

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1987

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PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-198
OAL DOCKET NO. CCC 5898-86
LICENSE NO. 00905-11

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

FINAL ORDER

Complainant, :

v. :

JAMES R. ABEL, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 29, 1987,

IT IS on this 15th day of May 1987, ORDERED that the initial decision is modified as follows:

The 60-day deadline for payment of the civil penalty and service of the license suspension is rejected. The penalties will be imposed in a manner consistent with past Commission decisions.

IT IS FURTHER ORDERED that the respondent pay a civil penalty of \$500 and his casino key employee license is suspended from 12:01 a.m., May 27, 1987, until 11:59 p.m., May 29, 1987, substantially for the reasons stated in the

initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that 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
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5898-86

AGENCY DKT. NO. 86-198

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

Petitioner,

v.

JAMES R. ABEL,
Respondent.

**Norma Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

James R. Ozol, Esq., for respondent

Record Closed: February 10, 1987

Decided: March 25, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on May 28, 1986 seeking sanctions against the respondent's casino key employee license because he gambled at the Claridge Hotel Casino (on March 20, 1986) in violation of N.J.S.A. 5:12-100n. The respondent filed an answer admitting the violation, apologizing for his behavior, promising not to violate the rules and regulations again, and accepting the penalty imposed by the Commission in advance. Nevertheless, the matter

was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was conferenced on October 20, 1986 and the single issue was identified as what penalty, if any, should be applied.

The parties were convened in Atlantic City on February 10, 1987 at which time there was testimony and oral argument after which the record closed. Since then the attorneys ably briefed the issue.

FACTUAL FINDINGS

1. James Abel, a pit boss at Harrah's Casino, has been employed in the casino industry in Nevada and New Jersey for 16 years, the last six and one-half in New Jersey, without incurring any violations of casino regulations except for the instant one of gambling in a casino while licensed by the Casino Control Commission.
2. James Abel earns a base annual salary of \$53,000 and has no onerous financial obligations.
3. On March 20, 1986, James Abel traveled to New York City and attended a party with casino patrons at the request of his employer for public relations purposes.
4. Abel returned from New York City in an exhilarated state as a result of his first exposure to New York City and the consumption of alcohol.
5. Abel went to the Claridge Casino searching for friends who were employed there but found that they had just completed their shift and had left the casino.
6. On the spur of the moment, Abel joined a craps game in progress for approximately 15 minutes then cashed chips out worth \$135 and left the casino.

7. Abel was observed during the entire 15 minutes by Sr. Inspector Toni-Lynn Barber who knew him personally, and her assistant, Franklin Policastro.

ADDITIONAL TESTIMONY FROM RESPONDENT

In addition to the factual recitation, the respondent repeated his apology for his infraction of the rules, noted his embarrassment, and promised, not only to conform his behavior to the rules and regulations of the Commission in the future, but to remain sober as further insurance that he would so conform.

PENALTY

The imposition of any penalty beyond the two days suspension already served by the respondent will have little, if any, deterrent effect on this respondent. This respondent will not commit a second infraction of this regulation. This respondent is an ideal casino employee.

The Casino Control Commission views gambling by casino licensees as a serious offense with the potential for undermining the integrity of the casino industry. It imposes fines and suspensions on violations, not only to punish and correct the violator's behavior, but in order to deter others as well.

A policy that permits extensive mitigation of penalties is not consistent with a policy which employs penalties against a violator in order to deter others. It is not logic which compels this, but the frailty of human nature.

The Commission seeks to implement a policy of deterrence on a case by case basis (see colloquy of Commissioners of March 21, 1984 attached hereto as Exhibit A).

Because the respondent is a key casino employee making in excess of \$50,000 annually, because the imposition of a fine and suspension will not work an undue hardship upon the respondent, because the respondent is a first offender, and because persons similarly situated may be deterred by the respondent's punishment, I **ORDER** that the respondent pay a civil penalty to the Casino Control Commission in the amount of \$500

within 60 days of the adoption of a final decision in this matter by the Casino Control Commission and that the respondent serve a five day suspension with credit for two days served within 60 days of the adoption of a final decision by the Casino Control Commission.

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

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

March 25, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

March 26, 1987
DATE

Michael L. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 30 1987
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

None.

CCC minutes 3/21/84

1

1 to one; a familiar pattern.

2 MR. HERBERT: Thank you very much.

3 MS. BIACHE: The next item is Item
4 No. 27:

5 "Complaints of the Division of
6 Gaming Enforcement against casino employee
7 licensees for violation of N.J.S.A.

8 5:12-100(n):

9 a) Argirios Karavasilis

10 b) Joseph M. Tursi

11 c) Seu Y. Forcellini."

12 Mr. Daly.

13 MR. DALY: Mr. Chairman,

14 Commissioners, before we reach the specifics
15 of these three 100(n) violation cases that
16 are before you today, I might note that on
17 several occasions in the past the Commission
18 has indicated that it was in the process of
19 adopting a new policy for handling 100(n)
20 violations generally.

21 It might be helpful if the
22 Commission considers that policy at this
23 time prior to addressing the merits of the
24 individual complaints.

25 CHAIRMAN READ: You're suggesting,

1 Mr. Daly, that we might try at this time to
2 formulate some sort of a policy we would
3 apply probably to these three matters before
4 us at this time and in the future, in line
5 with the fact we have a standard policy
6 before us for penalties which might be
7 assessed on such matters for a somewhat
8 modified basis, at least in the past in a
9 modified basis, depending on when the
10 infraction might have taken place?

11 MR. DALY: That's correct.

12 CHAIRMAN READ: It very well may be
13 appropriate to consider going forward in
14 that fashion. I know that we had
15 established originally, and I don't remember
16 the exact dates, but I think it was early in
17 1983, late 1982 or early '83, a series of
18 monetary fines that were scaled to agree in
19 some fashion with the income of the
20 individuals who might have been charged,
21 that is, whether they were dealers or
22 security officers or box persons or floor
23 persons or pit bosses. I've given them in
24 somewhat of an ascending order of fines to
25 been given. That was subsequently modified.

1 I think this goes back to March of 1983, to
2 include, instead of a fixed dollar figure
3 for those categories, arrange for those
4 categories, again, on an ascending basis of
5 dealers and others earning less than \$25,000
6 the fine being \$100 to \$200; box persons
7 being \$150 to \$300; floor persons being \$200
8 to \$400; and pit bosses and other key
9 employees \$250 to \$500.

10 At that time I think we also spoke
11 of the possible suspension of credentials of
12 the licensee and that we might impose those
13 sanctions in combination with each other,
14 dependent upon the severity of the
15 particular circumstances of the case.

16 I think we had limited the number
17 of times we had actually suspended a
18 person's license for a short period of time,
19 but we have taken it into consideration more
20 recently the discussion certainly including
21 that as an appropriate consideration for us
22 to take into consideration at the time of
23 assessing penalties.

24 There has been, I know, some
25 discussion as to whether or not such

1 sanctions should be entirely within the
2 discretion of the Commission or whether the
3 Commission should give consideration to any
4 penalties that might be imposed by the
5 licensee's employer.

6 It seems to me that a more flexible
7 system would be quite appropriate -- I know
8 that there have been various time frames
9 involved that have been discussed by several
10 Commissioners. I would like to simply throw
11 the discussion open at this time for any
12 comment by the Commissioners to see where we
13 might come to some sort of a conclusion as
14 to an appropriate range for consideration in
15 the future, if I may. Commissioner
16 Jacobson.

17 COMMISSIONER JACOBSON: Mr.
18 Chairman, I certainly don't need, I think at
19 this time, to set forth the reasons for the
20 harsher penalties to be imposed upon 100(n)
21 violations; only to remind everyone once
22 again that we had a situation most recently
23 where licensed personnel were involved in
24 gambling in one casino and sustained losses
25 with a resulting attempt to recover those

1 losses through illegal means while
2 performing their duty as licensed personnel
3 for casinos.

4 I make no charge obviously that
5 everyone in the casino industry is going to
6 go out and steal the next day, that's not
7 what we're saying. We are looking to remove
8 the vulnerability of any of the licensee
9 personnel who gamble and who obviously will
10 be ground down by the house edge and lose.

11 For that reason, I think there's
12 justification for tightening the
13 restrictions on 100(n) violations.

14 I would like to offer the following
15 for perhaps a policy as to how we can treat
16 violations of 100(n) in the future.

17 For a first violation, we suspend
18 the license credentials for a period ranging
19 from one to 14 days and impose a monetary
20 penalty within the following ranges: for
21 security employees and other casino
22 employees earning less than \$20,000, a
23 penalty of between \$100 and \$250 dollars.

24 For dealers and other casino
25 employees earning more than \$20,000 but less

1 than \$30,000, a monetary penalty between
2 \$100 and \$500.

3 For box persons and floor persons
4 and other casino employees earning more than
5 \$30,000 but less than \$40,000, a penalty
6 between \$100 and \$750. For pit bosses and
7 other casino employees earning more than
8 \$40,000 a year, a monetary penalty between
9 \$100 and \$1000.

10 The earnings are to be computed on
11 a per annum basis.

12 For a second violation, I would
13 recommend that we arrange for a suspension
14 of the license credentials for a period
15 ranging from 15 to 60 days and/or a monetary
16 fee between \$500 and \$2,000 for all
17 categories of employees.

18 In the event of a third violation,
19 the revocation in all cases for all
20 categories.

21 CHAIRMAN READ: Other comments?

22 COMMISSIONER BURDGE: Mr. Chairman,
23 I support Commissioner Jacobson's comments.
24 However, I would like it to be made clear
25 that during the period of suspension an

1 employee that is suspended should receive no
2 remuneration whatsoever if he or she has
3 accrued vacation, sick time, bonuses,
4 whatever.

5 It seems that the licensees are
6 taking our warnings lightly. Every month a
7 report comes to us showing two, three, four,
8 five individuals that have been found
9 gambling in one casino or another. I'm sure
10 the word has gone through the grapevine and
11 I would also like to see the violations that
12 have been mentioned either handed out by the
13 Commission or the casinos themselves so that
14 the employees cannot come back and say, we
15 were not aware of the sanctions that may be
16 imposed upon us for violating this section.

17 CHAIRMAN READ: Commissioner Zeitz.

18 COMMISSIONER ZEITZ: We all seem to
19 talk on this one.

20 In the past I've tried to make
21 distinctions concerning dates, when we said
22 we would do one thing and when we had said
23 we would do another and how much notice
24 there had been.

25 I understand there's a few of these

1 cases that may go back to as early as '81,
2 which may be still pending and why I don't
3 know, and that's long before the Commission
4 ever addressed or issued any kind of a
5 procedural policy, and those I think we
6 might want to deal a little more leniently
7 with.

8 As far as I'm concerned with,
9 anything in the last -- at this point,
10 anybody who's been involved in this kind of
11 thing in the last year or so, I don't think
12 we have many that would be older than that,
13 Mr. Daly, except for the few that go back,
14 but I'm not drawing any time limits on
15 myself.

16 There's been enough discussion and
17 public notices and enough warnings, that I
18 think all these people who are licensed,
19 whether they are a casino employee licensee
20 or key licensee, and they all came to this
21 Commission seeking a license knowing that
22 the law said they had to get a license.,
23 That same law says they are prohibited from
24 gambling, and yet they go on and on and on.

25 Now, I was for, and still am for,

1 personally, a much stricter and harsher
2 penalty at this point. I said a three month
3 suspension. That would be my personal
4 preference. But I can see a consensus
5 forming for the policy and procedure
6 outlined by Commissioner Jacobson, and I
7 will support that today with a vote.

8 With the further caution that if
9 there's any more required, that if this, if
10 we keep getting droves and droves of these
11 cases in the face of a new and tougher
12 policy, then my solution may become the
13 Commission's solution at some point, and you
14 might as well lose your license if you're
15 going to lose it for three months, which I
16 would like to see happen, because nobody's
17 going to hire you again; that's the way it
18 works in this town.

19 COMMISSIONER THOMAS: Might I add,
20 Mr. Chairman, that I would hope that this
21 proposal will be implemented on a trial
22 basis with no attempt at this moment to
23 reduce it to a regulation. I think it
24 really provides some guidelines for the
25 disposition of 100(n) cases.

1 I think we should retain, this
2 Commission should retain the right to use
3 any sanction authorized by 129 if the
4 circumstances warrant it.

5 I think we're just doing, I
6 suspect, a temporary route hopefully that
7 sooner or later based upon other
8 circumstances, these sanctions can reduce
9 this to a regulation in some form or
10 fashion.

11 CHAIRMAN READ: Well, Commissioner
12 Thomas, I think that's a point well taken.
13 Particularly, when we review the history as
14 to the way this has been treated.

15 I remember clearly the day in
16 December of 1982 when Commissioner Jacobson
17 first said that he didn't think monetary
18 penalties were working and that he thought
19 revocation -- suspension, I should say, of
20 the license would be appropriate.

21 While he was a voice crying in the
22 wilderness, but he suddenly got a clamor of
23 other voices joining him, particularly
24 evidenced by the course that's arising
25 today.

1 But I would suggest that in line
2 with what you said, Commissioner Thomas, and
3 what Commissioner Zeitz said, that these are
4 guidelines that we are talking about at this
5 stage.

6 I would hope these guidelines, if
7 they are being enunciated, as I rather
8 having a feeling they are about to be, will
9 reach the industry and be understood by the
10 licensee as to what is involved and be taken
11 very seriously, as they are intended to be
12 taken.

13 But they are guidelines, they are
14 not a straightjacket. If there are
15 particular appealing reasons we should not
16 be this strict, I can conceive of our
17 reacting to them to some extent.

18 If somebody's conduct is absolutely
19 outrageous, despite the fact that it's a
20 first offense, I can conceive of us being
21 more difficult than these guidelines
22 indicate.

23 So as I say, I would like to
24 consider what we're talking about here, they
25 are simply guidelines. They are guidelines

1 for us and they are also guidelines for the
2 licensees.

3 We treat them in that fashion and
4 it will be clearly stated in that way,
5 unless anyone has any objection to treating
6 them in that fashion?

7 COMMISSIONER JACOBSON: I quite
8 agree these should be regarded as
9 guidelines, but above and beyond the
10 guidelines, let the message go forth: No
11 more, our patience is exhausted. If you're
12 a licensed personnel and you gamble, you're
13 going to get nailed.

14 MR. MOUNTFORD: May I make an
15 inquiry, Mr. Chairman?

16 CHAIRMAN READ: Yes, you may,
17 indeed.

18 MR. MOUNTFORD: Thank you. Since
19 this seems to be my baliwick at the Division
20 and I have a bunch of them holding up on, to
21 be clear for the people here, and myself
22 included, for a first violation, it is
23 suspension plus, it isn't and/or; as to the
24 second violation, it was quoted and/or. For
25 first violation, it is suspension plus fine --

1 monetary penalties?

2 CHAIRMAN READ: Yes.

3 MR. MOUNTFORD: Thank you.

4 CHAIRMAN READ: Any further
5 questions or discussions?

6 From a matter of mechanics, I'm not
7 quite sure how we should proceed on this
8 basis. Commissioner Jacobson, since you
9 enunciated that, would you like to move that
10 we adopt these figures and time frames as
11 guidelines?

12 COMMISSIONER JACOBSON: I would so
13 move Mr. Chairman.

14 COMMISSIONER ZEITZ: Second.

15 CHAIRMAN READ: Any further
16 discussion? All those in favor?

17 (All Commissioners present voted in
18 favor of the motion.)

18 CHAIRMAN READ: Unanimously

19 - carried.

20 With that background, let's now
21 proceed to Item No. 27.

22 MS. FRIGEN: Mr. Chairman, perhaps
23 we should first hear the matter of Argirios
24 Karavasilis. Mr. Richard Rosenberg is here
25 on behalf of the respondent in this matter.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 365501

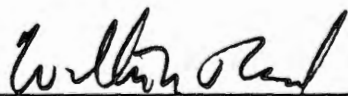
IN THE MATTER OF THE PETITION OF :
ADAMAR OF NEW JERSEY, INC., :
REQUESTING A DECLARATORY RULING :
CONCERNING THE OFF-SITE : FINAL ORDER
ACCEPTANCE OF PAYMENTS ON NON- :
RETURNED COUNTER CHECKS, ETC. :

This matter having been opened to the Commission on the declaratory ruling petition of Adamar of New Jersey, Inc. (Adamar), Mark H. Sandson, Esq., Steven R. Bolson, Esq., and Lee H. Gottlieb, Esq., appearing; and the Division of Gaming Enforcement (Division), Kevin F. O'Toole, Deputy Attorney General, appearing, having responded in opposition to the petition; and the Commission having considered the briefs and statements filed by Adamar, the Division and all other operating casino hotels; and the Commission having on September 24, 1986, heard oral argument by counsel for the parties and other industry members,

IT IS on this 1st day of December 1986 ORDERED that, for the reasons set forth on the record of the November 26, 1986, public meeting and in the written opinion of the same date which is attached hereto and made a part hereof:

1. The request for a declaratory ruling to permit passive collections away from the casino cage on outstanding counter checks is denied.
2. The request for a declaratory ruling to permit passive collections at branch offices or other suitable locations pursuant to approved internal control procedures is granted, subject to the conditions set forth in the attached opinion.
3. The request for a declaratory ruling to permit passive collections on returned counter checks at other unspecified locations "in the field" pursuant to approved internal control procedures is granted, subject to the conditions set forth in the attached opinion.

IT IS FURTHER ORDERED that a copy of this order be served forthwith on counsel for the parties, for the Association and for all operating casino hotels.



WALTER N. READ, CHAIR

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 365501

IN THE MATTER OF THE PETITION OF ADAMAR :
OF NEW JERSEY, INC. REQUESTING A :
DECLARATORY RULING CONCERNING THE :
OFF-SITE ACCEPTANCE OF PAYMENTS ON :
NON-RETURNED COUNTER CHECKS, ETC. :

DECISION

This matter comes before the Commission as a declaratory ruling petition filed by Adamar of New Jersey, Inc. (Adamar) and joined by each of the other operating casinos and the Atlantic City Casino Association. It seeks to resolve the major legal and policy issues raised by casino licensees engaging in collection practices at branch offices and "in the field," a term that the casino industry has developed to mean other unspecified locations, including a patron's home or place of business, for receipt of payment on outstanding and returned counter checks initiated by a patron. The term "collections" may have different meanings, and it will be important to distinguish between passive receipt of funds at the behest of the patron (or "passive collection activities") and casino efforts to obtain payments for gaming debts (or "collection efforts"). Essentially the Commission must decide four separate issues:

(1) Whether casinos may accept payments from patrons on outstanding counter checks other than at the casino cage? "Outstanding counter checks" means checks which are issued by a patron to a casino for gaming credit and which have not yet been deposited by the casino with a bank for payment in accordance with N.J.S.A. 5:12-101(c).

(2) Whether casinos may accept payments from patrons on returned counter checks in locations outside of the casino cage? "Returned counter checks" means checks which are issued by a patron to a casino for gaming credit and which have been returned by a depository bank unpaid for insufficient funds. See N.J.S.A. 5:12-101(e).

(3) If casinos may accept payments on outstanding counter checks other than at the casino cage, may such payments be accepted only at approved branch offices or may they be accepted also in the field?

(4) If casinos may accept payments on returned counter checks other than at the casino cage, may such payments be accepted

only at approved branch offices or may they be accepted also in the field?

A brief review of the factual history which prompted the instant petition is essential to an understanding of the issues. Early in 1980, the casino industry expressed an interest in implementing passive collection activities for accepting payments on patron gaming checks or "counter checks" in areas outside of the casino cage, specifically at branch offices. Later, in 1980, a letter was sent by Francis X. Fee, then Director of the Commission's Division of Financial Evaluation and Control, to a number of casino licensees concerning branch offices. In effect, the letter stated that casino licensees desiring to implement branch office procedures would be required to seek formal Commission approval. The letter indicated that the casinos must demonstrate that contemplated branch office activities regarding counter checks are permissible under the Act. More specifically, the casinos were to address the issue of whether receipt of funds at a branch office would be "redemption" of an outstanding patron check and, if so, whether it could occur outside the cage.¹ The casino industry did not file such a

1. Pursuant to N.J.S.A. 5:12-101(c), a casino licensee must deposit in a bank for collection each patron gaming check within a specific time period which varies with the amount of the check. However, an exception is provided to permit
(Footnote Continued)

petition. Rather, the casinos began to submit internal control procedures for branch office collections for Commission staff approval pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. Commission staff approvals were granted on a case by case basis to casinos desiring to utilize branch offices for passive collection activity. Approvals were granted to the following casinos for the following activities:

- (1) Atlantis, on August 8, 1983, to use its branch office for the acceptance of cash, checks and cash equivalents in payment of outstanding counter checks, returned counter checks and checks which have been written off and for² the acceptance of safekeeping deposits.

(Footnote Continued)

the issuing patron to redeem the check before the deposit deadline by paying it off in full with cash or gaming chips (full redemption) or in part by paying some of it with cash or chips and issuing a new check for the remainder (partial redemption).

2. The Commission has never formally considered the correctness of staff approvals for accepting safekeeping deposits at branch offices or any other locations outside the cage. Indeed, several Commission decisions have indicated that such acceptances may be contrary to the regulations and the security protections built into the cage. See State v. Boardwalk Regency Corporation, et al., OAL Docket No. 84-246, Opinion dated October 28, 1985; State v. Playboy Elsinore Associates, et al., Agency Docket No. 83-16, Opinion dated October 11, 1984; and State v. Greate Bay Hotel and Casino, et al., Agency Docket No. 83-17, Opinion dated July 25, 1984. The Commission is not asked to determine the permissibility of these approvals at this point and does not do so. However, the issues should be reconsidered as soon as possible in light of this decision and our prior rulings.

(2) Sands, on March 23, 1984, to use its branch office to accept payments for outstanding counter checks and returned counter checks and to use the branch offices of banks with which Sands has made arrangements to accept such payments.

(3) GNOC, on October 24, 1984, to use its branch office to accept payments on outstanding counter checks, returned checks and checks which have been written off and for the acceptance of safekeeping deposits.

(4) Resorts, on January 30, 1985, to use its branch office to receive payments for outstanding counter checks, to assist in collections of returned checks and for the acceptance of safekeeping deposits.

(5) Boardwalk Regency Corporation on October 9, 1985, to accept payments on outstanding and returned counter checks.

In addition, branch office procedures were submitted by Harrah's Marina and Trump Plaza but were never granted final Commission staff approval in view of the pendency of this petition for a declaratory ruling. Bally and Claridge have in the past, and Trump's Castle has very recently submitted procedures for field collections, none of which have obtained Commission staff approvals. In February and June 1985, Adamar submitted procedures for field collections. In view of the objection by the Division of Gaming Enforcement ("the Division"), Adamar filed the instant petition. Nevertheless, in the absence of explicit Commission approval, many casinos have extended their branch office procedures to include passive collections in the field for both outstanding and returned counter checks.

A number of things are clear from this background. formal Commission consideration has been given to the issues raised by the collection of payments on outstanding or returned counter checks in the field. The Commission has, however, summarily ratified Commission staff approvals with respect to collection activities at branch offices.³ Thus, the Commission has never fully considered the legal and policy questions raised by branch office procedures and has never considered in any form the propriety of field collections as proposed by the casino industry.

With regard to this history, we note that a government agency is not bound by ordinary errors or omissions in the conduct of its employees because there is a generally prevailing public interest in correcting erroneous interpretation of policy nor will a government normally be bound by erroneous advice or by entry into an agreement which is not in accordance with law. American Training Services, Inc. v. Veteran's Administration, 434 F. Supp. 988 (1977). Thus, if the Commission or Division staffs

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3. By Resolution No. 81-667, the Commission formally delegated the authority to its Division of Financial Evaluation and Control to approve internal control procedures where no objection is raised by the Division of Gaming Enforcement. Where an objection is lodged, the matter must be presented to the Commission itself. If staff approval is given, the Commission is asked to ratify the approvals on a periodic basis, when the Commission is given a summary of approvals for the period.

erred in extending approval to any of these procedures, the Commission is not estopped from seeking to correct prospectively this interpretation of law and policy. Further, it is a well settled proposition that administrative agencies possess the inherent power to reconsider their quasi-judicial acts when good cause is present, except to the extent such power is limited by some legislative restriction.⁴ Burl. City Evergreen Pk. Mental Hospital v. Cooper, 59 N.J. 579, 600 (1970) (the power of an agency to reopen or rehear an order must be exercised reasonably and with reasonable diligence); Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950) (the power of an agency to reconsider its judicial acts is subject to the requirement of procedural due process and notice to the parties.)

Thus, Commission or Division staff approvals extended to branch office procedures and subsequent Commission ratification of these procedures do not now restrict the

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4. Pursuant to N.J.S.A. 5:12-107(d), the Commission may consider a petition to reopen a contested case determination if such petition is filed within 10 days of the order entered in the case. The instant matter does not concern a contested case determination, since there was no trial-type hearing or procedures followed by the staff in granting approval. Moreover, the industry has the benefit of the staff approvals for previous acts. The question here deals with future behavior and it is, therefore, not controlled by the limitations on reopening earlier decisions. Prospective rulings on law and policy cannot be foreclosed indefinitely by an earlier staff approval, and we do not read Section 107(d) as creating such a barrier.

Commission from addressing the legal and policy issues raised by industry-wide collection practices now in question. The Commission has a continuing duty to review the areas over which it has regulatory responsibility and it may reformulate policy and respond to new problems as they may arise. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975), aff'd. 60 N.J. 599 (1976). As has been so often discussed, casino gaming is an especially sensitive industry and subject to extensive regulation and control in order to engender and maintain the public's confidence and trust. Knight v. Margate, 86 N.J. 374, 382 (1981); In Re Boardwalk Regency Corp. License Application, 180 N.J. Super. 324, 341 (App. Div.), aff'd. 90 N.J. 361 (1982). Clearly then, the Commission has a continuing duty to regulate the casino industry and may reconsider all legal and policy issues related to collections of outstanding counter checks and returned checks both at branch offices and in the field.

Collection of Outstanding Counter Checks Outside the Cage

In drafting the Casino Control Act, the legislators debated extensively the subject of whether or not to extend credit to gaming patrons. As the petitioners duly noted in oral argument, the State Commission of Investigation (SCI) completely opposed the issuance of credit in connection with gambling in Atlantic City. The SCI was concerned with the problem of illegal diversion of funds, player protection and strongarm methods of

debt collection. The Governor's Staff Policy Group on Casino Gambling studied all aspects of a credit system and recommended a tightly controlled system of check cashing for patrons. The Staff Policy Group proposed that collections be made only by appropriately licensed casino employees so that the legitimate interests of the casinos could be accommodated while the troublesome features of open credit would be minimized.

What developed in the legislation was a limited credit system which incorporated many aspects of the Staff Policy Group's check cashing proposal and which demanded extensive and strict controls. This is evident in section 101 of the Act which governs all credit transactions including the redemption of outstanding counter checks and the collection of returned counter checks. This is further evident in the comprehensive regulations promulgated by the Commission which detail procedures for every aspect of credit issuance and which must be followed exactly as specified in the regulations. See N.J.S.A. 5:12-101(b)(4). Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981).

Subsections 101(c), (e) and (f) are pertinent to the issues concerning collection of outstanding counter checks. N.J.S.A. 5:12-101(c), (e) and (f). Section 101(c) requires that all checks cashed by a casino licensee must be deposited by the licensee within specific time periods depending upon the dollar amounts of such checks. The only exception is for redemption of

the checks by the issuing patron. Checks issued in partial redemption or consolidation transactions are likewise subject to the bank deposit deadlines. Further, subsection (f) provides that all "checks cashed in conformity with the requirements of [the Act] shall be valid instruments enforceable at law in the courts of this State." Read in pari materia, these provisions of the Act spell out the requirements for the handling of outstanding counter checks. To collect on an outstanding counter check, a casino licensee need only deposit the check into a bank account in compliance with section 101(c) of the Act.

In essence, there can be no "collection," i.e., no active collection, on an outstanding counter check. Since the check is not yet due for payment, no collection efforts are permitted, other than bank deposit for payment. An outstanding counter check may, however, be redeemed or consolidated by the patron. Thus, there is a very clear distinction between active collection activity and passive acceptance of payments on outstanding counter checks. The Casino Control Act plainly mandates that collection efforts may be made only with respect to returned checks as provided in section 101(e) and further provided in the Commission regulations at N.J.A.C. 19:45-1.29. Thus, casinos may not engage in active collection efforts on

outstanding counter checks regardless of where those efforts occur.⁵

Moreover, with regard to passive receipt of payments on outstanding counter checks, the Commission regulations govern both the manner and the location for redemption of such checks. N.J.A.C. 19:45-1.11 is instructive here. That provision sets forth the organizational scheme for all departments of a casino licensee making up the licensee's system of internal controls. Included in a licensee's system of internal controls is the cashier's cage which, among other functions, maintains custody for cash and patron checks and is responsible for the approval, exchange, redemption and consolidation of patron checks received for the purpose of gaming. N.J.A.C. 19:45-1.11(c)(9)i and ii. The redemption function is again addressed in N.J.A.C. 19:45-1.15 dealing with accounting controls within the cashier's cage. N.J.A.C. 19:45-1.15(b)1i states:

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5. The only arguable exception to this restriction is the obligation imposed on a casino to ask a credit patron who is cashing chips in excess of \$500 or leaving the casino with such amount of gaming chips to refund the chips in redemption of outstanding counter checks. N.J.A.C. 19:45-1.25(o). This policy against "walking with the chips" is not inconsistent with the prohibition on efforts to collect outstanding counter checks since the underlying purpose of a counter check is to allow the patron to play rather than to obtain an interest free loan. Thus, the patron is merely reminded of the intent of the parties in executing the credit transaction. In any event, further
(Footnote Continued)

The cashier's cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and such cashiers' functions shall be, but not limited to, the following:

i Receive cash, cash equivalents, checks, gaming chips and plaques from patrons for check consolidations, total or partial redemptions or substitutions. (emphasis added).

These two sections manifestly require all redemption transactions to take place at the cashier's cage. This requirement is also expressly stated in N.J.A.C. 19:45- 1.25(e) (cash equivalents and casino checks shall only be accepted at the cashier's cage) and N.J.A.C. 19:45-1.26(d) (all consolidations, total or partial redemptions or substitutions of checks by gaming patrons shall be made at the cashier's cage.) These specific regulatory provisions contradict the petitioners' contention that the Casino Control Act and Commission regulations are concerned only with the persons who are engaged in the collection function and not the location of the activity. Rather, these requirements circumscribe both the manner and the location of the petitioners' proposed activity.

(Footnote Continued)

collection efforts would be prohibited as to outstanding counter checks once the patron leaves the casino room.

Five prior Commission decisions referenced by the Division in its brief support the proposition that redemption must occur at the cashier's cage. The petitioners contend that these decisions are not instructive in this matter. However, the Commission believes that they are controlling and bear discussion.

In State v. Greate Bay Hotel and Casino, et al., Agency Docket No. 83-17, Opinion dated July 25, 1984, the Commission found that the Sands had violated the Casino Control Act and Commission regulations, N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.15, 1.24(a) and 1.25(e), for accepting cash and checks outside of the casino cage area. Specifically, employees of Sands' casino cage department accepted \$311,350 in cash and 48 checks totalling \$2,638,650 presented by a group of oriental patrons in a hotel conference room. The funds were then transported in a suitcase to the cage area. In rendering its decision the Commission stated:

The plain meaning and design of the Commission's internal control regulations require these critical functions to occur within the casino cage. The thrust of respondent's argument fails to properly consider the strict regulatory purpose behind those regulations. Casino gaming is an especially sensitive industry and subject to extensive regulation and control in order to engender and maintain the public's confidence and trust. Knight v. Margate, 86 N.J. 374, 382 (1981); In Re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341 (App. Div.) aff'd 90 N.J. 361 (1982).

Transactions performed by the cage cashier are required to happen at the cage to safeguard the assets involved, as well as facilitate the monitoring and control of these activities by the Commission, the Division and the casino's own surveillance and security departments. State v. Greate Bay, et al., supra, Commission decision at 10.

Similarly, State v. Playboy Elsinore Associates, et al., Agency Docket No. 83-16, Opinion dated October 11, 1984, involved the same group of patrons named in the Sands case. In this instance, cage personnel accepted 75 checks totalling \$1.9 million in a hotel meeting room. The Commission affirmed its decision in the Sands matter when it stated:

In the Sands case we expressed at some length the seriousness with which we view the practice of conducting such transactions outside of the secured area known as the "cage". The thrust of that holding was that neither business interests nor consideration of patron convenience can supplant the statutory and regulatory constraints binding upon all casino licensees. The regulations are not unclear or vague on this point. State v. Playboy, et al., supra, Commission decision at 8.

These two cases clearly support the requirement that transactions involving the acceptance of cash, checks or cash equivalents⁶ to establish a patron cash deposit must occur at the cashier's cage.

6. State v. Resorts International Hotel, Inc. et al, Agency Docket No. 83-388, Opinion dated June 14, 1985, found
(Footnote Continued)

The case of State v. Boardwalk Regency Corporation, Agency Docket No. 81-32, Opinion dated January 3, 1983, involved a field visit within the licensee's own facility. A "high roller" patron requested casino representatives to come to his hotel room to receive payment on his outstanding \$1.2 million debt. In exchange for three nonconforming personal checks used to consolidate the debt, each in the amount of \$400,000, the casino representatives turned over 37 counter checks which the patron tore in half. The Commission found the casino licensee in violation of the Act and regulations for the acceptance of nonconforming checks and the removal of counter checks from the cashier's cage. The Commission stated in its opinion,

[T]he removal of the counter checks was neither a necessary nor included act in the redemption violation. The separate objective served by the cage maintenance requirement was frustrated, quite apart from the improper redemption itself.

While the Commission did not specifically find that the casino licensee had violated N.J.A.C. 19:45-1.26(d) for performing a

(Footnote Continued)

Resorts in violation of N.J.A.C. 19:45-1.25(e) for accepting \$100,000 in traveler's checks at the baccarat pit. The Commission cited the prior Sands and Playboy Elsinore Associates decisions and stated:

When a transaction is moved from the cage to a casino gaming table without the approval of either of the regulatory agencies, it is an egregious breach of internal control and security requirements.

cage function (a consolidation) in a patron's room, it is clear that this transaction, even under ideal conditions, should have occurred at the casino cage.

Finally, we refer to the "Molony" case, State v. Boardwalk Regency Corporation, et al, OAL Docket No. 84-246, Opinion dated October 28, 1985, as an illustration of impermissible field visits for the purpose of obtaining a patron's signature on Customer Deposit Receipt forms. In that matter, Mr. Molony transferred funds from a Canadian Bank to Caesars Palace in Las Vegas. From there the funds were wired to BRC in Atlantic City. However, transmittal forms indicated that the funds were transferred in another individual's name (Alphonse Ruggiero). When Mr. Molony arrived at BRC from Toronto he was informed that he could not use the funds. Arrangements were then made to fly BRC personnel to Toronto to obtain Mr. Ruggiero's signature on blank Customer Deposit Forms. The Commission approved a finding of liability on the part of BRC for executing cage documents outside the casino cage in violation of N.J.A.C. 19:45-1.15(b) and N.J.A.C. 19:45-1.25(e).

Based on the Commission regulations and prior caselaw, it is clear that if the activity petitioners propose constitutes a redemption it is presently prohibited by the Commission regulations from taking place outside the cage. The petitioners have proposed that, although they will take money from patrons at remote locations, no counter checks will be released from the

cage and to the patron until the patron's money is delivered to the cage and all accounting procedures have been completed. The petitioners further propose that the patron will be made aware, through a disclaimer, that the redemption is not complete until the funds are received in the cage. In short, the petitioners argue that they are merely receiving the funds in payment for the counter check and that acceptance, and by implication, redemption, does not occur until the funds are received at the casino cage. This argument presumes that the casino representative who is receiving payment is acting as the agent of the patron and not the casino for the purposes of the collection. Under this theory, then, any risk of loss of the funds would not pass to the casino until payment is received in the casino and the counter check is returned.

This contention depends on the efficacy of the disclaimer on the patron's receipt, a doubtful proposition to which the petitioners have not addressed themselves. It also depends on the fairness of holding a patron liable for amounts paid to the casino and lost, destroyed or stolen through no fault of the patron and, possibly, through the fault of the casino's representative. In such a case, the reality is that the patron would, and should, be found to have paid the obligation. Thus, from the instant the funds are handed to a casino representative in the field or at a branch office and a receipt is given to the patron, the casino can no longer demand payment on the

outstanding counter check to the extent of the funds received.⁷
Simply stated, the counter checks have been effectively redeemed,
in whole or in part, whether the funds reach the cage or not.⁸

7. The petitioners may assert that, notwithstanding the casino's probable liability to the patron for lost, stolen or otherwise missing funds, this liability can be separated from any cage transactions. Under this theory, the casino would acknowledge its separate liability to the patron for the funds and would then propose to set off the liability against the gaming debt represented by the counter check, which would be voided and returned to the patron. While this segmentation of the payment and the counter check release may make some sense as an accounting entry, it is inconsistent with the stated requirements of the Act. If it is assumed that the receipt of the funds and the liability of the casino do not constitute a redemption, then the casino must deposit the counter check in a bank for payment within the time specified by Section 101(c) of the Act. While this may seem unfair to the patron, the casino cannot knowingly violate the statute in order to offset a separate liability. Moreover, the Act expressly states the casino may accept chips, cash or other qualifying checks in exchange for an outstanding counter check. The proposed transaction would be barred, therefore, since it would involve exchanging a "live" counter check for a liability owed by the casino to the patron. To hold otherwise would not only disregard the plain language of the Act but would open up the possibility of a casino using other, "unrelated" claims by patrons to reduce outstanding gaming obligations. If done, the integrity of gaming debts would be no higher than the integrity of any claim against the casino hotel business. Such a result is hardly consistent with the regulatory system.
8. A distinction should be drawn between the case described herein and one where a bona fide agent of the patron, e.g., a spouse or a friend, unaffiliated with casino operations, seeks to redeem a patron's outstanding counter check at the cage. It may well be that the casino can accept the funds at the cage, tender a receipt to the agent and mark the counter check paid without violating the Act or the

(Footnote Continued)

Under the present regulations, redemption and related transactions must occur at the casino cage. Thus, the Commission cannot authorize this activity through a declaratory ruling. Nor can we, in compliance with the Administrative Procedures Act and related case law, authorize interim procedures or guidelines to be utilized pending the adoption of such regulations, absent a declaration of emergency and concurrence by the Governor. See N.J.S.A. 52:14B-4(c). Since we have nothing before us to suggest that the inability of the industry to receive payments on outstanding counter checks at remote locations pending consideration of amendatory regulations would cause "imminent peril to the public health, safety, and welfare," the ordinary rule-making procedures must be followed. The industry is free to propose appropriate amendments which must address the security and integrity concerns now protected by the limitation of redemption transactions to the cage. However, the industry should be advised that, in order to succeed in having such regulations promulgated, it must demonstrate not only that comparable security and accountability to that now provided at the cage will be achieved but also that a system of remote

(Footnote Continued)

regulations, provided the original counter check is not released to the agent but is personally or otherwise delivered to the patron. In any event, the industry is invited to pose this question by way of a petition if it wishes a resolution.

redemption sites is necessary to the vitality of the industry and consistent with the letter and spirit of the credit system created by the Act. In short, the industry must confront the question why, if a patron chooses not to effect a redemption at the cage, the casino's response should be other than simply to deposit the counter check for collection by a bank, as contemplated by the Legislature.

Collection of Returned Counter Checks Generally

With respect to returned counter checks, section 101(e) of the Casino Control Act is the controlling provision. It provides:

No person other than one licensed as a casino key employee or as a casino employee may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney at law representing a casino licensee may bring action for such collection.

The Act specifically provides for the collection of returned checks by properly licensed casino personnel as well as by attorneys who may bring legal action for collection. Specific "collection efforts" are delineated in the Commission regulations to include verbal or written communication with patrons (N.J.A.C. 19:45-1.29(b)); redeposit of a dishonored check upon sufficient belief that it will be honored upon redeposit (N.J.A.C. 19:45-1.29(d)); notice to a patron by initial collection statement immediately upon receipt of a returned check (N.J.A.C. 19:45-1.29(e)); notice to a patron by a quarterly collection statement

until such time as collection efforts are discontinued (N.J.A.C. 19:45-1.29(e)); and referral of a delinquent account to an attorney for legal action (N.J.A.C. 19:45-1.29(b)). The regulations do not specifically prohibit collection of payments on returned counter checks either at branch offices or otherwise in the field.

Collection of Returned Counter Checks In the Field

We are concerned, as is the Division and as was the State Commission on Investigation (SCI) [Report and Recommendations on Casino Gambling, April 1977, pp. 1E to 9B] and the Staff Policy Group, [Second Interim Report, February 17, 1977, pp. 34 to 36] with such collections and the impact or ill effects that they might have on the integrity of the casino industry. We are concerned that field activity will be especially difficult if not impossible to monitor from a law enforcement standpoint, leaving much to the good faith efforts of casino licensees and leaving the licensees more vulnerable to complaints by patrons.

Nonetheless, there is no present legal impediment to permitting properly licensed members of the collection department to obtain payment on returned counter checks either in branch offices or at other remote locations. Thus, we are inclined to grant the petitioner's request insofar as it pertains to such collections. We recommend that regulations ultimately be promulgated to ensure uniformity in this area and we encourage

the casino industry to collaborate in this effort. To assure that this issue is not lost among the welter of problems and tasks confronting the industry, we hereby condition our ruling on the filing of a proper petition for rulemaking pursuant to N.J.S.A. 5:12-69(c) within 60 days. In the interim, however, any casino licensee which desires to engage in field collections of payments on returned counter checks must first submit to the Financial Division, and obtain approval of, internal control procedures which address at a minimum the following:⁹

(1) documentation of field activity --
including, at least, the following:

- name of patron who initiated the field visit
- date of such call
- name and license number of responding accounting department, collection section, representative
- resulting action
- where payment was made
- monetary amounts and whether such payment constitutes full or partial payment
- place of deposit of funds and exact time of deposit

(2) an adequate system of document control to record and establish accountability for collection transactions;

9. It should be clearly understood that interim guidelines represent the minimum acceptable standard for passive collections. Regulations will be much more stringent and comprehensive in scope and will refine even further the passive nature of the permissible activity.

(3) an assurance that such collections are to be made solely at the request of the patron;

(4) bonding of casino personnel making such collections by an accredited bonding company;

(5) prohibition on field collection employees negotiating the terms of payment. This function must be handled by accounting department collection section personnel prior to any field collection;

(6) assumption of the risk of loss of collected funds by the casino and no deduction for uncollectible instruments for purposes of section 24 of the Act in the event of a loss;

(7) security safeguards and procedures for the transfer or delivery of collected funds to the casino cage or the casino's bank, including the use of nearby depository banks where feasible.

Collection of Returned Counter Checks at Branch Offices

Voluntary payments made by patrons at branch offices for returned counter checks present less serious concerns.¹⁰ Such activity can be more readily controlled through on-site reviews, physical security approvals and observation by casino superiors. Once again, as requested by petitioners, the collection activity will be purely passive inasmuch as a patron must take the initiative to come to a branch office to make

10. For the reasons stated previously, there can be no collections on outstanding counter checks other than at the cage unless and until modified regulations are promulgated.

payment. Thus, it is unlikely that such payments would be made as a result of coercion by the casino's collection employees. Provided that there is adequate documentation of the receipt and transfer of funds, similar to the documentation created at the casino hotel facility, payments made by patrons on returned counter checks at branch offices do not raise the same integrity and public confidence concerns as do field collection activities. We would therefore grant the petitioners' request to engage in this activity pending the adoption of regulations to establish uniform standards for the industry. Once again, this decision is conditioned upon the filing of a proper rule-making petition pursuant to section 69(c) of the Act within 60 days and upon compliance with the following:

(1) Any casino desiring to engage in this collection practice must submit to the Financial Division and have approved internal controls governing this activity prior to engaging in same, provided that a casino already authorized under approved internal controls may continue to engage in this activity on the condition that a properly revised, complete internal control submission is filed within 30 days of this decision.

(2) Such submission should address at a minimum the following:

- approval of all branch offices where funds may be received;
- an adequate system of document control to record and establish accountability for collection transactions;
- assurance that branch office personnel

will not solicit funds, and that collection efforts will be undertaken by the appropriate accounting department, collection section, personnel in the collection area at the casino hotel;

- daily deposit of all funds into deposit-only bank accounts at or near the branch office location;
- use of casino representatives at branch offices who are properly licensed members of the accounting department, collection section, with no incompatible functions;
- assumption of the risk of loss of funds received at the branch office and exclusion of any deduction from gross revenues for purposes of section 24 of the Act by reason of loss of such funds;

In reviewing any submission for collections on returned counter checks at a branch office or other approved location,¹¹ the Commission and its staff will be guided by the procedures in place at the casino hotel and shall attempt to obtain as nearly as possible the same level of control and security.

11. In proposing alternative sites for passive collection activities, the industry might consider the availability and suitability of bank offices located near the patron's home or residence. Whether such offices could be utilized would depend on an assessment of security and control which we are not prepared to discuss here. Similar consideration should also be given to establishing "deposit only" accounts at convenient bank locations so that patrons could deposit their funds directly to the casino's credit. We do not wish to do more than note these possibilities and we do not express any approval or disapproval at this time.

SUMMARY

The Commission has considered the issues raised by the petitioners' request to engage in passive collection activities with respect to outstanding and returned counter checks both in the field and at branch offices. We have stressed throughout this decision the requirements of the Casino Control Act and present regulations governing the sensitive area of these credit transactions. We have expressed our concern, as did the State Commission of Investigation and the Staff Policy Group on Casino Gambling, with the potential abuses and negative impact that the desired collection activities may have on the security of credit transactions and the integrity of gaming.

As stated above, under the present regulations, redemption of counter checks and related transactions must take place at the casino cage. We have found nothing to distinguish the petitioners' proposed activity with respect to collection of payments on outstanding counter checks both in the field and at branch offices from a redemption transaction. As the industry is well aware, we have sanctioned casino licensees on numerous occasions for allowing sensitive cage functions to take place away from the casino cage. We cannot, absent adoption of regulations addressing the security and integrity concerns now protected by the limitation of redemption transactions to the cage, authorize this activity. Therefore, all collections on outstanding counter checks, other than redemptions taking place

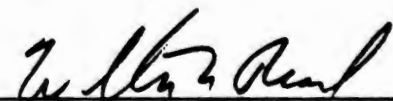
at the cage, must immediately cease and any prior approvals of such activity are rescinded as invalid. If the industry wishes to propose regulatory amendments, it should be cautioned that it will bear the burden of demonstrating why the legislative system of check collection through ordinary banking procedures should be deemed inadequate where a patron chooses not to redeem a counter check at the cage.

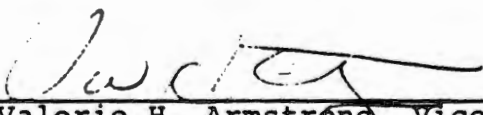
While policy concerns and potential abuses exist with regard to collection of payments on returned counter checks, there is no present legal impediment to permitting properly licensed members of the collection department to obtain payment on returned counter checks either in branch offices or at remote locations. Payments on returned counter checks may be received at branch offices under approved internal controls consistent with this decision and the public policies expressed in the Act. However, regulations must be promulgated consistent with this decision to ensure uniformity of branch office collection procedures and we hereby condition this ruling on the filing of a proper rule-making petition, consistent with this opinion, within 60 days.

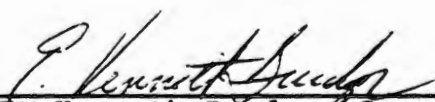
Payments may also be received on returned counter checks in the field subject to the conditions outlined in our decision. Once again, this decision is conditioned upon the filing of a proper rule-making petition, consistent with this opinion, within 60 days.

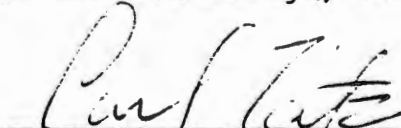
We stress that these interim guidelines represent the minimum acceptable standard for off-site passive collections, that is, collections initiated solely by a patron. Regulations governing this area must be much more stringent and comprehensive. The industry should be aware that a minimum regulation will not be acceptable and that failure to propose a satisfactory and complete regulation will result in cessation of any off-site collection activities under the interim guidelines.

NEW JERSEY CASINO CONTROL COMMISSION


Walter N. Read, Chair


Valerie H. Armstrong, Vice Chair


E. Kenneth Burdge, Commissioner


Carl Zeitz, Commissioner

Dated: November 26, 1956

SEPARATE OPINION OF
COMMISSIONER W. DAVID WATERS

While I concur in the majority's determination that receipt of payments on outstanding counter checks must occur at the casino cage, I would disapprove of the collection of returned counter checks either by branch offices or through field visits. Section 101(e) of the Casino Control Act controls the collection of returned counter checks. It provides that:

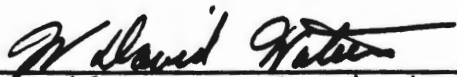
No person other than one licensed as a casino key employee or as a casino employee may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney-at-law representing a casino licensee may bring action for such collection. [N.J.S.A. 5:12-101(e)].

As outlined by the majority, the specific collection efforts in which casinos may engage are prescribed in existing commission regulations. N.J.A.C. 19:45-1.29. Those regulations do not envision the representative of a casino licensee going to a patron's home, place of business, etc., for the purpose of receiving payment. Further, those regulations do not envision the establishment of an off-site location for the purpose of receiving payment on returned counter checks.

In addition, there are fundamental policy considerations involved in the off-site collection of returned counter checks such as security, inability to monitor off-site activity, increase potential for criminal activity and other illegal acts. While the argument has been made that there is no evidence of activity of this sort, there certainly is the potential. If such activity occurred, it would undoubtedly destroy the public confidence and trust in the integrity of casino operations.

The argument also is made that the acceptance of off-site payments is designed to meet the needs of the patron. I see no evidence of this "need." The patron has provided the casino with a check which has been returned, and it would appear that payment could be made through the use of vehicles such as the Post Office or wire transmittal of funds which should not be an inconvenience to the patron.

Accordingly, I see no need to permit off-site collection of returned checks either at branch offices or by field visits. Further, I would prohibit members of the industry who are presently engaged in such activity from continuing the practice.


W. David Waters, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-53
OAL DOCKET NO. CCC 4354-84

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

Complainant, :

v. :

AMENDED
FINAL ORDER

ADAMAR OF NEW JERSEY, INC. :
t/a TROPICANA HOTEL AND CASINO, :
GARY EILENBERG, HAROLD KLARICH, :
SHERMAN GOLDBERG, ELIZABETH :
YOACHUM, RICHARD GOLDSTEIN AND :
JEROME PALMA, :

Respondents. :
:

Proceedings in this matter having been held before the Office of Administrative Law; and an initial decision which approves the Stipulation of Settlement for respondents Adamar of New Jersey, Richard Goldstein and Jerome Palma, incorporates the Stipulation of Facts and Settlement Agreement for respondent Sherman Goldberg, and contains Findings of Facts and Conclusions of Law concerning respondents Harold Klarich, Gary Eilenberg and Elizabeth Yoachum, having been filed with the Casino Control Commission (Commission); and respondent Gary Eilenberg and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision and the DGE and respondent Elizabeth Yoachum having filed replies thereto;

and the parties having agreed at the Commission's public meeting of July 2, 1986, to expand the record to include additional supplemental Stipulations of Fact and Conclusions of Liability as well as additional penalties; and the Commission having considered the entire record of these proceedings at its public meetings of July 2 and 16, 1986,

IT IS on this *10th* day of February 1987, ORDERED that the initial decision and Stipulation of Settlement, as supplemented, are approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that the following respondents pay civil penalties in the amounts designated, which are due and payable upon receipt of any invoice from the Commission's Division of Financial Evaluation and Control:

Richard Goldstein.....	\$ 4,000
Jerome Palma.....	4,000
Elizabeth Yoachum.....	4,000
Adamar of New Jersey.....	180,000

IT IS FURTHER ORDERED that a copy of the initial decision, Stipulation of Settlement and final order will be placed in the permanent file of respondents Adamar of New Jersey, Inc. and Sherman Goldberg, to serve as a letter of reprimand; and

IT IS FURTHER ORDERED that the complaint is dismissed against Harold Klarich; and

IT IS FURTHER ORDERED that the Certificate of Operation held by respondent Adamar of New Jersey, Inc. be conditioned

to prohibit the licensee from utilizing the services of individuals not employed by the licensee for junket activities from 12:01 a.m., August 1, 1986, until 11:59 a.m., August 29, 1986; and

IT IS FURTHER ORDERED that, in accordance with the Stipulation of Settlement, the licensee's legal department will prepare a written compendium of the applicable portions of the Casino Control Act and Commission regulations pertaining to junket activities which shall be disseminated to all junket representative and junket enterprises not employed by the casino licensee who are conducting or seeking to conduct junket activities to its casino. All junket representatives and junket enterprises not employed by the casino licensee are required to certify prior to conducting further junket activities with the casino licensee that they have read the prepared compendium and fully understand it; and

IT IS FURTHER ORDERED that, in accordance with the Stipulation of Settlement, the casino licensee shall have its internal audit department commence an independent audit of the activities of its marketing department to ascertain compliance with the Casino Control Act and Commission regulations concerning junket activities. Said audit is to be conducted on a quarterly basis for one year; and, thereafter, one additional audit be conducted the following

year. Reports reflecting the results of these audits shall be filed with the Commission and the DGE; and

IT IS FURTHER ORDERED that the casino key employee license and casino employee license held by Gary Eilenberg are revoked substantially for the reasons stated in the initial decision; and

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

This order amends the order incorrectly dated February 10, 1986.

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 4354-84

AGENCY DKT. NO. 84-53

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ADAMAR OF N.J., INC.,

t/a TROPICANA HOTEL AND CASINO,

GARY EILENBERG, HAROLD KLARICH,

SHERMAN GOLDBERG, ELIZABETH YOACHUM,

RICHARD GOLDSTEIN AND JEROME PALMA,

Respondents.

Mitchell A. Schwefel, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Mark H. Sandson, Esq., for respondent Adamar of New Jersey, Inc., t/a Tropicana Hotel and Casino (Hankin, D'Amato and Sandson, attorneys)

Donald G. Targan, Esq., for respondent Eilenberg (Targan, Higbee and Faia, attorneys)

Dennis J. Oury, Esq., for respondent Klarich (Mariniello and Oury, attorneys)

Sherman Goldberg, pro se

Alfred R. Scerni, Jr., Esq., for respondent Yoachum (Wilson, Fusco and Scerni, attorneys)

Robert A. Cooper, Esq., for respondent Goldstein

Warren O. Stilwell, Esq., for respondent Palma (Ribis, McCluskey, Ruane, Graham and DeCotiis, attorneys)

Record Closed: January 13, 1986

Decided: April 18, 1986

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns a complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on February 21, 1984, as amended, which alleges in part that respondent Adamar of New Jersey, Inc., trading as the Tropicana Hotel and Casino (hereinafter Tropicana), permitted individuals not in compliance with junket representative licensing requirements to conduct junket operations to its facility between February and July 1983, and in conjunction therewith, filed false and inaccurate junket prearrival reports and junket arrival report, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), N.J.A.C. 19:49-2 and N.J.A.C. 19:49-3. The complaint also charged the individual respondents with violations of the act and regulations with regard to the operation of these junkets and the filing of false and inaccurate junket prearrival reports and junket arrival reports.

The Division and respondents Tropicana, Goldstein and Palma have entered into a written stipulation of facts and settlement agreement. The Division and respondent Goldberg orally entered into a stipulation of fact and settlement agreement on the record. In addition, the Division's motion for a dismissal of the charges against respondent Klarich as a result of the unavailability of necessary witnesses was granted. These settlements and the dismissal will be discussed more fully herein.

The charges remaining for disposition are those pertaining to respondents Eilenberg and Yoachum. The issues to be resolved in this matter may be stated as follows:

1. Whether Gary Eilenberg, while employed as Tropicana's Vice-President of Casino Marketing, and Elizabeth Yoachum, while employed as Tropicana's Air Program Manager, knew or should have known that engaging the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements violated the provisions of section 102 of the Casino Control Act and N.J.A.C. 19:49-2.
2. Whether Gary Eilenberg, while employed as Tropicana's Vice-President of Casino Marketing, knew or should have known that the filing of junket prearrival reports and arrival reports containing false and inaccurate information, pertaining to junkets conducted prior to March 3, 1983, violated the requirements of N.J.A.C. 19:49-3.1 and 3.2.

3. Whether Elizabeth Yoachum, while employed as Tropicana's Air Program Manager, knew or should have known that the filing of junket prearrival reports and junket arrival reports containing false and inaccurate information violated the requirements of N.J.A.C. 19:49-3.1 and 3.2.
4. Whether the respondents lack the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the Act, so as to require judgment that they are unqualified for licensure, pursuant to section 129 of the Act.
5. Whether the respondents lack sufficient business ability and casino experience for licensure, pursuant to sections 89b(3) and 90b of the Act, so as to require judgment that they are unqualified for licensure, pursuant to section 129 of the Act.
6. Whether any such conduct of the respondents, if established, requires judgment imposing a monetary penalty, or some other appropriate sanction, pursuant to sections 129 and 130 of the Act.

PROCEDURAL HISTORY

On February 21, 1984, the Division of Gaming Enforcement filed with the Casino Control Commission its complaints in this and two related matters (State v. Gary Eilenberg, et al., OAL DKT. NO. CCC 4355-84 and State v. Carl Allegood, et al., OAL DKT. NO. CCC 4356-84). Amendments to the complaint were filed on March 20 and July 27, 1984. Answers to the complaint were filed by the respondents and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law on June 14, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Prehearing conferences in this and the two related matters were held on July 16, 1984 and February 13, 1985. After it was determined that the matters should not be consolidated for hearing, the hearing in this matter was originally scheduled to commence on September 3, 1985, following the hearings on the other two complaints. For good cause shown by counsel for Tropicana, the matter was adjourned and rescheduled to commence on October 21, 1985. Proceedings were held on that day and on October 28

and 31, November 1, 4, 6, 13, 14, 16, 19, 20, 25 and 26, 1985. At the conclusion of the hearing, the parties were directed to submit proposed findings of fact and conclusions of law. The final submission was received on January 13, 1986, and the record was closed on that date.

PARTIAL SETTLEMENTS AND DISMISSAL

Prior to the scheduled hearing in this matter, the parties engaged in discussion concerning the possibility of a settlement disposition. The Division and respondents Tropicana, Goldstein and Palma determined that a mutually satisfactory resolution of the matters in controversy was possible, and they thereafter reached agreement on an consented to a settlement disposition. The terms of settlement has been expressly set forth in the attached stipulation of facts and settlement agreement.

The Division and respondent Goldberg engaged in discussion concerning the possibility of a settlement disposition on the first day of hearing in this matter. It was determined at that time that a mutually satisfactory resolution of the matters in controversy was possible, and the Division and respondent Goldberg reached agreement on and consented to a settlement disposition. The terms of settlement were expressly stated on the record and respondent Goldberg stated under oath that he fully understood and voluntarily consented to all of the terms and conditions of the settlement.

The Division alleged in count six of its complaint that respondent Goldberg was in part responsible for the engaging of and causing to have a junket organized and operated by an unlicensed junket representative. Count eleven of the complaint alleged that respondent Goldberg worked for Tropicana in a position requiring that he be registered as a casino hotel employee without his having been so registered. It is undisputed that Goldberg commenced employment as a subordinate employee within Tropicana's New York City Marketing Office on or about January 27, 1983. He remained so employed until March 1984. It is also undisputed that Goldberg was not registered as a casino hotel employee until on or about October 25, 1983. Following the settlement stated on the record during the hearing, counsel for the Division drafted a proposed stipulation of facts and settlement agreement. Objecting to its form, respondent Goldberg declined to sign the proposal. Nevertheless, the settlement entered into on the record adequately reflects the intentions of the parties and its essential terms may be stated as follows:

1. In full settlement of the allegations set forth in count eleven of the complaint, the respondent Goldberg admits that he worked for the Tropicana Hotel and Casino in a position requiring that he be registered as a casino hotel employee without his actually having been so registered; and that as a consequence of such employment in violation of N.J.S.A. 5:12-91(a) and N.J.S.A. 5:12-117(a), respondent Goldberg agrees to accept a letter of reprimand from the Casino Control Commission which shall be made a permanent part of his licensing file. It is further agreed that the Division will not use the circumstances of the letter of reprimand in a manner adverse to respondent Goldberg upon any subsequent application that Goldberg might file with the Casino Control Commission.
2. The Division and respondent Goldberg agree that the Division of Gaming Enforcement was unable to present evidence at the hearing concerning the allegations of count six of the complaint because of the unavailability of a necessary witness and the Division and respondent Goldberg further agree that count six of the complaint shall be dismissed without prejudice.

Respondent Harold Klarich is the holder of a casino hotel employee registration, and he was employed by respondent Tropicana as a junket representative in Tropicana's New York City Marketing Office. In count five of its complaint, the Division charges respondent Klarich with responsibility, in part, for engaging the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements, in violation of the provisions of section 102 of the Casino Control Act and N.J.A.C. 19:49-2. At the hearing in this matter, the Division moved for a dismissal of the charges against respondent Klarich because necessary witnesses were unavailable. The motion was granted.

Having reviewed the entire record in this matter, I FIND:

1. The terms of settlement in this matter between the Division of Gaming Enforcement and respondents Tropicana, Palma and Goldstein have been incorporated into an executed stipulation of facts and settlement

agreement, which is attached to this initial decision and which is incorporated herein as if set forth at length. The terms of settlement between the Division and respondent Goldberg are set forth above.

2. The aforementioned parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement, or by their acceptance of the terms on the record.
3. These settlements fully dispose of all issues in controversy as to the settling parties, and they are consistent with the law.
4. The Division's motion for voluntary dismissal of count five of the complaint against respondent Klarich was granted.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-17.1, the parties to a contested case may settle the matter by consent and may express the settlement terms on the record and in an agreement of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy between the settling parties, he shall enter an initial decision which sets forth the settlement terms.

As set forth in the attached stipulation of facts and settlement agreement, respondent Richard Goldstein has agreed to pay a fine of \$4,000 in full settlement of the allegations set forth in count eight of the Divisions complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5). Respondent Goldstein has agreed to pay this fine in regard to his having signed and thereby certified the truth and accuracy of certain junket prearrival and arrival reports which falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the vendor identification numbers of individuals involved, and the terms of compensation arrangements.

On the record, counsel for respondent Goldstein sought permission for his client to pay the aforementioned fine to the New Jersey Casino Control Fund in installments over a period of three years. The Division of Gaming Enforcement took no

position on this request. Other than the desirability of such an option which appears on the face of the request, no support for permission to make installment payments was offered. I **CONCLUDE** that the opportunity to make installment payments is not warranted.

The Division has requested that its voluntary dismissal of count five of the complaint against respondent Klarich be entered without prejudice. Respondent Klarich seeks to have the dismissal granted with prejudice as a bar to reinstitution of the action. Respondent Klarich notes that his registration was suspended upon the filing of the complaint and he had suffered not only loss of income, but also great expense in defending himself. He would like to put these problems behind him and to start fresh, and he contends that it is onerous and unfair to permit the Division to reinstitute the action at any time.

The Division notes that the dismissal of its complaint results from inability to produce certain key witnesses for testimony at the hearing. It is argued that the inability to produce these witnesses should not act as a bar to future litigation of the allegations contained in count five of the complaint, if the witnesses are subsequently located. The Division cites Mayflower v. Thor Corp., 19 N.J. Super. 505 (Ch. Div. 1952), for the proposition that "unless it is based upon matters going to the merits, a dismissal should ordinary be without prejudice."

In this instance, the voluntary dismissal of count five is not predicated upon issues going to the merits of the complaint. Rather, the dismissal is the result of the Division's inability to produce certain key witnesses because they are from out of state and are unavailable. Having considered the arguments of counsel, I **CONCLUDE** that the dismissal of count five as to respondent Klarich shall be without prejudice.

I have found that the terms of settlement, as set forth in the attached stipulation of fact and settlement agreement, are satisfactory to the Division and respondents Tropicana, Goldstein and Palma and the terms are fully dispositive of all issues in controversy between them. I have found that the terms of settlement, as set forth on the record, are satisfactory to the Division and respondent Goldberg, and they are fully dispositive of all issues in controversy between them. I have further found that the settling parties have voluntarily consented to the settlement terms. Accordingly, I **CONCLUDE** that the matters in controversy between the settling parties no longer constitute a contested case before the Office of Administrative Law.

RESPONDENTS EILENBERG AND YOACHUM

FINDINGS OF FACT

Respondent Gary Eilenberg is the holder of casino key employee and casino employee licenses, issued by the Casino Control Commission. In September 1982, he began his employment with Tropicana as Vice President for Casino Marketing. He was responsible for the operation of the Dash Aircraft Junket Program from Tropicana's New York Marketing Office. Eilenberg had previously been in charge of junket operations for the New York office of Resorts International Hotel and Casino.

Among Eilenberg's responsibilities was the recruitment of junket representatives who would solicit qualified players for junkets to the Tropicana. In addition, Eilenberg personally solicited players and on occasion, he would accompany players to the Tropicana in Atlantic City. In his testimony at the hearing, Eilenberg acknowledged that he was aware that persons bringing junkets to the Tropicana needed to be properly licensed.

In February 1981, respondent Yoachum began employment with Tropicana as Air Program Manager. In this position, Yoachum was responsible for coordinating the junket activities arriving at the Tropicana by aircraft. In addition, she was responsible for the preparation of all required junket reports.

In addition to coordinating the activities of the Jet Program, which involved junkets arriving from locations approximately 300 or more miles from Atlantic City, Yoachum was also responsible for scheduling on a cost efficient basis the Dash Program flights arranged by the New York Marketing Office. It is undisputed that the responsibility for conducting junket operations solely through properly licensed individuals fell to Yoachum. As Air Program Manager, she supervised the conduct of three subordinate employees. During February 1983, she personally prepared all required junket prearrival and arrival reports. She acknowledged in testimony that she was responsible for supervising the preparation of all required reports which she did not personally prepare.

Prior to her employment by Tropicana, Yoachum was employed by Revere Travel Agency in Trenton, New Jersey, and she also was employed by Trans World Airlines for approximately twelve years. Her primary career experience has been in the area of

air travel management. Many character witnesses testified on behalf of Yoachum. These witnesses attested to her reputation for good character, honesty and integrity. Those who have worked with her also attested to her business skill. (See Exhibits RY-3 to RY-14).

January 27, 1983, was the effective date of amendment to section 102 of the Casino Control Act, concerning junkets and complimentary services. On that date, it became mandatory that an individual performing the functions of a junket representative be licensed as a casino employee and be employed by a licensed casino or junket enterprise, or have an additional license endorsement as a junket representative, sole owner/operator. Prior to January 1983, "casino marketing activity," which involved the procurement of players who received complimentary services valued at less than \$200, would be conducted by "Field Agents." A person who had filed with the Commission a form for application to conduct casino marketing activity prior to January 1983 was considered to be registered as a Field Agent and was allowed to solicit players who would receive complimentary services valued at less than \$200.

Richard Franz, Deputy Director of the License Division of the Casino Control Commission, testified at the hearing that meeting were held with employees of each casino in the fall of 1982 to explain the changes in the Casino Control Act. A meeting was held with employees of the Tropicana Casino Hotel, including respondent Yoachum, in October 1982 (Exhibit P-72). Casino licensees were informed that the amendments would eliminate the category of Field Agent and that activities previously defined as "casino marketing activities" would be classified as "junkets." The Tropicana staff was informed that it would be a violation of the Casino Control Act to allow junkets to be operated by unlicensed junket representatives. According to Deputy Director Franz, some casino licensees asked about junkets which had been arranged prior to the effective date of the Act, but which would occur after the effective date. The license division staff responded to these inquiries with the information that if there were no remaining actions to take place that would require licensure, then the trips could run. In the opinion of Franz, if a junket representative collected money at the airport from the junket patrons, that activity would require that he have a junket representative license after the effective date of January 27, 1983.

Franz testified that the October 21, 1982, meeting with the Tropicana staff did not involve junket reporting requirements, because those regulations were still being drafted. At that time, the information concerning changes in the licensing requirements

was presented cautiously, since it was not known when the changes would become effective. Franz also testified that license division employees were instructed that there would be no grace period. He did not know if there had been a rumor in the casino industry as to whether there would be a grace period following the effective date of the changes in the act. Informational letters were sent to casino licensees by the License Division when it became known that the proposed changes would become law (Exhibit P-48). To implement the changes in the Act, N.J.A.C. 19:49-1.1 et seq. was adopted on an emergency basis on January 11, 1983, and approved by the governor on January 27, 1983. These regulations require that licensed junket representatives be either employed by a licensed junket enterprise or casino licensee, or, if neither, be licensed as a sole owner/operator junket enterprise. These regulations further require that junket prearrival reports be filed by the casino licensee with the Division of Gaming Enforcement at least five days prior to the scheduled arrival date of the junket if the junket is arranged prior thereto. If the junket was arranged within the five days immediately preceding the scheduled arrival date, the junket prearrival report would be filed immediately. These reports are required to include the names of all junket representatives and junket enterprises participating in the organization of the junkets, the appropriate vendor identification numbers and license numbers, the terms of compensation arrangements, the anticipated value of complimentary services expected to be given to patrons, and the city of origin and dates and times of arrival and departure. Changes in this information shall be immediately reported in writing to the Division. Junket arrival reports are required to be filed in a timely manner following arrival of the junket. As with the prearrival reports, arrival reports shall be certified by an authorized agent of the casino licensee.

Respondent Jerome Palma testified that he became Director of the Tropicana Marketing Department in December 1982. The Assistant Director of Casino Marketing was respondent Richard Goldstein. Both Palma and Goldstein testified that respondent Yoachum was responsible for junket licensing and reporting compliance. Nevertheless, Palma and Goldstein supervised the operation of the Marketing Department at the Tropicana, and only they were authorized to certify the truth and accuracy of junket prearrival and arrival reports filed with the Division.

At all times relevant to the Division's complaint, Tropicana utilized an organizational system whereby all junkets were directly arranged and operated through either the New York City Marketing Office or the Atlantic City Marketing Office (Exhibit J-1). From these offices, dates for proposed junkets were disseminated by Tropicana

employees to individuals who were not employed by Tropicana but who were acting as junket representatives. After these individuals solicited their patrons for participation on these junkets, and before arrival at Tropicana, the list of players was transmitted by telephone by the individuals acting as junket representatives, to either the New York City Marketing Office or the Atlantic City Marketing Office. Prior to the arrival of a junket at Tropicana, the marketing office in Atlantic City was to file a junket prearrival report with the Division.

When a junket would arrive in Atlantic City, an air program representative from Tropicana's marketing office in Atlantic City would meet the airplane at the airport and would receive corrected information concerning the list of patrons from the person acting as a junket representative. The marketing office in Atlantic City would then disseminate an updated junket patron manifest to the gaming pits within the casino facility for rating purposes (Exhibit J-1). Subsequently, the Tropicana Marketing Office in Atlantic City was to file junket arrival reports with the Division for all junkets.

It is undisputed that respondents Palma and Goldstein certified all junket prearrival reports and junket arrival reports which are the subject of this proceeding without independently verifying that the information contained therein was in fact true and accurate. A total of 41 junkets were identified by the Division as having been operated to the Tropicana by unlicensed or improperly licensed individuals. Pursuant to its settlement with the Division (See Exhibit J-1), Tropicana admits that through its marketing offices in Atlantic City and New York City, it scheduled 22 junkets with unlicensed individuals acting as junket representatives and permitted all 22 junkets to arrive at its casino, in violation of N.J.S.A. 5:12-102 and N.J.A.C. 19:49-2. Tropicana further admitted that its marketing offices in Atlantic City and New York City scheduled four junkets with unlicensed individuals acting as junket representatives, even though these junkets arrived at the casino following receipt of temporary licensure by these individuals. Tropicana also admitted that its marketing offices in Atlantic City and New York City scheduled 15 junkets with individuals licensed as junket representatives who were not licensed as sole owner/operator junket enterprises and who were not employed by a licensed junket enterprise or casino licensee. Tropicana permitted each of these junkets to arrive at its casino, violating sections 102 of the act and N.J.A.C. 19:49-2.

As part of its settlement with the Division (See Exhibit J-1), Tropicana admitted that, through its Atlantic City Marketing Office, it filed 34 junket prearrival reports with the Division that violated section 102 of the Act and N.J.A.C. 19:49-3.1, in

that all 34 reports falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the vendor identification numbers of individuals involved, and terms of compensation arrangements, while certifying said reports to be true and accurate. As part of their settlement agreement with the Division (Exhibit J-1), respondents Palma and Goldstein admitted that they signed the 34 junket prearrival reports for filing with the Division, thereby certifying these reports to be true and accurate, without independently verifying their contents, while all 34 reports were false and inaccurate in the manner described above.

Pursuant to the settlement agreement, Tropicana also admits, that through its Atlantic City Marketing Office, it filed 47 junket arrival reports with the Division that falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the vendor identification numbers of individuals involved, and terms of compensation arrangements, while certifying these reports to be true and accurate, in violation of section 102 of the Act and N.J.A.C. 19:49-3.2. Respondents Palma and Goldstein admit that they signed a total of 47 junket arrival reports for filing with the Division, thereby certifying these reports to be true and accurate without independently verifying them, while all 47 reports were false and inaccurate in the manner described above (Exhibit J-1).

On January 17, 1983, respondent Yoachum and several other Tropicana employees met with Gerald Rogers of the Division of Gaming Enforcement Travel Unit. Rogers testified at the hearing that he discussed the new junket reporting requirements, utilizing his own handwritten agenda. Copies of the reporting forms and instructions were provided. A draft of the new regulations was also provided to the participants, and the new definitions were discussed.

According to the testimony of Rogers, each question on each form was discussed in detail. Of particular importance was the explanation to the participants that the entries on the reports must be accurate, including the name of the junket representative and the terms of compensation. Rogers acknowledged that he did not attempt to interpret the regulations, and he agreed that it was fair to say that it was a lot of material to absorb. It was his impression that the participants had a better understanding of the new regulations as a result of the meeting.

Rogers testified candidly that he was aware of rumors in the casino industry that there would be a grace period for implementation of the new regulations. However, he also stated that he never told respondent Yoachum that there would be a grace period, and to the best of his knowledge, no one from the Division of Gaming Enforcement would have said that there was going to be a grace period. It is undisputed that there was no grace period afforded for the implementation of the new regulations.

Since her superiors were expecting her to deal with junket licensing and reporting requirements, respondent Yoachum gathered the information which she had received and prepared a summary which she submitted to Lee Gottlieb, an attorney for Tropicana (Exhibit RY-26). Yoachum also sent her summary to Rogers (Exhibit RY-23) but she received no response. Testifying at the hearing, Rogers acknowledged receiving the summary prepared by Yoachum and he stated that it comported with the new regulations. He also testified that when he received her letter, he felt that she was making an effort to comply with the new regulations. Significantly, Rogers testified that he had no reason to think that Yoachum did not earnestly attempt to comply with the new regulations.

As noted previously, the Tropicana operated the Dash Junket Program from its New York Office. The Jet Program was operated from Tropicana's Atlantic City office. Junkets were generally scheduled approximately 30 days in advance of the actual junket date. The dates for the Dash Junkets were given to junket representatives by the New York Office until sometime in late April 1983. These junket representatives would telephone their patron manifest information to the New York office for Dash junkets until sometime in April 1983. The Dash program utilized a computer generated buy-in slip as part of its identification procedure for patrons on the casino floor. The Atlantic City office did not have the capability of producing the computer generated buy-in slip until April 1983 (Exhibits RY-25 and RY-2).

As noted previously, respondent Yoachum prepared prearrival and arrival reports during February of 1983. Following that month, these reports were prepared by her subordinates, Bobbi Crawford and Millie Torrez. Generally, these reports were prepared using information which was obtained from previous reports concerning junkets

from the same cities. When the New York Office of Tropicana first informed the Atlantic City Office of the scheduling of a Dash Program Junket, detailed information concerning the identity of the junket representative and his license would be provided.

It is undisputed that the Casino Control Commission issued a series of lists on a regular basis which identified junket representatives who had received temporary licensure following the change in the act in January 1983 (Exhibit RY-24). These lists were divided to identify temporary licensure granted to junket representatives, junket enterprises and sole owner/operator junket enterprises. The list did not identify for which junket enterprise or casino, if any, a junket representative might be working.

JET PROGRAM JUNKETS

On February 21, 1983, Gerald Ades and Richard Ullner operated junkets to Tropicana through the Jet Program, sharing an airplane that departed from Louisville, Kentucky and Cincinnati, Ohio. Ullner had filed as a Field Agent with the Casino Control Commission early in 1982 and he procured customers for gambling trips to the Tropicana in October, November and December 1982. Beginning in October 1982, Ades began organizing junket trips to the Tropicana. At that time, he had not filed with the Casino Control Commission as a field agent.

Neither Ullner nor Ades was licensed as a junket representative while organizing and operating the February 21, 1983 junket (Exhibit P-71). Both were charged by the Division with organizing and operating this junket without having been properly licensed by the Commission, and were found after a full hearing to have acted without necessary licensure, contrary to the Act. See, Division of Gaming Enforcement v. Carl Allegood, et. al., OAL DKT. NO. CCC 4356-84, Agency DKT. NO. 84-55, Decided August 12, 1985, and adopted by the Casino Control Commission September 24, 1985. The sanction imposed for the violative conduct of these individuals was a letter of reprimand to be made a permanent part of their files.

It is undisputed that the February 21, 1983 junket operated by Ades and Ullner was scheduled by respondent Yoachum. The junket arrival report for this junket (Exhibit P-11a) was prepared for filing by Yoachum. This report identified Daniel Cort as the junket enterprise operating the junket. It is undisputed that Cort had no connection with

the conduct of this junket on February 21, 1983 and he did not act as a junket representative or junket enterprise with respect to it. The junket arrival report failed to identify the actual junket representatives who operated the junket (Exhibit P-11a).

Between February 14, 1983 and May 9, 1983, John Manley and Terry Welborn operated separate junkets to Tropicana through the Jet Program, sharing an airplane that departed from Myrtle Beach, South Carolina and Greensboro, North Carolina. Welborn filed with the Casino Control Commission as a field agent in 1982, and he began conducting casino marketing activity to Tropicana through arrangements with respondent Yoachum. Welborn did not receive his temporary licensure as a junket representative and a sole owner/operator junket enterprise until March 30, 1983 (Exhibit P-71). Manley received his temporary licensure as a junket representative on February 8, 1983 (Exhibit P-71). He was never licensed as a junket enterprise or sole owner/operator junket enterprise during anytime relevant to this proceeding.

Manley and Welborn shared airplanes to Tropicana while operating junkets on February 14, March 28, April 25, and May 9, 1983. Although he had a junket representative license, Manley operated these four junkets without being licensed as a sole owner/operator junket enterprise and without being employed by a license junket enterprise or casino licensee. Manley was charged by the Division in the Allegood complaint with organizing and operating these junkets without meeting licensing requirements. However, he was never served with the complaint. Welborn was unlicensed for the first two junkets and he was fully licensed for the third and fourth trips. He was charged by the Division with organizing and operating the February 14, 1983 junket without having been properly licensed by the Commission, and was found after a full hearing to have acted without the necessary licensure, contrary to the Act. See Allegood. The sanction imposed for this conduct was a letter of reprimand.

It is undisputed that the Jet Program junkets operated by Manley and Welborn on February 14, March 28, April 25, and May 9, 1983, were scheduled by respondent Yoachum. The junket arrival report for the February 14, 1983 junkets (Exhibit P-5a) was personally prepared for filing by Yoachum. This report identified Manley as the sole owner/operator junket enterprise operating the junket, even though he was never so licensed. The report also fails to identify Welborn as the individual acting as a junket

representative for that portion of the junket that departed from Greensboro, North Carolina, using the same airplane as the junket being operated by Manley from Myrtle Beach, South Carolina.

The subsequent reports for the remaining three junkets operated by Manley and Welborn were prepared by air program office employees Bobbi Crawford and Millie Torrez (Exhibits P-23a, P-27a and P-37a). The report for the March 18, 1983 junket operated by Manley and Welborn incorrectly identifies Manley as a licensed sole owner/operator junket enterprise and fails to identify Welborn as the individual operating the portion of the junket departing from Greensboro, North Carolina (Exhibit P-23a). The reports for the junkets operated by Manley and Welborn on April 25, and May 9, 1983, incorrectly identify Manley as a junket representative employed by Welborn, who is listed as a licensed junket representative and junket enterprise (Exhibits P-27a and P-37a). Manley was not so employed, and Welborn had no connection with the junkets departing from Myrtle Beach, South Carolina, other than to share the airplane for these junkets scheduled by Tropicana.

On February 16, 1983, and March 27, 1983, Carl Wilson operated Jet Program Junkets to Tropicana from Charlotte, North Carolina. Wilson had previously filed as a Field Agent with the Casino Control Commission and he began bringing junkets to Tropicana in 1982. Wilson was not licensed as a junket representative when he organized and operated the February 16, 1983 junket (Exhibit P-71). He received his temporary licensure as a junket representative and sole/operator junket enterprise on March 23, 1983 (Exhibit P-71), which was only four days prior to his operation of the junket to Tropicana on March 27, 1983. Wilson testified at the hearing that he ordinarily received two or three weeks notice from Tropicana prior to a junket date.

Wilson was charged by the Division with organizing and operating junkets without having been properly licensed by the Commission, and was found after a full hearing to have acted without necessary licensure, contrary to the Act. See, Allegood. Wilson received a letter of reprimand for his conduct.

It is undisputed that the February 16, 1983 junket operated by Wilson was scheduled by respondent Yoachum. The junket arrival report for this junket (Exhibit P-6a) was prepared for filing by Yoachum. The report identifies John Manley as the junket

enterprise operating the junket. According to the testimony of Ms. Yoachum, she realized that Wilson might not be properly licensed at the time of the trip and she asked Manley for his assistance. Ultimately, Manley was not able to assist in the operation of the junket, but the report was not corrected.

At the time of the March 27, 1983 junket, Wilson had received his licensure as a temporary junket representative and sole owner/operator junket enterprise. The junket report for this junket (Exhibit P-22a) identifies Wilson as the junket enterprise operating the junket.

DASH PROGRAM JUNKETS

On 12 occasions between February 7, 1983 and May 10, 1983, Michael Fayad organized and operated Dash Program Junkets to Tropicana from Pittsburgh and Latrobe, Pennsylvania, and Youngstown, Ohio. Fayad had previously filed as a field agent with the Casino Control Commission, and he began bringing junkets to Tropicana in the fall of 1982. He was not licensed as a junket representative and sole owner/operator junket enterprise while organizing and operating the 12 junkets (Exhibit P-71).

Fayad was charged by the Division with organizing and operating these junkets without having been properly licensed by the Commission, and was found after a full hearing to have acted without necessary licensure, contrary to the Act. See, Allegood. Fayad received a letter of reprimand for his conduct.

Prior to March 3, 1983 (See Exhibit P-57), scheduling arrangements for Fayad's trips to Tropicana were made through the New York Marketing Office supervised by respondent Ellenberg. The junket arrival reports for the junkets operated by Fayad on February 7, 27 and 28, 1983 (Exhibits P-3a, P-12a and P-13a) were personally prepared by respondent Yoachum. Although he had no involvement with these junkets, these reports indicate that Daniel J. Cort was the junket enterprise operating the junkets. The remainder of the reports for the junkets operated by Fayad (Exhibits P-20a, 21a, 24a, 26a, 29a, 32a, 36a, and 38a) were prepared by respondent Yoachum's subordinates in the Air Program Office. Each of these reports indicates that Daniel J. Cort was the junket enterprise operating the junket, even though Cort had no involvement with these junkets.

On February 17, 1983, Betty Jarrett operated a Dash Program Junket to Tropicana from Roanoke, Virginia. Jarrett had not previously registered with the Casino Control Commission as a field agent, and she was not licensed as a junket representative at the time she organized and operated the junket on February 17, 1983. Jarrett was charged by the Division with operating the junket without having been properly licensed by the Commission. See, Allegood. Jarrett did not appear for the hearing on the Allegood complaint and the complaint as it relates to her has been redocketed as Division of Gaming Enforcement v. Betty Jarrett, OAL DKT. NO. CCC 503-86.

It is undisputed that Jarrett's junket to Tropicana on February 17, 1983, was arranged through respondent Eilenberg and the New York office of Tropicana. The scheduling was then approved by Tropicana's Atlantic City Marketing Office. The junket arrival report for Jarrett's February 17, 1983 junket was prepared for filing by respondent Yoachum. Although it is undisputed that Jarrett actually organized and operated this junket, the junket arrival report (Exhibit P-7a) identifies the junket representative operating the junket as respondent Eilenberg. It is undisputed that Eilenberg did not act as a junket representative or junket enterprise with respect to this junket.

On February 20, 1983, Carl Allegood operated a Dash Program junket to Tropicana from Kinston, North Carolina. Allegood was not licensed as a junket representative and sole owner/operator junket enterprise until March 30, 1983 (Exhibit P-71). He was charged by the Division with organizing and operating the junkets without having been properly licensed by the Commission. See, Allegood. He did not appear for the hearing on that complaint.

It is undisputed that the February 20, 1983 junket operated by Allegood was scheduled through respondent Eilenberg and the New York City Marketing Office of Tropicana. This scheduling was confirmed through respondent Yoachum of Tropicana's Atlantic City office. The junket arrival report for this junket (Exhibit P-9a) was prepared for filing by Yoachum. Although the junket was operated by Allegood, the junket arrival report incorrectly identifies respondent Eilenberg as the junket representative operating this junket.

On February 14, March 4, April 16, and May 26, 1983, Chester Glass organized and operated Dash Program junkets to Tropicana from Dayton, Ohio. On June 8, 1983, Glass operated a junket from Dayton to Tropicana through the Jet Program, sharing an

airplane with a junket from the Indianapolis, Indiana area, which was organized and operated by John Domi. Glass received temporary licensure from the Commission as a junket representative on January 25, 1983 (Exhibit P-71). At any time relevant to this proceeding, Glass was never licensed as a sole owner/operator junket enterprise or as a junket enterprise.

Glass was charged by the Division with organizing and operating these junkets without having been licensed as a sole owner/operator junket enterprise and without having been employed by a licensed junket enterprise or casino licensee. See, Allegood. Glass and the Division entered into a Stipulation of Fact and Settlement Agreement, which was approved by the Casino Control Commission on September 24, 1985. As part of this agreement, it was stipulated that Glass had acted in the manner described, contrary to the Casino Control Act.

The junket arrival report for the junket operated by Glass on February 14, 1983 (Exhibit P-4a) was personally prepared by respondent Yoachum. Although he had no involvement with this junket, this report indicated that Daniel J. Cort was the junket enterprise operating the junket. The next trip operated by Glass arrived at Tropicana on March 4, 1983. The junket arrival report for this junket (Exhibit P-14a) was prepared by a subordinate of respondent Yoachum. This report also indicates that Daniel J. Cort was the junket enterprise operating the junket, even though Cort actually had no involvement with the operation of the junket. Although Glass was the individual who operated the junket, he is not mentioned.

Glass operated another junket to Tropicana on April 16, 1983. The junket arrival report for this junket (Exhibit P-28a) was prepared either by respondent Yoachum or one of her subordinates. This report shows Daniel J. Cort as the junket enterprise and Glass as the junket representative employed by Cort. However, Glass was not so employed, and Cort had no connection with the conduct of this junket. The junket report for the trip operated by Glass on May 26, 1983, (Exhibit P-42a) was prepared by respondent Yoachum's subordinate, Bobbi Crawford. This report also indicates that Cort was the junket enterprise and Glass was the junket representative employed by Cort, even though Glass was not actually so employed, and Cort has no connection with the junket.

The junket which Glass operated from Dayton on June 8, 1983, was a Jet Program flight which was shared with a junket departing from Indianapolis, Indiana. The Indianapolis junket was operated by John Domi who received temporary licensure as a

junket representative on April 13, 1983 (Exhibit P-71). Domi was charged by the Division with organizing and operating this junket without having been licensed as a sole owner/operator junket enterprise and without having been employed by a licensed junket enterprise or casino licensee, contrary to the Casino Control Act. See, Allegood. He did not appear at the hearing on that complaint.

The junket arrival report for the June 8, 1983 junket flight shared by Glass and Domi (Exhibit P-43a) was prepared by a subordinate of respondent Yoachum. This report indicates that Glass and Domi were the junket representatives operating this junket and that Daniel J. Cort was the licensed junket enterprise. Actually, Glass and Domi were not employed by Cort and Cort had no connection with the conduct of this junket.

During February and March 1983, Walter Shaul organized and operated four Dash Program Junkets to Tropicana from Toronto, Ontario, Canada. Shaul began bringing junket trips to Tropicana in October 1982, even though he had not filed as a field agent. He was not licensed as a junket representative or junket enterprise while organizing the junkets to Tropicana in February and March 1983 (Exhibit P-71). He subsequently received a temporary junket representative license in April 1983.

Shaul was charged by the Division with organizing and operating these junkets without having been properly licensed by the Commission, and was found after a full hearing to have acted without necessary licensure, contrary to the Act. See, Allegood. Shaul received a letter of reprimand for his conduct.

Shaul's junkets to Tropicana in February and March 1983 were initially arranged through respondent Eilenberg and the New York Office of Tropicana. The scheduling was then approved by Tropicana's Atlantic City Marketing Office. Respondent Yoachum personally prepared the junket arrival reports for the junkets operated by Shaul on February 5 and February 19, 1983 (Exhibits P-1a and P-8a). Although Shaul organized and operated these junkets, he was unlicensed and his name does not appear on the junket arrival reports. Rather, the name of Judith Stewart appears as the junket enterprise. Although she may have traveled on these junkets, she did not act as a junket representative or junket enterprise with respect to them. Shaul also brought junkets from Toronto to Tropicana on March 5 and March 19, 1983. The junket arrival reports for these junkets (Exhibits P-15a and P-18a) were prepared by a subordinate of respondent Yoachum. These reports do not indicate that the junkets were organized and

operated by Shaul, who was still unlicensed. Rather, they indicate that the junket enterprise was Judith Stewart, who may have traveled on the junkets, but did not act as a junket representative or junket enterprise with respect to them.

On March 7, 1983, Ellis McMillan operated a Dash Program Junket to Tropicana from Columbus, Ohio. McMillan had filed as a field agent with the Casino Control Commission prior to the change in licensure requirements in January 1983. However, he was not licensed as a junket representative and sole owner/operator junket enterprise until October 26, 1983 (Exhibit P-71). McMillan was charged by the Division with organizing and operating this junket without being licensed as a junket representative and sole owner/operator junket enterprise. He was found after a full hearing to have so acted, contrary to the Casino Control Act. See, Allegood. McMillan received a letter of reprimand for his conduct.

The junket arrival report for the junket operated by McMillan on March 7, 1983 (Exhibit P-16a) was prepared by a subordinate of respondent Yoachum. Although McMillan organized and operated this junket, the junket arrival report indicates that the junket enterprise was Daniel Cort. Actually, Cort had no connection with the conduct of this junket.

Russell Giuffrida organized and operated two Dash Program junkets to Tropicana from Jamestown, New York, on February 6 and March 13, 1983. Giuffrida had not filed with the Casino Control Commission as a field agent, and his junket activities did not begin until the effective date of amendments to section 102 of the Act. He was not licensed as a junket representative until March 1, 1983, and he did not receive his license as a sole owner/operator junket enterprise until May 4, 1983 (Exhibit P-71).

The Division charged Giuffrida with organizing and operating the February 6, 1983 junket without being licensed as a junket representative. He was also charged with organizing and operating the March 13, 1983 junket while not being licensed as a sole owner/operator junket enterprise and not being employed by a licensed junket enterprise or casino licensee. See, Allegood. Giuffrida did not appear for the hearing on this complaint, but he subsequently entered into a stipulation of fact and settlement agreement with the Division. As part of this agreement, he admitted that he had acted in a manner contrary to the Casino Control Act.

It appears that the dates for the two junkets operated by Giuffrida to Tropicana were actually afforded to Murray DeFranco, who was fully licensed as a junket enterprise. According to the testimony of DeFranco, he allowed Giuffrida to solicit all of the players for both flights and it was Giuffrida who accompanied the junkets to Atlantic City. DeFranco would meet the flight at the airport and would conduct the remaining business with the marketing office at Tropicana.

The junket arrival report (Exhibit P-2a) for the February 6, 1983 junket operated by Giuffrida was prepared by respondent Yoachum. Although DeFranco was the junket enterprise which had received this junket date, and although Giuffrida operated the junket, the report incorrectly identifies the junket enterprise as Daniel J. Cort. Cort had no involvement with this junket. The junket arrival report (Exhibit P-17a) for the March 13, 1983 junket operated by Giuffrida was prepared by a subordinate of respondent Yoachum. This report also indicates that the junket enterprise was Daniel J. Cort, although he had no involvement with this junket. Although DeFranco was the junket enterprise which had been afforded the junket date, and Giuffrida actually operated the junket, neither are mentioned on the report.

On April 23, May 21, July 16, and July 31, 1983, Linda Ennis organized and operated Dash program junkets to Tropicana. The first three departed from Raleigh-Durham, North Carolina and the fourth departed from Fayetteville, North Carolina. Ennis was licensed by the Casino Control Commission as a junket representative on March 30, 1983 (Exhibit P-71). She was never licensed as a sole owner/operator junket enterprise, or employed by a licensed junket enterprise or casino licensee. Ennis was charged by the Division with organizing and operating these junkets without her having been licensed as a sole owner/operator junket enterprise and without her having been employed by a licensed junket enterprise or casino licensee. See, Allegood. She did not appear for the hearing on that complaint.

The junket arrival reports (Exhibits P-31a, P-40a, P-44a and P-45a) for these junkets organized and operated by Ennis were prepared under the supervision of respondent Yoachum. Each of the reports indicate that the junket enterprise for the junkets was Ted Welborn, trading as Junket Tours. Each also states that the junket representative was Linda Ennis. At the time of these trips, Welborn was properly licensed as a junket enterprise and Ennis was properly licensed as a junket representative. However, there was no business relationship nor compensation being paid between Welborn

and Ennis in regard to these junkets. Ennis was not licensed as a sole owner/operator junket enterprise, nor was she employed by a licensed casino, Welborn, or any other junket enterprise. It is undisputed that Welborn and Ennis had agreed that she could operate the junkets through his junket enterprise license, although he had no relationship with the patrons on the junkets and he had no involvement with the operation of the junket.

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

The foregoing findings of undisputed fact clearly establish that Tropicana on numerous occasions in 1983 utilized the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements. The findings also clearly establish that Tropicana on numerous occasions in 1983 filed junket prearrival and arrival reports containing false and inaccurate information. The factual disputes remaining in this matter concern the knowledge and responsibility of respondent's Eilenberg and Yoachum in regard to junket activities conducted by persons not in compliance with licensing requirements, and in regard to the preparation of false and inaccurate reports.

Respondent Eilenberg testified that he was aware that all individuals operating junkets had to be licensed, and that he was also aware that he had a continuing duty to ensure that all individuals operating through his office were licensed. However, he also stated that he did not know the specifics of the license which would be required. It was his testimony at the hearing that he believed Fayad, Shaul, DeFranco, Jarrett, and Allegood were all properly licensed at the time they brought junkets to Tropicana.

As to each of the foregoing persons performing the functions of a junket representative, Eilenberg followed the same procedure. According to his testimony, when the individual first made contact with the New York marketing office of Tropicana, Eilenberg would obtain his name, address, telephone number, license number, and the dates preferred for junkets from a particular city to Tropicana. This information would then be relayed to the Atlantic City Marketing Office. The Atlantic City office would then approve or disapprove the particular trip. According to Eilenberg, for subsequent trips, the New York Marketing Office would simply relay to the Atlantic City Office the date of the junket, the city of departure, and the name of the junket operator.

With reference to his knowledge of licensing and reporting requirements, it was the testimony of respondent Eilenberg that he did not know prior to March 3, 1983, that there had been a change in the Casino Control Act and a change in the regulations concerning junkets. It was also his testimony that he had no knowledge of the existence of junket prearrival and arrival reports prior to March 3, 1983. In fact, he stated that he first learned of these reports at the commencement of this litigation.

Respondent Yoachum testified at length concerning the operation of the casino marketing office at Tropicana. When Jerome Palma became Director of Casino Marketing in November 1982, he was the tenth person to have supervised Yoachum since February 1982. A further disruption of operations in the casino marketing office occurred in the fall of 1982 when the office was physically relocated within the Tropicana facility. In addition, the office expanded substantially between December 1982 and June 1983.

As noted previously, the responsibility for the preparation and filing of all required junket prearrival and arrival reports was entrusted with Yoachum. It was her testimony that licensing and reporting requirements were not made clear to her as a result of a meeting with Commission staff in October 1982 and a meeting with agent Rogers of the Division in January 1983. Significantly, Richard Franz, Deputy Director of the Commission's License Division and agent Rogers, currently Supervisor of the Employee Licensing Section of the Division of Gaming Enforcement, testified in essence that respondent Yoachum had a good understanding of the changes in the act and of the reporting requirements as a result of these two meetings. In addition, Yoachum was able to prepare a pamphlet summarizing the new junket requirements, and she sent it to a Tropicana staff attorney in March 1983, for his review (RY-26). The summary was praised as "an excellent job" (Exhibit RY-27).

Respondent Yoachum testified that she believed a thirty day grace period would be afforded to those persons operating junkets who had already filed applications for licensure at the time of the effective date of amendments to section 102 of the Casino Control Act on January 27, 1983. She attempted to verify the existence of such a grace period (Exhibit RY-1) prior to the effective date of the changes. However, she acknowledged she never received any confirmation that such a grace period had been afforded. It was the undisputed testimony of both Franz and Rogers that there was no grace period.

It would appear that Yoachum did not rely upon the possibility of a grace period in any event. When she was scheduling junkets to be operated by Wilson and Allegood in February 1983, both had applied for licensure, but had not yet been licensed. Although both would have been covered by the grace period described by Yoachum, she filed junket arrival reports which listed licensed individuals who were not involved in the operation of the junkets.

Respondent Yoachum personally prepared twelve of the junket reports which contain false and inaccurate information (Exhibits P-1a, P-2a, P-3a, P-4a, P-5a, P-6a, P-7a, P-8a, P-9a, P-11a, P-12a, P-13a). Six of these reports reflect Daniel J. Cort as the junket enterprise. Cort himself testified at the hearing that he never ran any of these junkets. He further testified that he never represented to Yoachum that any of the individuals who actually operated these junkets worked for him or were employed by him. When Yoachum testified in the matter of Division of Gaming Enforcement v. Gary Eilenberg, et al., OAL DKT. NO. CCC 4355-84, on September 10 and 11, 1985, she stated that she was instructed by Eilenberg to place Cort's name on junket prearrival and arrival reports pertaining to junkets being operated by unlicensed individuals. She acknowledged in that testimony that the use of Cort's name for these reports was wrong, partly because of the extent of its use.

It was also the testimony of Yoachum that she was instructed by Eilenberg to use his name as the junket representative on the junket reports filed by Tropicana for junkets operated by Jarrett and Allegood (Exhibits P-7a and P-9a). According to Yoachum, when Eilenberg requested that these two cities be added to the February 1983 junket schedule, she determined that Jarrett and Allegood were not licensed. In a sworn interview given on July 22, 1983 (Exhibit P-66), and in her testimony at the prior proceeding (Exhibit P-67a), Yoachum admitted that she was aware of the impropriety of having placed Eilenberg's name on the required filings for these junkets. In her sworn statement in July 1983, Yoachum confirmed that, "I knew when I filed the flights, it was going to start something and it has taken a while but I knew it was wrong when it was done and I was not going to do it again."

In his testimony, respondent Eilenberg specifically denied that he ever told Yoachum to utilize the name of Daniel J. Cort for junket prearrival and arrival reports pertaining to Dash program junkets scheduled by Eilenberg, but operated by persons not in compliance with licensing requirements. Eilenberg also denied instructing Yoachum to

use his name with respect to the junket operated by Betty Jarrett from Roanoke on February 17, 1983. In this regard, it is significant to note that Yoachum stated in a memorandum dated November 3, 1982 (Exhibit RY-16), which was before the effective date of the change in licensing and reporting requirements, with respect to those agents used by Gary Eilenberg for the Dash program, "most of the filings for his program are being submitted under his name, as he said to do, though I am not too comfortable with the situation." This memo was written with regard to the need of field agents to obtain junket representative licenses. It is likewise significant that Yoachum states in the memo with reference to information on agents used by Gary Eilenberg, "I did speak to Gary last week to make sure he was aware of the new requirements, which he was, but I have heard nothing further."

It is not possible to totally reconcile the testimony of respondent Yoachum with the testimony of respondent Eilenberg. On the issue of credibility, the memorandum of November 3, 1982 (Exhibit RY-16) discussed above is exceptionally useful. Of course, it was prepared by respondent Yoachum. However, it was prepared before the effective date of changes in the junket licensing requirements, and certainly well before the contemplation of any litigation on the subject. This memo places in serious doubt three aspects of Eilenberg's testimony. One is his assertion that he was unaware of the changes in the Casino Control Act and regulations concerning junket licensing requirements. Another is his assertion that he was unaware of the existence of junket prearrival and arrival reports prior to March 3, 1983. The third is his denial that he ever instructed respondent Yoachum to use his name on reports for junkets operated by persons who were not in compliance with licensing requirements. Yoachum's testimony that she discussed these matters with Eilenberg before and after the effective date of the changes in the Casino Control Act on January 27, 1983, is consistent with this memo (RY-16) and is more believable than Eilenberg's denials.

Yoachum's credibility concerning Eilenberg's knowledge is further enhanced by her admissions against interest. It must be remembered that in her sworn statement of July 22, 1983 (Exhibit P-66), when asked who brought up the possibility of Eilenberg's name as a junket representative on the reports, Yoachum answered, "I would imagine I said something to him just like I just said to you that I have no license to put on here, the only one I can use is yours." "Knowing full well and saying to him that this was not a correct procedure, but as I said, he was in charge of the flights, he was going to operate those flights."

The credibility of Eilenberg is also placed in doubt in regard to the assertion that he invariably obtained the names, addresses, telephone numbers and license numbers of all individuals seeking to operate junkets through the Dash program. Michael Fayad testified concerning the junkets which he operated from Pittsburgh, Latrobe and Youngstown. He testified credibly that he was never asked by any New York Marketing Office employee whether he was licensed. In fact, Fayad had no license number to give to Eilenberg in February 1983, since he did not obtain his temporary licensure until May 1983. Eilenberg testified that he obtained license information from Carl Allegood when Allegood sought approval to operate a junket in February 1983. However, Allegood did not receive temporary licensure until March 30, 1983. Similarly, Eilenberg testified that he obtained license information from Walter Shaul when he discussed the possibility of Shaul operating junkets to Tropicana in the fall of 1982. However, at that time, Shaul was not registered as a field agent and would have had no license information to provide to Eilenberg.

I have previously discussed respondent Yoachum's testimony concerning the degree of confusion accompanying the change in the statute and regulations and the possibility of a grace period following the effective date of these changes. Yoachum memorialized the possibility of a grace period in a memo dated January 20, 1983 (Exhibit RY-1). However, it is clear that the grace period was not actually afforded. It is also clear that Yoachum was able to carefully summarize the changes in junket licensing requirements in a pamphlet which she prepared (Exhibit RY-26). Thus, her testimony concerning reliance on a grace period and confusion concerning changes in junket licensing requirements was less than candid.

Having considered all of the testimony and documentary evidence, and in light of the foregoing discussion and the findings of undisputed fact, I make the following additional findings of fact:

1. Respondents Eilenberg and Yoachum, on numerous occasions as specifically set forth above, engaged and were responsible for engaging the services of persons performing the functions of a junket representative, knowing those persons were not in compliance with licensing requirements.

2. Respondent Yoachum, while employed as Tropicana's Air Program Manager, had actual knowledge of and was responsible for the preparation and filing of numerous junket prearrival and arrival reports containing false and inaccurate information.
3. Respondent Eilenberg, while employed as Tropicana's Vice President of Casino Marketing had actual knowledge of and permitted the preparation and filing of numerous prearrival and arrival reports containing false and inaccurate information. Specifically, this involved the use of the name of Daniel J. Cort on junket reports pertaining to junkets operated by persons not in compliance with licensing requirements, and the use of his own name on junket reports pertaining to junkets operated by Jarrett and Allegood, while they were unlicensed.

CONCLUSIONS OF LAW

Pursuant to section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), junket representatives shall be licensed in accordance with the qualification requirements for casino employees which are set forth in sections 89 and 90 of the Act. N.J.A.C. 19:49-2.1(a) defines junket representative as any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants on, any junkets to a licensed casino, regardless of whether or not those activities occurred within the State of New Jersey.

Pursuant to N.J.A.C. 19:49-2.1(c)1 and 2, a person acting as a junket representative must be licensed as a junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise. Pursuant N.J.A.C. 19:49-2.1(d), a junket representative shall only be considered "employed" by a casino licensee or junket enterprise if all compensation received by the junket representative for his services is reflected on and received through the payroll account of the employer and all other appropriate indicia of genuine employment, including federal and state taxation withholdings, are present. Casino licensees and junket enterprises shall engage the services of junket representatives only in accordance with the foregoing requirements, pursuant to N.J.A.C. 19:49-2.1(e).

The regulations promulgated pursuant to section 102 of the Act also require that junket prearrival reports and junket arrival reports be filed by the casino licensee with the Division of Gaming Enforcement. An authorized agent of the casino licensee is required to certify the accuracy of these reports, pursuant to N.J.A.C. 19:49-3.1(c) and N.J.A.C. 19:49-3.2(c).

It is clear from the undisputed findings of fact in this matter that Tropicana engaged the services of a number of persons performing the functions of a junket representative between February and July 1983, without those persons being in compliance with junket representative licensing requirements. It is also clear from the undisputed findings of fact that many junket prearrival and arrival reports containing false information pertaining to these junkets were prepared and filed on behalf of Tropicana. The specific findings of disputed fact have identified the knowledge and responsibility of respondents Eilenberg and Yoachum for this conduct.

Based upon the foregoing discussion and the findings of undisputed and disputed facts, I **CONCLUDE** that respondent Gary Eilenberg, while employed as Tropicana's Vice President of Casino Marketing, and respondent Elizabeth Yoachum, while employed as Tropicana's Air Program Manager, had reason to know and knew that engaging the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements violated the provisions of section 102 of the Casino Control Act and N.J.A.C. 19:49-2. I further **CONCLUDE** that respondent Eilenberg had reason to know and knew that the filing of junket prearrival reports and junket arrival reports containing false and inaccurate information, pertaining to junkets conducted prior to March 3, 1983, violated the requirements of N.J.A.C. 19:49-3.1 and 3.2. I also **CONCLUDE** that respondent Yoachum had reason to know and knew that the filing of junket prearrival reports and junket arrival reports containing false and inaccurate information violated the requirements of N.J.A.C. 19:49-3.1 and 3.2.

Both Eilenberg and Yoachum have substantial experience in the casino industry, particularly in the area of casino marketing activities. Notwithstanding the foregoing conclusions concerning their conduct in violation of the Casino Control Act, the credible evidence in the record does not demonstrate that they lack sufficient business ability and casino experience for licensure, within the meaning of sections 89b(3) and 90b of the Act, so as to require judgment that they are unqualified for licensure, pursuant to section 129 of the Act. I so **CONCLUDE**.

The foregoing conclusions concerning the conduct of respondents Eilenberg and Yoachum call into question their good character, honesty and integrity. While Yoachum was less than completely candid in her testimony concerning the possibility of a grace period and concerning the degree of confusion engendered by the change in licensing requirements, her testimony was otherwise worthy of belief. This is especially so because she candidly admitted to her detriment that some of her conduct had been in violation of the Act. While her mistaken belief that some of these activities were proper does not excuse her violations of section 102 of the Act and N.J.A.C. 19:49-1.1 et seq., I **CONCLUDE** that respondent Yoachum's conduct does not demonstrate such a lack of good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the Act, so as to require judgment that she is unqualified for licensure, pursuant to section 129 of the Act.

Sections 129 and 130 of the Casino Control Act authorize the imposition of sanctions for violations of the provisions of the Casino Control Act or regulations promulgated thereunder. The conduct of respondent Yoachum created a potential risk to the public and to the integrity of gaming operations by engaging the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements and by preparing and permitting the preparation of reports concerning these junkets which were not accurate. Such conduct justifies the imposition of an administrative sanction. Considering the entire course of respondent Yoachum's conduct, I **CONCLUDE** that the appropriate sanction for her violative conduct is a fine in the amount of \$4,000 and the issuance of a letter of reprimand which shall be made a permanent part of her file, pursuant to sections 129 and 130 of the Act.

The credible evidence in the record does not support the version of events offered by respondent Eilenberg. His testimony that he did not know prior to March 3, 1983, that there had been a change in the Casino Control Act and regulations in regard to junket licensing requirements was not credible. Similarly, his assertion that he had no knowledge of the existence of junket prearrival and arrival reports prior to March 3, 1983, was not worthy of belief, and was unsupported by the credible evidence in the record. In light of respondent Eilenberg's incredible testimony, I **CONCLUDE** that his conduct in violation of section 102 of the Act and N.J.A.C. 19:49-2.1, 3.1 and 3.2, demonstrates a lack of good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the Act, so as to require judgment that he is unqualified for licensure, pursuant to section 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that a letter of reprimand shall be issued and made a permanent part of the file of respondent Elizabeth Yoachum, and respondent Yoachum shall pay a fine in the amount of \$4,000, pursuant to N.J.S.A. 5:12-129(5) and (8). It is further **ORDERED** that judgment be entered that respondent Gary Eilenberg is unqualified for licensure, and that his casino key employee and casino employee licenses be revoked, pursuant to section 129 of the Act.

For the reasons stated herein, it is further **ORDERED** that count five of the Division's complaint as to respondent Harold Klarich be and hereby is dismissed without prejudice. It is further **ORDERED** that the Division and respondents Tropicana, Goldstein, Palma and Goldberg comply with the settlement terms described herein and attached hereto, and that these proceedings before the Office of Administrative Law be concluded.

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

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

April 18, 1986
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 18, 1986
DATE

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 25 1986
DATE

Ronald D. Parker E. S.
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Stipulation of Settlement

For the petitioner:

P-1a	Junket Report for February 5, 1983 Toronto junket
P-2a	Junket Report for February 6, 1983 Jamestown junket
P-3a	Junket Report for February 7, 1983 Pittsburgh junket
P-4a	Junket Report for February 14, 1983 Dayton junket
P-5a	Junket Report for February 14, 1983 Myrtle Beach and Greensboro junket
P-6a	Junket Report for February 16, 1983 Charlotte junket
P-7a	Junket Report for February 17, 1983 Roanoke junket
P-8a	Junket Report for February 19, 1983 Toronto junket
P-9a	Junket Report for February 20, 1983 Kinston junket
P-10	Not in evidence
P-11	Junket Report for February 21, 1983 Louisville and Cincinnati junket
P-12a	Junket Report for February 27, 1983 Latrobe junket
P-13a	Junket Report for February 28, 1983 Youngstown junket
P-14a	Junket Report for March 4, 1983 Dayton junket
P-15a	Junket Report for March 5, 1983 Toronto junket
P-16a	Junket Report for March 7, 1983 Columbus junket
P-17a	Junket Report for March 13, 1983 Jamestown junket
P-18a	Junket Report for March 19, 1983 Toronto junket
P-19a	Junket Report for March 20, 1983 Latrobe junket
P-20a	Junket Report for March 21, 1983 Pittsburgh junket
P-21a	Junket Report for March 27, 1983 Youngstown junket

P-22a	Junket Report for March 27, 1983 Charlotte junket
P-23a	Junket Report for March 28, 1983 Myrtle Beach and Greensboro junket
P-24a	Junket Report for March 28, 1984 Pittsburgh junket
P-25	Not in evidence
P-26a	Junket Report for April 10, 1983 Youngstown junket
P-27a	Junket Report for April 25, 1983 Myrtle Beach and Greensboro junket
P-28a	Junket Report for April 16, 1983 Datyon junket
P-29a	Junket Report for April 19, 1983 Youngstown junket
P-30	Not in evidence
P-31	Junket Report for April 23, 1983 Raleigh and Durham junket
P-32a	Junket Report for April 29, 1983 Pittsburgh junket
P-33	Not in evidence
P-34	Not in evidence
P-35	Not in evidence
P-36	Junket Report for May 10, 1983 Youngstown junket
P-37a	Junket Report for May 9, 1983 Myrtle Beach and Greensboro junket
P-38a and b	Junket Reports for May 10, 1983 Pittsburgh junket
P-39	Not in evidence
P-40	May 21, 1983 Junket Report for Raleigh and Durham junket
P-41	Not in evidence
P-42a	Junket Report for May 26, 1983 Datyon junket
P-43a	Junket Report for June 8, 1983 Indianapolis and Datyon junket
P-44a	Junket Report for July 16, 1983 Raleigh and Durham junket
P-45a	Junket Report for July 31, 1983 Fayetteville junket
P-46	-Not in evidence
P-47	Not in evidence

P-48	January 13 and 20, 1983 letters from the Casino Control Commission
P-49 through P-54	Not in evidence
P-55	Manifests prepared by Michael Fayad
P-56	Letter dated March 3, 1983
P-57	Letter dated March 3, 1983
P-58	Not in evidence
P-59	Letter from Daniel Cort, dated October 3, 1985
P-60 to P-62	Not in evidence
P-63	Compendia of job descriptions
P-64	Not in evidence
P-65	Not in evidence
P-66	Sworn statement of Betsy Yoachum, dated July 22, 1983
P-67a and b	September 10 and 11, 1985 testimony of Betsy Yoachum
P-68 through P-70	Not in evidence
P-71	Dates of temporary licensure
P-72	Memo dated November 18, 1982, concerning meeting with the Tropicana Casino Hotel
P-73	Letter dated May 4, 1983
P-74	Personal history disclosure form
P-75	Report of agent Barsony, dated April 23, 1983
P-76a and b	Testimony of Betty Jarrett on September 5, 6 and 9, 1985
P-77	Sworn statement of Linda Ennis, dated December 19, 1983

For the respondents:

RY-1	Memo dated January 20, 1983
RY-2	Memo, dated April 1, 1983
RY-3 through R-14	Character letters
RY-15	Memo dated October 25, 1982

RY-16	Memo dated November 3, 1982
RY-17	List of junket and marketing representatives, dated December 22, 1982
RY-18	Memo dated January 13, 1983
RY-19	Memo dated January 13, 1983
RY-20	Memo dated February 23, 1983
RY-21	Memo dated March 22, 1983
RY-22	Memo dated March 21, 1983
RY-23	Letter dated April 4, 1983, with attachments
RY-24	Temporary license listings
RY-25	Memo dated February 1, 1983
RY-26	Memo dated March 4, 1983; with attachments
RY-27	Memo dated March 9, 1983 concerning new junket legislation summary

WITNESSES

For the petitioner:

Richard Franz
Jerome Palma
Richard Goldstein
Michael Fayad
Daniel Cort
Ellis McMillan
Chester Glass
Robert Barsony
Terry Welborn
Carl Wilson
Gerald Rogers
Murray DeFranco
Richard Ullner
Gerald Ades
Russell Giuffrida
John Manley

For the respondent Yoachum:

Patricia Farrell
Patricia Seaman
Walter Fair
Thomas Costello
Bertram J. Stevenson
Peter R. Zarzaca
Judy Zarzaca
Harold McKee
Elizabeth Yoachum
Joyce Douglas
Janet McFadden
George McHugh

For the respondent Eilenberg:

Gary Eilenberg

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket No. CCC 4354-84
Agency Docket No. 84-53

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

Plaintiff,)

vs.)

ADAMAR OF NEW JERSEY, INC., trading)
as TROPICANA HOTEL AND CASINO,)
GARY EILENBERG, HAROLD KLARICH,)
SHERMAN GOLDBERG, ELIZABETH)
YOACHUM, RICHARD GOLDSTEIN, and)
JEROME PALMA,)

Respondents.)

Civil Action

STIPULATION OF FACTS
AND
SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Thomas R. O'Brien, Assistant Attorney General; Mark H. Sandson, Esquire, of the law office of Hankin, D'Amato and Sandson, Attorney for Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino; Warren O. Stilwell, Esquire, of the law office of Ribis, McCluskey, Ruane, Graham and DeCotiis, Attorney for Respondent, Jerome Palma; and Robert A. Cooper, Esquire, Attorney for Respondent, Richard Goldstein, set forth

below are the facts and proposed terms of settlement that have been agreed upon and stipulated to. For ease of presentation, in light of the diverse aspects of the instant matter, the Stipulated Facts and Settlement Agreement are divided into the following areas: A) Identity of Parties to the Stipulation; B) The Law; C) The Marketing Department; D) The Complaint; E) The Junkets; F) Sherman Goldberg; and G) The Settlement Agreement.

A. Identity of Parties to the Stipulation.

1. Respondent, Adamar of New Jersey, Inc., trading as the Tropicana Hotel and Casino (hereinafter "Tropicana"), is the holder of a plenary casino license issued on November 26, 1982, and subsequently renewed annually by the Casino Control Commission (hereinafter "Commission"). Said plenary casino license authorizes Tropicana to operate a casino hotel in accordance with the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter "Act") and the regulations promulgated thereunder by the Commission.

2. Respondents Jerome Palma and Richard Goldstein were at all times referenced herein, and prior to January 27, 1983, employed by Tropicana respectively as Director of Casino Marketing and as Assistant Director of Casino Marketing. Both Palma and Goldstein are currently employed in similar capacities at Trump Castle Hotel and Casino, Atlantic City, New Jersey.

3. On February 21, 1984, Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter "Division"), filed with the Commission a Complaint against Tropicana and the individually named Respondents Gary Eilenberg, Harold Klarich, Sherman Goldberg, Elizabeth Yoachum,

Richard Goldstein and Jerome Palma, alleging violations of the Act and regulations promulgated thereunder by the Commission pertaining to the operation of junkets to Tropicana by unlicensed and improperly licensed individuals and the filing of false and inaccurate junket prearrival reports and junket arrival reports in connection with said junkets.

B. The Law.

4. Prior to January 27, 1983, a junket was defined by Section 29 of the Act as being "an arrangement...the primary purpose of which is to induce any person to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, over \$200 of the cost of transportation, food, lodging and entertainment is directly or indirectly paid by a casino licensee...." A junket could only be organized by a junket representative, who, under Section 102 of the Act, was licensed to the qualification standards of a casino key employee. An enterprise engaged in the organization of junkets was deemed to be engaged in gaming-related business, and therefore required to be licensed in accordance with Section 92(a) of the Act. Those arrangements wherein the junket criteria was met, but the consideration received failed to exceed the \$200 threshold as referenced within the definition of junket, were designated as casino marketing activities (hereinafter "CMA's"); individuals organizing CMA's were only required to have been registered with the Commission as field agents, a position utilizing the same qualification criteria as a casino hotel employee registrant. Enterprises engaged in the organization of CMA's were deemed to be engaged in non-gaming related business, and therefore required to

be licensed in accordance with Section 92(c) of the Act. Section 102(c) of the Act stressed that casino licensees were held strictly accountable for the conduct of junkets and of junket representatives associated therewith, regardless of the employment status of said junket representatives.

5. In furtherance of the maintenance of public confidence and trust in the regulation of junket activities and in recognition of the highly-sensitive nature of casino gaming, the New Jersey Legislature amended Section 102 of the Act, enacting a comprehensive and precise statute governing all junket activities effective January 27, 1983. This statute, which was in effect at all times referenced herein, amended Section 29 of the Act, thereby redefining a junket as being "an arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee...." This revision eliminated the \$200 threshold for determination as to whether an arrangement was a junket or a CMA. Junkets, pursuant to the amendments, could only be organized by licensed junket representatives, who under the amended Section 102 of the Act were licensed to the qualification standards of casino employees. Junket enterprises, pursuant to the amended Section 102 of the Act, were required to be licensed under

Section 102 of the Act prior to engaging in the organization of junkets. Section 102(c) of the Act, as referenced above, was amended effective January 27, 1983 and redesignated as Section 102(g). The amendment expanded the casino licensee's absolute responsibility to include accountability for the conduct of junket representatives and junket enterprises associated therewith and for junkets engaged in upon its premises, regardless of whether the junket involved persons not employed by the casino licensee.

6. The Commission promulgated regulations pursuant to the newly-amended Section 102 of the Act, which were adopted on an emergency basis on January 27, 1983 and adopted without comment on March 29, 1983. These regulations (N.J.A.C. 19:49-1 et seq.), which were in effect at all times referenced herein, mandated that licensed junket representatives be either employed by a licensed junket enterprise or casino licensee, or, if neither, be licensed as a sole owner/operator junket enterprise. These regulations further required that junket prearrival reports be filed by the casino licensee with the Division at least five (5) days prior to the scheduled arrival date of the junket if the junket is arranged prior thereto; if the junket was arranged within the five (5) days immediately preceding the scheduled arrival date, the junket prearrival report pertinent thereto was required to be immediately filed. Said reports are required to include, without limitation, the names of all junket representatives and junket enterprises participating in the organization of said junkets; the appropriate Vendor Identification Numbers and License Numbers; the Terms of Compensation Arrangements; the anticipated Value of Complimentary Services expected to be given to patrons; and the city of origin

and dates and times of arrival and departure. These regulations further required that junket arrival reports be filed by the casino licensee with the Division within a set period of time after arrival; these reports delineated the same information as did the junket prearrival reports, with amendments made wherever appropriate and a patron manifest attached therewith.

7. Upon amendment of Section 102 of the Act effective January 27, 1983, individuals registered with the Commission as field agents but not licensed as junket representatives, and engaged in what were previously designated as CMA's but now defined as junkets, were barred from continued operations to casino licensees unless a junket representative license, embodying a higher standard of qualification than had been required for registration as a field agent, had been issued to them by the Commission.

C. The Marketing Department.

8. At all times referenced herein, Tropicana has operated a Marketing Department; Tropicana delegated to the Marketing Department all responsibility for coordination, scheduling, organization and approval of junkets. Said Marketing Department was supervised by the Director of Casino Marketing, Jerome Palma; Tropicana assigned to Palma the responsibility of developing programs to attract high-stakes players; assisting in the planning of special and sports events; studying evaluation reports of casino action relating to said special events; managing the sales and promotional activities of branch offices and of junket representatives; reviewing and recommending improvements to the casino evaluation system; coordinating activity of helicopters,

corporate jets and propeller-driven aircraft for high-stakes players; maintaining a superbus and aircraft program as operated through the branch offices and junket representatives; and preparing the departmental budget and maintaining on-going control of all items. Palma supervised a departmental staff comprising up to eighty (80) employees, including insofar as relevant herein, the Vice President of Casino Marketing, Gary Eilenberg, and the Assistant Director of Casino Marketing, Richard Goldstein.

9. Tropicana assigned to Eilenberg, as the Vice President of Casino Marketing - New York, the responsibility of maintaining a smooth and efficient operation of the New York City branch office; collaborating in the development of new programs designed to attract high-stakes players; participating in the selection of various customers to be invited to special events; and promoting outstanding customer relations. Eilenberg directly supervised, insofar as relevant herein, Harold Klarich, a junket representative, and Sherman Goldberg, an administrative assistant, as well as secretarial and other subordinate employees within the New York City branch office.

10. Tropicana assigned to Goldstein, as Assistant Director of Casino Marketing, the responsibility of assisting Palma in the execution of policies and procedures to maintain smooth operations in the Marketing Department; preparing documents outlining and explaining procedures; assisting in the management of sales and promotional activities of the branch offices; managing the day-to-day activities of the Marketing Department; coordinating helicopter, limousine and room assignments for high-stakes players; and evaluating the players sent to Tropicana through splinter and

superbus programs. Goldstein supervised a departmental staff comprising upto eighty (80) employees, including insofar as relevant herein, the Air Program Manager, Elizabeth Yoachum.

11. Tropicana assigned to Yoachum, as Air Program Manager, the responsibility for coordinating air patron movement in and out of the area, thereby ensuring smooth and efficient operations; assuring that air patrons received a pleasant greeting, that coupons were distributed appropriately, and that air patrons received necessary directions; soliciting and booking quality casino marketing and junket business; preparing necessary junket reports and records; and maintaining outstanding customer relations. Yoachum directly supervised, insofar as relevant herein, three Air Program Representatives, Barbara Crawford, Millie Torres, and William Olive, who were responsible for greeting air patrons upon arrival, conforming patron manifests, distributing appropriate coupons to air patrons, and maintaining outstanding customer relations.

12. At all times referenced herein, Tropicana designed and utilized an organization system whereby all junkets were directly arranged and operated through either the New York City marketing office or the Atlantic City marketing office, from which dates for proposed junkets were disseminated by Tropicana employees to individuals not employed by Tropicana but acting as junket representatives. After these individuals solicited their patrons for participation on said junkets and before arrival at Tropicana, the list of players was telephonically transmitted by said individuals acting as junket representatives back to either the New York City marketing office or the Atlantic City marketing office.

Prior to the actual trip, individuals acting as junket representatives received certain materials from either the New York City marketing office or Atlantic City marketing office, to wit: baggage tags, "buy-in" slips to be used by patrons at the gaming tables, and, on occasion, a computer manifest listing patrons whose names had been telephonically transmitted by said individuals acting as junket representatives. Prior to arrival of said junkets at Tropicana, the Tropicana marketing office in Atlantic City filed junket prearrival reports with the Division. Upon arrival of the junket in Atlantic City, an Air Program Representative, a subordinate employee within the Tropicana's marketing office in Atlantic City, would personally meet the airplanes at Bader Field or at Atlantic City International Airport, and would confer with the individuals acting as junket representatives to conform the manifest listing all patrons. The Tropicana marketing office in Atlantic City would thereupon disseminate an updated junket patron manifest to the pits within the casino facility for rating purposes. Subsequently, the Tropicana marketing office in Atlantic City filed junket arrival reports with the Division for all junkets. Tropicana delegated all authority for the certification of said junket prearrival reports and junket arrival reports to Respondents Jerome Palma and Richard Goldstein, who were designated as authorized agents for this purpose. Both Palma and Goldstein certified all junket prearrival reports and junket arrival reports as comprise the instant matter and as referenced more specifically below, without independently verifying that the information contained therein was in fact true and accurate.

13. Prior to January 27, 1983, Tropicana representatives attended and participated in meetings held by the Commission and the Division concerning the implementation of the proposed amendments to Section 102 of the Act; Tropicana directed Elizabeth Yoachum, Barbara Miller, Lee Gottlieb, and Lucy Tamburini to be present at all such meetings, and they in fact attended these meetings, wherein the proposed amendments to the Act and accompanying regulations to be promulgated thereunder by the Commission were discussed, analyzed and explained by the Commission and the Division. Tropicana delegated and assigned all responsibility for ensuring compliance with Section 102 of the Act and regulations promulgated thereunder by the Commission to the Marketing Department, which was under the supervision of Respondents Jerome Palma and Richard Goldstein; this responsibility included the assurance that Tropicana junket activities were conducted solely by properly licensed junket representatives and junket enterprises, and that the required junket prearrival reports and junket arrival reports were filed in conformance with said regulations.

D. The Complaint.

14. The Division filed the above-captioned Complaint with the Commission on February 21, 1984, after an investigation revealed that Tropicana continued to utilize the services both of previously-registered field agents and of individuals not previously so registered in the conduct of junket activities from February through July 1983, without these individuals having been properly licensed as junket representatives, sole owner/operator junket enterprises and junket enterprises. In conjunction with

these junkets, Tropicana filed junket prearrival reports and junket arrival reports containing false and inaccurate information pertaining to the individuals actually operating these junkets.

15. A total of forty-one (41) junkets were cited by the Division as having been operated to Tropicana by unlicensed or improperly-licensed individuals. Twenty-two (22) junkets were conducted by unlicensed individuals; four (4) junkets were conducted by individuals who, upon the date of arrival of the junket, were properly licensed, although in each case they conducted junket representative activities prior to licensure; and fifteen (15) junkets were conducted by improperly-licensed individuals, who were licensed as junket representatives but not employed by a licensed junket enterprise or casino licensee and not otherwise licensed as a sole owner/operator junket enterprise.

16. Pursuant to the regulatory requirements, Tropicana filed insofar as relevant herein thirty-four (34) junket prearrival reports with the Division. These junket prearrival reports, filed between February and July 1983, were cited by the Division in the instant matter as containing false and inaccurate information, to wit: misrepresenting the junket enterprise and junket representatives actually involved in the operation of the junket; misstating the Terms of Compensation Arrangements; omitting the names of individuals actually acting as junket representatives with respect to the junket; and listing incorrect Vendor Identification Numbers and License Numbers thereon. Tropicana further filed insofar as relevant herein forty-seven (47) junket arrival reports with the Division which were also cited by the Division in the above-captioned Complaint. The thirty-four (34) junket arrival

reports had been filed failed to correct the false and inaccurate information contained therein; the thirteen (13) junket arrival reports pertaining to junkets for which no junket prearrival reports had been filed contained false and inaccurate information as detailed above. Respondent, Jerome Palma, signed two (2) paired junket prearrival reports and junket arrival reports, and four (4) junket arrival reports for which no junket prearrival reports had been filed, and Respondent, Richard Goldstein, signed thirty-two (32) paired junket prearrival reports and junket arrival reports and nine (9) junket arrival reports for which no junket prearrival reports had been filed; Palma and Goldstein, by signing said reports, certified that the information contained therein was true and accurate.

17. The Division also cited Tropicana within the above-captioned Complaint for employment of Sherman Goldberg in its New York City marketing office from January through October 1983 without Goldberg having filed an application for registration as a casino hotel employee, and without his having been issued a registration in such position.

E. The Junkets.

18. Although the above-captioned Complaint designated three separate and distinct categories of violations, specifically, 1) the operation of junkets by unlicensed or improperly-licensed individuals, 2) the filing of junket prearrival reports relevant therewith, and 3) the filing of junket arrival reports relevant therewith, for purposes of clarity, these actions will be jointly addressed below in relation to the specific licensure status of the

individual performing junket representative duties relevant thereto.

19. The parties to this Stipulation of Fact agree, with respect to the below-listed activities, that junkets, as defined within Section 29 of the Act and as governed by Section 102 of the Act, were in fact operated on each of the below-enumerated dates by the individuals listed below. The parties to this Stipulation of Fact further agree, with respect to the below-listed activities, that junket prearrival reports and junket arrival reports, as referenced within Section 102 of the Act and the regulations promulgated thereunder, were in fact prepared and submitted to the Division by Tropicana.

1. Michael Fayad.

20. Michael Fayad, a resident of Aliquippa, Pennsylvania, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Fayad subsequently applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on May 4, 1983.

21. Tropicana scheduled two (2) junkets with Fayad to be operated from Latrobe, Pennsylvania on February 27 and March 20, 1983. Fayad conducted junket representative duties with respect to these trips, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

22. Tropicana filed a junket prearrival report and junket arrival reports pertaining to said junkets operated by Fayad from Latrobe, Pennsylvania on February 27 and March 20, 1983. These reports, which are attached hereto and incorporated herein as Exhibit A, consisting of twenty-one (21) pages and numbered consecutively as A-1 through A-21, contained false and inaccurate information.

23. The junket prearrival report and junket arrival reports attached hereto and incorporated herein as Exhibit A listed Daniel Cort as the junket enterprise operating said junkets. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junkets originating in Latrobe, Pennsylvania on February 27 and March 20, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival report and junket arrival reports attached hereto and incorporated herein as Exhibit A failed to list Fayad as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junkets. The junket arrival report attached hereto and incorporated herein as A-1 through A-11 within Exhibit A was certified as true and accurate by Respondent, Jerome Palma, who signed same without independently verifying the information contained therein. The junket prearrival report and junket arrival report attached hereto and incorporated herein as A-12 through A-21 within Exhibit A were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

24. Tropicana scheduled four (4) junkets with Fayad to be operated from Pittsburgh, Pennsylvania on February 7, March 21,

March 28, and April 29, 1983. Fayad conducted junket representative duties with respect to these trips, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

25. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Fayad from Pittsburgh, Pennsylvania on February 7, March 21, March 28, and April 29, 1983. These reports, which are attached hereto and incorporated herein as Exhibit B, consisting of thirty-four (34) pages and numbered consecutively from B-1 through B-34, contained false and inaccurate information.

26. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit B listed Daniel Cort as the junket enterprise operating said junkets. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junkets originating in Pittsburgh, Pennsylvania on February 7, March 21, March 28, and April 29, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit B failed to list Fayad as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit B were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

27. Tropicana scheduled four (4) junkets with Fayad to be operated from Youngstown, Ohio on February 28, March 27, April 10, and April 19, 1983. Fayad conducted junket representative duties with respect to these trips, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

28. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Fayad from Youngstown, Ohio on February 28, March 27, April 10 and April 19, 1983. These reports, which are attached hereto and incorporated herein as Exhibit C, consisting of forty-one (41) pages and numbered consecutively from C-1 through C-41, contained false and inaccurate information.

29. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit C listed Daniel Cort as the junket enterprise operating said junkets. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junkets originating in Youngstown, Ohio on February 7, March 21, March 28, and April 19, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit C failed to list Fayad as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junkets. The junket arrival report attached hereto and incorporated herein as C-1 through C-11 within Exhibit C was certified as true and accurate by Respondent, Jerome Palma, who signed same without independently verifying the information

contained therein. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as C-12 through C-41 within Exhibit C were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

30. Tropicana scheduled three (3) junkets with Fayad to be operated from Pittsburgh, Pennsylvania on May 9, 1983, from Youngstown, Ohio on May 10, 1983, and from Latrobe, Pennsylvania on May 15, 1983. Fayad conducted junket representative duties with respect to these trips prior to May 4, 1983, the date upon which he was issued temporary licenses as a junket representative, sole owner/operator junket enterprise by the Commission, although said trips arrived at Tropicana subsequent to said licensure.

31. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Fayad from Pittsburgh, Pennsylvania on May 9, 1983, from Youngstown, Ohio on May 10, 1983, and from Latrobe, Pennsylvania on May 15, 1983. These reports, which are attached hereto and incorporated herein as Exhibit D, consisting of eighteen (18) pages and numbered consecutively from D-1 through D-18, contained false and inaccurate information.

32. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as D-1 through D-15 within Exhibit D listed Daniel Cort as the junket enterprise operating said junkets. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junkets originating in Pittsburgh, Pennsylvania on May 9, 1983 and in Youngstown, Ohio on May 10, 1983, and did not act as a junket

representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as D-1 through D-15 within Exhibit D failed to list Fayad as the actual junket representative. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit D further listed incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit D were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

2. Russell Giuffrida.

33. Russell Giuffrida, a resident of Jamestown, New York, was not registered as a field agent with the Commission prior to January 1983, and did not commence junket activities until after the effective date of amendments to Section 102 of the Act. Giuffrida applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on March 1, 1983. Giuffrida subsequently applied for licensure as a sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure as such on May 4, 1983.

34. Tropicana scheduled one (1) junket with Giuffrida to be operated from Jamestown, New York on February 6, 1983. Giuffrida conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

35. Tropicana filed a junket arrival report pertaining to said junket operated by Giuffrida from Jamestown, New York on February 6, 1983. This report, which is attached hereto and incorporated herein as Exhibit E, consisting of three (3) pages and numbered consecutively as E-1 through E-3, contained false and inaccurate information.

36. The junket arrival report attached hereto and incorporated herein as Exhibit E listed Daniel Cort as the junket enterprise operating said junket. Cort, a licensed junket representative and junket enterprise, had no connection with respect to said junket originating in Jamestown, New York on February 6, 1983, and did not act as a junket representative of junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit E failed to list Giuffrida as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as Exhibit E was certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

37. Tropicana scheduled one (1) junket with Giuffrida to be operated from Jamestown, New York on March 13, 1983. Giuffrida, already licensed as a junket representative, conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a sole owner/operator junket enterprise by the Commission. Giuffrida was not employed by a licensed junket enterprise or by a casino

licensee while acting as a junket representative with respect to this trip.

38. Tropicana filed a junket prearrival report and junket arrival report pertaining to said junket operated by Giuffrida from Jamestown, New York on March 13, 1983. These reports, which are attached hereto and incorporated herein as Exhibit F, consisting of ten (10) pages and numbered consecutively as F-1 through F-10, contained false and inaccurate information.

39. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit F listed Daniel Cort as the junket enterprise operating said junket. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junket originating in Jamestown, New York on March 13, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit F failed to list Giuffrida as the actual junket representative, and listed incorrect Terms of Compensation Arrangements for said junket. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit F were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

3. John Manley.

40. John Manley, a resident of Myrtle Beach, South Carolina, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Manley

subsequently applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on February 8, 1983. At all times referenced herein, Manley never applied for licensure as a sole owner/operator junket enterprise, and was not employed by a licensed junket enterprise or casino licensee.

41. Tropicana scheduled four (4) junkets with Manley to be operated from Myrtle Beach, South Carolina on February 14, March 28, April 25 and May 9, 1983. Manley, already licensed as a junket representative, conducted junket representative duties with respect to said trips, which arrived at Tropicana without his having been licensed as a sole owner/operator junket enterprise by the Commission. Manley was not employed by a licensed junket enterprise or by a casino licensee while acting as a junket representative with respect to said trips.

42. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Manley from Myrtle Beach, South Carolina on February 14, March 28, April 25, and May 9, 1983. These reports, which are attached hereto and incorporated herein as Exhibit G, consisting of eighty-one (81) pages and numbered consecutively as G-1 through G-81, contained false and inaccurate information.

43. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as G-1 through G-41 within Exhibit G listed Manley as a sole owner/operator junket enterprise operating said junkets on February 14 and March 18, 1983. Manley was not so licensed. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as G-42

through G-81 within Exhibit G listed Manley as a junket representative employed by Ted Welborn, a licensed junket representative and junket enterprise, who was listed as operating said junkets on April 25 and May 9, 1983. Manley was not so employed, and Welborn had no connection with the conduct of said junkets originating in Myrtle Beach, South Carolina on April 25 and May 9, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit G further listed incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit G were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

4. Terry "Ted" Welborn.

44. Terry Welborn, a resident of Greensboro, North Carolina, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Welborn subsequently applied for licensure as a junket representative and junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on March 30, 1983.

45. Tropicana scheduled two (2) junkets with Welborn to be operated from Greensboro, North Carolina on February 14 and March 28, 1983. Welborn conducted junket representative duties with respect to these trips, which arrived at Tropicana prior to his

having been licensed as a junket representative and junket enterprise by the Commission.

46. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Welborn from Greensboro, North Carolina on February 14 and March 28, 1983. These reports, which are attached hereto and incorporated herein as G-1 through G-41 within Exhibit G, contained false and inaccurate information.

47. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as G-1 through G-41 within Exhibit G listed John Manley as the junket enterprise operating said junkets. Manley, a licensed junket representative but not licensed as a sole owner/operator junket enterprise or as a junket enterprise, had no connection with the conduct of said junkets originating in Greensboro, North Carolina on February 14 and March 28, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as G-1 through G-41 within Exhibit G failed to list Welborn as the actual junket representative, and further listed incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as G-1 through G-41 within Exhibit G were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

5. Chester Glass.

48. Chester Glass, a resident of Dayton, Ohio, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Glass subsequently applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on January 27, 1983. At all times referenced herein, Glass never applied for licensure as a sole owner/operator junket enterprise, and was not employed by a licensed junket enterprise or casino licensee.

49. Tropicana scheduled five (5) junkets with Glass to be operated from Dayton, Ohio on February 14, March 4, April 16, May 26, and June 8, 1983. Glass, already licensed as a junket representative, conducted junket representative duties with respect to these trips, which were operated without his having been licensed as a sole owner/operator junket enterprise by the Commission. Glass was not employed by a licensed junket enterprise or casino licensee while acting as a junket representative with respect to these trips.

50. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Glass from Dayton, Ohio on February 14, March 4, April 16, May 26, and June 8, 1983. These reports, which are attached hereto and incorporated herein as Exhibit H, consisting of fifty-nine (59) pages and numbered consecutively as H-1 through H-59, contained false and inaccurate information.

51. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as H-1 through H-22 within

Exhibit H listed Daniel Cort as the junket enterprise operating said junkets on February 14 and March 4, 1983. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junkets originating in Dayton, Ohio on February 14 and March 4, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as H-1 through H-22 within Exhibit H failed to list Glass as the actual junket representative. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as H-23 through H-59 within Exhibit H listed Glass as a junket representative employed by Cort, a licensed junket representative and junket enterprise, who was listed as operating said junkets on April 16, May 26, and June 8, 1983. Glass was not so employed, and Cort had no connection with the conduct of said junkets originating in Dayton, Ohio on April 16, May 26, and June 8, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit H further listed incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as H-1 through H-11 and H-23 through H-59 within Exhibit H were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein. The junket prearrival report and junket arrival report attached hereto and incorporated herein as H-12 through H-22 within Exhibit H were certified as true and accurate by Respondent, Jerome Palma, who

signed same without independently verifying the information contained therein.

6. Carl Wilson.

52. Carl Wilson, a resident of Charlotte, North Carolina, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Wilson subsequently applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on March 23, 1983.

53. Tropicana scheduled one (1) junket with Wilson to be operated from Charlotte, North Carolina on February 16, 1983. Wilson conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

54. Tropicana filed a junket arrival report pertaining to said junket operated by Wilson from Charlotte, North Carolina on February 16, 1983. This report, which is attached hereto and incorporated herein as Exhibit I, consisting of sixteen (16) pages and numbered consecutively as I-1 through I-16, contained false and inaccurate information.

55. The junket arrival report attached hereto and incorporated herein as Exhibit I listed John Manley as the junket enterprise operating said junket. Manley, licensed as a junket representative but not licensed as a sole owner/operator junket enterprise or as a junket enterprise, had no connection with the

conduct of said junket originating in Charlotte, North Carolina on February 16, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit I failed to list Wilson as the actual junket representative, and further listed an incorrect Vendor Identification Number and incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as Exhibit I was certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

56. Tropicana scheduled one (1) junket with Wilson to be operated from Charlotte, North Carolina on March 27, 1983. Wilson conducted junket representative duties with respect to this trip prior to March 23, 1983, the date upon which he was issued temporary licensure as a junket representative, sole owner/operator junket enterprise by the Commission, although said trip arrived at Tropicana subsequent to said licensure.

57. Tropicana scheduled one (1) junket with Wilson to be operated from Charlotte, North Carolina on May 5, 1983. Wilson conducted junket representative duties with respect to this trip, which arrived at Tropicana, and was fully and properly licensed by the Commission while operating said junket.

58. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets originating in Charlotte, North Carolina on March 27 and May 5, 1983. These reports, which are attached hereto and incorporated herein as Exhibit J, consisting of thirty-six (36) pages and numbered

consecutively as J-1 through J-36, contained false and inaccurate information.

59. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit J listed incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit J were certified as true and accurate by Respondent, Richard Goldstein, who signed them without independently verifying the information contained therein.

7. Betty Jarrett.

60. Betty Jarrett, a resident of Roanoke, Virginia, was not registered as a field agent with the Commission prior to January 1983, although she had conducted CMA's to Caesars Boardwalk Regency Hotel and Casino and to Playboy (now Atlantis) Hotel and Casino prior to the effective date of amendments to Section 102 of the Act. Jarrett applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on April 6, 1983. At all times referenced herein, Jarrett never applied for licensure as a sole owner/operator junket enterprise, and was not employed by a licensed junket enterprise or by a casino licensee.

61. Tropicana scheduled one (1) junket with Jarrett to be operated from Roanoke, Virginia on February 17, 1983. Jarrett conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to her having been licensed as a junket representative by the Commission.

62. Tropicana filed a junket arrival report pertaining to said junket operated by Jarrett from Roanoke, Virginia on February 17, 1983. This report, which is attached hereto and incorporated herein as Exhibit K, consisting of eleven (11) pages and numbered consecutively as K-1 through K-11, contained false and inaccurate information.

63. The junket arrival report attached hereto and incorporated herein as Exhibit K listed Gary Eilenberg, a licensed casino key employee, as the junket enterprise operating said junket on February 17, 1983. Eilenberg did not act as a junket representative or junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit K failed to list Jarrett as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as Exhibit K was certified as true and accurate by Respondent, Jerome Palma, who signed same without independently verifying the information contained therein.

8. Carl Allegood.

64. Carl Allegood, a resident of Kinston, North Carolina, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Allegood subsequently applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on March 30, 1983.

65. Tropicana scheduled one (1) junket with Allegood to be operated from Kinston, North Carolina on February 20, 1983. Allegood conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

66. Tropicana filed a junket arrival report pertaining to said junket operated by Allegood from Kinston, North Carolina on February 20, 1983. This report, which is attached hereto and incorporated herein as Exhibit L, consisting of three (3) pages and numbered consecutively as L-1 through L-3, contained false and inaccurate information.

67. The junket arrival report attached hereto and incorporated herein as Exhibit L listed Gary Eilenberg as the junket enterprise operating said junket on February 20, 1983. Eilenberg, a licensed casino key employee, did not act as a junket representative or junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit L failed to list Allegood as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as Exhibit L was certified as true and accurate by Respondent, Jerome Palma, who signed same without independently verifying the information contained therein.

9. Gerald Ades.

68. Gerald Ades, a resident of Louisville, Kentucky, was not registered as a field agent with the Commission prior to January 1983, although he had conducted CMA's to Tropicana prior to the

effective date of amendments to Section 102 of the Act. Ades applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on March 16, 1983.

69. Tropicana scheduled one (1) junket with Ades to be operated from Louisville, Kentucky on February 21, 1983. Ades conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

70. Tropicana filed a junket arrival report pertaining to said junket operated by Ades from Louisville, Kentucky on February 21, 1983. This report, which is attached hereto and incorporated herein as Exhibit M, consisting of twenty-one (21) pages and numbered consecutively as M-1 through M-21, contained false and inaccurate information.

71. The junket arrival report attached hereto and incorporated herein as Exhibit M listed Daniel Cort as the junket enterprise operating said junket. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junket originating in Louisville, Kentucky on February 21, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit M failed to list Ades as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as

Exhibit M was certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

10. Richard Ullner.

72. Richard Ullner, a resident of Cincinnati, Ohio, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Ullner applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on March 30, 1983.

73. Tropicana scheduled one (1) junket with Ullner to be operated from Cincinnati, Ohio on February 21, 1983. Ullner conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

74. Tropicana filed a junket arrival report pertaining to said junket operated by Ullner from Cincinnati, Ohio on February 21, 1983. This report, which is attached hereto and incorporated herein as Exhibit M, consisting of twenty-one (21) pages and numbered consecutively as M-1 through M-21, contained false and inaccurate information.

75. The junket arrival report attached hereto and incorporated herein as Exhibit M listed Daniel Cort as the junket enterprise operating said junket. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junket originating in Cincinnati, Ohio on February

21, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket arrival report attached hereto and incorporated herein as Exhibit M failed to list Ullner as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket arrival report attached hereto and incorporated herein as Exhibit M was certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

11. Ellis McMillan.

76. Ellis McMillan, a resident of Columbus, Ohio, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. McMillan applied for licensure as a junket representative, sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on October 26, 1983.

77. Tropicana scheduled one (1) junket with McMillan to be operated from Columbus, Ohio on March 7, 1983. McMillan conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a junket representative, sole owner/operator junket enterprise by the Commission.

78. Tropicana filed a junket prearrival report and junket arrival report pertaining to said junket operated by McMillan from Columbus, Ohio on March 7, 1983. These reports, which are attached hereto and incorporated herein as Exhibit N, consisting of ten (10)

pages and numbered consecutively as N-1 through N-10, contained false and inaccurate information.

79. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit N listed Daniel Cort as the junket enterprise operating said junket. Cort, a licensed junket representative and junket enterprise, had no connection with the conduct of said junket originating in Columbus, Ohio on March 7, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit N failed to list McMillan as the actual junket representative, and further listed incorrect Terms of Compensation Arrangements for said junket. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit N were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

12. Linda Ennis.

80. Linda Ennis, a resident of Sanford, North Carolina, was not registered as a field agent with the Commission prior to January 1983, and did not commence junket activities until after the effective date of amendments to Section 102 of the Act. Ennis subsequently applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on March 30, 1983. At all times referenced herein, Ennis never applied for licensure as a sole owner/operator junket enterprise, and was not employed by a licensed junket enterprise or casino licensee.

81. Tropicana scheduled four (4) junkets with Ennis to be operated from Raleigh-Durham, North Carolina on April 23, May 21, July 16, and July 31, 1983. Ennis, already licensed as a junket representative, conducted junket representative duties with respect to said trips, which arrived at Tropicana without her having been licensed as a sole owner/operator junket enterprise. Ennis was not employed by a licensed junket enterprise or casino licensee while acting as a junket representative with respect to said trips.

82. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Ennis from Raleigh-Durham, North Carolina on April 23, May 21, July 16, and July 31, 1983. These reports, which are attached hereto and incorporated herein as Exhibit O, consisting of forty (40) pages and numbered consecutively as O-1 through O-40, contained false and inaccurate information.

83. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit O listed Ennis as a junket representative employed by Ted Welborn, a licensed junket representative and junket enterprise, who was listed as operating said junkets. Ennis was not so employed, and Welborn had no connection with the conduct of said junkets originating in Raleigh-Durham, North Carolina on April 23, May 21, July 16 and July 31, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit O further listed incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as

Exhibit 0 were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

13. John Domi.

84. John Domi, a resident of Indianapolis, Indiana, was registered as a field agent with the Commission prior to January 1983, and conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Domi subsequently applied for licensure as a junket representative pursuant to Section 102 of the Act, and received temporary licensure as such on April 13, 1983. Domi subsequently applied for licensure as a sole owner/operator junket enterprise pursuant to Section 102 of the Act, and received temporary licensure as such on August 17, 1983.

85. Tropicana scheduled one (1) junket with Domi to be operated from Indianapolis, Indiana on June 8, 1983. Domi, already licensed as a junket representative, conducted junket representative duties with respect to this trip, which arrived at Tropicana prior to his having been licensed as a sole owner/operator junket enterprise by the Commission. Domi was not employed by a licensed junket enterprise or casino licensee while acting as a junket representative with respect to this trip.

86. Tropicana filed a junket prearrival report and junket arrival report pertaining to said junket operated by Domi from Indianapolis, Indiana on June 8, 1983. These reports, which are attached hereto and incorporated herein as H-39 through H-59 within Exhibit H, contained false and inaccurate information.

87. The junket prearrival report and junket arrival report attached hereto and incorporated herein as H-39 through H-59 within

Exhibit H listed Domi as a junket representative employed by Daniel Cort, a licensed junket representative and junket enterprise, who was listed as operating said junket. Domi was not so employed, and Cort had no connection with the conduct of said junket originating in Indianapolis, Indiana on June 8, 1983, and did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival report and junket arrival report attached hereto and incorporated herein as H-39 through H-59 within Exhibit H further listed incorrect Terms of Compensation Arrangements for said junket. The junket prearrival report and junket arrival report attached hereto and incorporated herein as H-39 through H-59 within Exhibit H were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

14. Walter Shaul.

88. Walter Shaul, a resident of Toronto, Ontario, Canada, was not registered as a field agent with the Commission prior to January 1983, although he had conducted CMA's to Tropicana prior to the effective date of amendments to Section 102 of the Act. Shaul applied for licensure as a junket representative and junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on April 16, 1983.

89. Tropicana scheduled four (4) junkets with Shaul to be operated from Toronto, Ontario, Canada on February 5, February 19, March 5, and March 19, 1983. Shaul conducted junket representative duties with respect to said trips, which arrived at Tropicana prior to his having been licensed as a junket representative and junket enterprise by the Commission.

90. Tropicana filed junket prearrival reports and junket arrival reports pertaining to said junkets operated by Shaul from Toronto, Ontario, Canada on February 5, February 19, March 5, and March 19, 1983. These reports, which are attached hereto and incorporated herein as Exhibit P, consisting of twenty (20) pages and numbered consecutively as P-1 through P-20, contained false and inaccurate information.

91. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit P listed Judith Stewart as the junket enterprise operating said junkets on February 5, February 19, March 5, and March 19, 1983. Stewart, a licensed junket representative and junket enterprise, did not act as a junket representative or junket enterprise with respect thereto. The junket prearrival reports and junket arrival reports attached hereto and incorporated herein as Exhibit P failed to list Shaul as the actual junket representative, and further listed an incorrect Vendor Identification Number and incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival report and junket arrival reports attached hereto and incorporated herein as P-1 through P-14 and P-18 through P-20 within Exhibit P were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein. The junket prearrival report and junket arrival report attached hereto and incorporated herein as P-15 through P-17 within Exhibit P were certified as true and accurate by Respondent, Jerome Palma, who signed same without independently verifying the information contained therein.

15. Richard Levy.

92. Richard Levy, a resident of Houston, Texas, applied for licensure as a junket representative and junket enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on January 27, 1983.

93. Tropicana scheduled one (1) junket with Levy to be operated from Houston, Texas on May 1, 1985. Levy conducted junket representative duties with respect to this trip, which arrived at Tropicana, and was fully and properly licensed by the Commission while operating said junket.

94. Tropicana filed a junket prearrival report and junket arrival report pertaining to said junket originating in Houston, Texas on May 1, 1985. These reports, which are attached hereto and incorporated herein as Exhibit Q, consisting of nineteen (19) pages and numbered consecutively as Q-1 through Q-19, contained false and inaccurate information.

95. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit Q listed an incorrect Vendor Identification Number and incorrect Terms of Compensation Arrangements for said junket. The junket prearrival report and junket arrival report attached hereto and incorporated herein as Exhibit Q were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

16. Murry DeFranco.

96. Murry DeFranco, a resident of Niagara Falls, New York, applied for licensure as a junket representative and junket

enterprise pursuant to Section 102 of the Act, and received temporary licensure in said positions on January 27, 1983.

97. Tropicana scheduled three (3) junkets with DeFranco to be operated from Buffalo, New York on February 20, March 27, and May 1, 1983. DeFranco conducted junket representative duties with respect to said trips, which arrived at Tropicana, and was fully and properly licensed by the Commission while operating said junkets.

98. Tropicana filed a junket prearrival report and junket arrival reports pertaining to said junkets originating in Buffalo, New York on February 20, March 27, and May 1, 1983. These reports, which are attached hereto and incorporated herein as Exhibit R, consisting of thirty-one (31) pages and numbered consecutively as R-1 through R-31 contained false and inaccurate information.

99. The junket prearrival report and junket arrival reports attached hereto and incorporated herein as Exhibit R listed incorrect Vendor Identification Numbers, listed incorrect junket enterprise-sole owner/operator junket enterprise status, and listed incorrect Terms of Compensation Arrangements for said junkets. The junket prearrival report and junket arrival reports attached hereto and incorporated herein as Exhibit R were certified as true and accurate by Respondent, Richard Goldstein, who signed same without independently verifying the information contained therein.

F. Sherman Goldberg.

100. Sherman Goldberg, a subordinate employee within Tropicana's New York City marketing office and reporting directly to Gary Eilenberg, Vice President for Casino Marketing, was hired effective January 27, 1983. Goldberg, at all times referenced

herein, was employed at said marketing office and remained so employed until March 1984.

101. Upon being hired by Tropicana, Goldberg was placed upon the employee payroll effective January 27, 1983, and remained so situated until March 1984.

102. By cover letter dated January 25, 1983, Tropicana mailed to the Commission a Personal History Disclosure Form Box #274 on behalf of Goldberg for the position of Hotel Employee-Field Agent. A copy of the cover letter submitted with said application is attached hereto and incorporated herein as Exhibit S. Notwithstanding said cover letter, the records of the Commission do not reflect receipt of this submission.

103. Upon discovering in October 1983 that Goldberg was not registered with the Commission, Barbara Miller, Tropicana's Personnel Administrative Manager, submitted a casino hotel employee registration on his behalf.

104. Consequently, Goldberg was not registered as a casino hotel employee until October 25, 1983, and was employed by Tropicana without having been so registered from January 27, 1983 to that date.

G. The Settlement Agreement.

WHEREAS, paragraphs 1 through 104 of this Stipulation, supra, which are set forth above, have been agreed upon by and between the parties hereto and they are stipulated to as Findings of Facts; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that through its marketing offices in Atlantic City and New York City, it scheduled twenty-two (22) junkets with unlicensed individuals acting as junket

representatives and permitted all twenty-two (22) junkets to arrive at its casino, thereby violating N.J.S.A. 5:12-102, N.J.A.C. 19:49-2.1 and N.J.A.C. 19:49-2.2, as set forth in Part E above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that, through its marketing offices in Atlantic City and New York City, it scheduled four (4) junkets with, and allowed same to be arranged by, unlicensed individuals acting as junket representatives, thereby violating N.J.S.A. 5:12-102, N.J.A.C. 19:49-2.1 and N.J.A.C. 19:49-2.2, even though said junkets arrived at its casino subsequent to receipt of temporary licensure by said individuals, as set forth in Part E above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that, through its marketing offices in Atlantic City and New York City, it scheduled fifteen (15) junkets with, and permitted fifteen (15) junkets operated by, individuals licensed as junket representatives but not licensed as sole owner/operator junket enterprises and not employed by a licensed junket enterprise or casino licensee to arrive at its casino, thereby violating N.J.S.A. 5:12-102, N.J.A.C. 19:49-2.1 and N.J.A.C. 19:49-2.2, as set forth in Part E above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that, through its Atlantic City marketing office, it filed thirty-four (34) junket prearrival reports with the Division of Gaming Enforcement that violated N.J.S.A. 5:12-102 and N.J.A.C. 19:49-3.1, in that all thirty-four (34) reports falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket

representatives and junket enterprises, the Vendor Identification Numbers of individuals involved, and Terms of Compensation Arrangements pertinent thereto, while certifying said reports to be true and accurate, as set forth in Part E above; and

WHEREAS, Respondents Jerome Palma and Richard Goldstein admit that they signed a total of thirty-four (34) junket prearrival reports for filing by Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, with the Division of Gaming Enforcement, thereby certifying said reports to be true and accurate without independently verifying same, while all thirty-four (34) reports violated N.J.S.A. 5:12-102 and N.J.A.C. 19:49-3.1, in that all thirty-four (34) reports falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the Vendor Identification Numbers of individuals involved, and Terms of Compensation Arrangements pertinent thereto, as set forth in Part E above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that, through its Atlantic City marketing office, it filed forty-seven (47) junket arrival reports with the Division of Gaming Enforcement that violated N.J.S.A. 5:12-102 and N.J.A.C. 19:49-3.2, in that all forty-seven (47) reports falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the Vendor Identification Numbers of individuals involved, and Terms of Compensation Arrangements pertinent thereto, while certifying said reports to be true and accurate, as set forth in Part E above; and

WHEREAS, Respondents Jerome Palma and Richard Goldstein admit that they signed a total of forty-seven (47) junket arrival reports for filing by Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, with the Division of Gaming Enforcement, thereby certifying said reports to be true and accurate without independently verifying same, while all forty-seven (47) reports violated N.J.S.A. 5:12-102 and N.J.A.C. 19:49-3.2, in that all forty-seven (47) reports falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the Vendor Identification Numbers of Individuals involved, and Terms of Compensation Arrangements-pertinent thereto~~y~~ as set forth in Part E above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that it employed Sherman Goldberg in a position requiring that he be registered as a casino hotel employee without his actually having been so registered, as set forth in Part F above; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that its Marketing Department practices and policies as implemented in Atlantic City and New York City during the time period set forth above, as set forth in Parts C, D, E, and F above, were deficient in that said practices and procedures failed to insure the existence of adequate controls and oversight over the day-to-day operations of the Marketing Department, and inadequate to assure that junkets were being organized, operated and reported in accordance with the statutory

requirements set forth in N.J.S.A. 5:12-102 and the regulations promulgated thereunder by the Casino Control Commission; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, recognizes the necessity of strengthening its controls over the conduct of junket activities to its casino and over the filing of true and accurate junket prearrival reports and junket arrival reports pertinent thereto; and

WHEREAS, Respondents, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, Jerome Palma and Richard Goldstein, recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder by the Casino Control Commission and agree to comply with the aforementioned statutory and regulatory provisions; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that its actions in regard to the scheduling of twenty-two (22) junkets with unlicensed individuals acting as junket representatives and permitting all twenty-two (22) junkets to arrive at its casino justify the imposition of an administrative sanction pursuant to N.J.S.A. 5:12-64, N.J.S.A. 5:12-102, and N.J.S.A. 5:12-129; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that its actions in regard to the scheduling of four (4) junkets with unlicensed individuals acting as junket representatives, although all four (4) junkets arrived at its casino subsequent to receipt of temporary licensure by said individuals, justify the imposition of an administrative

sanction pursuant to N.J.S.A. 5:12-64, N.J.S.A. 5:12-102, and N.J.S.A. 5:12-129; and

WHEREAS, Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, admits that its actions in regard to the scheduling of fifteen (15) junkets with and permitting all fifteen (15) junkets operated by individuals licensed as junket representatives but not licensed as sole owner/operator junket enterprises and not employed by a licensed junket enterprise or casino licensee to arrive at its casino justify the imposition of an administrative sanction pursuant to N.J.S.A. 5:12-64, N.J.S.A. 5:12-102, and N.J.S.A. 5:12-129; and

WHEREAS, Respondents, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, Jerome Palma and Richard Goldstein, admit that their actions, or inactions, in regard to the filing of thirty-four (34) junket prearrival reports and forty-seven (47) junket arrival reports that violated N.J.S.A. 5:12-102, N.J.A.C. 19:49-3.1 and N.J.A.C. 19:49-3.2, justify the imposition of an administrative sanction pursuant to N.J.S.A. 5:12-64, N.J.S.A. 5:12-102, and N.J.S.A. 5:12-129; and

WHEREAS, the parties have endeavored to submit to Your Honor, and ultimately to the Casino Control Commission, a detailed and comprehensive submission of all of the material and relevant facts pertinent to the allegations contained in the above-captioned Complaint;

NOW THEREFORE, be it resolved that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to cease junket activities utilizing the services of individuals not employed by Respondent, Adamar of New Jersey, Inc., for a period of

thirty (30) days from the date of ratification of this Stipulation of Fact and Settlement Agreement by the Casino Control Commission.

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to conduct in-house instruction of all employees of its Marketing Department, whether employed within or outside the Atlantic City marketing office, on the Casino Control Act and regulations promulgated thereunder by the Casino Control Commission as same pertain to junket activities for a total of four (4) hours per employee.

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to have its Legal Department prepare a written compendium of the Casino Control Act and regulations promulgated thereunder by the Casino Control Commission as same pertain to junket activities, which shall be disseminated to all individuals not employed by Respondent, Adamar of New Jersey, Inc., who are conducting or seeking to conduct junket activities to its casino, with said individuals being required to certify prior to conducting further junket activities therewith that they have read said compendium and fully understand same.

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, shall have its Internal Audit Department commence an independent audit of the activities of its Marketing Department for the purpose of determining whether said Marketing Department has complied with the Casino Control Act and regulations promulgated thereunder by the Casino Control Commission as same pertain to junket activities. Said audit shall be conducted on a quarterly basis for a period of

one (1) year, during which time reports reflecting the complete results of said audits shall be issued to the Casino Control Commission and to the Division of Gaming Enforcement. Thereafter, one audit shall be conducted for an additional year, and a report reflecting the complete results of said audit shall be issued to the Casino Control Commission and to the Division of Gaming Enforcement.

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to pay as a fine the sum of \$5,000 for each of the twenty-two (22) junkets set forth in Part E above wherein it scheduled the operation of junkets with unlicensed individuals acting as junket representatives and permitted said junkets to arrive at its casino. Said junkets arrived at Tropicana from Latrobe, Pennsylvania on February 27 and March 20, 1983, from Pittsburgh, Pennsylvania on February 7, March 21, March 28 and April 29, 1983, from Youngstown, Ohio on February 28, March 27, April 10 and April 19, 1983, from Jamestown, New York on February 6, 1983, from Greensboro, North Carolina on February 14, 1983, from Charlotte, North Carolina on February 16, 1983, from Roanoke, Virginia on February 17, 1983, from Kinston, North Carolina on February 20, 1983, from Louisville, Kentucky on February 21, 1983, from Cincinnati, Ohio on February 21, 1983, from Columbus, Ohio on March 7, 1983, and from Toronto, Ontario, Canada on February 5, February 19, March 5 and March 19, 1983. Said total fine of \$110,000 is to be paid by Respondent, Adamar of New Jersey, Inc., to the New Jersey Casino Control Fund in full settlement of the allegations pertaining to the scheduling of junkets with

unlicensed individuals acting as junket representatives and permitting said junkets to arrive at its casino, with respect to said twenty-two (22) junkets as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to pay as a fine the sum of \$1,000 for each of the four (4) junkets set forth in Part E above wherein it scheduled junket activities with unlicensed individuals acting as junket representatives and permitted said junkets to arrive at its casino, although said junkets arrived at its casino subsequent to receipt of temporary licensure by said individuals. Said junkets arrived at Tropicana from Charlotte, North Carolina on March 27, 1983, from Pittsburgh, Pennsylvania on May 9, 1983, from Youngstown, Ohio on May 10, 1983, and from Latrobe, Pennsylvania on May 15, 1983. Said total fine of \$4,000 is to be paid by Respondent, Adamar of New Jersey, Inc., to the New Jersey Casino Control Fund in full settlement of the allegations pertaining to the scheduling of junkets with unlicensed individuals acting as junket representatives and permitting said junkets to arrive at its casino, although said junkets arrived at its casino subsequent to receipt of temporary licensure by said individuals, with respect to said four (4) junkets as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to accept a letter of censure from the Casino Control Commission for each of

the fifteen (15) junkets set forth in Part E above wherein it scheduled junket activities with and permitted junkets operated by individuals licensed as junket representatives but not licensed as sole owner/operator junket enterprises and not employed by a licensed junket enterprise or casino licensee to arrive at its casino. Said junkets arrived at Tropicana from Jamestown, New York on March 13, 1983, from Myrtle Beach, South Carolina on February 14, March 28, April 25 and May 9, 1983, from Dayton, Ohio on February 14, March 4, April 16, May 26 and June 8, 1983, from Raleigh-Durham, North Carolina on April 23, May 21, July 16 and July 31, 1983, and from Indianapolis, Indiana on June 8, 1983. Said letters of censure are to be made a permanent part of the licensing file of Respondent, Adamar of New Jersey, Inc., and accepted in full settlement of the allegations pertaining to the scheduling of junkets with and permitting junkets operated by individuals licensed as junket representatives but not licensed as sole owner/operator junket enterprises and not employed by a licensed junket enterprise or casino licensee to arrive at its casino, with respect to said fifteen (15) junkets as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to pay as a fine the sum of \$2,000 for each of eleven (11) paired junket prearrival reports and junket arrival reports it filed with the Division of Gaming Enforcement, pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on March 20, 1983, from Pittsburgh, Pennsylvania on March 21, March 28 and April 29, 1983,

from Youngstown, Ohio on March 27, April 10 and April 19, 1983, from Greensboro, North Carolina on February 14, 1983, from Columbus, Ohio on March 7, 1983, and from Toronto, Ontario, Canada on March 5 and March 19, 1983, and for each of eleven (11) junket arrival reports it filed with the Division of Gaming Enforcement for which no junket prearrival reports had been filed, pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on February 27, 1983, from Pittsburgh, Pennsylvania on February 7, 1983, from Youngstown, Ohio on February 28, 1983, from Jamestown, New York on February 6, 1983, from Charlotte, North Carolina on February 16, 1983, from Roanoke, Virginia on February 17, 1983, from Kinston, North Carolina on February 20, 1983, from Louisville, Kentucky on February 21, 1983, from Cincinnati, Ohio on February 21, 1983, and from Toronto, Ontario, Canada on February 5 and February 19, 1983, with aforesaid reports having been certified by Respondent, Adamar of New Jersey, Inc., as being true and accurate. Said reports failed to disclose the true identity of unlicensed individuals acting as junket representatives, instead identifying licensed junket representatives and junket enterprises having no connection with the conduct of said junkets, and said reports further supplied incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements, as set forth in Part E above. Said total fine of \$44,000 is to be paid by Respondent, Adamar of New Jersey, Inc., to the New Jersey Casino Control Fund in full settlement of the allegations pertaining to the aforesaid junket prearrival reports and junket arrival reports as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to pay as a fine the sum of \$1,000 for each of seventeen (17) paired junket prearrival reports and junket arrival reports it filed with the Division of Gaming Enforcement, pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on May 15, 1983, from Pittsburgh, Pennsylvania on May 9, 1983, from Jamestown, New York on March 13, 1983, from Myrtle Beach, South Carolina on February 14, March 28, April 25 and May 9, 1983, from Dayton, Ohio on February 14, March 4, April 16, May 26 and June 8, 1983, from Raleigh-Durham, North Carolina on April 23, May 21, July 16 and July 31, 1983, and from Indianapolis, Indiana on July 8, 1983, with aforesaid reports having been certified by Respondent, Adamar of New Jersey, Inc., as being true and accurate. Said reports falsely and inaccurately represented the identity, relationship and licensing status of individuals acting as junket representatives, and said reports further supplied incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements, as set forth in Part E above. Said total fine of \$17,000 is to be paid by Respondent, Adamar of New Jersey, Inc., to the New Jersey Casino Control Fund in full settlement of the allegations pertaining to the aforesaid junket prearrival reports and junket arrival reports as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to accept a letter of censure for each of the five (5) paired junket prearrival reports and junket arrival reports it filed with the Division of

Gaming Enforcement, pertaining to junkets operated by licensed junket representatives and junket enterprises, arriving at Tropicana from Latrobe, Pennsylvania on May 15, 1983, from Charlotte, North Carolina on March 27 and May 5, 1983, from Buffalo, New York on May 1, 1983, and Houston, Texas on May 1, 1983, and for each of the two (2) junket arrival reports it filed with the Division of Gaming Enforcement for which no junket prearrival reports had been filed, pertaining to junkets operated by licensed junket representatives and junket enterprises arriving at Tropicana from Buffalo, New York on February 20 and March 27, 1983, with aforesaid reports having been certified by Respondent, Adamar of New Jersey, Inc., as being true and accurate. Said reports supplied incorrect Vendor Identification Numbers and incorrect Terms of Compensation Arrangements, as set forth in Part E above. Said letters of censure are to be made a permanent part of the licensing file of Respondent, Adamar of New Jersey, Inc., and accepted in full settlement of the allegations pertaining to aforesaid junket prearrival reports and junket arrival reports as set forth in the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, agrees to accept a letter of censure from the Casino Control Commission for employing Sherman Goldberg in its New York City marketing office from January 1, 1983 through October 25, 1983 in a position requiring his registration with the Casino Control Commission as a casino hotel employee, without his being so registered during time period, as set forth in Part F above, with said letter of censure to be made a

permanent part of its licensing file, and to be accepted in full settlement of the allegations pertaining to said employment of Goldberg as set forth in the Tenth Count of the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Jerome Palma, agrees to pay as a fine the total sum of \$4,000 for signing two (2) paired junket prearrival reports and junket arrival reports pertaining to junkets arriving at Tropicana from Dayton, Ohio on March 4, 1983 and from Toronto, Ontario, Canada on March 5, 1983, and for signing four (4) junket arrival reports for which no prearrival reports had been filed, pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on February 27, 1983, from Youngstown, Ohio on February 28, 1983, from Roanoke, Virginia on February 17, 1983, and from Kinston, North Carolina on February 20, 1983, without independently verifying the information contained therein, with aforesaid reports to be filed by Respondent, Adamar of New Jersey, Inc., trading as Tropicana Hotel and Casino, with the Division of Gaming Enforcement. Said reports bearing Palma's signature, thereby certifying said reports to be true and accurate, falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the Vendor Identification Numbers of individuals involved, and the Terms of Compensation Arrangements pertinent thereto, as set forth in Part E above. Said fine is to be paid by Respondent, Jerome Palma, to the New Jersey Casino Control Fund in

full settlement of the allegations as set forth in the Ninth Count of the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that Respondent, Richard Goldstein, agrees to pay as a fine the total sum of \$4,000 for signing thirty-two (32) paired junket prearrival reports and junket arrival reports pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on March 20 and May 15, 1983, from Pittsburgh, Pennsylvania on March 21, March 28, April 29 and May 9, 1983, from Youngstown, Ohio on March 27, April 10, April 19 and May 10, 1983, from Jamestown, New York on March 13, 1983, from Myrtle Beach, South Carolina on February 14, March 28, April 25 and May 9, 1983, from Greensboro, North Carolina on February 14 and March 28, 1983, from Dayton, Ohio on February 14, April 16, May 26 and June 8, 1983, from Charlotte, North Carolina on March 27 and May 5, 1983, from Columbus, Ohio on March 7, 1983, from Raleigh-Durham, North Carolina on April 23, May 21, July 16 and July 31, 1983, from Indianapolis, Indiana on June 8, 1983, from Toronto, Ontario, Canada on March 19, 1983, from Houston, Texas on May 1, 1983, and from Buffalo, New York on May 1, 1983, and for signing nine (9) junket arrival reports for which no junket prearrival reports had been filed, pertaining to junkets arriving at Tropicana from Latrobe, Pennsylvania on February 27, 1983, from Pittsburgh, Pennsylvania on February 7, 1983, from Jamestown, New York on February 6, 1983, from Charlotte, North Carolina on February 16, 1983, from Louisville, Kentucky on February 21, 1983, from

Cincinnati, Ohio on February 21, 1983, from Toronto, Ontario, Canada on February 5 and February 19, 1983, and from Buffalo, New York on February 20 and March 27, 1983, without independently verifying the information contained therein, with aforesaid reports to be filed by Respondent, Adamar on New Jersey, Inc., trading as Tropicana Hotel and Casino, with the Division of Gaming Enforcement. Said reports bearing Goldstein's signature, thereby certifying said reports to be true and accurate, falsely and inaccurately reflected the identity, relationship and licensing status of individuals acting as junket representatives and junket enterprises, the Vendor Identification Numbers of individuals involved, and the Terms of Compensation Arrangements pertinent thereto, as set forth in Part E above. Said fine is to be paid by Respondent, Richard Goldstein, to the New Jersey Casino Control Fund in full settlement of the allegations as set forth in the Eighth Count of the Division of Gaming Enforcement's Complaint, pursuant to N.J.S.A. 5:12-102 and N.J.S.A. 5:12-129(5).

IT IS FURTHER RESOLVED that upon implementation of the remedial actions listed above, upon receipt of aforesaid fines totalling \$175,000 from Respondent, Adamar of New Jersey, Inc., \$4,000 from Respondent, Jerome Palma, and \$4,000 from Respondent, Richard Goldstein by the New Jersey Casino Control Fund, and upon acceptance of aforesaid letters of censure by Respondent, Adamar of New Jersey, Inc., the Division of Gaming Enforcement shall dismiss said Complaint with prejudice as to Respondents, Adamar of New

Jersey, Inc., trading as Tropicana Hotel and Casino, Jerome Palma
and Richard Goldstein.

By: Mitchell A. Schwefel
Mitchell A. Schwefel
Deputy Attorney General
Counsel for Plaintiff

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

By: Mark H. Sandson, Esq.
Mark H. Sandson, Esq.

Counsel for Respondent
ADAMAR OF NEW JERSEY, INC.

By: Warren O. Stilwell, Esq.
Warren O. Stilwell, Esq.

Counsel for Respondent
JEROME PALMA

By: Robert A. Cooper, Esq.
Robert A. Cooper, Esq.

Counsel for Respondent
RICHARD GOLDSTEIN

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-50
OAL DOCKET NO. CCC 6034-86

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

Complainant,

v.

ADAMAR OF NEW JERSEY, INC.,
t/a TROPICANA HOTEL/CASINO,

Respondent.

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 (Commission); and Tropicana having filed exceptions to the initial decision; and the Division of Gaming Enforcement having filed a reply; and the Commission having considered the entire record of these proceedings at its public meeting of May 13, 1987,

IT IS on this 20th day of May 1987, ORDERED that the initial decision is modified as follows:

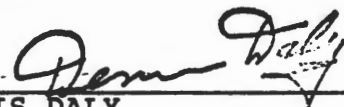
The portion of the initial decision ordering Tropicana to pay the total civil penalty of \$4,000 "on or before the sixty-first day from the date of this initial decision" is modified to provide that Tropicana shall pay the penalty "upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control."

IT IS FURTHER ORDERED that Tropicana is found to have violated N.J.S.A. 5:12-119(b) for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Tropicana pay a civil penalty of \$4,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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 6034-86

AGENCY DKT. NO. 87-50

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

Petitioner,

v.

**ADAMAR OF NEW JERSEY
(TROPICANA),**

Respondent.

**Katherine A. Smith, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Eileen Toll, Esq., for respondent

Record Closed: February 17, 1987

Decided: March 18, 1987

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement charges that respondent, which operates the Tropicana Casino Hotel, violated N.J.S.A. 5:12-119(b) in that it allowed two minors to remain on the floor of its casino. The respondent, while not denying that the two juveniles were in fact found on the casino floor by a representative of the Division, requested a hearing on the Complaint. 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 Richard L. Voliva, Jr. on October 28, 1986 and a prehearing order was issued on October 28. A hearing was held before Administrative Law Judge Jeff S. Masin on February 17, 1987 at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City.

EVIDENCE

There is no dispute as to the presence of the two juveniles on the casino floor. They were discovered there on June 20, 1986 by Detective Sergeant Frank Nixon of the Division of Gaming Enforcement, who serves as a casino coordinator at the Tropicana. Nixon testified at the hearing that he saw an individual with a young looking face walking away from a slot machine at about 1:00 to 1:30 p.m. He asked the individual for identification and the youth could not produce one. The youth identified himself as a juvenile and indicated that he had come from New York City on a bus. A few minutes later the individual's brother joined them. He also had no identification, but admitted that he was 20 years old. Both the young men, John and Bernard Smith, admitted having arrived on a Vanguard Bus at approximately 12:00 noon. They entered the Tropicana through the bus entrance, went to the lobby, and took the escalator into the casino. Once there, they found the redemption counter and redeemed a \$17.50 cash coupon which each had received from the Tropicana bus greeter who met the bus. They then left the casino, went out onto the Boardwalk, ate lunch and returned to the casino through the Boardwalk entrance on the northside of the hotel. They proceeded to the top of the escalator at security post no. 4 which is always manned by a security officer for the casino. The boys reentered the casino and one played in slot section A while the other went to watch the blackjack games.

Sergeant Nixon interviewed a representative of Vanguard Bus Company to see if the company had any passenger list or bus roster. The buses are regularly scheduled carriers and anyone can purchase a ticket. No roster of purchasers is kept.

Nixon also spoke with Christine Dwyer, a bus greeter. She described her function as that of greeting the bus and giving out coin coupons. Where a "borderline age" person appears he is given a small food allowance rather than a gambling coupon. Ms. Dwyer indicated that the photos of the two Smith brothers "looked familiar" and that it was possible that they had been on the bus, although she was extremely busy at the time and could not be sure.

Nixon interviewed Brenda Brown, a security officer who was posted at post 4, the main entrance from the lobby. She viewed photographs of the boys and stated that if the 17-year-old had come through she would have stopped him because he did not appear to be near 21. However she did not recall seeing either of the boys. She was on a lunch break from 12:30 to 1:00 p.m. and would have been relieved by another officer.

Robert Lorenzi, who was the post 2 security person at the time of the incident, also viewed the photographs and said that he did not see the boys go in. He would have remembered them if he had seen them.

Detective Nixon testified that on the day in question he was patrolling the floor specifically looking for under age individuals who might be gambling. He was not in uniform. He performs this function about once a month, although he could conceivably do the same thing everyday. Although he patrolled the floor on previous occasions, he had never caught any juveniles gambling and has never since.

The respondent presented several witnesses who testified concerning security arrangements and procedures as well as practices surrounding the bus and coupon system. Eileen Duffin, Director of Bus Program Operations, who oversees the staff which is involved with buses coming into the casino, testified that she had examined the records and determined that the bus which brought the Smiths, Vanguard 2043, was a "line bus," that is, it ran according to a published schedule seven days a week. The bus arrived at the Atlantic County Transportation Department's interception lot at about 12:04 p.m. Each bus stays there for a time while \$17.50 coupons are given out as a bonus to each passenger in exchange for their line run ticket. A Tropicana tour service representative (greeter) makes a welcoming announcement and a count is taken. The tour service representative was on the bus for perhaps seven to ten minutes, during which time approximately 18 other coaches were also present. Generally there is one supervisor and about three or four greeters present on a Friday. The bus left the depot at about approximately 12:20 along with a group of about 6 other buses. Allowing approximately an average 10 minutes travel time [which may vary from 7 to 25 minutes in actuality], the bus probably arrived at the Tropicana between 12:30 and 1:00 p.m.

Bus greeters are instructed that they are not to give bonuses to anyone on the bus who does not have a bus ticket and one who is younger than 21, or who appears of questionable age and cannot produce suitable identification is not to be given a \$17.50 coupon for redemption, but only a food coupon. The bus greeter on the day in question appears to have been Christine Dwyer.

The policy concerning underage riders and the denial of coupons to such individuals is contained in a written policy given to the greeters in the training manual and repeated on a regular basis.

Brenda Brown and Robert Lorenzi of the Tropicana security staff testified that they had been trained that suspected juveniles were to be asked for identification and if they had none were to be escorted off the floor. Security officers are stationed at the entrances to the casino, as well as on roving patrol throughout the casino area. A security guard on duty at an entrance is responsible for observing those entering through the entrance, looking for suspicious individuals or juveniles, checking large packages, keeping an eye open for open pocketbooks and answering myriad questions posed by individuals concerning all types of matters. Ms. Brown has removed juveniles "lots of times, more than ten."

The Tropicana, and all other casinos, is required to keep a record of juveniles found on the floor and removed therefrom, as well as those found gambling. William Reed, Casino Security Supervisor for the entity, testified that in June 1986 2,982 juveniles were kept off the floor, 426 were escorted off, and 20 were removed from gambling tables or slot machines. Records have been kept for at least three to four years. During 1986, through the month of October, 26,477 were prohibited entrance, 4,451 were removed from the floor, and 295 from the tables. Juveniles are a major problem for all casinos, particularly during the summer months. During the last three months of 1985, there was a 15 percent increase in the number of juveniles attempting to enter the casino. At this time only valid New Jersey driver's licenses are permitted as identification. There have been instances where the casino has been presented with doctored Pennsylvania or New Jersey driver's licenses. The policy of the hotel is to escort juveniles off the floor, but not to arrest them unless they present doctored identifications, in which case the Atlantic City police are notified. This policy has been reinforced to the staff on many occasions.

Mr. Reed testified that generally one guard is posted at each entrance, although at various times of the day and year two guards may be posted. Approximately 900,000 patrons a month enter the casino floor, with the figure rising to approximately one million a month during the summer. This estimate is obtained by guards at the entrances who click counters for each patron observed. Because the guards are frequently distracted by their duties they miss many who enter.

DISCUSSION

The problem of juveniles attempting to enter the casino floor is obviously a massive problem for each and every casino in Atlantic City. It is not surprising that this is so and it is equally not surprising that the casinos, despite their best efforts, will occasionally miss juveniles who will either obtain entrance to the floor because the guard or guards at the entrance are distracted by other duties, are unable to observe every individual in a crowd entering the entrances at the same time, or otherwise miss an entrant. It is a tribute to the efforts of the security officers that they do seem to catch a large percentage of those who attempt to enter, such that of approximately 31,000 juveniles through October 1986 almost 26,500 were turned away. However, despite these efforts, and without any evidence that the casinos have been amiss in their security arrangements, nearly 5,000 juveniles managed to get on the floor of the casino during the first 10 months of 1986.

In this case, the Smith brothers did manage to enter the casino floor. There is no way of knowing whether the security guards on duty missed them out of carelessness, because they were distracted, or for any other reason. I can **FIND** no specific fault to be laid upon the security officers for their failure to spot these two juveniles. However, once the boys entered the floor it appears that they then proceeded to redeem the coupons which they had obtained from the bus greeter at the cashier's window. No evidence was presented as to the exact circumstances under which this redemption process occurs. It would appear that at this point, had the cashier been alert, he or she might have noticed that two individuals attempting to redeem coupons appeared quite young or "borderline" and might have questioned them about their age. It is at this point that the casino appears most vulnerable to a charge that it was in some fashion lax in its responsibility to assure that these juveniles neither stayed on the casino floor nor gambled.

It is quite likely that cashiers at the coin booths are so busy when confronted with the hordes of individuals coming in and attempting to cash their coupons that they routinely and matter-of-factly take the coupon, hand over the cash, and do not pay attention to those whom they are dealing with. This is perhaps understandable, but does not serve as a defense for the failure of the casino to prevent underage presence on the floor.

The Casino Control Commission has previously dealt with an incident of gambling on the casino floor by juveniles in the matter of Div. of Gaming Enforcement v. Resorts International Hotel, Inc., CCC 4604-84, decided January 16, 1995, opinion by then Judge, now Commissioner, Armstrong. In that case, Judge Armstrong considered the various factors set forth in N.J.S.A. 5:12-130 in deciding what penalty should be imposed on the casino for its violation of the regulation prohibiting the presence of juveniles on the casino floor. She quite rightly concluded that it is "unrealistic to assume that human error will not occur," and therefore despite the best efforts of everyone involved, there will be juveniles who do get onto the gaming floor. She also quite accurately noted that the efforts already undertaken appear quite adequate to attempt the nearly impossible task of preventing all juveniles from reaching the floor, and thus it was difficult to understand what remedial steps could be taken which were likely to be more effective.

In the present case, it appears to this judge that a special effort might be made on the part of the Tropicana to assure that its bus greeters, and more significantly, its cashiers, are alerted to their responsibility to look at the individuals with whom they deal and, where there is any reason to believe that the individual requesting redemption of a coupon while on the casino floor may be underage, to demand identification and in the absence of satisfactory identification, to take steps to assure the removal of the individual from the casino floor.

With respect to the offense charged, that is, the presence of juveniles on the casino floor in violation of N.J.S.A. 5:12-119, I FIND that the Smith brothers were on the casino floor and were underage and therefore **CONCLUDE** that the Tropicana is guilty of violating the regulation in the case of each of the two brothers. I further **CONCLUDE** that the financial penalty to be imposed on the Tropicana is necessary in order to assure that the entity will in the future continue both its present admirable efforts to prevent juvenile entrance and, significantly, to heighten the awareness of its employees,

particularly in connection with the cashiers and others involved in the coupon redemption process, of the need for vigilance. Since I have no indication that this casino has previously been penalized for this type of incident, and since although I consider it to be serious it is in many ways inevitable that incidents of this type will frequently occur, I **CONCLUDE** that a minimal monetary penalty is appropriate. Therefore, a penalty of \$2,000 will be imposed for each of the two violations involved, for a total of \$4,000. The Tropicana shall pay this amount to the Casino Control Fund on or before the sixty-first day from the date of this initial decision. In addition, the entity shall commence training programs and issue necessary instructions to its personnel, particularly cashiers, concerning the necessity of careful observation of those who appear at the windows and of requiring acceptable proof of age from "questionable" individuals.

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

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

March 8 1986
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 19, 1987
DATE

Nicholas L. Pagan
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 23 1987
DATE

Ronald J. Packer
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Memorandum of June 27, 1986
- P-2 Investigation Report, 2 pages
- P-3 Photograph of John Smith
- P-4 Photograph of Bernard Smith

On behalf of respondent:

- R-1 New Jersey State Police Arrest Report of June 20, 1986, Re: John Smith
- R-2 New Jersey State Police Arrest Report of June 20, 1986, Re: Bernard Smith
- R-3 Tropicana Daily Bus Schedule
- R-4 Tropicana East Certificate of Operation Part III, Staffing Analysis Narrative Security Submission
- R-5 Statistical-Evaluation Report for the month of June 1986, 3 pages
- R-6 Sheet, dated June 20, 1986, Re: Juvenile Entrance
- R-7 Five page statistical analysis

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-206
OAL DOCKET NO. CCC 500-87

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

Complainant, :

ORDER

v. :

ADAMAR OF NEW JERSEY, INC., :
t/a TROPICANA HOTEL AND CASINO, :

Respondent. :

Proceedings in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 17, 1987,

IT IS on this 26th day of June 1987, ORDERED that the initial decision is adopted and incorporated herein by reference; and

IT IS FURTHER ORDERED THAT substantially for the reasons stated in the initial decision, Adamar of New Jersey, Inc. pay a civil penalty of \$6,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 500-87

AGENCY DKT. NO. 87-206

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

Petitioner,

v.

**ADAMAR OF NEW JERSEY, INC.,
t/a TROPICANNA HOTEL AND CASINO,**
Respondent.

Wendy A. Way, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Eileen Weiss Toll, Assistant Corporate Counsel for the respondent, Adamar of New
Jersey, Inc., t/a Tropicanna Hotel and Casino

Record Closed: April 28, 1987

Decided: May 1, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent, Adamar of New Jersey, Inc., t/a Tropicanna Hotel and Casino (Tropicanna). The Division of Gaming Enforcement (Division) alleges that Tropicanna engaged in the illegal

storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.A.C. 19:50-1.13(a), (b), (c) and (d) and N.J.S.A. 19:5-01.6(f) and engaged in illegal bottling in violation of N.J.S.A. 33:1-2(a), N.J.S.A. 33:1-50(a), N.J.S.A. 33:1-78, N.J.A.C. 13:2-23.23(a) and, as a result thereof, Tropicanna was not within the terms and conditions of its Casino Hotel Alcoholic Beverage (C.H.A.B.) license.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 14, 1986. Tropicanna, filed an Answer to the complaint on or about December 16, 1986. On January 15, 1987, 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 scheduled in Atlantic City, New Jersey, on April 10, 1987.

Prior to scheduling a hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the Office of Administrative Law on April 28, 1987. The record closed on April 28, 1987.

FINDINGS OF FACT AND CONCLUSION

The Division and Tropicanna have prepared an extensive Stipulation of Facts (paragraphs 1-21, Stipulation of Settlement) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I FIND:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

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

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

May 1, 1987
DATE

Stephen W. Thompson (CLVH)
STEPHEN W. THOMPSON, AL

May 4, 1987
DATE

Receipt Acknowledged:

Richard Zapp
CASINO CONTROL COMMISSION

MAY 6 1987
DATE

Mailed to Parties:

Ronald L. Parker x.5
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DKT. NO. CCC-00500-87
AGENCY REF. NO. 87-206

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW AND	:	
PUBLIC SAFETY, DIVISION	:	STIPULATION
OF GAMING ENFORCEMENT,	:	OF
Plaintiff	:	SETTLEMENT
v.	:	
ADAMAR OF NEW JERSEY, INC.,	:	
t/a TROPICANA HOTEL/CASINO,	:	
Respondent.	:	

PLEASE TAKE NOTICE that the above-captioned matter has been discussed by and between the Parties involved, W. Cary Edwards, Attorney General of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Alice Way, Deputy Attorney General, and Eileen Weiss Toll, Esquire, Attorney for Respondent, Adamar of New Jersey, Inc., t/a Tropicana Hotel and Casino, and pursuant to said discussions the following facts have been agreed upon and stipulated:

1. Respondent, Adamar of New Jersey, Inc., t/a Tropicana Hotel/Casino (hereinafter "Respondent" or "Tropicana"), 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.

2. Tropicana is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was initially issued to Tropicana effective on November 26, 1982 and has been renewed annually on that date. Tropicana has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Tropicana is the holder of, and operates pursuant to, a Certificate of Operation effective November 26, 1981 at which time Tropicana was the holder of a temporary casino permit. Said Certificate of Operation entitles Tropicana to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Tropicana is now, and at all times material to this matter, has been the holder of a Casino Hotel Alcoholic Beverage ("C.H.A.B.") license issued by the Commission effective November 26, 1982 and renewed annually thereafter, authorizing Tropicana to possess, store and sell alcoholic beverages in accordance with the terms of such authorization, Section 103 of the Act, N.J.S.A.

5:12-103, and the regulations promulgated thereunder, N.J.A.C.
19:50-1.1, et seq.

5. From on or about February 1985 until on or about June 1985, employees of Tropicana's Beverage Department pumped alcoholic beverages through the Bar-O-Matic System in Casino Service Bars #1 and #2 into empty 1.75 liter bottles and placed these refilled bottles on the pumping racks of the Bar-O-Matic System for reuse in other alcoholic beverage outlets in the approved hotel.

6. On or about May 1985, Tropicana purchased 330 cases of Tatingers Champagne in preparation for the "Wayne Newton Show." At the conclusion of this event, approximately 100 cases of champagne remained unsold. Said 100 cases were placed by Tropicana in various locations throughout Tropicana's Casino/Hotel facility which were not C.H.A.B. authorized for the sale or storage of alcoholic beverages until said cases of champagne were ultimately sold through various alcoholic beverage outlets.

7. On or about June 25, 1985, Tropicana required and received the resignations of the following individuals, who were discovered to have been involved with the commission of the violations alleged herein: Peter Klein, Director of Food & Beverage, Commission License #2778-11; Joseph Croce, Beverage Manager, Commission License #24719-21; and Thomas DeMent, Jr., Assistant Beverage Manager, Commission License #41978-21.

8. N.J.S.A. 5:12-103(f)(2) states:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of

Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

9. N.J.A.C. 19:50-1.6(u) states in pertinent part:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes...

10. N.J.S.A. 5:12-103(d) reads as follows:

Except as otherwise provided in this section, the provisions of Title 33 of the Revised Statutes and the rules, regulations and bulletins promulgated by the director of the Division of Alcoholic Beverage Control shall apply to a Casino Hotel Alcoholic Beverage Licensee licensed under this act.

11. N.J.S.A. 33:1-2(a) states in pertinent part:

It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of a licensee, or as otherwise expressly authorized, under this chapter...

12. N.J.S.A. 33:1-50(a) provides in pertinent part:

Any person who shall: [m]anufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport any alcoholic beverage in violation of this chapter...[s]hall be guilty of a misdemeanor...

13. N.J.S.A. 33:1-78 states:

Any person, except a person holding a brewery, distillery, winery or rectifier's license under this chapter, who shall bottle alcoholic beverages for sale or resale shall be guilty of a misdemeanor.

14. N.J.A.C. 13:2-23.23(a) provides in pertinent part:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law...

15. N.J.S.A. 5:12-103(g) (7) provides:

In issuing a Casino Hotel Alcoholic Beverage License the commission shall describe the scope of the particular license and the restrictions and limitations thereon as it deems necessary and reasonable. The commission may, in a single Casino Hotel Alcoholic Beverage License, permit the holder of such a license to perform any or all of the following activities, subject to perform any or all of the following activities, subject to applicable laws, rules and regulations: [t]o possess or store alcoholic beverages intended but not actually exposed for sale in an area, room or location so licensed. The holder of a Casino Hotel Alcoholic Beverage License permitting such possession and storage shall be entitled, subject to applicable laws, rules and regulations, to store any alcoholic beverage intended for sale at a fixed location on a casino hotel premises, not in a casino, and not otherwise licensed under this section; and to transfer or deliver such alcoholic beverages only to a licensed location for which such licensee is licensed; provided, however, that no access to or from a licensed storage location shall be permitted except during the normal course of business by employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a Casino Hotel Alcoholic Beverage License from obtaining an off-site storage license from the Division of Alcoholic Beverage Control.

16. N.J.A.C. 19:50-1.13(a) reads as follows:

A licensee may, in a class VII area of location authorized pursuant to N.J.S.A. 5:12-103(g) (7), store alcoholic beverages

intended for sale at a fixed enclosed area of location on a casino hotel premises, not in a casino, and not otherwise licensed or authorized.

17. N.J.A.C. 19:50-1.13(b) states:

A licensee shall transfer or deliver such alcoholic beverages from a class VII area or location authorized pursuant to N.J.S.A. 5:12-103(g)(7) only to a licensed area of authorized location within a casino hotel complex.

18. N.J.A.C. 19:50-1.13(c) provides:

A licensee shall, in a class VII area of location authorized pursuant to N.J.S.A. 5:12-103(g)(7), provide no access to or from the licensed area or authorized location for employees or agents of the licensee or for licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes, Title 13 of the New Jersey Administrative Code, the Casino Control Act and the regulations of the Commission, except as such access is necessary in the normal course of business.

19. N.J.A.C. 19:50-1.13(d) reads as follows:

A licensee shall maintain its class VII licensed areas and locations authorized pursuant to N.J.S.A. 5:12-103(g)(7) at an appropriate temperature and in a secure manner.

20. N.J.A.C. 19:50-1.6(g) states:

No casino hotel alcoholic beverage licensee shall significantly alter any aspect of its physical plant without first submitting a description of such proposed alteration to the commission and receiving a written permission therefor.

21. N.J.A.C. 19:50-1.6(f) provides:

No casino hotel alcoholic beverage licensee shall store any alcoholic beverage in, on, or about any portion of a casino hotel except at his licensed premises or subject to an arrangement with a casino hotel alcoholic beverage licensee which is licensed or authorized to store alcoholic beverages

pursuant to a class VII license or N.J.S.A.
5:12-103(g) (7).

THEREFORE, the Parties hereby made application to the Honorable Stephen Thompson, A.L.J., as well as to the Honorable Walter N. Read, Chairman, Casino Control Commission, for permission to submit the following Stipulation of Settlement which has been agreed upon by the Parties for consideration by the Office of Administrative Law and by the Casino Control Commission as a final resolution of the above-captioned matter:

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charge Respondent for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as for various violations of Title 33 and the regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and Respondent admits that pumping alcoholic beverages through the Bar-O-Matic System in Casino Service Bars #1 and #2 into empty 1.75 liter bottles and placing these refilled bottles on the pumping racks of the Bar-O-Matic System for reuse in other alcoholic beverage outlets at Tropicana constitutes the illegal bottling of alcoholic beverages in violation of N.J.S.A. 33:1-2(a), N.J.S.A. 33:1-50(a), N.J.S.A. 33:1-78 and N.J.A.C. 13:2-23.23(a) as incorporated by reference into N.J.S.A. 5:12-103(d) as well as N.J.A.C. 19:50-1.6(u); and

WHEREAS, the Division contends and Respondent admits that Respondent's storage of an alcoholic beverage inventory in areas not licensed by the Commission for such storage constitutes the

illegal storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.A.C. 19:50-1.13(a), (b), (c) and (d) and N.J.A.C. 19:50-1.6(f); and

WHEREAS, the Division contends and Respondent admits that such illegal storage of alcoholic beverages constitutes a significant alteration of Respondent's physical plant inasmuch as Respondent has not received prior written Commission authorization for such storage areas in violation of N.J.A.C. 19:50-1.6(g); and

WHEREAS, the Division contends and Respondent admits that Respondent's activity of engaging in the practices of illegal bottling and that Respondent's illegal storage of alcoholic beverage inventories in unauthorized areas are not within the terms and conditions of Respondent's C.H.A.B. licensure in violation of N.J.S.A. 5:12-103(f)(2); and

WHEREAS, the Parties are desirous of amicably settling this litigation without the necessity for a full hearing; and

WHEREAS, Tropicana required and received the resignations of the individuals who were discovered to have been involved with the commission of the violations alleged herein; and

WHEREAS, the problems raised by the Division's Complaint have been addressed by the cessation of the aforementioned illegal practices by Respondent;

NOW THEREFORE, be it resolved that upon recommendation of the Office of Administrative Law and upon final approval of this Stipulation of Settlement by the Casino Control Commission the Respondent agrees to the following penalties:

COUNT ONE

For violations of N.J.S.A. 5:12-103(f)(2) and N.J.A.C. 19:50-1.6(u) as well as N.J.S.A. 33:1-2(a), 33:1-50(a), 33:1-78 and N.J.A.C. 13:2-23.23(a), as incorporated by referenced into N.J.S.A. 5:12-103(d), Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) as a civil penalty.

COUNT TWO

For violations of N.J.S.A. 5:12-103(f)(2); 5:12-103(g)(7); N.J.A.C. 19:50-1.13(a), (b), (c) and (d); N.J.A.C. 19:50-1.6(g); and N.J.A.C. 19:50-1.6(f), Respondent agrees to pay the sum of Five Thousand Dollars (\$5,000.00) as a civil penalty.

Upon payment of the total monetary penalty of Six Thousand Dollars (\$6,000.00) as a civil penalty, the matter shall be deemed fully adjudicated and resolved.

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of
New Jersey

Dated: April 23, 1987

By: Wendy Alice Way
Wendy Alice Way
Deputy Attorney General

Dated: April 23, 1987

By: Eileen Weiss Toll
Eileen Weiss Toll, Esquire
Attorney for Respondent

A010287/22

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-408
OAL DOCKET NO. CCC 03520-86
LICENSE NO. 19823-21

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

Complainant, :

: FINAL ORDER

v.

NANCY L. ALLEN,

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of December 23, 1986,

IT IS on this *7th* day of January 1987, ORDERED that the initial decision of the Office of Administrative Law is adopted; and

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

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 3520-86

AGENCY DKT. NO. 85-408

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

Petitioner,

v.

**NANCY ALLEN,
Respondent.**

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

William W. Freihofer, Jr., Esq., for respondent

Record Closed: September 29, 1986

Decided: November 13, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission on October 4, 1985 seeking to revoke the respondent's casino employee license because she was alleged to have consumed marijuana in a casino. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in the Atlantic County Civil Courthouse on September 29, 1986.

FACTS

The following facts are undisputed and I **FIND** that:

On September 18, 1985, the respondent was observed rolling a marijuana cigarette in the female dealers' lockerroom of the Tropicana Casino/Hotel. She was subsequently awarded a conditional discharge in the Atlantic City Municipal Court. She successfully completed the conditional discharge program which consisted of submitting to and successfully passing a urine monitoring test. The complaint against her was accordingly dismissed.

ISSUES

The issues in this case are whether or not these facts constitute an offense which would render the respondent's continued casino employee licensure inimical to the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86c(4) and/or whether she possesses the requisite good character, honesty and integrity for continued casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) and 90b.

TESTIMONY

The respondent testified that she has not smoked marijuana since she originally tried it "a long time ago". She said that a friend of hers came into the employee lounge on the day in question and gave her marijuana and rolling papers and asked her to roll her a "joint" while she "went to do something else." I was not satisfied with the truthfulness of this assertion when it was first uttered, since a person who has never used marijuana should probably not be expected to "roll a joint" with any degree of success.

I closely examined the respondent on this issue and observed her demeanor during her response. She agreed that she was not adept at rolling the cigarette and in fact asserted she did not complete the task when she was apprehended. I was impressed with her apparent candor and I am convinced she was telling the truth. She acknowledged she acted stupidly and should not have attempted it.

In addition the respondent has shown that she has no prior or subsequent criminal involvement. She is a 24 year old athletically inclined person who has been continuously employed as a dealer since 1980 without incident.

She is a biology major at Atlantic Community College and hopes to enter Life College in Georgia to become a chiropractic physician. She is well recommended by friends, supervisors and her personal physician. She submitted to a urinalysis as late as September 8, 1986 in preparation for this hearing.

While what she did can never be condoned, since it appeared to be a momentary aberrant act, it can be excused. The act did not involve malice or dishonesty.

I **CONCLUDE** that the offense committed by the respondent does not render her continued licensure inimical to the Casino Control Act and casino operations as defined in N.J.S.A. 5:12-86c(4).

I further **CONCLUDE** that the respondent has established her reputation for good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89b(2) and 90b.

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

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

November 13, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

November 13, 1986
DATE

Receipt Acknowledged:

Holmes
CASINO CONTROL COMMISSION

NOV 18 1986
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

Nancy Allen

EXHIBIT LIST

P-1 New Jersey State Police Investigation Report
P-2 New Jersey State Police Arrest Report
P-3 New Jersey State Police Property Report
P-4 Complaint
P-5 Three page lab report

R-1 Letter of recommendation, dated September 13, 1986, from Harry M. Backen
R-2 Letter of recommendation, dated September 13, 1986, from Stephen N. Hirschberg
R-3 Letter of recommendation, dated September 4, 1986, from Michael F. Mooney
R-4 Lab Report from National Health Laboratories, dated November 30, 1985
R-5 Lab Report from National Health Laboratories, dated February 12, 1986
R-6 Lab Report from National Health Laboratories, dated September 10, 1986
R-7 Order of Dismissal
R-8 Letter to Judge Weeks from William Freihofer, dated February 27, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-251
OAL DOCKET NO. CCC 5827-86
LICENSE NO. 09406-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Complainant, :
V. :
KURT S. ARBITMAN, :
Respondent. :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 18, 1987,

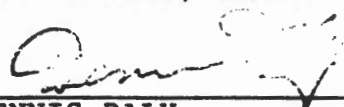
IT IS on this 24th day of March 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license held by Kurt S. Arbitman is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5827-86

AGENCY DKT. NO. 85-251

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

Petitioner,

v.

KURT S. ARBITMAN,

Respondent.

**Norma Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Kurt S. Arbitman, pro se

Record Closed: December 24, 1986

Decided: January 23, 1987

BEFORE JEFF S. MASIN, ALJ:

On June 12, 1985, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of Kurt S. Arbitman's casino employee license. Mr. Arbitman requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Honorable Edgar R. Holmes, ALJ, on October 24, 1986, and a prehearing order was issued on October 27, 1986. That order established the issue for determination in the contested case as whether Mr. Arbitman possessed the requisite good character, honesty and integrity for casino employee

licensure, pursuant to N.J.S.A. 5:12-89b(2). In the context of this revocation proceeding the Division argues that Mr. Arbitman does not have the good character attributes required by the statute and therefore no longer deserves licensure.

A hearing on the matter was held before Administrative Law Judge Jeff S. Masin at the Pleasantville Municipal Court on December 23, 1986. Following the hearing, Mr. Arbitman submitted character reference letters which were received by the administrative law judge on December 24, 1986, at which time the record closed.

Evidence presented by the petitioner in form of documents established as facts that Mr. Arbitman, who is 29 years old, was arrested by the New Jersey State Police and charged with possession of cocaine as a result of a search of an automobile in which Arbitman was riding as a passenger on January 29, 1985. He was indicted on March 28, 1985, for possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20. He was granted pre-trial intervention and was required as a result of the PTI to perform 48 hours of community service, serve a six (6) month period of probation, and submit to two (2) urine tests. He passed the tests, completed the probation successfully, and performed the 48 hours of community service in connection with the Live Aid concert and a balloon race staged in Florida for the benefit of Abused Children. He was released from probation and the indictment was dismissed on December 9, 1985 as a result of the successful completion of his PTI program.

Mr. Arbitman had .04 grams of cocaine at the time of his arrest. A significant amount of money was found in connection with the incident, some of it possessed by Arbitman and a good deal more by the driver of the vehicle. However, Arbitman was not indicted for possession of a controlled dangerous substance with intent to distribute.

At the time of his arrest, Arbitman was employed by the Atlantis Casino Hotel. When the police officer asked for identification, he denied that he had any, but his wallet was found on the floor of the car and it contained a casino license. Arbitman explained that his arrest occurred the day before his birthday and he had been celebrating his birthday in advance. In his testimony he compared the situation to what he conceived to have been a normal situation in other times of individuals celebrating their birthdays with alcohol.

The respondent is 29 years old and has no dependents. He was originally employed in the casino industry as a dealer about six years ago with Resorts Casino Hotel. Since then he has worked as a box person and floor person at Playboy (Atlantis) and left that establishment two years ago because of an "unprofessional conduct" problem involving a argument with a player for which he was fired.

DISCUSSION

The undisputed record establishes, and I **FIND**, that Mr. Arbitman possessed cocaine on January 29, 1985 while a passenger in an automobile. He received pre-trial intervention and successfully completed the requirements thereof resulting in the dismissal of the indictment which had been issued against him. The evidence clearly and convincingly establishes that Mr. Arbitman would have a conviction for possession of a controlled dangerous substance were it not for the Pre-trial Intervention Program. Possession of cocaine is a violation of N.J.S.A. 24:21-20(a)1.

The determination to be made with respect to Mr. Arbitman's continued licensure is whether he has the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)2. This character must be established by a licensee by clear and convincing evidence. With respect to Mr. Arbitman, the fact that he possessed cocaine, a criminal violation against the laws of New Jersey, as recently as January 1985 indicates a significant flaw in his character. Further, Mr. Arbitman's testimony at the hearing, while admitting his guilt, seemed to indicate his conception of the possession of cocaine as nothing more than the equivalent of the possession and use of alcohol by a birthday celebrant. Apparently the respondent fails to distinguish between that which is lawful, that is the possession and use of alcohol (although generally not lawful in an automobile) and the absolute illegality of the possession of cocaine.

Based upon the evidence and a consideration of Mr. Arbitman's testimony, I **CONCLUDE** that the Division has established by the requisite burden of proof that he does not possess the requisite good character, honesty and integrity required for continued licensure as a casino employee. Therefore, it is **ORDERED** that his casino license be **REVOKED.**

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

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

DATE

January 23, 1987

DATE

January 26, 1987

DATE

JAN 28 1987

ml

JEFF S. MABIN, ALJ

Receipt Acknowledged:

Bernadette J. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

x.5

EVIDENCE LIST

On behalf of petitioner:

- P-1 New Jersey State Police Investigation Report, dated January 29, 1985, 3 pages
- P-2 New Jersey State Police Arrest Report, dated January 29, 1985
- P-3 New Jersey State Police Property Report, dated January 29, 1985, 4 pages
- P-4 Request for Examination of Evidence, dated January 29, 1985, and Laborator Report, dated March 4, 1985
- P-5 Indictment No. 85-03-0483B
- P-6 ORDER OF DISMISSAL UNDER RULE 3:28

On behalf of respondent:

- R-1 Letter of September 11, 1985 from Betty Lou Sochocky, Principal Probation Officer I

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 85-EA-191 AND 85-78
OAL DOCKET NO. CCC 5828-86
APPLICATION NO. 54446-21
REGISTRATION NO. 30997-40

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
JEFFREY B. ATKINS, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 20, 1987,

IT IS on this 12th day of June 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license application of Jeffrey B. Atkins is denied substantially for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the casino hotel employee registration of Jeffrey B. Atkins is revoked substantially for the reasons stated in the initial decision; 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5828-86

AGENCY DKT. NOS. 85-EA-191

85-78

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

Petitioner,

v.

JEFFREY B. ATKINS,

Respondent.

**Joanne Ciancimino, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Jeffrey B. Atkins, respondent, pro se

Record Closed: March 2, 1987

Decided: April 8, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND IDENTIFICATION OF ISSUES

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on February 28, 1985 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 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing conference on November 17, 1986, and the issues were identified as follows:

- A. Should the respondent's casino hotel employee registration be revoked and his application for a casino employee license be denied as a result of his alleged 1982 conviction of theft from a person, contrary to N.J.S.A. 2C:20-3, which is a statutory disqualifier under section 86c of the Casino Control Act.
- B. Does the respondent possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.
- C. Has the respondent, if convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the Act.

The parties convened in the Ventnor Municipal Court on March 2, 1987, and the record closed on that day at the conclusion of the testimony.

THE DIVISION'S EVIDENCE

Agent Revalee Brady introduced without objection records of the respondent's criminal history. These documents reveal that the respondent was convicted of a third degree theft from the person on September 13, 1982 for an offense committed July 11, 1982, and he was thereupon committed to the "custody of the Commissioner of Corrections for a term of 4 years." (P-1, P-2, P-3).

I **FIND** that the respondent was convicted of a statutory disqualifier i.e. a crime enumerated in N.J.S.A. 5:12-86c1, to wit: N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees).

Agent Revalee Brady also introduced an investigation report of March 16, 1984 (P-4), a complaint charging the respondent with theft and possession of burglars tools (P-5) and an indictment and judgment of conviction for burglary 2C:18-2 (P-6). This burglary is not of the second degree and is not therefore a statutory disqualifier pursuant to N.J.S.A. 5:12-86.

Finally Agent Revalee Brady introduced a supplementary report dated August 8, 1984 (P-8), an arrest report for August 9, 1984 (P-9), a written confession from the respondent dated August 9, 1984 (P-10), and an accusation and judgment of conviction showing that the respondent pled guilty to burglary 2C:18-2 on August 15, 1984, and was sentenced to jail. This burglary was not of the second degree and is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c.

The respondent denied none of the arrests and convictions but relied entirely on good conduct in prison as proof of his rehabilitation.

I **CONCLUDE** that the respondent should be denied a casino employee license and that his casino hotel employee registration should be revoked unless both or either are saved by affirmative proof of rehabilitation pursuant to N.J.S.A. 5:12-90h and 9ld.

REHABILITATION

The respondent was on the street only 30 days when this hearing convened. The pretrial conference had been conducted by telephone because he was incarcerated at the time. Respondent has not found a job, and therefore his prison record is his only proof of rehabilitation. He conceded that he was not qualified for casino employee licensure. He eagerly seeks registration.

Based on the documentary exhibits supplied by the parties and the oral testimony of the respondent, I **FIND** the following facts pursuant to N.J.S.A. 5:12-90h and 9ld.

1. The respondent seeks casino hotel kitchen employment as a baker.
2. The offense was serious, Detective Whittles described it as follows: "Victim stated that at above date and time, she awoke to a b/m, the accused, standing over her bed, rubbing her legs. Victim stated that she began screaming and the accused ran out of her home, carrying a black camera-type bag (containing above described articles)." (P-1)

3. The offense occurred after the respondent broke into the victims home. This offense was plea-bargained away. In addition, it was committed while the respondent was on parole.
4. The offense occurred on July 11, 1982.
5. The respondent was 18 when the offense occurred.
6. This was a repeated incident and was subsequently repeated. In fact the respondent testified that he was convicted of juvenile delinquency when he was eight or nine years old and if convicted of one more adult offense he will consider himself a career criminal.
7. The respondent said there was no justification for his continuing course of criminal conduct. He said that he succumbed to peer pressure.
8. The respondent was in prison for two and one-half years on the conviction of August 15, 1984. Prior to this conviction the respondent had achieved some measure of academic success. He offered (R-1), (R-2), (R-3) and (R-4) as evidence of his rehabilitation. These, however, were obtained prior to his last conviction and are not evidence of rehabilitation. In prison, the respondent had more academic success. He completed Social Service Counseling (R-5). He was a Teacher's Aide (R-6) (R-8). He completed a course in Behavior Modification Training in Self-Control Techniques (R-7). He received a glowing letter of recommendation from the Assistant Supervisor of Education at the Youth Correctional Institution at Annandale (R-9). He will be on probation until August 9, 1989.

CONCLUSION

The respondent is intelligent and may go far in life. But 30 days on the street is not enough time to show affirmatively that one is rehabilitated from a life of crime that began at age nine and resulted in several periods of incarceration by age 21.

I **CONCLUDE** therefore, that the respondent has failed to affirmatively prove his rehabilitation pursuant to N.J.S.A. 5:12-90h and 91d.

I also **CONCLUDE** that the respondent has failed to show by clear and convincing evidence that he has the requisite good character, honesty and integrity for a casino employee license.

I **ORDER** that the respondent's application for casino employee licensure be **DISMISSED** and it is further **ORDERED** that the respondent's casino hotel employee registration is **REVOKED**.

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

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

April 8, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

April 9, 1987
DATE

Ali L. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1987
DATE

Ronald L. Parker * S.
OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESS LIST

For the petitioner:

Revalee Brady

For the respondent:

Jeffrey B. Atkins

EXHIBIT LIST

- P-1 Atlantic City, New Jersey Police Department Investigation Report, dated July 11, 1982
- P-2 Atlantic County Superior Court No. I.8-175-82-A, dated August 17, 1982
- P-3 Atlantic County Superior Court Criminal No. I.8-175-82, dated July 11, 1982
- P-4 Atlantic City, New Jersey Police Department Investigation Report, dated March 16, 1984
- P-5 Atlantic City Municipal Court Complaint, dated March 16, 1984
- P-6 Atlantic County Superior Court, No. I.0450-4-84B, dated August 31, 1984
- P-7 Egg Harbor Township Police Department Investigation Report, dated July 28, 1984
- P-8 Egg Harbor Township Police Department Supplementary Investigation Report, dated August 8, 1984
- P-9 Egg Harbor Township Police Department Arrest Report, dated August 9, 1984
- P-10 Egg Harbor Township Police Department Criminal Investigation Division Statement Form, dated August 9, 1984
- P-11 Atlantic County Court Criminal Accusation, dated August 31, 1984

- R-1 Certificate of Recognition - C.A.P. Student Council, dated 1983
- R-2 Certificate of Achievement - Security, dated June 28, 1984
- R-3 Letter from Tim Hsley, dated October 29, 1984
- R-4 State of N.J., Board of Education - High School Diploma, dated August 2, 1983
- R-5 Certificate - Social Service Counseling, dated July 30, 1985
- R-6 Certificate of Recognition - Teacher's Aide, dated January 14, 1986
- R-7 Certificate of Achievement - Behavior Modification Training in Self-Control Techniques, dated January 9, 1986
- R-8 Certificate of Recognition - Teacher's Aide, dated January 12, 1985 to August 12, 1986
- R-9 Letter from Youth Correctional Institution Annandale, dated November 21, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION OF :
ATLANTIC CITY SHOWBOAT, INC., :
OCEAN SHOWBOAT, INC. AND SHOWBOAT, INC. :
FOR A STATEMENT OF COMPLIANCE :

OPINION

Before:

Walter N. Read, Chair
Carl Zeitz, Vice Chair
Valerie H. Armstrong, Commissioner
E. Kenneth Burdge, Commissioner
W. David Waters, Commissioner

Appearances:

For Atlantic City Showboat, Inc., Ocean Showboat, Inc.,
and Showboat, Inc.:

Howard A. Goldberg, Esq.
Nicholas Casiello, Jr., Esq.
David Arrajj, Esq.
Thomas C. Bonner, Esq.

For John Davis Gaughan:

Laurence B. Orloff, Esq.
Stuart I. Gold, Esq.

For the Division of Gaming Enforcement:

George H. Henningsen, Deputy Director
John E. Adams, Jr., Deputy Attorney General

For the Casino Control Commission:

John R. Zimmerman, Deputy Director, Legal Division
Catherine A. Walker, Assistant Counsel

INTRODUCTION

In furtherance of its casino license application, Atlantic City Showboat, Inc. is before us seeking a ruling that it is in compliance with the license requirements set forth in sections 84(a), (c) and (d) of the Casino Control Act, and that it and certain of its individual qualifiers meet the standards of sections 86 and 89(b)(1), (2) and (3). A detailed description of the license criteria embodied in all of these sections is set forth in the Instructions previously adopted by the Commission, and need not be repeated here.

We will address only those areas which were the subject of significant attention at the hearing.

We note that the Division of Gaming Enforcement, in discharging its responsibility pursuant to section 76 of the Act, filed reports on the qualifications of A.C. Showboat and seventeen of its individual qualifiers. The hearing before us concerned issues raised by the Division with respect to three of these individuals, namely, Joseph Kelley, Chairman of the Board and Chief Executive Officer of Showboat, Inc. and Chairman of the Boards of Ocean Showboat, Inc. and A.C. Showboat; John Kell Houssels, Jr., a director and Senior Vice-President of Showboat, Inc., and a director of Ocean Showboat and A. C. Showboat; and John D. Gaughan, a director of Showboat, Inc. The Division has objected to the qualification of Gaughan, and has also questioned the fitness of A.C. Showboat for casino licensure because of the appointment of Gaughan to the Showboat Board of Directors.

II. JOSEPH KELLEY

The issues addressed at this hearing concerning Kelley's qualifications can be divided into two areas: his involvement in illegal gaming in California from 1932 through 1941, and certain allegedly unsuitable associations.

As to the first of these areas, from 1932 through 1941 Kelley was employed on various gambling ships operating near Long Beach, California and in several illegal gambling houses in southern California.

Kelley was arrested three times between 1935 and 1941 for dealing craps in illegal California gambling houses. He was also arrested sometime during the latter part of this period for operating an illegal bingo game in his garage. Kelley disclosed these arrests on his Personal History Disclosure Form and indicated that small fines of two or three dollars were imposed for the craps dealing offenses. Kelley received a 30-day suspended sentence and a fine of approximately \$100 for the bingo offense.

Of course, this Commission will never condone participation in illegal gambling. However, in view of the fact that Kelley's involvement in such activities occurred between 46 and 55 years ago, and in view of the subsequent course of his life, we cannot believe that his transgressions of California anti-gambling laws reflect negatively on his present fitness for qualification under the Casino Control Act.

The Division has also noted that some of the ships on which Kelley worked were owned by Antonio Cornero Stralla,

a/k/a Tony Cornero, a reputed organized crime figure. Kelley has testified that he did not know anything about Cornero's background when he worked on the ships, that his relationship with Cornero was that of "just an extra itinerant worker," and that he never had anything to do with Cornero after he left California. We can find no basis in the record to question this testimony, or to conclude that Kelley's character in any way was tainted by his most limited association with Cornero.

The remaining associational issues concerning Kelley all stem from the early development of the Showboat and Kelley's various investments in Las Vegas leading up to his acquisition of an interest in what is now Showboat, Inc.

While the record before us is less than clear with respect to the early history of the Showboat, it is certainly sufficient to enable us to dispose of the issues at hand.

The first of these issues relates to Kelley's relationship with Bill Friday, an unsavory individual with a criminal background. The relationship began sometime in late 1952 or early 1953, and, according to Kelley's undisputed testimony, ended shortly thereafter. Kelley's relationship with Friday resulted in two business dealings: a partnership in a used car lot, and the procurement of an option to build and equip a casino on the Showboat Hotel site. Kelley and Friday were unable to raise the capital necessary to exercise the Showboat option. A Mr. Kennington, who was originally from Pittsburgh and who worked at the used car lot, suggested that he knew someone in Pittsburgh who might be able to raise some of the

necessary capital. Kelley has testified that the individual in question was a Milton Jaffe, who referred Kelley and Friday to Ruby Kolod at the Desert Inn.

The next issue raised by the Division concerns Kelley's subsequent relationship with Kolod and certain other members of the Desert Inn group, including Morris Dalitz, Morris Kleinman, and Bernie Rothkopf. All of these individuals had allegedly been long associated with organized crime and other illegal activities, although it is also clear that the Desert Inn group was licensed by the Nevada gaming authorities at the time in question.

At any rate, Kelley and Friday held discussions with the Desert Inn group, which resulted in an agreement of April 15, 1954, pursuant to which Desert Showboat, Inc. was to construct and lease the public building, including the casino, from Showboat Hotel Corporation. As part of the agreement, Friday and Kelley each obtained a four and one-half percent interest in Desert Showboat, Inc.

According to newspaper accounts, Desert Showboat, Inc. experienced licensing problems with Nevada gaming authorities due to Friday's disreputable background. Subsequently, Friday's interest was acquired by Ruby Kolod.

Desert Showboat, Inc. operated the casino from approximately September 1954 through March 1955. It then subleased its interest in the Showboat facility to Hotel El Cortez Enterprises. On or about July 1, 1955, Desert Showboat, Inc.'s leasehold interest was purchased by Hotel El

Cortez Enterprises. Thus, Kelley's association with the Desert Inn group lasted less than two years, and was limited to business transactions regarding the development and operations of the Showboat casino.

From even the limited description we have given of the Showboat's early years, it is clear that Kelley's involvement with both Friday and the Desert Inn group was legitimately motivated, was limited in nature and duration, and took place over 30 years ago. Having seen Kelley testify, and having examined the documentary record before us, we are satisfied that these associations do not reflect negatively ~~on~~ his present good character, honesty and integrity.

The final issues raised by the Division with respect to Kelley concern his relationship with John Kell Houssels, Sr. We have before us evidence that Houssels, Sr. was associated, during his long career in Nevada gaming, with a variety of unsavory individuals. We will discuss this evidence in more detail in a moment. For present purposes, it suffices to say that there is no basis to impute any of the alleged Houssels' associations to Kelley. There was no evidence presented at this hearing which would indicate that Kelley maintained any direct contacts with any of the individuals in question. Furthermore, with the exception of the Showboat investment, Kelley did not participate in any of the other business dealings of Houssels, Sr. There is no basis in the record to believe that Kelley's long-time business relationship with Houssels, Sr. through ownership of the Showboat facility has

any adverse impact on Kelley's present good character, honesty and integrity.

For all of these reasons, we would find that Joseph Kelley has satisfied the qualification standards imposed by the Casino Control Act.

III. J. KELL HOUSSELS, JR.

We will now turn to the issues raised concerning the good character, honesty and integrity of J. Kell Houssels, Jr. These issues primarily flow from Houssels' relationship with his father, J. Kell Houssels, Sr.

Houssels, Sr.'s investments in the El Cortez and the Tropicana, on behalf of himself and his son, led to Houssels, Sr.'s association with various individuals of alleged ill-repute. During this hearing, Houssels, Jr., as a result of these investments, has been linked to these associations.

Houssels, Jr. denies knowledge of any association of either himself or his father with Jake Lansky through ownership of the El Cortez. The evidence that Jake Lansky was involved with the El Cortez when Houssels, Sr. invested in it is less than compelling, and Houssels, Jr. has testified that he was not even aware of the investment until many years after his father made it.

Houssels, Jr. has also testified that he did not participate in any of the business affairs of the Tropicana casino or the management of its holding company, Hotel Conquistador, Inc., until 1959, well after organized crime

associate Philip Kastel had been removed as a stockholder of Hotel Conquistador, and well after two other organized crime associates named Tanico and Lederer had been removed from their positions at the Tropicana by Nevada gaming authorities.

It is obvious from the undisputed testimony of Houssels, Jr. that he was a passive investor in both the El Cortez and the Tropicana during the time periods in question. We find nothing unusual about a parent making investments on behalf of his son, without the son's knowledge or participation in the business dealings consummating the transactions.

In light of Houssels' testimony on the subject, and the amount of time that has passed since these alleged associations, in our view they do not present any impediment to his qualification by this Commission.

The Division has raised additional concerns regarding Houssels' business relationship with his father in light of the latter's other alleged unsavory business associations. However, there is no evidence in the record from which we can adduce that Houssels, Jr. had any direct association with any of the individuals in question.

In summary, Houssels, Jr. was largely unaware of any alleged disreputable associations of his father. In at least some instances it is less than clear that these associations of the father in fact existed. At any rate, we see no reason to question the qualifications of Houssels, Jr. because of his business dealings with his father.

Another issue which was a topic of testimony was Houssels, Jr.'s participation in the early development of Showboat Hotel Corporation and the lease with Desert Showboat, Inc. As we mentioned with regard to Joseph Kelley, certain individuals with alleged unsavory backgrounds were involved in Desert Showboat, Inc. at this time. Houssels, Jr., a partner in Hotel El Cortez Enterprises and an attorney, met with representatives of Desert Showboat, Inc., including Morris Dalitz and probably Morris Kleinman, to discuss reformation of the sublease between Desert Showboat, Inc. and Hotel El Cortez, because Hotel El Cortez was unable to make the payments on the sublease. This meeting led to negotiations between Houssels, Jr. and Jack Donnelley, an attorney for Desert Showboat, Inc., and resulted in the purchase of the leasehold interest by Hotel El Cortez on or about July 1, 1955.

Houssels testified that he had only one meeting with Morris Dalitz and that at the time he was unaware of Dalitz's alleged organized crime connections. Houssels also testified that he knew that the Desert Showboat principals were licensed by Nevada gaming officials in 1950 in connection with the Desert Inn operation and again in 1954 in connection with the Showboat opening.

Houssels' relationship with the Desert Showboat, Inc. is much the same as that of Joseph Kelley, except for the additional fact of Houssels' personal involvement in the sublease meeting and ensuing negotiations concerning the buyout of the leasehold interest. However, this additional contact

was for a legitimate business purpose, lasted no more than few months, and terminated over 30 years ago. We cannot conclude that it, or any of the other issues we have mentioned, have any negative impact on Houssels' present good character, honesty and integrity. We therefore find that John Kell Houssels, Jr. is qualified.

IV. JOHN GAUGHAN

We will now turn to the primary focus of this hearing, namely, the qualifications of John Gaughan. The Division has objected to Gaughan's qualification, contending that he has failed to establish by clear and convincing evidence his good character, honesty and integrity, as required by N.J.S.A. 5:12-89(b)(2), or his business ability and casino experience as required by N.J.S.A. 5:12-89(b)(3).

Gaughan's participation in illegal gaming activities began in 1936, when as a teenager he delivered scratch sheets and engaged in bookmaking in Omaha, Nebraska. Gaughan's initial involvement in these activities is perhaps explained by the fact that his uncle, Thomas Gaughan, was a long-time bookmaker. It was through this familial relationship that Gaughan met and began dealing with Eddie Barrick and Sam Ziegman, notorious bookmakers and contemporaries of his uncle.

Gaughan continued to participate in illegal gaming activities in Omaha through 1951, except during his service in the Army. These activities resulted in four arrests between 1940 and 1950, but in each instance the charges were dismissed

It was in 1946, after he was released from the Army but while still living in Omaha, that Gaughan purchased a three percent interest in the Boulder Club in Las Vegas. One of his partners in that venture was Connie Hurley, a bookmaker with alleged organized crime connections. Gaughan sold his interest in the Boulder Club to Hurley in 1951.

Gaughan has admitted that he believed that Hurley was a bookmaker, and, of course, has freely admitted that he himself was a bookmaker at the time of the Boulder Club investment.

In light of our comments concerning Joseph Kelley, it should be clear that we do not view the conduct of illegal bookmaking, or association with illegal bookmakers, as matters which can be condoned by this Commission. Nor do we believe that such activities can be excused because, as Gaughan testified, illegal gambling was commonplace in Omaha at the time in question. However, the fact remains that Gaughan's illegal gambling days are 35 years behind him. It would obviously be unfair to determine that the activities and associations we have discussed thus far necessarily render Gaughan unqualified. Rather, we must carefully review his career in legalized gambling in Nevada from his arrival in that State in 1951 until the present.

One of Gaughan's early investments in the Nevada casino industry was the purchase of a two percent interest in the Flamingo Hotel in late 1951. Gaughan was able to purchase this interest because of his relationship with Eddie Barrick, who was already a minor investor. Gaughan obtained his small

interest in the Flamingo in order to secure a job there, although this employment lasted less than three months. The money used to purchase this interest came partly from the proceeds of Gaughan's sale of his Boulder Club interest, but mostly from a loan from his mother.

Although several changes in ownership occurred between 1951 and 1960, Barrick and Gaughan continued to maintain their small interests in the Flamingo. During this time Sam Ziegman also held a minor ownership interest.

In 1960 the Samuel Cohen and Morris Lansburgh group bought the controlling interest in the Flamingo. Barrick, Ziegman and Gaughan continued to hold ownership interests in the Flamingo until its sale in 1967 to Kirk Kerkorian. Gaughan's interest during the Cohen-Lansburgh years was solely that of a minority investor, owning three percent of the Flamingo.

Another minority interest holder during this period, who also functioned as casino manager, was Chester Simms, an alleged associate of Meyer Lansky.

During the Cohen-Lansburgh period, various individuals conducted a major skim of cash from the count room and cash payments from credit customers at the Flamingo. The most notable participants were Cohen, Lansburgh, Simms, Jerry Gordon and Steven Delmont.

Delmont, who was involved in the count room skim from 1962 until 1967, appeared before us. His testimony concerning the skim operation was largely collaborated by affidavits and a sworn interview of Gordon, which are also part of the record.

From this evidence, it appears that cash from the drop boxes was counted three times a day in the Flamingo count room. On most occasions, some, if not all, of the one hundred dollar bills were excluded from the count and not recorded as casino revenue. According to both Gordon and Delmont, Gordon usually took the skimmed money and secured it in a safe deposit box in the casino cage. According to Gordon, the money was eventually turned over to Lansburgh, and on some occasions to Cohen.

Both Gordon and Delmont remember that Barrick, Ziegman, Simms, Cohen and Lansburgh were present in the Flamingo count room at various times during the skim operation. However, there is some question as to whether Barrick knew that funds were being skimmed.

The other source of skimmed revenue was from gambling debts incurred by junket players. Delmont was not involved in this part of the skim operation, but Gordon was. From the record before us, it is evident that cash obtained through junket collections was not recorded as casino revenue and in most instances was eventually turned over to Lansburgh.

In 1971 Meyer Lansky, Samuel Cohen, Morris Lansburgh, Jerry Gordon, Sam Ziegman, Steven Delmont and Harry Goldberg were indicted for their participation in the skim. Chester Simms, who also participated in the skim, was by this time deceased.

Gordon cooperated with federal authorities and provided information concerning the skim. His indictment was ultimately dismissed. Additionally, the indictments against Lansky and

Ziegman were dismissed due to their poor health. Cohen and Lansburgh entered guilty pleas and were sentenced to one year in prison. Delmont and Goldberg entered pleas of nolo contendere. Delmont was sentenced to sixty days in prison and 305 days of probation and Goldberg was fined \$5,000.

The gravamen of the Division's objection to Gaughan's qualifications is that Gaughan knew or should have known about the skim. From all of the evidence before us, we cannot reach this conclusion.

Gordon, who was intimately involved in the skim, provided two affidavits to the government in 1971, which contained details of the skim and identified the participants. Gaughan's name does not appear in these affidavits. In a sworn interview Gordon has acknowledged that in return for his cooperation, the government agreed to drop all charges against him. In our opinion, Gordon, who was facing the possibility of a long jail term, was strongly motivated to convince the government that he was cooperating, and to provide the government with information useful to it. In other words, his motive was to name names. There is nothing in the record before us to indicate that he would have hesitated to implicate Gaughan, had there been any basis for doing so.

In Gordon's recent sworn interview, he confirms that Gaughan did not participate in the skim. We know of no reason for Gordon to lie to this Commission to protect Gaughan, with whom he maintained nothing more than a casual business association.

Delmont's testimony that Gaughan was never in the Flamingo count room in his presence and that, to the best of his knowledge, Gaughan had no knowledge of the skim while it was ongoing, corroborates Gordon's statements.

Voluminous materials from the Grand Jury investigation of the skim are in evidence. Gaughan is not implicated in any of these documents. We also have before us transcripts and summaries of FBI electronic surveillance from the Flamingo investigation, none of which mention Gaughan as having knowledge of, or having participated in the skim. Of course, Gaughan was not named as a defendant or an unindicted co-conspirator in the Flamingo indictments. In fact, despite the great notoriety which the skim received, and the numerous civil and criminal investigations which it engendered, we have nothing before us to indicate that Gaughan was ever named as a participant or was ever even a serious subject of investigatory scrutiny.

In this regard we must also note that we have been supplied with affidavits of key government attorneys involved in the criminal prosecution of the skim, which clearly support Gaughan's claim that he did not participate in or have contemporaneous knowledge of the skim.

In addition, William Hundley, who was Delmont's attorney in the skim prosecution, testified that Gaughan was never mentioned in any of his dealings with any of the defendants or the other attorneys involved in the Flamingo skim case.

Another factor that supports our conclusion that Gaughan was not involved in the skim is the lack of any evidence to show that he ever received any of the skimmed funds. From subsequent tax litigation, we are aware that the Internal Revenue Service estimated that approximately \$27 million dollars was skimmed. Careful scrutiny of a qualifier's financial records is always a part of the exhaustive investigation of qualifiers conducted by the Division. The Division has conceded that it does not have any evidence that Gaughan received money from the skim.

However, nothing is more important to our determination that Gaughan did not participate in, or have contemporaneous knowledge of the skim operation than his testimony before the Commission. We found him to be highly credible. He was candid about his past transgressions and questionable associations, and we see no reason to disbelieve his uncontradicted testimony concerning the skim.

Specifically, Gaughan has denied that either Barrick or Ziegman informed him of the skim. Gaughan has not denied his long-time associations with these men, but we cannot agree with the Division that these relationships, in and of themselves, are compelling evidence of Gaughan's knowledge of the skim. While we are well aware of the length of Gaughan's relationships with Barrick and Ziegman, having their early roots in illegal gaming activities in Omaha, during the time of the skim the only business association Gaughan had with Ziegman was their common investment in the Flamingo. Gaughan's

relationship with Barrick was more extensive, and Gaughan testified that he respected and trusted Barrick. However, he also testified that Barrick never advised him of the skim, and that in hindsight his trust and respect was obviously misplaced.

While Barrick and Ziegman may have participated in or had knowledge of the skim, the issue before us is whether they ever provided Gaughan with information concerning the skim. We have concluded from the evidence before us that they did not.

Similarly, there is nothing in the record to indicate that either Delmont or Simms advised Gaughan of the skim while it was in operation. In our opinion, to characterize Simms or Delmont as friends of Gaughan during this period grossly overstates the association. In fact, it is apparent that Gaughan's associations with Simms and Delmont at this time were limited for the most part to sporadic business contacts. We cannot accept the Division's invitation to conclude from such contacts that Simms or Delmont must have informed Gaughan about the skim, especially in light of Delmont's testimony to the contrary.

Other events which deserve our careful consideration are the circumstances surrounding the 1966 negotiations over a possible sale of the Flamingo to Japanese businessmen and a lease of the operation to Sheraton Corporation. Gaughan testified that he met with Sheraton representatives to discuss the possibility of employment as the Flamingo's casino operator, in the event that it was sold. During these

discussions, Gaughan was advised that Lansburgh had told the Sheraton group that the Flamingo was making "alot of other money." Gaughan testified that he thought this was a lie, intended to increase the sale price, but that he also asked Barrick about Lansburgh's supposed representation. According to Gaughan, Barrick agreed that Lansburgh was a liar.

The Division has asked why Gaughan did not discuss the representation with Lansburgh or the Nevada gaming authorities, or take other steps to confirm or deny it.

In our view, the Division asks a very legitimate question, and in fact we share the Division's view that Gaughan's actions in this regard were less than adequate. However, we stop short of concluding that the incident evidences a lack of good character, honesty and integrity.

Gaughan has testified that he accepted Barrick's statements. As we have previously indicated, Gaughan trusted Barrick and respected his judgment. In hindsight, of course, he should have done more than talk to Barrick. We are confident that Gaughan realizes that he should have handled this situation differently, and that if faced with a similar situation today, he would in fact handle it differently. However, viewing the facts as they existed at the time, we can understand why Gaughan relied on Barrick's statements. Up until this point in their association, Gaughan had no reason to question Barrick's credibility. Moreover, Gaughan was not closely associated with the Cohen-Lansburgh group or involved in any way in the Flamingo operation. In our opinion,

Gaughan's failure to take further action to obtain information about the skim is not inconsistent with his prior treatment of his Flamingo interest as a passive investment.

We also have evidence that two other prospective purchasers may have been advised by Cohen or Lansburgh that revenues were being skimmed from the Flamingo. Even assuming the truth of these assertions, there is no indication in the record that either of these prospective purchasers ever discussed these assertions with Gaughan. To the contrary, it is apparent that Cohen and Lansburgh, the majority owners of the Flamingo, negotiated these proposed transactions, and we see no reason to believe that Gaughan was involved in any way. In fact, the only way that Gaughan became aware of the assertions made to the Sheraton group was from the group itself, not from any of the other Flamingo owners.

The Division has also asked us to conclude that, in view of Gaughan's training as an accountant and knowledge of the casino industry, together with his habit of reviewing the Flamingo's financial performance, he knew or should have known of the skim. However, Gaughan testified that during the Cohen-Landsburgh years the Flamingo's drop, handle and hold percentages were well within acceptable limits for the industry and caused him no concern about his investment. He further testified that the Flamingo's financial performance did not deteriorate while the facility was operated by the Cohen-Landsburgh group. We have not been provided with the financial information to which Gaughan referred in his

testimony, nor is there anything else in the record which should cause us to question this testimony.

We have been presented with volumes of evidence concerning civil litigation arising from the Flamingo skim. That evidence indicates that in 1974, the Internal Revenue Service issued a notice of deficiency to the Flamingo Company and its individual shareholders. In 1977, to protect himself from the IRS claims, Gaughan, along with Barrick, Zeigman and Morris Baker, other minority shareholders of the Flamingo Company, filed suit against Lansburgh's estate asserting a claim of contingent liability as to the IRS claim. Subsequently, the IRS assessed Gaughan for three percent of the approximately \$20 million owed in back taxes, interest and penalties. Gaughan protested the assessment. The Tax Court case was eventually dismissed and the suit against Lansburgh's estate was thus abandoned.

The Division has asked us to conclude that Gaughan knew about the skim, based on the fact that he did not sue Cohen and Lansburgh to recover the percentage of the skimmed money which would have accrued to him as a three percent owner of the Flamingo. However, Gaughan testified that he was confused about the purpose of the suit against Lansburgh's estate, and he apparently thought it was designed to recover any money due him in connection with the skim. He also testified that by the time he had clear knowledge of the skim, he believed it was too late to seek recovery from the skimmed funds.

At this point it is impossible to assess the likelihood of success of a suit to recover skimmed funds, or to weigh that

likelihood against the costs of litigation. We accept Gaughan's explanation of the matter, and do not find his action or inaction indicative that he knew of or participated in the skim.

We believe we have now discussed all of the arguments made by the Division in support of its contention that Gaughan knew or should have known about the skim. We are sure that in the course of that discussion we have made it clear that we do not accept the Division's position.

Viewing the record as a whole, we must conclude that Gaughan did not participate in the skim, nor are we persuaded that he knew or should have known about it. We further conclude that the totality of the evidence concerning the skim does not reflect negatively on his qualifications with respect to good character, honesty and integrity, or with respect to business ability and casino experience.

Another significant issue at this hearing has been Gaughan's association with Steven Delmont. Although we have mentioned Delmont's name in connection with the skim, it is important that we scrutinize Gaughan's association with Delmont before and after the skim. However, we must also keep in mind that Delmont's qualifications are not in issue here.

Gaughan first met Delmont in the early 1960's, when Delmont was employed at the Flamingo as a purchasing agent. They developed a casual business relationship, with only sporadic contact. Gaughan sometimes conferred with Delmont on purchasing matters during Delmont's tenure at the Flamingo.

After the Flamingo was sold, Gaughan spoke with Delmont on an infrequent basis and visited him once while vacationing in Florida, where Delmont was working for Samuel Cohen's son.

Delmont became disenchanted with his job in Florida and sometime in 1979 or 1980 contacted Gaughan regarding employment in Las Vegas. Gaughan had an opening for a restaurant manager at the El Cortez and Delmont accepted Gaughan's offer of employment without discussing remuneration. Delmont relocated to Las Vegas and remained at the El Cortez for approximately 13 months. His salary was the same as that of the previous restaurant manager. Gaughan also offered Delmont a one percent ownership interest in the El Cortez at a price of \$200,000, contingent upon Delmont's licensure by Nevada gaming authorities. Delmont's attempt to obtain a license was not successful due to his Flamingo skim conviction. In August 1981 Delmont accepted an offer from Michael Gaughan, John Gaughan's son, to be a restaurant manager at the Barbary Coast. Delmont continues to be employed by Michael Gaughan and is presently working as a restaurant manager at the Gold Coast.

During Delmont's employment at the El Cortez, Gaughan established a wholly-owned purchasing company, RJS, Inc., and installed Delmont as president. It is evident from the record that RJS is merely a purchasing entity used by Delmont on behalf of John and Michael Gaughan to buy goods for their facilities. Delmont receives no compensation from RJS.

It is undisputed that, when Delmont approached him for a job, Gaughan was aware of Delmont's felony conviction for hi-

role in the Flamingo skim and his long association with the Cohen family. However, Gaughan testified that he believed Delmont's categorical denial that he received any skim money. Gaughan testified to the effect that, in his opinion, Delmont had paid his debt to society. Gaughan was willing to give Delmont a second chance.

We find Gaughan's testimony in this regard entirely credible, and quite consistent with his character. It is certainly consistent with the picture of Gaughan presented by long-time Gaughan employee Meldon Woods, by Steven Wynn, by Father McMahon and by two former Nevada Governors and two sitting United States Senators.

At this point we feel compelled to note that this Commission has seen many character witnesses on behalf of many would-be qualifiers. Frankly, character testimony is usually of little help to the Commission. However, the character testimony presented on behalf of Gaughan was singularly impressive and quite helpful in determining the type of man before us. While such testimony can never substitute for careful evaluation of the factual record, with respect to the Delmont issue, as well as the other issues raised by the Division, it has given us an added level of comfort.

One additional issue requires discussion, namely, Gaughan's association with Benny Binion and the two loans that were made by Binion's Horseshoe Club to Gaughan. We note that these loans were arranged by Jack Binion, chief executive officer of the Horseshoe Club and Benny Binion's son. We also

note that both loans were more than fully secured, that competitive interest rates were charged and that repayment was made in full. It is our opinion from the evidence before us that the loans were legitimate business transactions and nothing more. Furthermore, although Benny Binion has an unsavory past, we find that Gaughan's association with Binion is not so close as to call into question Gaughan's qualifications.

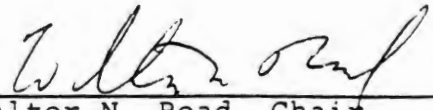
In our opinion, Gaughan has met the burden of establishing by clear and convincing evidence his good character, honesty and integrity, as well as his business ability and casino experience. We would find him qualified.

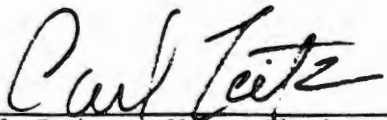
Finally, in light of our comments concerning John Gaughan's qualifications, it should be obvious that, in our opinion, there is no reason to discuss the issues raised concerning Gaughan's association with Showboat, Inc.

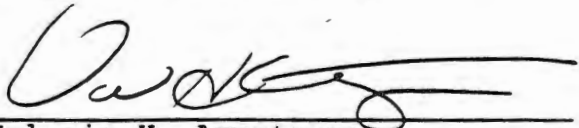
CONCLUSION

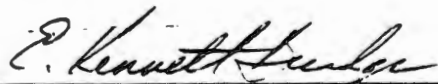
For all of the reasons we have stated, a statement of compliance is issued to A. C. Showboat, Inc., Ocean Showboat, Inc., and Showboat, Inc. with regard to sections 84(a), (c) and (d) of the Act and the following individuals are found qualified to the standards of sections 86 and 89(b)(1), (2) and (3): John Kell Houssels, Jr., Joseph Kelley, John Gaughan, Frank Modica, William Downey, Thomas Bonner, G. Clifford Taylor, Jr., Frederick Morledge, Jeanne Stewart, John Kell Houssels, III, H. Gregory Nasky, Robert McDonald, Albert Hoff,

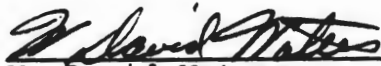
Randall Miller, Ronald Block, William Richardson and Thomas Adams.


Walter N. Read, Chair


Carl Zeitz, Vice-Chair


Valerie H. Armstrong
Commissioner


E. Kenneth Burdge
Commissioner


W. David Waters
Commissioner

As of February 11, 1987

SEPARATE OPINION OF E. KENNETH BURDGE

Although I wholeheartedly agree with the majority and fully support its opinion, I offer some additional comments.

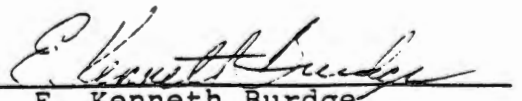
First, with regard to Steven Delmont, I have found his testimony to be highly credible. Delmont appeared before us and relived some extremely painful experiences related to the Flamingo skim. This is not to say that I am in any way overlooking the seriousness of the skim operation or the negative impact that skimming has on the public's confidence in the integrity of casino gaming. However, there are various circumstances surrounding Delmont's role in the Flamingo skim which, in my opinion, mitigate his culpability.

For example, Delmont testified that he feared Chester Simms, who had ordered Delmont to assist in the count. Delmont blindly followed that order. Additionally, Delmont was unquestionably loyal to Samuel Cohen and the Cohen family, who had helped him obtain a position at the Flamingo. From Delmont's forthright testimony before this Commission and his candid explanation of the skim operation, I have concluded that either fear or misplaced loyalty were the driving forces behind his participation in the skim.

After reviewing all of the evidence before us, I find that Jackie Gaughan's association with Steve Delmont has no negative impact on Gaughan's good character, honesty and integrity. Delmont has paid his debt to society with respect to his role in the Flamingo skim. He was never in trouble with the law before or after the skim. In fact, Delmont has received a Presidential pardon for his role in the skim.

When Jackie Gaughan offered Delmont the restaurant manager job at the El Cortez, he did nothing that was inconsistent with his ordinary course of conduct. Delmont was a proven restaurant manager and purchasing agent, who would be an asset to Gaughan's operation. Gaughan gave Delmont a second chance, which is totally consistent with his character, as described to us by an impressive array of character witnesses. Gaughan's employment of Delmont reminds me of the story we heard from Meldon Woods about Gaughan assisting an old man whose car had stalled in front of the El Cortez. In both instances, there was no need for Gaughan to go out of his way to assist these people; yet he did. Such concern for a fellow human being, made without the possibility of recognition or reward, is something that I applaud.

In my opinion, Jackie Gaughan has shown, by clear and convincing evidence, that he has the good character, honesty and integrity necessary to qualify for licensure in New Jersey. From what we have heard, I am sure that every town in this country wishes that it had an upstanding citizen like Jackie Gaughan at the forefront of its charitable and civic endeavors. Gaughan has come a long way since his early days in Omaha and has certainly convinced me that he will be an asset to New Jersey gaming.


E. Kenneth Burdge
Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-EA-44, 87-271
OAL DOCKET NO. CCC 7102-86
APPLICATION NO. 62824-22
REGISTRATION NO. 65699-40

APPLICATION OF CHARLES AVERNA	:	
FOR A CASINO EMPLOYEE LICENSE	:	
AND	:	
STATE OF NEW JERSEY, DEPARTMENT	:	<u>FINAL ORDER</u>
OF LAW AND PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
CHARLES AVERNA,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission) by the administrative law judge; and exceptions having been filed; and the Commission having considered the entire record of these consolidated proceedings,

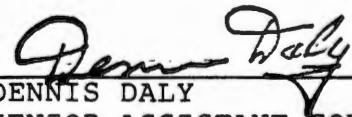
IT IS on this *2nd* day of April 1987, ORDERED that the initial decision is modified as follows:

The initial decision at page 4 should be corrected to reflect that the respondent was indicted by a federal grand jury for one count of conspiracy to kidnap, in violation of 18 U.S.C.A. §1201(c), one count of conspiracy to travel in interstate commerce to commit a crime, in violation of 18

U.S.C.A. §371, and one count of conspiracy to obstruct interstate commerce by robbery and extortion, in violation of 18 U.S.C.A. §1951.

IT IS FURTHER ORDERED that the complaint against the casino hotel employee registration of Charles Aversa be dismissed and the casino employee license application of Charles Aversa be granted substantially for the reasons stated in the initial decision, as modified, which is incorporated by reference.

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 7102-86

AGENCY DKT. NOS. 87-EA-44

and 87-271 (CONSOLIDATED)

CHARLES AVERNA,

Petitioner,

v.

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

Respondent.

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

Petitioner,

v.

CHARLES AVERNA,

Respondent.

Charles Averna, petitioner/respondent, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent/petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: January 30, 1987

Decided: February 20, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. First, Charles Aversa, petitioner/respondent, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent/petitioner, opposed licensure by reason of its contention that the petitioner/respondent had committed a disqualifying offense under section 86c(1) of the Casino Control Act (Act), and that the petitioner/respondent did not possess the requisite good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference. The petitioner/respondent contended that he was rehabilitated under section 90h. Second, the Division charged that the petitioner/respondent, the holder of casino hotel employee registration no. 65699-40, had committed a disqualifying criminal offense under section 86c(1), for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The petitioner/respondent opposed the action and, in the alternative, contended that he was rehabilitated under section 91d.

PROCEDURAL HISTORY

Mr. Aversa filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on August 6, 1985 (J-1). By letter, the Commission advised the petitioner/respondent that based upon information received in a report from the Division, dated September 2, 1986, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed with the Commission on October 7, 1986, the petitioner/respondent requested a hearing. On October 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on December 10, 1986, and the matter was scheduled for hearing on January 30, 1987. On January 27, 1987, the Division filed its complaint against the petitioner/respondent's registration with the Commission and requested that the matters be consolidated for hearing. At the hearing on January 30, 1987, the petitioner/respondent, who had received a copy of the complaint, was advised that both the factual and legal allegations contained in the complaint were included in the matter of his application for licensure, with the exception

that an adverse finding could result in disciplinary action taken against his registration. The petitioner/respondent exhibited a full understanding of the significance of the Division's application, and he consented to consolidation of the matters for hearing on that date. Accordingly, the matters were consolidated. The matter was heard on January 30, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Averna is 49 years of age (J-1). He is a 1955 graduate of Central High School in Newark. The petitioner/respondent served in the United States Army from January 1956 until December 1957. He received an honorable discharge. The petitioner/respondent resides currently in Toms River with his second wife of eight years. His wife is employed. Mr. Averna has been the stepfather to his wife's two children.

From December 1962 until December 1977, the petitioner/respondent was a police officer with the City of Newark Police Department. At all times he was a uniformed officer and was highly decorated. On September 11, 1974, he was injured on the job in a motorcycle accident. For all but one and one-half months during the next three years, he was on paid sick leave. On the occasions when he was able to work, the petitioner/respondent worked four-hour shifts in an office environment.

In 1977, the petitioner/respondent's take-home pay as a police officer was \$1,437 per month. During this time, he was married to his first wife, with whom he had one child. However, there were significant marital problems. During most of his tenure with Newark, the petitioner/respondent held a second job. From 1974 to 1975, he worked occasionally as a guard for Payroll Express Corporation (Payroll Express), an armored car service.

In February and March 1977, the petitioner/respondent became involved in unlawful activities which led to his arrest and indictment, and his dismissal from the police department. More specifically, the petitioner/respondent met with a John DiGiovanni on more than one occasion and also with Terrell Henry Hallman on one

occasion, and discussed DiGiovanni's proposition to commit an armed robbery of Payroll Express. The petitioner/respondent knew that DiGiovanni needed certain information concerning Payroll Express in order to commit the robbery. The petitioner/respondent provided DiGiovanni with information concerning employee work schedules and amounts of money held in the company safe (approximately \$2 million) with the clear understanding that the information provided would assist DiGiovanni in his plan. In return, Mr. Averna expected to receive the sum of \$1,500. Subsequent to providing the information to DiGiovanni, the petitioner/respondent was told that he would be taken care of, i.e., paid, after the robbery. In addition, Mr. Averna testified that at some point during March 1977, he believed that he was under surveillance because he recognized an FBI officer who was watching the petitioner/respondent's meeting with DiGiovanni and Hallman. However, the petitioner/respondent did nothing to extricate himself from furtherance of the criminal activity nor did he advise DiGiovanni of his observations. Some of the circumstances underlying the incident were in dispute and will be discussed, infra.

On March 23, 1977, DiGiovanni, Hallman and DiGiovanni's sister attempted to commit the crime. DiGiovanni's sister held the family of the president of Payroll Express hostage in New York, while DiGiovanni and Hallman took the president to Newark in order to open the safe. However, the FBI apprehended the perpetrators during the attempt. Upon learning that the FBI had appeared at his mother's home looking for him, the petitioner/respondent turned himself in to the FBI on March 24, 1977, and made a written voluntary statement of his involvement in the crime.

On March 31, 1977, the petitioner/respondent and others were indicted by a federal grand jury (P-1). The petitioner/respondent was charged with violations of 18 U.S.C.A. § 1201(a), kidnapping; 18 U.S.C.A. § 371, conspiracy; and 18 U.S.C.A. § 1951, conspiracy to obstruct interstate commerce by robbery and extortion. On July 13, 1977, the petitioner/respondent pled guilty to violation of 18 U.S.C.A. § 1951, conspiracy to obstruct interstate commerce by robbery and extortion. The remaining two charges were dismissed. On that date, he was sentenced to the maximum term of imprisonment of 20 years. On November 21, 1977, the sentence was reduced to 10 years. On April 6, 1978, the petitioner/respondent was resentenced to a three-year term of imprisonment. Mr. Averna was incarcerated for a total of 19 months, which he served in Springfield, Missouri, and in Wisconsin. Following his release, he was on parole for approximately six months. Upon satisfactory completion of his sentence, he was released in mid-1979.

While incarcerated, the petitioner/respondent was asked to testify on behalf of the prosecution concerning matters which occurred while he was on duty as a police officer. The petitioner/respondent complied with this request.

Subsequent to the initiation of criminal proceedings, the petitioner/respondent turned over his interest in the family residence to his former spouse in lieu of support/alimony obligations. In addition, his \$5,000 in accrued pension benefits were put in trust as support for his child. Ultimately, the petitioner/respondent was divorced.

From March 1979 to May 1981, the petitioner/respondent was the manager of the Hyway Sweet Shop in Verona, New Jersey, which was owned by his current spouse. The business was sold.

From February 1982 to April 1985, the petitioner/respondent was the manager of the Village Sweet Shop in Union, New Jersey, which he operated with his natural son. Again, the business was sold.

Thereafter, the petitioner/respondent was employed briefly by a construction company in Whippany, New Jersey.

On August 6, 1985, the petitioner/respondent filed his PHDF-2A with the Commission, on which he disclosed his criminal record history (J-1). Also about this same time, the petitioner/respondent obtained casino hotel employee registration no. 65699-40 from the Commission.

For a three-month period during the spring of 1986, the petitioner/respondent was employed by Harrah's Marina Hotel Casino (Harrah's) as a heavy duty porter. His duties included shampooing rugs and floors. The petitioner/respondent was terminated from employment because he was unable to obtain his casino employee license, which was a requirement for the environmental department at Harrah's. However, the petitioner/respondent's employment was positive and he would be considered for rehire (R-1).

For the past one and one-half years, the petitioner/respondent has been the manger of a Texaco gas station in Toms River. He closes the station at night and is

responsible for handling substantial sums of money. One of the petitioner/respondent's stepsons works with him. Also, he is employed part-time at a food market/delicatessen in Seaside Park.

The petitioner/respondent helped support one of his stepsons during college.

The petitioner/respondent has not committed any other violations of the criminal laws.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner/respondent's criminal misconduct, including the nature of his marital difficulties; his relationship, if any, with DiGiovanni, as well as the scope of his involvement in the crime; his rehabilitation; and his good character, honesty and integrity.

Mr. Averna testified that he had a poor marriage and had separated from his wife sometime prior to the incident. In February 1977, his wife secured a court order which directed the petitioner/respondent to pay the amount of \$1,500 to his wife as alimony, and \$35 per week child support on or before April 1, 1977. The petitioner/respondent had always held a second job and had given his wife his police officer's pay. However, her application revealed that she had not paid the mortgage on the home, and she denied receipt of any support. In addition, she did not work. The petitioner/respondent was attempting to secure a modification of the order; however, he had been advised by counsel that the \$1,500 payment would have to be made.

At this time, the petitioner/respondent worked part-time at an automobile upholstery shop. On one occasion he worked on DiGiovanni's car. The petitioner/respondent testified that he did not know DiGiovanni before that time and did not know how DiGiovanni supported himself. As the petitioner/respondent and DiGiovanni began to carry on a conversation, the petitioner/respondent eventually discussed his marital and fiscal problems. The petitioner/respondent stated his need for \$1,500 and

indicated that he was interested in securing a loan from any source. Within a short period of time following this conversation, DiGiovanni contacted the petitioner/respondent with a proposition. More specifically, DiGiovanni offered to give the petitioner/respondent the money he needed in exchange for information from the petitioner/respondent concerning Payroll Express. The petitioner/respondent understood that DiGiovanni intended to use the information in order to commit an armed robbery. The petitioner/respondent subsequently met with DiGiovanni on several occasions and provided the information requested. During one meeting in an automobile, the petitioner/respondent observed an FBI agent conducting a surveillance of the meeting. However, the petitioner/respondent neither extricated himself from the conspiracy, nor did he inform the other participants of his observations. Although the petitioner/respondent provided the information, he was unaware of the precise schedule for the robbery or the details thereof, i.e., that hostages would be taken. He never received any money from DiGiovanni. Nevertheless, the petitioner/respondent accepted responsibility as a conspirator for all crimes committed. Mr. Avera further testified that when he turned himself in to the FBI, he then learned that DiGiovanni knew more about him than he knew about DiGiovanni. The petitioner/respondent also testified that he did not use the alias Charles Palumbo, as alleged by the FBI. Palumbo is his mother's name, and this may have been known to DiGiovanni. Also, the FBI first looked for the petitioner/respondent at his mother's home.

Martin H. Mogensen, an agent for the past two and one-half years, testified on behalf of the Division. The agent has spoken with an officer of Payroll Express, who confirmed that the petitioner/respondent was employed by that company on a part-time basis. Further, the agent reviewed documents at the United States Probation Office and confirmed that the petitioner/respondent had been contacted by DiGiovanni for information concerning Payroll Express in February 1977, and that the information was provided. Thereafter, the agent described the events of the crime. Next, the agent testified that his review of the probation report indicated that the petitioner/respondent had known DiGiovanni casually for a period of four years preceding the conspiracy. However, the report did not disclose the basis for this statement.

In order to resolve the issues in dispute, i.e., the length of time which the petitioner/respondent had known DiGiovanni, it is necessary to assess the credibility of the witnesses.

Although Agent Mogensen is not a party in this matter and does not have an identifiable interest in the outcome nor a bias in these proceedings, it must be noted that he is employed by the Division, which is a party. The vast majority of the agent's testimony corroborated fully the testimony of Mr. Avera. In dispute was the agent's testimony concerning the length of time which the petitioner/respondent had known DiGiovanni. The agent's testimony was based upon a review of the probation report, which indicated a casual relationship of several years; however, no basis for this information was provided. Therefore, although the agent's testimony was credible, the reliability of the information relayed must be assessed. Absent any disclosure of the source or nature of the information and, further, absent any corroboration thereof, it is not possible to assess the reliability of the information, and, therefore, it cannot be accorded any weight. This is especially so when the record contains direct credible evidence to the contrary.

Initially, the petitioner/respondent's position in this matter must be recognized. As an applicant for licensure and as the holder of a registration, he has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the petitioner/respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence, that the petitioner/respondent testified truthfully in every regard. More specifically, his description of the circumstances underlying the incident were corroborated by the allegations set forth in the indictment, the investigation conducted by Agent Mogensen as well as the letters of support (R-2 through R-7). Further, the petitioner/respondent candidly admitted his misconduct, which he described in detail, and acknowledged full responsibility for all of the crimes committed by his co-conspirators, despite his non-participation in the robbery itself. Accordingly, I am persuaded to accept his testimony in all respects.

Mr. Avera also testified that he would not repeat his prior misconduct because he has a good marriage, is now happy, works hard, does not need the money and would never want to return to prison. In response to a question concerning his behavior in the event he incurred financial difficulties in the future, the petitioner/respondent replied that he would not resort to criminal misconduct because he does not understand why anyone would ever want to return to prison. Accordingly, there appears to be little, if

any, likelihood of a repetition of his past misconduct. This is corroborated by the absence of any other criminal misconduct, particularly since his release from incarceration almost eight years ago.

Mr. Averna also offered several letters on his behalf. Tom D. Davis, environmental services department manager for Harrah's, described the petitioner/respondent's performance in the casino industry for a three-month period in very positive terms (R-1). The remainder of the letters were prepared in June 1977, for consideration by the court at time of sentencing. The letters submitted were from John Cross, captain of police, commanding narcotics bureau, Newark Police Department, for whom the petitioner/respondent had worked between September 1975 and March 1977 (R-2); Lieutenant James B. Brown, Jr., of the Department of Police of the Borough of Caldwell, who had known the petitioner/respondent for a period of ten years (R-3); Carl R. Scholz, lieutenant of police, narcotics bureau, Newark Police Department, who worked with the petitioner/respondent between September 1975 and March 1977 (R-4); Michael Battista, a friend of the petitioner/respondent, who had known him for approximately 30 years (R-5); Frank J. Palermo, senior field representative for East Orange, who had known the petitioner/respondent for a period of 12 years (R-6); and Angelo D. Mostello, the owner of the Branch Brook Auto Top, Inc., who had known the petitioner/respondent for many years and occasionally employed him on a part-time basis (R-7). Each of the letters written in 1977 reveals that the author knew of the petitioner/respondent's misconduct, which each identified as aberrational. Also, the authors noted his very positive record as a police officer as well as the marital conditions, to which the misconduct was attributed in part.

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

1. The petitioner/respondent's testimony was persuasive and believable, and was corroborated by the documentary and testimonial evidence.
2. The Division's evidence concerning the extent of the relationship between the petitioner/respondent and DiGiovanni was based upon a probation report which was not produced, and did not disclose the source or nature of the information. Accordingly, no weight can be attributed to this evidence and it does not adversely impact upon the petitioner/respondent's credibility nor the believability of his testimony.

3. The petitioner/respondent's explanation of the events underlying his criminal misconduct in 1977, is adopted fully as a finding of fact.
4. There is little, if any, likelihood that the petitioner/respondent will repeat his misconduct.
5. The petitioner/respondent had a positive employment record with Harrah's during a three-month period in 1985.
6. The petitioner/respondent was well regarded by colleagues of the Newark Police Department and close personal friends, each of whom wrote letters on his behalf for consideration during his sentencing in 1977.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner/respondent's conviction for a violation of 18 U.S.C.A. § 1951, conspiracy to obstruct interstate commerce by robbery and extortion, is analogous directly to a violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1, conspiracy to commit robbery. However, a violation of 18 U.S.C.A. § 1951 (Hobbs Act) does not necessarily satisfy the culpability requirement of N.J.S.A. 2C:5-2.

The federal criminal code section at issue, in pertinent part, reads as follows:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section-

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction. [18 U.S.C.A. § 1951.]

The act required under this statute, with respect to its conspiracy aspect, is a conspiracy to rob (or extort) that has an effect on interstate commerce. The effect on interstate commerce can be minimal and may still provide a jurisdictional base under this statute. See, United States v. Wright, 797 F.2d 245, 249 (5th Cir. 1986); United States v. Phillips, 577 F.2d 495, 500-501 (9th Cir. 1978).

The mental state element of this offense is not directly expressed in the Hobbs Act. However, it has been held that "knowledge" of a conspiracy's essential nature is sufficient for conviction. United States v. Ciambone, 787 F.2d 799, 809 (2nd Cir. 1986); see also, United States v. Arambasich, 597 F.2d 609, 611 (7th Cir. 1979); United States v. Warledo, 577 F.2d 721, 729 (10th Cir. 1977).

The requirement of conspiracy is not defined in 18 U.S.C.A. § 1951, but has been interpreted to include that the prohibited conduct is group association for a criminal purpose. Callanan v. United States, 364 U.S. 587 (1961), rehearing denied, 365 U.S. 825 (1961).

Under New Jersey law, the crime of conspiracy is defined as follows:

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. N.J.S.A. 2C:5-2a (emphasis added).

In other words, conspiracy is "the joining together of the conspirators with an unlawful intent." State v. Moretti, 52 N.J. 182, 186 (1968) (citation omitted). Thus, conspiracy has essentially the same meaning under the Hobbs Act and under New Jersey law.

Nevertheless, a violation of the Hobbs Act cannot automatically be equated with conspiracy under New Jersey law. That is, a person's level of culpability under the conspiracy statute must rise to the level of "purpose" to support a conviction in this state. N.J.S.A. 2C:5-2a. Under New Jersey law, "purpose" is a higher level of culpability than "knowledge." N.J.S.A. 2C:2-2b(1) and (2). A person is not guilty of a crime unless he/she acts with the required, or higher, degree of culpability. N.J.S.A. 2C:2-2a and c. Since petitioner was convicted of a federal crime for which the required culpability level was lower than an otherwise analogous crime in New Jersey, it cannot be assumed that his conduct would have been a violation of N.J.S.A. 2C:5-2.

Under section 86g, a person may be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Accordingly, at issue is whether the petitioner/respondent participated in the conspiracy with "purpose of promoting or facilitating" the commission of the robbery.

During the course of his testimony, Mr. Averna candidly acknowledged that he provided the information to DiGiovanni with a complete understanding that DiGiovanni needed the information in order to commit the robbery. Also, the petitioner/respondent was to receive \$1,500 as compensation for the information, although it was only after he provided the information that he learned the money would be paid following the robbery. Although the petitioner/respondent testified that the actual commission of the robbery

did not matter to him, it is apparent that he had the requisite purpose in providing the information to DiGiovanni for the crime to be committed, i.e., the receipt of the \$1,500, to satisfy requirements of N.J.S.A. 2C:5-2.

I **CONCLUDE** that the petitioner/respondent's misconduct constitutes a violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1, conspiracy to commit robbery. I further **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner/respondent's conduct constitutes a violation of section 86c(1), by means of section 86g.

(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:23-91d

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

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

First, Mr. Aversa is an applicant for a casino employee license and seeks employment in a maintenance and cleaning capacity, and is a registrant who was formerly employed by Harrah's as a heavy duty porter. In either capacity, the petitioner/respondent would have limited contact with casino patrons.

Second, the petitioner/respondent's criminal misconduct is serious as a disqualifying offense under section 86c(1). In addition, the fact that the petitioner/respondent entered into a criminal conspiracy which involved the commission of a potentially violent crime, all of which occurred while he was a police officer, enhances enormously the seriousness of his offense.

Third, the misconduct was committed knowingly by a law enforcement officer who, by virtue of his prior part-time employment, possessed special knowledge which facilitated the scheme. Although the petitioner/respondent's explanation of the circumstances underlying the misconduct were believable and explained his actions, they do not serve to mitigate his misconduct.

Fourth, the misconduct occurred in early 1977, and ended approximately 10 years ago.

Fifth, at the time of the misconduct, the petitioner/respondent was 39 years of age. There was no indication that his misconduct was due to immaturity.

Sixth, the petitioner/respondent's criminal misconduct involved several meetings with DiGiovanni in early 1977, during which he provided information. In the absence of any other criminal misconduct, the criminal activity was isolated.

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

Eighth, the petitioner/respondent has made substantial rehabilitative efforts. He turned himself in to the FBI, admitted his role in the scheme and provided a written statement. When charged, the petitioner/respondent fully acknowledged his misconduct, accepted responsibility therefore, and pled guilty. In addition, he fully satisfied the sentence imposed. The petitioner/respondent also fulfilled his financial obligations to his former spouse and child to the best of his abilities under the circumstances. Subsequent to his release, the petitioner/respondent has not repeated his misconduct, and has managed to secure a positive marriage. Further, he has earned a positive employment record, including limited time within the casino industry. His subsequent employment involves responsibility for and the handling of substantial sums of monies. Accordingly, it

is apparent that Mr. Avena has regained the trust of others. Although the petitioner/respondent's misconduct was inordinately serious, his conduct during the past ten years is sufficient by which to measure his rehabilitation.

I CONCLUDE that the petitioner/respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Avena was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980), at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Although the petitioner/respondent's misconduct involved a violation of the special trust reposed within law enforcement officials, there is no reason now to believe that his misconduct reflects adversely upon his qualifications. Despite an enhanced burden of proof attributable to his special knowledge as a police officer, the petitioner/respondent has affirmatively demonstrated his rehabilitation. The totality of his conduct since his arrest is sufficient to overcome the negative concerns raised by his prior misconduct. Accordingly, there is little likelihood, if any, that the

petitioner/respondent will commit any unlawful acts in the future. The petitioner now presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner/respondent has earned the privilege of licensure.

I **CONCLUDE** that the petitioner/respondent has established, by clear and convincing evidence, his good character, honesty and integrity, under section 90b of the Act.

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here, the Division seeks revocation of the petitioner/respondent's casino employee registration.

For the reasons previously expressed, it is clear that the petitioner/respondent's prior misconduct does not now disqualify him from continued registration. Further, there is every reason to believe that he will not repeat his misconduct in the future. Accordingly, no penalty shall be imposed against his registration. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the application of Charles Aversa for licensure as a casino employee be **GRANTED**; and it is further **ORDERED** that the petition of the Division against the casino hotel employee registration held by the petitioner/respondent be **DENIED**.

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

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

February 20, 1987
DATE

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

Receipt Acknowledged:

February 24, 1987
DATE

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 25 1987
DATE

Epitacio Lopez
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission - Personal History Disclosure Form - 2A, Charles Aversa, filed on August 6, 1985 (20 pages)
- P-1 United States of America v. Charles Aversa, United States District Court for the District of New Jersey, No. 77-00124, Indictment, filed on March 31, 1977; Judgment and Probation/Commitment Order, filed on July 14, 1977; Final Judgment and Commitment, filed on November 21, 1977; Order Vacating Sentence Imposed November 11, 1977 and Re-Sentencing Defendant, filed on April 6, 1978; Order, filed on August 7, 1978 (14 pages)
- R-1 Letter from Tom D. Davis, December 12, 1986
- R-2 Letter from John Cross, June 24, 1977
- R-3 Letter from James B. Brown, Jr., June 24, 1977
- R-4 Letter from Carl R. Scholz, June 24, 1977
- R-5 Letter from Michael Battista, June 24, 1977
- R-6 Letter from Frank J. Palermo, June 23, 1977
- R-7 Letter from Angelo D. Mostello, June 23, 1977

WITNESS LIST

For the petitioner/respondent:

Charles Aversa

For the respondent/petitioner:

Charles Aversa

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-135
OAL DOCKET NO. CCC 4447-86

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

Complainant, : AMENDED
 : ORDER
v. :

BALLY'S PARK PLACE, INC., :

Respondent. :

Proceedings in this matter having been conducted in the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 3, 1986,

IT IS on this *8th* day of April 1987, ORDERED that the initial decision is affirmed, and

IT IS FURTHER ORDERED that the complaint is dismissed for reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

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 4447-86

AGENCY DKT. NO. 86-135

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

Petitioner,

v.

BALLY'S PARK PLACE, INC.,

Respondent.

**Wendy A. Way, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Shelley C. Waxman, Esq., for respondent

Record Closed: October 2, 1986

Decided: October 7, 1986

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

Petitioner, The Division of Gaming Enforcement (Division), Department of Law and Public Safety, alleges, among other things, that respondent permitted an underaged individual entry to its licensed premises for the purpose to gamble, in violation of N.J.S.A. 5:12-119(a); whereby it seeks judgment and the imposition of an appropriate penalty by the Casino Control Commission (Commission) against respondent. The respondent denies the allegations and opposes the requested action against it.

PROCEDURAL HISTORY

Petitioner filed its complaint with the Commission on or about April 23, 1986. Respondent filed its answer by way of Notice of Defense and Request for Hearing on June 16, 1986. On July 2, 1986, 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. After notice, a prehearing conference was held on September 3, 1986, at the Atlantic City OAL at which, among other things, the issues to be determined were settled and discovery procedures were established.

On September 30, 1986, Deputy Attorney General Way advised the undersigned of the need to entertain petitioner's motion to withdraw the herein action together with oral argument on the motion to be heard. As a consequence, a telephonic conference and oral argument was set down for October 2, 1986.

MOTION

Petitioner moves to withdraw the complaint against respondent based upon information revealed to it by way of discovery. The documents transmitted to petitioner demonstrate that respondent's security personnel identified the underaged individual on its premises and subsequently turned the identified underaged individual over to the custody of the Division's on-site personnel. The underaged individual was thereafter placed under arrest and charged with Theft by Unlawful Taking (N.J.S.A. 2C:20-3). As a consequence of the discovery information, petitioner may not sustain its action by a preponderance of the credible evidence and, therefore, requests that the instant matter be withdrawn. Respondent does not object nor oppose petitioners motion.

FINDINGS OF FACT AND CONCLUSIONS

Having carefully reviewed and considered the entire record before me including the arguments of the parties to this controversy, I **FIND** and **CONCLUDE** that petitioner has insufficient proofs to sustain its action of a violation of N.J.S.A. 5:12-119(b) against respondent.

Accordingly, I **CONCLUDE** that the herein matter is hereby withdrawn and, therefore, no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is hereby **ORDERED** that the herein complaint of the Division of Gaming Enforcement against Bally's Park Place, Inc., be and is hereby **DISMISSED WITH PREJUDICE**; and

It is further **ORDERED** that the instant matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

7 October 1986
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

Oct 10 1986
DATE

M. B. B. B.
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 10 1986
DATE

Ronald J. Parker / x. 5
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

None

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

Complainant, :

: FINAL ORDER

v. :

BALLY'S PARK PLACE, INC., :

Respondent. :

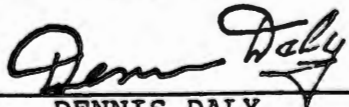
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 13, 1987,

IT IS on this ~~29th~~ day of May 1987, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed with prejudice substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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

WITHDRAWAL

OAL DKT. NO. CCC 7178-86

AGENCY DKT. NO. 87-47

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

Petitioner,

v.

BALLY'S PARK PLACE, INC.,

Respondent.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Shelley C. Waxman, Esq., for the respondent

Record Closed: March 25, 1987

Decided: April 2, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Bally's Park Place, Inc. (Park Place), with two violations of N.J.S.A. 5:12-119b, for which it sought the imposition of a penalty, pursuant to section 130 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 9, 1986. On October 8, 1986, the respondent filed its notice of defense and request for a hearing. On October 23, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on December 10, 1986. The record closed on March 25, 1987.

FINDINGS OF FACT AND CONCLUSION

By letter filed on March 25, 1987, which is attached hereto and included herein as though fully set forth at length, the Division withdrew the complaint.

Therefore, I **FIND** and **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against Bally's Park Place, Inc. be **DISMISSED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

April 2, 1987
DATE

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

Receipt Acknowledged:

April 3, 1987
DATE

Al Lou Gayo
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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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

March 23, 1987

W. CARY EDWARDS
ATTORNEY GENERAL

DONALD R. BELSOLE
FIRST ASSISTANT
ATTORNEY GENERAL

RECEIVED
STATE OF N.J.
OFFICE OF ADM. LAW
MAR 23 2 23 PM '87
ANTHONY J. PARRILLO
DIRECTOR

GEORGE H. HENNINGSSEN
DEPUTY DIRECTOR, OPERATIONS

THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL

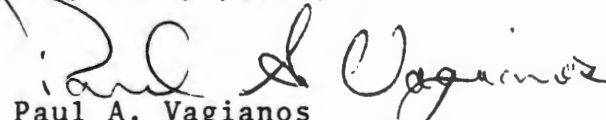
Richard L. Voliva, Jr. A.L.J.
Office of Administrative Law
CN 049
Quakerbridge Plaza
Building No. 9
Quakerbridge Road
Trenton, NJ 08625

Re: DGE v. Bally's
OAL Dkt. No. CCC 7178-86
Agency Dkt. No. 87-47

Dear Judge Voliva:

As per our conversation of this date, this is to confirm that the Division does hereby withdraw its complaint in the captioned matter.

Very truly yours,


Paul A. Vagianos
Deputy Attorney General

jes/4.109
c: Shelley C. Waxman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-252
OAL DOCKET NO. CCC 4449-86
REGISTRATION NO. 49340-40

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

Complainant, : FINAL ORDER

v. :

AL MATTHEW BAYTOPS, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed by the administrative law judge with the Casino Control Commission (Commission); and the Commission having considered the entire record at its public meeting of January 14, 1987,

IT IS on this 15th day of January 1987, ORDERED
that the initial decision is modified as follows:

The Commission rejects the ALJ's analysis of the respondent's criminal record under N.J.S.A. 5:12-86(c)(4). We find the respondent's possession on July 25, 1984, at Resorts International Hotel Casino of cocaine, in violation of N.J.S.A. 24:21-19(a)(1), and marijuana under 25 grams, in violation of N.J.S.A. 24:21-20(a)(4), constitutes criminal conduct. Further, after considering all the evidence presented, we conclude

that these criminal offenses, although dismissed, indicate that the continued registration of the respondent is inimical to the Act and casino operation. He is thus disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

IT IS FURTHER ORDERED that Al Matthew Baytops is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and (g) substantially for the reasons stated in the initial decision, as modified, which is incorporated by reference; and

IT IS FURTHER ORDERED that, notwithstanding the above, for the reasons stated in the record, the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit Mr. Baytops to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Al Matthew Baytops is prohibited from applying for any other license, registration, qualification or approval 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. NO. CCC 4449-86

AGENCY DKT. NO. 85-252

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

Petitioner,

v.

**AL MATTHEW BAYTOPS,
Respondent.**

**Barth Aaron, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Al Matthew Baytops, respondent, pro se

Record closed: October 9, 1986

Decided: November 13, 1986

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on July 1985 seeking the revocation of the respondent's casino hotel employee registration 49340-40. The complaint charged Mr. Baytops with violations of the criminal law and contended that he had a lengthy record of arrests and argued that his continued licensure would be inappropriate in that he had committed a per se disqualifying offense pursuant to N.J.S.A. 5:12-86c(1) of the Casino Control Act and that his continued licensure would be inimical to the interest of the Casino Control Act and would tend to erode public trust and confidence in the credibility, integrity and stability of casino operations and the regulatory framework, N.J.S.A. 5:12-86c(4).

Mr. Baytops requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case on July 7, 1986. A prehearing was held before Honorable Lillard E. Law on August 15, 1986, and a prehearing order was issued on August 18, 1986. Thereafter, by letter of September 12, 1986, the Division moved to amend the prehearing order. This application was granted.

A hearing was held before Administrative Law Judge Jeff S. Masin on October 9, 1986, at the Millville Municipal Court. The record closed upon completion of the hearing.

ISSUES

The prehearing order and the amendment thereto established the issues for consideration. As noted, the Division contends that Mr. Baytops' continued registration would be inimical. The grounds for this allegation arise from a series of incidents in which Mr. Baytops was charged with criminal and disorderly persons offenses. These will be detailed below.

EVIDENCE

Documentary evidence presented by the petitioner established that on May 30, 1983, Mr. Baytops was charged in the Stow Creek Township Municipal Court (Cumberland County) with possession of marijuana under 25 grams in violation of N.J.S.A. 24:21-20a(4). He pled guilty on August 24, 1983 and was fined \$100 and \$25 costs. The New Jersey State Police arrest report reveals that Baytops was arrested by Trooper Simpkins on State Highway 49. He was observed driving in an erratic manner and after being pulled over he was observed to place an object into his jacket on the front seat of the automobile. A check of the jacket revealed envelopes which contained a substance determined to be marijuana.

Mr. Baytops next difficulty arose on July 2, 1984, when he was charged with shoplifting at the Wilmington Dry Goods Store in Vineland. According to the Vineland Police Department report of Patrolman Coccio, Baytops was observed concealing a \$9 hat inside his pants. He entered a plea of guilty to the charge of shoplifting, N.J.S.A. 2C:20-11, on December 4, 1984 and was sentenced to a \$175 fine and \$25 costs, as well as a \$25 charge to the Violent Crimes Compensation Board and a \$25 charge on a bench warrant.

On July 25, 1984, Mr. Baytops was arrested by Detective William DiGiuseppe of the New Jersey State Police at the Resorts International Casino Hotel. Anne Fox, Assistant Chief of Security for Resorts, testified that she had observed Mr. Baytops exit from an area behind the dealer's lounge leading to an alley. He was wearing his housekeeping uniform. Individuals in the housekeeping department were not permitted to be in that area and thus Fox determined that Baytops was leaving work from an unauthorized location. She observed him running and gave chase. When she stopped him he was arrogant. She demanded to know what was inside the gym bag which he was carrying. He refused to allow her to look, saying that he wanted to talk to his supervisor. Eventually, the bag was searched and after analysis the substance found in the bag was determined to be .16 grams of cocaine. In addition, when Detective Giuseppe came on the scene, he discovered a plastic baggie containing green vegetation on Baytops' person. This was determined to be 4.36 grams of marijuana. Detective DiGiuseppe was present in the Atlantic City Municipal Court on February 25, 1985, when Honorable Bruce Weeks, J.M.C. conditionally discharged Mr. Baytops pursuant to N.J.S.A. 24:21-20.

Finally, Mr. Baytops was charged on March 26, 1985, with unlawful possession of a weapon in violation N.J.S.A. 2C:39-5d. The weapon was a set of nun-chucks. According to the Judgment of Conviction, Baytops was fined \$500 and placed on probation for one year, with further stipulations that he cooperate with any drug evaluation and drug treatment that might be deemed necessary and pay \$25 charge to the Violent Crimes Compensation Board. An additional charge of possession of marijuana less than 25 grams, which arose from the same incident, was dismissed as part of his plea to the weapons charge.

The New Jersey State Police report of Trooper Marcel A. Slusher indicates that he stopped Baytops' vehicle for not using his turn signal. A rolled cigarette was observed on the floor of the vehicle and a small manila envelope was found in the pocket of Baytops' jacket. Although admitting to the officer that the cigarette "looked like a joint" Baytops denied that it was his. The envelope in his jacket also contained marijuana. A passenger in the vehicle, Michelle Bard, was also searched and marijuana was discovered in her pocketbook.

Matthew Baytops testified in his own behalf. He did not deny the arrests and convictions related above. With respect to the shoplifting charge, he stated that he had been taking his three-year-old child to the bathroom and had the hat with him. Although

he was not guilty he pled guilty in order to "just get it over with." As for the nun-chucks, Baytops alleged that he had been "into the martial arts" and was studying with friends. He noted that the police officer had advised him that had the nun-chucks been in the trunk of the automobile there would have been no violation of the law.

With respect to the cocaine and marijuana possession arising at Resorts, Baytops claimed that the marijuana was being held for another individual. However, he might have used some for himself. He claimed that he had purchased the cocaine from another unnamed employee and stated that he had advised another Detective at the time of his arrest (not DiGiuseppe) that he knew of individuals dealing in the casinos and that he could provide information. He claimed that he was never contacted by anyone concerning this information.

Mr. Baytops was first employed with Resorts in 1983 as a utility porter. He is 27 years old. He was terminated from Resorts on January 4, 1985, when he was found sleeping on the job. Baytops takes medication for epilepsy and also takes medication for injuries suffered as a result of an automobile accident, which medication leaves him drowsy.

At the present time, Mr. Baytops is not employed. He is under a court order to pay \$40 a week support for his child and has been unable to do so since losing his job. He did not go through any drug treatment as he did not feel that he needed to do so. He is not using drugs at this time and realizes "what the world is about" and that his "world was blowing up in his face." He claims that he "doesn't need drugs" and that using them is just "dumbness."

DISCUSSION

Mr. Baytops does not dispute that he was arrested and convicted in the above listed incidents. While he asserts that he was not guilty of the shoplifting incident, he pled guilty and must be considered so at this time. Further, his assertion that the marijuana found in his jacket at the time of the 1985 arrest for possession of a weapon was actually Ms. Bard's does not ring true. The facts indicate that both Ms. Bard and Mr. Baytops had marijuana in their possession on the day in question. There is no reason to believe that he was holding some of her marijuana while she held the rest. Even if she

originally obtained the substance, I find that Mr. Baytops did take possession knowingly and intentionally of some of the substance and that he exercised control over the same and was therefore in possession.

I FIND that Mr. Baytops has been convicted of unlawful possession of a weapon, shoplifting, possession of marijuana under 25 grams [a disorderly persons offense], and has received a conditional discharge on a cocaine and marijuana possession charge.

The record shows that this respondent has been involved with illegal activities in each of the years 1983, 1984, and 1985. He has been charged and either convicted of, or conditionally discharged from, drug offenses in each year. Although he denies needing drug treatment, and testifies that he does not now use drugs, it appears that at best, until recently, he had no hesitation in being involved with illegal substances. Further, Mr. Baytops' testimony concerning the 1985 marijuana matter and the 1984 shoplifting case indicate a desire to deny responsibility for his illegal actions.

Given the totality of the circumstances, particularly the nature and repetition of the offenses and their drug orientation, I CONCLUDE that Mr. Baytops' continued registration would be inimical, that is, against the best interests of the casino industry and in subversion of the policies of the Casino Control Act. Although an incident of drug involvement in and of itself may not be sufficient in all cases to require revocation, a history of repetitious involvement with drugs, including cocaine, coupled with the highly significant fact that one of the incidents involved cocaine which was purchased and possessed at a casino hotel by a registrant on duty, strongly indicates the necessity for the severest sanction. There appears to be no mitigating circumstance which would dissuade from this course. Therefore, it is ORDERED that Mr. Baytops' casino employee registration be REVOKED.

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

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

November 13, 1986
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

November 14, 1986
DATE

Benardette J. Frick
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 18 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Stow Creek Township Municipal Court complaint with attached New Jersey State Police arrest report of May 30, 1983 and laboratory report and supplementary investigation report
- P-2 Vineland Municipal Court docket sheet with attached Vineland Police Department general and arrest reports
- P-3 Indictment 319-8-85 with attached judgment of conviction and order for committment and statement of reasons; New Jersey State Police arrest report of March 27, 1985; Pilesgrove Township Municipal Court complaints SK70444 and SK70445; New Jersey State Police investigation report of March 28, 1985 and supplementary investigation report
- P-4 New Jersey State Police arrest report of July 26, 1984 with attached Atlantic City Municipal Court complaint WJ68273; investigation report of July 26, 1984; request for examination of evidence and laboratory report and supplementary investigation report of February 25, 1985

On behalf of respondent:

- R-1 Atlantic City Municipal Court complaint SM12909 showing conditional discharge
- R-2 Atlantic City Municipal Court complaint SM12906 showing conditional discharge and dismissal of charges

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 86-130 & 87-EA-118
OAL DOCKET NO. CCC 5240-86
REGISTRATION NO. 61346-40
APPLICATION NO. 66058-21

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

ORDER

Complainant, :

v. :

MARK BISCIOTTI, :

Respondent. :

and :

APPLICATION OF MARK BISCIOTTI :

FOR A CASINO EMPLOYEE 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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 3, 1987,

IT IS on this 10th day of June 1987, ORDERED that the initial decision is modified as follows:

1. The ALJ failed to consider whether the respondent's conviction on August 4, 1986, for possession of a controlled dangerous substance (marijuana under 25 grams) contrary to N.J.S.A. 24:21-20(a)(4) on the premises of a licensed casino hotel,

was an inimical offense warranting his disqualification from licensure and registration pursuant to N.J.S.A. 5:12-86(c)(4).

The inimical analysis requires consideration of the eight rehabilitative factors contained in sections 90(h) and 91(d) of the Casino Control Act. Upon consideration of these factors, the Commission finds that the offense is inimical for purposes of licensure primarily in recognition of the regulatory sensitive position of a casino employee. However, the Commission recognizes that casino hotel registrants pose a minimal threat to the integrity of casino operations and the public confidence in the conduct of gaming. Primarily in consideration of the respondent's position as a busboy, the Commission finds that he is not disqualified from casino hotel employee registration under section 86(c)(4) of the Casino Control Act.

IT IS FURTHER ORDERED that the application of Mark Bisciotti for a casino employee license is denied, the order suspending his casino hotel employee registration entered on May 27, 1986, is vacated and the complaint for revocation of his casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other

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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5240-86

AGENCY DKT. NO. 86-130

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

Petitioner,

v.

**MARK BISCIOTTI,
Respondent.**

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Wayne Powell, Esq., for respondent (Hockfield, Hasner & Weiss, attorneys)

Record Closed: March 27, 1987

Decided: April 9, 1987

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division") filed a complaint with the Casino Control Commission ("Commission") on April 28, 1986 seeking revocation of the respondent's casino hotel employee registration. The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The Commission suspended the registration on May 21, 1986, pending a hearing.

On December 2, 1986, in response to an application filed by Mr. Bisciotti for licensure as a casino employee [with a position designation of blackjack and craps dealer], the Division filed a letter with the Commission recommending denial of the proposed license. The basis for the recommended denial of the employee license arises

from the same set of facts which the Division asserted in its complaint seeking revocation of the registration. The registration and employee license matters were consolidated for purposes of hearing. A prehearing conference was held on December 2, 1986 and a prehearing order was issued on December 4, 1986 by Honorable Edgar R. Holmes, ALJ. A hearing was held before Administrative Law Judge Jeff S. Masin at the Longport Municipal Court on March 27, 1987. The record closed following the hearing.

ISSUES

The prehearing order identifies the issues for consideration as:

Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4)?

In addition, in view of the consolidation of the employee license application, the additional issue for consideration is whether Mr. Bisciotti possesses the requisite good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89(b)(2), as incorporated into N.J.S.A. 5:12-90(b).

EVIDENCE

Trooper John Thorpe, a 14-year veteran of the State Police, testified that on April 8, 1986 he was assigned to the Division of Gaming Enforcement, Enforcement Bureau, at Trump Plaza. During the early morning hours he was assigned to investigate an incident in which Mr. Bisciotti had been detained by security officers of the Trump Plaza. Atlantic City Police Officer Mooney was also present and he had frisked Mr. Bisciotti for protective reasons. During the frisk, Mooney had discovered three plastic bags in the respondent's pants-pocket area. Mr. Bisciotti was interviewed by Trooper Thorpe, who first gave him his Miranda warnings. Bisciotti indicated that he was 19 years old and admitted that the plastic bags contained marijuana, which he said was for his personal use. He could not recall where he had obtained it. Bisciotti was placed under arrest for possession of marijuana and for disorderly conduct, the latter charge arising from a confrontation with the security officers at the time of his detention on the casino floor. Bisciotti had been gambling.

The witness described the respondent's condition at the time of their meeting. Bisciotti exuded an odor of alcohol and was quite wound up and alternately cooperative and aggressive. He cried, and refused to sign an acknowledgment that he had been given the Miranda warnings. His eyes were bloodshot and watery, his speech rambling and at times incoherent and he jumped from one subject to another. Physically, he was jumpy and stumbling.

Evidence presented by the Division in the form of an Atlantic City Municipal Court Complaint established that Mr. Bisciotti was charged with possession of marijuana under 25 grams, a violation of N.J.S.A. 24:21-20a(4). On August 4, 1986, he entered a plea of guilty to the charge. The disorderly persons complaint was dismissed.

Mr. Bisciotti's witnesses included Toni Ann Pantalena, his girlfriend of two years. She is employed in the casino industry and was familiar with Mr. Bisciotti's reputation for good character, honesty and integrity at their previous mutual employer, the Trump's Castle. Bisciotti was employed as a busboy and Pantalena as a beverage server at the buffet. According to Ms. Pantalena, Mr. Bisciotti had a very good relationship with his supervisor and other employees and remains friendly with them even though he is no longer employed at the Castle. He worked very hard and was always seeking to help out. To her knowledge, he did not use marijuana on the day of the incident, at least while she was in his presence prior to the time when he was arrested. She had gone out to dinner with him and had observed nothing more than the fact that he consumed some wine with dinner. She was quite surprised that he had marijuana at the time of his arrest. He has been very upset about the incident ever since it occurred.

Marie Krassen, Mr. Bisciotti's mother, testified that she has had no previous problems with her son who she described as well liked and "happy-go-lucky." He told her about the incident about a day or two later and has been quite remorseful, upset and at times depressed ever since. He acknowledged to her that he had done something stupid and had laid the blame on himself. He has always been a good worker and has always wanted to get ahead.

The respondent testified in his own behalf. He is 20 years old and lives with his mother in Ventnor. He was employed at Trump's Castle as a busboy when on April 8, 1986 he was arrested at Trump's Plaza Hotel. He had been drinking and had gone to the Plaza with a fellow Castle employee. He was gambling when he was approached and

asked to leave. He turned around to get his money off the table and has no real recollection of what occurred after that until he found himself in an office being interviewed by security personnel. He indicated that it was not his regular practice to drink. He was questioned by the trooper and admitted having had marijuana on his person. He had used marijuana "now and again," although it was "not a practice." He knew that it was illegal for him to have the marijuana and it was illegal for him to be drinking or gambling. He has no real explanation of why he did these things. He has not used marijuana since the incident. He acknowledged that at the time of his being confronted by the security officers on the casino floor he presented his brother's identification.

DISCUSSION

This case presents the classic situation of a young man who, because of a flirtation with marijuana, runs the serious risk of being deprived of his ability to remain employed in the casino industry. Mr. Bisciotti, who started his employment as a registrant serving as a busboy, has taken steps necessary to permit himself to move up in the casino world and now seeks licensure as a casino employee with the intention of working in the gaming field. Obviously, losing his registration and/or having his application for licensure denied may have great consequences on his future.

The evidence establishes and I **FIND**, that on April 8, 1986 Mr. Bisciotti was 20 years old and at the time of his arrest was gambling on the Trump's Plaza Casino Hotel gaming floor while in possession of 12 grams of marijuana and under the influence of alcohol. In connection with the gambling and use of alcohol, he was underage at the time and therefore engaged in illegal conduct. With respect to the possession of marijuana, of course, his possession thereof was also illegal. As a result, he violated N.J.S.A. 24:21-20a4, and his guilty plea to that offense establishes the conviction.

The most difficult portion of this case is not the facts nor the findings, but the conclusion. The serious question to be addressed is whether Bisciotti's conduct is such as to require that he lose his registration and be denied a license. The Commission suspended his registration on May 21, 1986 approximately ten and one-half months ago. He has therefore not been employed in the industry for that period.

The entire question of the use of illegal substances by casino employees raises difficult concerns for the public and the Commission, as well as the industry. Obviously it is not the desire of the Commission to encourage in the least the use of illegal drugs by casino employees. Here, Mr. Bisciotti, while off duty and at another hotel, carried marijuana with him onto the casino floor. The incident occurred only a year ago. Mr. Bisciotti did not seek to explain the reasons for his wrongdoing and perhaps there is no real explanation for this, except that the use of marijuana by individuals of his tender age is certainly not uncommon. From his own testimony, it appears that he had experimented with the substance on some occasions, although it is not clear how regularly. By his testimony he has not used it since the incident.

In assessing whether Bisciotti has the requisite good character, honesty and integrity for licensure as a casino employee, one is immediately struck by the difficulty of making such a finding by the requisite clear and convincing evidence in the face of the fact that Bisciotti committed a quasi-criminal violation concerning drugs within the past year. While his conduct may well have arisen from his immaturity, it was nevertheless illegal and therefore makes a finding by clear and convincing evidence of good character, honesty and integrity so soon after the incident nearly impossible. At the same time, with respect to whether his continued registration would be inimical, on the face of the situation, permitting the registration of a recently convicted drug offender, albeit one involved with a minimal amount of marijuana, would not seem in conformity with the policies of the Act and the interests of the industry, especially if the intention of depriving such an individual of registration is to carry the message to those in the industry that the use of illegal drugs will simply not be tolerated. On these bases, it would appear that Bisciotti's action calls for the extreme penalty of revocation of registration and denial of licensure.

There is, of course, another aspect to this situation. Mr. Bisciotti, like all of us, is entitled to make a mistake. The question in cases of this nature is how serious was the mistake and whether it was of sufficient severity to require that his employment be affected. Here we deal with a very young man who, this judge can attest from observation, appeared throughout the hearing to be completely distraught by his situation. I fear that the cold record of the hearing and, unfortunately, even the descriptions of this decision, cannot sufficiently convey to the reader the judge's deep impression that Mr. Bisciotti was genuinely chastened by this entire affair. I have, in my years of

experience, rarely felt the sense of true remorse which I believe Mr. Bisciotti showed. The question therefore is whether it makes sense, where, as here, I have no doubt that Mr. Bisciotti has learned his lesson and will not again engage in this type of illegal conduct, to strip him of his ability to continue in an industry which promises him the potential for advancement in his life, something which his mother indicated has always been extremely important to him.

On the whole, I believe this case calls for a difficult weighing of strongly competing values. The life of one young, scared and deeply affected individual, with respect to his immediate economic future and perhaps his own self-image, must be weighed against the very serious concerns of the Commission in attempting to root out the drug problem in the industry. Having carefully considered the circumstances, I believe that it is at this time impossible to **FIND** that Mr. Bisciotti has the requisite good character, honesty and integrity required for licensure. The standard of proof which the Act requires for such a favorable determination is clear and convincing evidence, a high standard indeed. It is just too soon after the incident to allow for a finding that the evidence of good character, honesty and integrity meets that high standard. I strongly suspect that Mr. Bisciotti is in fact a generally honest and trustworthy individual, whose character is in fact quite good. However, at this early date, my feelings cannot be vindicated by any passage of time sufficient enough to confirm the belief as against the recent illegal act. Therefore, I must unfortunately **FIND** that the casino license application must be denied.

With respect to the question of whether Mr. Bisciotti's presence in the industry will be inimical should he remain as a registrant, again the competing values noted above must be considered. A casino registrant is not required to establish good character, honesty and integrity. The Legislature apparently felt that individuals could be registrants who might not be able to prove by the clear and convincing standard, or even by a preponderance of the evidence, that they had such good character. Having carefully weighed the competing values, I believe that it would not be inappropriate to permit Mr. Bisciotti to remain a registrant. The level of employment which he has held in the industry does not carry the responsibilities of that which he seeks with a license. As noted, I strongly believe he will not again engage in illicit activities. Therefore, although I cannot yet **FIND** the good character required at the level of proof mandated, I **CONCLUDE** that permitting this respondent to remain in the industry as a registrant will

not be inimical. While there is some danger in permitting any casino-related person to remain in the industry after conviction of even the most minor offense since such may send a false signal to others in the industry, there must be some consideration given to the minimal nature of this drug offense, the fact that it did not occur during employment, and that the individual involved was quite young. Most of all, the strong impression of complete remorse cannot be overlooked. Therefore, under all the circumstances and for the reasons set forth, I **CONCLUDE** that Mr. Bisciotti's casino hotel employee registration should not be revoked. The complaint is therefore **DISMISSED**.

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

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

DATE

April 9, 1987

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

April 13, 1987

Bernadette P. Frigen
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

APR 14 1987

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Atlantic City Municipal Court Complaint

on behalf of respondent:

R-1 Letter of February 1, 1987 from John Rosky

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-144
OAL DOCKET NO. CCC 4934-86
LICENSE NO. 55344-22

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

Complainant,

v.

PAULA J. BRETHAUER,

Respondent.

:
:
:
:
: FINAL ORDER

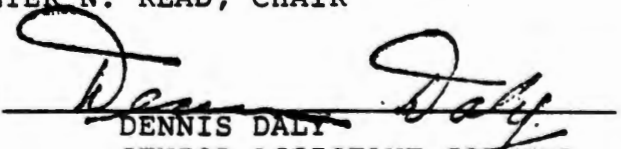
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 4, 1987,

IT IS on this *18th* day of February 1987, 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 and made a part hereof.

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 4934-86

AGENCY DKT. NO. 86-144

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

Petitioner,

v.

PAULA J. BRETHAUER,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Paula J. Brethauer, respondent, pro se

Record Closed: November 3, 1986

Decided: December 17, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Paula J. Brethauer, respondent and the holder of casino employee license number 55344-22, did not possess the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference, by reason of her criminal record history, for which the Division seeks revocation of her casino employee license, pursuant to sections 129 and 130 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 5, 1986. By letter, the Commission advised the respondent of the pending action and of her right to a hearing. By letter filed on May 16, 1986, the respondent requested a hearing. On July 23, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on September 23, 1986, before Administrative Law Judge Lillard E. Law. The matter was heard by the undersigned on November 3, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Brethauer is 26 years of age and is single. She is a 1978 graduate of Washington Township High School (Camden County).

Subsequent to her graduation from high school, the respondent was employed by Two Guys Department Store as a clerk, by an eye glass factory, by Arby's, and worked as an operator for an alarm company. She was also unemployed on occasion. She continued to live at home with her mother.

On February 20, 1979, the respondent was involved in an incident at a Bamberger's Department Store. More specifically, the respondent was arrested by the Deptford Township Police Department and was charged with a violation of N.J.S.A. 2A:170-97, shoplifting, a disorderly persons offense (P-5 and P-6). Store security observed the respondent conceal a vest with a value of \$36. On March 28, 1979, the respondent pled guilty and was fined \$100 and \$25 costs, which was paid (P-7). The respondent was 18 years of age at the time of the incident. The respondent admitted her misconduct; however, she offered an explanation of the underlying circumstances, which will be discussed, infra.

Thereafter, the respondent was employed sporadically at various jobs.

From April to July 1985, the respondent was employed by the J. C. Penney Department Store in the Echelon Mall, Voorhees Township, Camden County, as a cosmetics salesperson. In early July, the security manager conducted an investigation concerning missing property and monies. On July 3, 1985, the respondent was observed attempting to leave the store following her work shift with \$230.50 worth of merchandise for which she had not paid (P-1 and P-2). When questioned, the respondent admitted verbally and in writing to the attempted theft, and to having made fictitious refunds from which she received \$172.76. On July 10, 1985, a complaint was filed in the Voorhees Township Municipal Court which charged the respondent with a violation of N.J.S.A. 2C:20-9, theft by failure to make required disposition of property received (P-4). On July 11, 1985, the respondent was arrested (P-3). On August 12, 1985, the respondent pled guilty and was fined \$200 and \$25 costs, which has been paid. Also, the respondent has made full restitution. She was 24 years of age at the time of the incident. Again, the respondent admitted her misconduct; however, she offered an explanation of the circumstances underlying the incident.

Prior to the incident at J. C. Penney, the respondent had applied for and received casino employee license number 55344-22. She had disclosed the 1979 incident on her application form. Also, prior to the 1985 incident, the respondent had secured employment with Harrah's Atlantic City, Inc., to work at Harrah's Marina Casino, and had given notice of resignation to J. C. Penney. In fact, the incident occurred on the day preceding the respondent's last day of employment at J. C. Penney's.

The respondent commenced employment as a reservations agent at Harrah's Marina on July 8, 1985. After approximately one month, she was transferred to Harrah's at Trump Plaza, where she continues to be employed to this date. In July 1986, the respondent was promoted to the food and beverage department, where she is a secretary to the executive chef. She performs general secretarial work, has no patron contact and does not handle money or merchandise. The respondent is very happy with her position and has earned very good evaluations, which have qualified her for maximum increases in salary.

On November 1, 1986, the respondent left home. Her mother has since relocated to Chicago. The respondent currently lives alone in Ventnor, although she previously shared the apartment.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying both the 1979 and 1985 incidents, as well as the respondent's current good character, honesty and integrity.

Concerning the 1979 incident at Bamberger's, the respondent stated that she had no excuse for her misconduct and knew that it was wrong at the time. The respondent was with several girlfriends, each of whom participated in the incident. The respondent went along with the misconduct. The respondent stated that it was stupid and that she wanted to put it behind her.

Concerning the 1985 incident, the respondent again acknowledged her culpability and knew that her actions were wrong at the time. The respondent again offered no excuse and characterized her actions as stupid. Further, the respondent explained that she initially became involved in the misconduct by helping a coworker steal merchandise and make false refunds. The respondent believes that the wrongful influence of others contributed partially to her involvement in this misconduct.

The respondent also, and most significantly, described the circumstances of her relationship with her mother. At the time she resided with her mother, the respondent did not take anything seriously and cared little about anything, including herself. The respondent's mother expected the worst from the respondent. In essence, the respondent's expressions indicate that she had a very low self-esteem.

However, circumstances have changed. The respondent is ashamed of her prior misconduct. Further, she is now self-sufficient, which gives her a great deal of satisfaction. She has acquired a good job which she enjoys tremendously. The respondent stated that she is not a bad person and now cares and feels good about herself. She has

found what she likes to do and is good at it. Again, the essence of the respondent's testimony was that she now has high self-esteem. Also, the respondent regularly attends religious services. Last, the respondent expressed extreme remorse for her misconduct and stated that it will never be repeated.

The respondent offered letters of recommendation on her behalf. Marissa Rapp, reservations manager for Trump Plaza, supervised the respondent for approximately one year (R-1). Ms. Rapp was informed by the respondent of her prior misconduct. Nevertheless, Ms. Rapp gave the respondent an extraordinarily positive recommendation.

The respondent also offered a letter from Stephen E. Kuypers, Director, Food and Beverage, for Trump Plaza, who has been her supervisor since July 1986 (R-2). Mr. Kuypers acknowledged that he was advised of the respondent's misconduct at J. C. Penney; however, he has observed the respondent to be "dependable and conscientious," and offered an extraordinarily positive recommendation.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the two incidents 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 respondent and the holder of a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence, that the respondent testified truthfully in every regard. She candidly admitted her misconduct and described in detail the underlying circumstances. Accordingly, I am persuaded to accept her testimony in all respects.

The evidence reveals that the respondent's prior misconduct was, in part, the result of immaturity. Despite the respondent's age, particularly in 1985, she had not yet exhibited the ability or willingness to accept responsibility for herself as an adult. However, her pattern of behavior has undergone a complete reversal since her employment in the casino industry, which is her first permanent position, and since she became self-sufficient. Although both incidents were similar in nature, they bear no relationship to each other by reason of the lapse of time between the incidents and

because of the explanations offered by the respondent. Further, both incidents were not serious, although the incident with J. C. Penney raises concerns by reason of the respondent's employment. Nevertheless, the respondent accepted responsibility for her misconduct on both occasions, pled guilty, paid her fines and made restitution to J. C. Penney. She has also expressed deep and sincere remorse for her misconduct and expressed sincerely her desire not to repeat her misconduct. Last, the respondent has earned a very positive employment record within the industry as well as the respect of her supervisors, who know of her prior misconduct.

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

1. The respondent's testimony was plausible, believable and persuasive in all respects.
2. The respondent's prior misconduct was not particularly serious in nature.
3. The respondent's misconduct was, in part, the result of immaturity, and bore a direct relationship to the low self-esteem in which she held herself.
4. The respondent has expressed deep and sincere remorse for her misconduct.
5. There is little likelihood, if any, that the respondent will repeat her misconduct.
6. The respondent has earned a very positive employment record and the respect of her supervisors within the casino industry since July 1985.
7. As a result of the effect of her most recent incident of misconduct, attaining permanent employment within the casino industry and becoming self-sufficient, the respondent has undergone a tremendous maturation and has reversed her pattern of behavior.

DISCUSSION OF LAW AND CONCLUSIONS

Under section 90b, which incorporates section 89b(2) by reference, Ms. Brethauer 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 for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

It is apparent that, concurrent with her employment in the casino industry, the respondent has matured and become a positive and contributing person. She has affirmatively demonstrated that her prior misconduct will not be repeated. Although more time might have enhanced the permanency of the respondent's alteration of her behavior, her performance and development during the past one and one-half years are sufficient to outweigh any doubts. 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 continued licensure. An examination of the whole person clearly and convincingly establishes that Ms. Brethauer is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. Boardwalk Regency Corporation.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her good character, honesty and integrity, under section 90b.

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

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

December 17, 1986
DATE

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

December 18, 1986
DATE

Receipt Acknowledged:

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

DEC 22 1986
DATE

Mailed to Parties:

Ronald L. Parks *5
OFFICE OF ADMINISTRATIVE LAW

ks/e

LIST OF EXHIBITS ADMITTED IN TO EVIDENCE

- P-1 Voorhees Township Police Department - Investigation Report, July 10, 1985
- P-2 Voorhees Township Police Department - Witness Statement, made by Michael J. DiDomenico, July 10, 1985
- P-3 Voorhees Township Police Department - Arrest Report, Paula Jean Brethauer, July 11, 1985
- P-4 State of New Jersey v. Paul Brethauer, Voorhees Township Municipal Court, docket number C-4763, Complaint, July 10, 1985; and Order of Disposition, August 12, 1985
- P-5 Township of Deptford, Police Department - Investigation Report, February 20, 1979
- P-6 Township of Deptford, Police Department - Arrest Report, February 20, 1979
- P-7 Municipal Court of the Township of Deptford - Certificate of Judgment, October 17, 1986
- R-1 Letter from Marissa Rapp, October 20, 1986
- R-2 Letter from Stephen E. Kuypers, October 30, 1986

WITNESS LIST

For the petitioner:

Paula J. Brethauer

For the respondent:

Paula J. Brethauer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-91
OAL DOCKET NO. CCC 5306-86
APPLICATION NO. 62303-22
REGISTRATION NO. 63888-40

APPLICATION OF MELVIN BROWN
FOR A CASINO EMPLOYEE LICENSE

ORDER

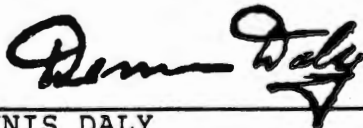
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 1, 1987,

IT IS on this 9th day of April 1987, 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 made a part hereof.

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 5306-86

AGENCY DKT. NO. 86-EA-91

MELVIN BROWN,

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,**
Respondent.

Anthony M. Bongiovanni, Esq., for the petitioner (Valore, McAllister, Westmoreland, Gould, Vesper & Schwartz, attorneys)

Ralph Fusco, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: January 6, 1987

Decided: February 13, 1987

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the application filed by the petitioner, Melvin Brown, with the Casino Control Commission on July 1, 1985, seeking a license as a casino employee (maintenance and cleaning), pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. By letter, dated May 6, 1986, the Division of Gaming Enforcement, Department of Law and Public Safety (Division) recommended that the petitioner's application for licensure be denied. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on August 12, 1986, for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Administrative Law Judge Stephen W. Thompson on October 6, 1986, and 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(1), as incorporated within N.J.S.A. 5:12-86g.
- 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. With regard to the alleged statutory disqualifier, whether the petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing was held before the undersigned on January 6, 1987, at the Egg Harbor 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.

The Division recommended the denial of the petitioner's application for casino employee license based on the fact that on January 18, 1985, the Division of Unemployment and Disability Insurance, State Department of Labor obtained a judgment in the Superior Court against the petitioner for \$1,694.01. The amount of the judgment represents unemployment benefits of \$1,450, improperly received by the petitioner between September 28, 1980 and December 20, 1982, and a fine of \$200. In addition, on November 26, 1985, there was a second judgment entered in the Superior Court against the petitioner for \$796.25. The amount of this judgment represents unemployment benefits of \$637 improperly received by the petitioner for a five-week period starting in April 1984, and a fine of \$159.25 (R-4).

As to the first judgment, the petitioner made two payments amounting to \$140 as of October 1984, and he made no further payments until he satisfied both judgments on August 8, 1986 (P-1, P-2), which was after he was notified that the Division was recommending the denial of his licensure application.

Based on the two judgments, the Division takes the position that even though unprosecuted, the petitioner's conduct constitutes a criminal offense pursuant to N.J.S.A. 2C:20-4, theft by deception, and that he is disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In addition, the Division takes the position that based on the two judgments, and the fact that Mr. Brown did not disclose the judgments in his application for a casino employee license (R-1), and did not disclose the judgments when initially questioned by the Division's investigator, that the petitioner cannot meet the requisite for good character, honesty and integrity that is required for licensure pursuant to N.J.S.A. 5:12-89b(2).

At the hearing, Mr. Brown stated that he is 48 years old, has been married for 21 years, and supports his wife and children. Mr. Brown has had a number of manual labor jobs since his graduation from high school.

Mr. Brown testified that for 12 1/2 years he worked for a pest control company and had to leave that job when he became allergic to the chemicals used by the company. In 1978, Mr. Brown joined a labor union, and for a number of years he obtained jobs through the union. These jobs were with various companies and for variable periods of time, and Mr. Brown never knew when he would get his next job. Since there were times when he was not working regularly, Mr. Brown applied for unemployment benefits, and he would sometimes receive a job through the union after he had applied for unemployment benefits. Mr. Brown admitted that at times he was working and receiving unemployment benefits. During the period covered by the first judgment, Mr. Brown admitted that he worked at times for Riggs Distler & Company and Jeddo Corporation (R-2, R-3), and he stated that he showed at least some of his pay stubs to a staff person at the Division of Employment and Disability Insurance when he went for his checks. Mr. Brown stated that he never intended to defraud the State.

When Mr. Brown received the notices from the Division of Unemployment and Disability Insurance regarding the overpayments of unemployment benefits, he thought he had to pay back the money, and he did not realize that he had a right to a hearing and he never requested or participated in a hearing.

Mr. Brown admitted that he did not satisfy the judgments initially and stated that he made the payments when he could afford to do so (P-1, P-2, P-3).

When he completed his application for a casino employee license, Mr. Brown did not list the judgments because he did not think that Question No. 18— "Have you been sued or named as a defendant or respondent (include matrimonial matters, negligence matters, auto accident matters, contract matters, collection matters, debt matters, etc.) in a lawsuit?" (p. 17 of R-1)—required him to give this information; therefore, he marked a "No" response. Mr. Brown thought that this question related to trials before a judge, and since he did not have a hearing as to the two unemployment benefits matters, he did not think he had to list the two judgments.

Mr. Brown is currently registered as a casino hotel employee and for approximately 16 months, he has been employed in the general maintenance/mechanic facilities department of Trump's Castle Hotel & Casino (Castle). According to Mr. Brown, he has had a good employment record with the Castle and was chosen as the employee of the month for August 1986 (P-15, P-16). Mr. Brown wants to get a casino employee license so that he can do maintenance work on the floor of the casino.

In addition to his job at the casino, Mr. Brown has done maintenance and repair work at his church, St. Augustine Episcopal Church in Atlantic City, as well as volunteer work for a number of community groups. In addition, Mr. Brown was responsible for the maintenance of the campaign headquarters for Mayor Usry during the last mayoral race in Atlantic City.

Reverend Earl S. Pierce, the rector of St. Augustine Episcopal Church, confirmed that Mr. Brown has worked for the church, frequently without receiving adequate compensation. Reverend Pierce stated that when he found out about this matter, he contacted a number of people who know Mr. Brown and suggested that they write letters regarding Mr. Brown's character, honesty and integrity. Twelve persons wrote letters on behalf of Mr. Brown; and they all stated that he is a person of good character, honesty and integrity (P-4 through 14). Several of these persons also confirmed that Mr. Brown has done volunteer work in the community (P-5, P-6, P-7, P-9), and that he worked during the last mayoral race in Atlantic City (P-8, P-10, P-11).

According to Mr. Brown, he told only a few people about the judgments since he was embarrassed and did not want anybody to know about the matters. Therefore, some of the persons who wrote letters on behalf of the petitioner may not have been

aware of the judgments or the circumstances that led to the filing of the judgments. However, Mr. Brown said that Reverend Pierce and Mayor Usry were aware of the incidents. Since Reverend Pierce contacted the other persons who wrote the letters, it is unclear as to how many of them, if any, knew about the judgments or the underlying facts.

In closing, Deputy Attorney General Ralph Fusco argued that Mr. Brown's statement that he received unemployment benefit checks, even though he indicated that he was working, is unbelievable. Mr. Fusco argued that Mr. Brown intentionally received unemployment benefits while he was employed and that this action is a criminal offense pursuant to N.J.S.A. 2C:20-4, and is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. Further, Mr. Fusco argued that Mr. Brown only paid the judgments when he discovered that his application for a casino employee license might be denied because of the outstanding judgments.

On behalf of the petitioner, Anthony M. Bongiovanni, Esq., argued that Mr. Brown is a person of good character, honesty and integrity, as demonstrated by his testimony regarding his civic and church activities and by the letters sent on his behalf. Mr. Bongiovanni stated that the unemployment benefits judgments represent two minor isolated incidents which occurred during times when Mr. Brown was not working regularly and needed the money, and that Mr. Brown has paid the judgments in full and has learned by his mistakes. Also, Mr. Bongiovanni argued that if criminal charges had been filed against Mr. Brown, after plea bargaining, it is probable that Mr. Brown would have pled guilty to a lesser offense which would not be an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c (1). Lastly, Mr. Bongiovanni argued that Mr. Brown did not intentionally make any misrepresentations in his application for a casino employee license or by his initial response to the questions of the Division's investigator, and that because of his limited education, Mr. Brown did not fully understand Question No. 18.

CONCLUSIONS OF LAW

Based on the facts presented, I **CONCLUDE** that Mr. Brown knowingly accepted unemployment benefits to which he was not entitled since he was gainfully employed and that such action constitutes a criminal offense pursuant to N.J.S.A. 2C:20-4. In view of the amount of monies involved, this criminal activity constitutes a

crime of the third degree, which is an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g.

Since the Division has established a statutory disqualification, it is now necessary to consider whether the respondent has shown his rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-90h sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining a casino employee license:

- (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.

Having considered the nature of Mr. Brown's criminal activities, which were isolated incidents occurring several years ago during periods of time in which Mr. Brown was not steadily employed, as well as the evidence of his rehabilitation, including his work as a volunteer for the church and civic groups, I **CONCLUDE** that the respondent has shown his rehabilitation pursuant to N.J.S.A. 5:12-90h.

Although the Division has not alleged that the respondent failed to provide relevant facts in his application, which is an automatic disqualifier pursuant to N.J.S.A. 5:12-86b, it has argued that Mr. Brown's failure to reveal the two judgments reflects negatively on his reputation for good character, honesty and integrity. Having heard Mr. Brown's testimony, I believed his statements that he was not aware that the two

judgments were the type of matters that had to be revealed in response to Question No. 18 and, therefore, I **CONCLUDE** that he did not intentionally withhold this information from the Division, and his action does not reflect negatively on his good character, honesty and integrity. Based on the facts in this matter, and specifically, on the respondent's employment record and his various church and civic activities, as well as the numerous letters submitted in his behalf, I **CONCLUDE** that Mr. Brown has shown his good character, honesty and integrity as required for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-89b(2).

DISPOSITION

Therefore, I **ORDER** that the application for a casino employee license submitted by Melvin Brown be **APPROVED**.

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

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

February 17, 1987
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

February 17, 1987
DATE

Receipt Acknowledged:

William J. Pappas
CASINO CONTROL COMMISSION

FEB 19 1987
DATE

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Warrant for satisfaction of judgment, DKT. NO. 304285, dated August 8, 1986
- P-2 Warrant for satisfaction of judgment, DKT. NO. 5891285, dated August 8, 1986
- P-3 A copy of three checks made out to State of New Jersey Department of Labor, dated July 29, 1986, May 8, 1986 and June 17, 1986
- P-4 Letter from Mayor James L. Usry, dated December 10, 1986
- P-5 Letter from James W. Masland III, Director of the Office of Emergency Management, Atlantic City, dated December 10, 1986
- P-6 Letter from Rosalind Norrell-Nance, Aide to Mayor Usry, dated December 10, 1986
- P-7 Letter from Reverend Earl S. Pierce, dated December 8, 1986
- P-8 Letter from John W. Indyk, Executive Director of the New Jersey Republican State Committee, dated December 9, 1986
- P-9 Letter from Ralph P. Greene, President of Ralph Greene Associates, Inc., dated December 10, 1986
- P-10 Letter from Doris L. Bentley, dated December 15, 1986
- P-11 Letter from Joseph F. Greenidge, Jr., President of Jim's Men, dated December 17, 1986
- P-12 Letter from Mary G. Moffitt, dated December 10, 1986
- P-13 Letter from Pierre Hollingsworth, President of the Executive Board of the National Association for the Advancement of Colored People, Atlantic City Branch, dated December 11, 1986
- P-14 Letter from Noel Eisenstat, Aide to Mayor Usry, dated December 11, 1986
- P-15 Letter from Ivana Trump, Senior Executive Vice President of Trump Castle Hotel & Casino to Melvin Brown, dated August 19, 1986
- P-16 Certification acknowledging that Melvin Brown was made Employee of the Month for August 1986, at the Trump Castle Hotel & Casino

FOR THE RESPONDENT:

- R-1 Personal History Disclosure Form-2A, filed by Melvin Brown with the Casino Control Commission on July 1, 1985

- R-2 Wage information inquiry sent to Riggs Distler & Company, Inc., regarding Melvin Brown, dated April 1, 1984
- R-3 Wage information inquiry sent to Jeddo Corporation regarding Melvin Brown, dated April 1, 1984
- R-4 Notice of hearing sent to Melvin Brown by the Bureau of Benefit Payment Control, Division of Unemployment and Disability Insurance, Department of Labor, dated August 13, 1985

WITNESSES:

FOR THE PETITIONER:

Melvin Brown
Reverend Earl S. Pierce

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-25
OAL DOCKET NO. CCC 2171-86
APPLICATION NO. 61389-21

APPLICATION OF ROGERS J. :

BROWN FOR A CASINO : FINAL ORDER

EMPLOYEE LICENSE :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 5, 1986,

IT IS on this ^{2nd} day of January 1987, ORDERED that the initial decision is modified as follows:

The conclusion that the applicant had not violated N.J.S.A. 24:21-19(a)(1) (possession with intent to distribute) by providing marijuana, a controlled dangerous substance, to his girlfriend and other social guests at his home, is rejected. Under a recent decision of the Superior Court, Appellate Division, State v. Heitzman, 209 N.J. Super. 617 (App. Div. 1986), possession of marijuana with the intent to provide it to social guests, however contingent that distribution may be, is sufficient to demonstrate distribution within the meaning of the statute. 209 N.J. Super. at 620-21. Therefore, the applicant's testimony, coupled

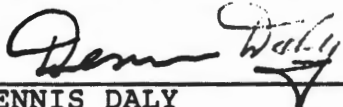
with the indictment and police reports in evidence (R-5, R-6 and R-8) are sufficient to demonstrate that the applicant engaged in conduct on December 9, 1982 constituting the offense of possession of CDS with intent to distribute contrary to N.J.S.A. 24:21-19(a)(1), warranting disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g).

IT IS FURTHER ORDERED that the casino employee license application of Rogers J. Brown is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated and made a part hereof; and

IT IS FURTHER ORDERED that Rogers J. Brown is prohibited from applying for any license, registration, qualification or approval except pursuant to the provisions of 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. NO. CCC 2171-86

AGENCY DKT. NO. 86-EA-25

ROGERS J. BROWN,

Petitioner,

v.

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

Respondent.

Rogers J. Brown, petitioner, pro se

**Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: July 22, 1986

Decided: October 1, 1986

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement objected to the petitioner's licensure as a blackjack dealer by letter to the Casino Control Commission dated February 6, 1986. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on July 22, 1986.

ISSUES

Three issues were identified in the prehearing conference. Did the petitioner commit a disqualifying offense pursuant to sections 86c and g of the Casino Control Act, if so is he rehabilitated pursuant to section 90h, and does he possess the good character, honesty and integrity required by section 89b(2) and 90b of the Act?

STIPULATED FACTS

The parties agree that the petitioner's arrest record is as follows:

	<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
1.	1-19-69	Disturbing the Peace	\$50 and \$10
2.	7-31-69	Simple Assault	\$15 and \$10
3.	2-13-73	Robbery (purse snatch)	No billed
4.	3-24-79	B. & E. & L. (remanded)	N.G.
5.	12-9-82	Poss. M.J., poss w/intent poss. handgun no license	P.T.I.
6.	4-8-83	Poss. knife	Dismissed
7.	11-17-84	Criminal mischief	\$100 and \$25
8.	4-15-85	Failure to pay #7	\$25

I attach no weight to 1 and 2 above because these were disorderly persons offenses committed when the petitioner was 18 or 19 years old; he is now 36. I attach no weight to 3 above since the charge was no-billed. I attach no weight to 4 and 6 above since the petitioner was found not guilty of one and the charges were dismissed on the other. The remaining charges will be discussed hereafter.

CONTESTED FACTS

The offense of December 9, 1982, although unprosecuted, if proven constitutes a statutory disqualifier. The petitioner was charged with possession of marijuana with intent. He denied selling marijuana to anyone when questioned by the police. There was

some indicia of intent to sell marijuana found at the scene but I am not satisfied from a police report alone that petitioner had an intent to sell marijuana. He admitted at this hearing, however, that he shared marijuana with his girlfriend and may have shared it with selected friends if the opportunity presented itself. This admission does not satisfy the statute against the distribution of controlled dangerous substance. The petitioner did not say he did anything to bring about the opportunity to share with his friends. His casual sharing with his girlfriend is not the same as placing a substance in the "stream of illegal commerce" as required by State v. Ruiz, 127 N.J. Super. 350 (1974), aff'd 68 N.J. 54.

I **FIND** that the petitioner did not commit an offense enumerated in Section 86g of the Casino Control Act.

GOOD CHARACTER, HONESTY AND INTEGRITY

The petitioner admitted that he had a subsequent conviction for criminal mischief on November 17, 1984, and an arrest on April 15, 1985 for failing to pay the fine imposed on the criminal mischief charge. This rather minor involvement with the police, taken into account with the petitioner's spotty work record, failure to support his child (for which the petitioner admitted he had recently been incarcerated), his inability to obtain letters of recommendation, his cavalier attitude towards the purchase and concealment of a gun which he thought may have been "in trouble", i.e., the instrumentality of a crime, and his inability or unwillingness to describe how he lived since he had no visible means of support, all lead me to **CONCLUDE** that the petitioner lacks the good character, honesty and integrity for licensure.

The petitioner told me that he is not a "bad man" and I agree with him. The statute, however, requires that he prove by clear and convincing evidence much more than that.

ORDER

It is hereby **ORDERED** tht the application of petitioner for a casino employee license is **DENIED**.

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

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

October 1 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

October 2, 1986
DATE

Nelson Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 6 1986
DATE

Ronald J. Park / s.
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

Rogers J. Brown

EXHIBIT LIST

- R-1 Copy of an arrest card with respect to the January 19 incident
- R-2 Copy of an arrest card referring to a July 31, 1969 incident
- R-3 Document referring to an arrest of February 13, 1973
- R-4 Arrest report from City of Bridgeton
- R-5 Copy of an indictment
- R-6 Copy of the disposition
- R-7 Police report pertaining to an incident occurring April 8, 1983
- R-8 Arrest report pertaining to a December 9, 1982 arrest for possession of marijuana

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-87
OAL DOCKET NO. CCC 7173-86
APPLICATION NO. 64011-21
REGISTRATION NO. 24749-40

APPLICATION OF VIVIAN M. BROWN :
FOR A CASINO EMPLOYEE LICENSE :

ORDER

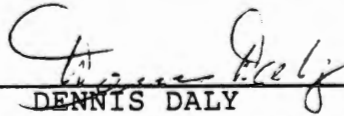
A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 29, 1987,

IT IS on this *7th* day of May 1987, ORDERED that the initial decision is modified as follows:

Because the applicant committed the unprosecuted offense of theft by deception (third degree) in violation of N.J.S.A. 2C:20-4 based upon her unlawful receipt of unemployment benefits, she is disqualified from licensure pursuant to N.J.S.A. 5:12-86(g) as well as N.J.S.A. 5:12-86(c)(1) as found by the ALJ.

IT IS FURTHER ORDERED that the application of Vivian M. Brown for a casino employee license is granted for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 7173-86

(ON REMAND CCC 4065-86)

AGENCY DKT. NO. 86-EA-87

VIVIAN M. BROWN,

Petitioner,

v.

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

Respondent.

Vivian M. Brown, petitioner, appeared pro se

**Joanne C. Ciancimino, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: March 12, 1987

Decided: March 27, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Vivian M. Brown, applied to the Casino Control Commission (Commission) for the issuance 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 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, 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 issuance of a casino employee license so she could be employed as a craps dealer. By letter to the Commission dated May 6, 1986, the Division objected to the application of the petitioner for licensure as a craps dealer asserting that the petitioner had "committed acts which are comparable to Theft by Deception in excess of \$500," which is a disqualifying offense under section 86c(1) and section 86g. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner that there was a "substantial probability" that her application would be denied and that she had the right to a hearing. By application dated June 11, 1986, which was received by the Commission on June 13, 1986, the petitioner requested a hearing. On June 19, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on June 20, 1986, 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 scheduled for a prehearing conference on August 22, 1986, before Administrative Law Judge Edgar R. Holmes. No one appeared on behalf of the petitioner, and by letter dated August 26, 1986, the petitioner was asked to submit reasons for her nonappearance at the scheduled prehearing conference. No response was received, and on September 26, 1986, Judge Holmes issued an Initial Decision concluding the petitioner had abandoned her request for a hearing and ordered the matter be dismissed. The Initial Decision was that day filed with the Commission.

The petitioner timely filed an exception to the Initial Decision, and the Commission considered the matter at its public meeting of October 15, 1986. On October 20, 1986, the Commission issued an Order remanding the case to the Office of Administrative Law for a hearing on all issues. The remanded case file was received by the Office of Administrative Law on October 23, 1986.

A prehearing conference was held on the matter on December 11, 1986, before Administrative Law Judge Stephen W. Thompson. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent 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.
- 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).
- C. Whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

A hearing was held on March 12, 1986, in the Municipal Courtroom, Borough Hall, Haddonfield, New Jersey, after which the record closed.

THE FACTS

On March 9, 1981, the petitioner began receiving unemployment compensation benefits from the New Jersey Department of Labor (R-1 and R-2). In August 1981, the petitioner was hired by the Playboy Hotel Casino¹ (Playboy) as a summer temporary (seasonal) employee as a housekeeper. She began work on August 17, 1981. The petitioner did not notify her local unemployment office of her employment until October, 1981. As such, the petitioner received unemployment benefits for seven weeks during which time she was employed full-time at Playboy (R-1 and R-2). In October 1981, the petitioner was asked by Playboy to remain as a full-time employee, which she did, and thereupon notified her unemployment office of her position.

On February 2, 1983, the Department of Labor notified the petitioner that they would be conducting a hearing on February 10, 1983, concerning the unemployment benefits she had received from August 16, 1981 through October 3, 1981, while the petitioner had been employed (R-3). The petitioner telephoned the Department of Labor on February 3, 1983, and indicated that she would not be able to attend the hearing as she just had had a baby (R-4). Since the petitioner did not attend the hearing, the Department of Labor made a determination in the case based on the record. On July 13, 1983, the Department determined that the petitioner had received unemployment benefits in the amount of \$697, which she was not entitled to receive, and it imposed a fine of \$140 for a total claim of \$837 (R-1). The Department then filed a Certificate of Debt for \$837 in

¹ Now the Atlantis Hotel Casino

the Superior Court of New Jersey on September 30, 1983, and a judgment was entered and docketed on October 7, 1983 (R-5 and R-6).

In 1981, the petitioner was only 20 years of age and was the sole parent of two small children, ages 1 1/2 and 3 years. Her mother was deceased, and she was living alone with her children. Early in the year there was a fire in her house, and she moved in with her aunt. Her aunt then requested the petitioner and her children to leave, and the petitioner moved into a hotel. The hotel room cost \$120 per week. In August she became employed at Playboy; however, it was only a temporary seasonal job which would last only through September. Since she was unsure whether or not she would be able to keep the job longer than seven weeks, she did not inform her unemployment office of her employment. She indicated that at that time she was concerned only with taking care of her children and that at that time she did not consider what she was doing as being wrong because the position was only temporary. At the end of September, the petitioner's supervisor recommended that the petitioner be given a permanent position in recognition of the petitioner's excellent work performed during the temporary period. The petitioner was offered a permanent position which she accepted, and thereafter, she immediately notified the unemployment office of her employment.

Since 1981, the petitioner has gone to school to learn computer programming and accounting. She graduated in 1985 with high honors. She then obtained some temporary work in the area, but she was not making enough money so she decided to seek employment in the casinos. She became employed as a housekeeper at the Golden Nugget, but she fell and got hurt so she decided to go to school to learn how to operate a craps table and be a craps dealer. She has now successfully completed a course in a certified gaming school. She is presently employed as a housekeeper at Trump Plaza and is responsible for cleaning the areas utilized by the Division of Gaming Enforcement and the Casino Control Commission.

The petitioner has been involved in several organizations in her community. She has been involved with the YMCA, the Boys Club, the Girls Club, the Rayettes Drill Team, and her church. She has helped others in the community by taking care of their children, transporting them to the youth clubs, and helping supervise them at the clubs. She also assists elderly members of her community. She has a reputation of being a

truthful and helpful person who can always be counted on at anytime of day. She is a dedicated person who can be depended upon to complete her assigned duties. While going to craps school, she became totally involved with the game and purchased equipment so she could practice at home in order to sharpen her skills.

The petitioner admitted that she did report to the unemployment office three times during the period in question for recertification and that all three times she indicated that she was unemployed so she could receive unemployment benefits. At the time and under the circumstances, she did not consider what she was doing as being wrong. Her mother was deceased and she was on her own with two small children. She now does consider her conduct to have been wrong. She is now 25, "a little older and a little wiser." She now is aware of other alternatives such as shelters, etc. which she was unaware of at the time, and she indicated that she would not do it again. She expressed remorse over her actions and is attempting to repay the debt. Last year she paid \$420 of the \$837 owed and currently has a balance owing of \$417 (R-7). She is trying to accumulate money in order to make lump sum payments. She stopped accumulating money late last year as she had to move to Camden and began commuting to Atlantic City. She is now working overtime in an attempt to repay the Department of Labor.²

The petitioner concluded that she is seeking a license to be a craps dealer in order to better provide for herself and her children (who are now ages nine, seven, and four years old) and to repay her debt. She is sorry she drew unemployment benefits to which she was not entitled, but indicates that she was younger then and did not understand the harm. She now understands what she did was wrong, accepts full responsibility for her actions, and promises that it will not happen again.

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.

² She indicated that between 1983 and 1986 (half of which time she was in school) she forgot about the debt, but in 1986 when her license investigation commenced it was again brought to her attention, and she immediately began accumulating money in order to repay the debt.

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 testimony of the other witness, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail and with great humiliation the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded as the petitioner claimed that her misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the overriding difficulty in dealing with a problem of enormous proportions. At the time the petitioner obtained the temporary job and failed to disclose this fact to her local unemployment office, she was in an extremely vulnerable situation. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner began receiving unemployment benefits on March 9, 1981.
2. On August 17, 1981, the petitioner began working as a seasonal temporary employee at the Playboy Hotel Casino.
3. On or about October 4, 1981, the petitioner was asked to become a permanent employee at Playboy; she immediately notified her unemployment office of this fact and terminated her unemployment insurance claim.
4. Between August 17, 1981 and October 3, 1981, while employed, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of \$697 to which she was not entitled.
5. The Department of Labor obtained a judgment against the petitioner in the amount of \$837, reflecting the \$697 overpayment and a \$140 fine.

6. To date, the petitioner has made restitution in the amount of \$420.
7. At the time of the false claim the petitioner was 20 years of age and had two children.
8. The petitioner is presently 25 years of age and has three children.
9. In 1981, the petitioner was burned out of her house, was living in a hotel with her children, was a single parent, and had no living immediate family from whom she could seek assistance.
10. The petitioner attended school to learn computer programming and accounting from 1983 to 1985, and she graduated with high honors.
11. The petitioner graduated from a certified gaming school in order to learn to become a craps dealer.
12. The petitioner is involved in several community and church organizations and has a reputation of being a truthful and honest person.
13. The petitioner is remorseful and has not been involved in any other criminal conduct.
14. The petitioner is presently employed at Trump Plaza.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application... a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

....

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; and

....

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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 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.

....

g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing

of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

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 or the offenses enumerated in this act as disqualification criteria; 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;
- (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between August 17 and October 3, 1981 inclusive while she was employed by 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 (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:111-2.³ 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 knowingly received unemployment benefits to which he was not entitled from the State 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 respondent is a disqualifying offense under section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

³ N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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.

First, Ms. Brown is a registered casino hotel employee and is employed as a housekeeper. As such, she does not have direct responsibilities for actual gaming activities but she does have potential contact with casino patrons. It is interesting to note that she is trusted enough by her employer to be responsible for the cleaning of the space used by the Division and the Commission at Trump Plaza.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception - third degree, over a seven-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. Here, a licensee employed in the industry knowingly committed a theft of public monies to which she was not entitled. In addition, it is apparent that the petitioner provided false information in the process of obtaining these monies. Although these factors tend to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an

extremely vulnerable position by reason of her period of unemployment prior to employment in the industry; she was the sole support for her family; she was the mother of two children, including an infant; her home had been burned; her mother was deceased and she had no other family to turn to as her aunt had turned her out; she was living in a hotel; and she had been hired for a temporary job which had the distinct possibility of lasting only six weeks. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate substantially the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from mid-August until the first week of October in 1981, when it ceased. As soon as the petitioner was informed that she was going to become permanently employed, she immediately notified the unemployment office and terminated her claim for unemployment benefits.

Fifth, the petitioner was approximately 20 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner even stated such. She believes she has learned with maturity and such conduct would not occur again. In addition, it is clear that the overwhelming nature of 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, due to the underlying circumstances, the petitioner was only concerned with taking care of her children. She needed to put food on the table and a roof over their heads. Her family's security was her only concern. Due to her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. The petitioner is making restitution and has repaid just over half of the amount owed. She is working overtime in order to accumulate enough money to repay the debt. She went to school to learn computer programing and accounting; however, she has found that the wages in the casino industry are better so she completed school to become a craps dealer. The petitioner is presently employed in the casino industry and performs in a most credible manner. In fact, it was her hard work and dedication exhibited in her temporary

job which enabled her to become employed full-time in 1981. She is actively involved in her community in various civic and church groups, involved with the children of her community, and assists elderly members of her community. Overall, she has a reputation of truthfulness and honesty in her community. Further, the petitioner has accepted and performed her parental responsibilities with distinction. 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. Brown was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980), at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

It is readily apparent that the petitioner's misconduct was aberrational and that she is otherwise a person of good character, honesty and integrity. The misconduct did not occur during the course of licensed employment, and the underlying circumstances

mitigated substantially 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 two years, as a single parent, has cared for her family in a commendable manner, 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. Brown 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 Vivian M. Brown for issuance of a casino employee license be **GRANTED**.

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

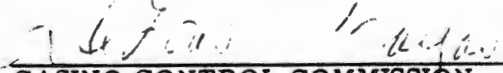
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

27 March 1987
DATE


STEVEN L. CARNES, ALJ

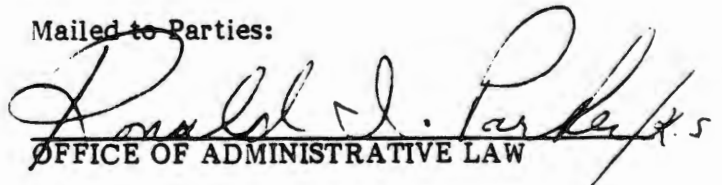
Receipt Acknowledged:

April 2, 1987
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

APR 3 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For Petitioner:

None

For Respondent:

- R-1 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 Disqualification Because of Willful Misrepresentation, re: Vivian M. Brown, mailed July 13, 1983
- R-2 Claimant's Benefit Payment and Employment Record, prepared August 5, 1982
- R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated February 2, 1983
- R-4 Record of Hearing, dated February 17, 1983
- R-5 Superior Court of New Jersey Judgment Docket Record, dated October 7, 1983
- R-6 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated September 30, 1983
- R-7 Letter dated February 11, 1987, from the Division of Unemployment and Disability Insurance to the Division of Gaming Enforcement indicating amount of restitution by petitioner

WITNESSES

For Petitioner:

Leonard Grate

Vivian M. Brown, petitioner

For Respondent:

Agent Harry Curley, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-52
APPLICATION NO. 57637-22
OAL DOCKET NO. CCC 7921-86

APPLICATION OF WILLIAM C. BUMPASS
FOR A CASINO EMPLOYEE LICENSE

ORDER

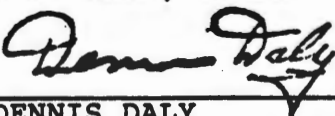
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 20, 1987.

IT IS on this // th day of June 1987, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of William C. Bumpass for a casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 7921-86
AGENCY DKT. NO. 87-EA-52

WILLIAM C. BUMPASS,

Petitioner,

v.

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

Edward P. Kozmor, Esq., for petitioner

Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: March 13, 1987

Decided: April 14, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns the application by the petitioner, William C. Bumpass, for a casino employee license (DGE 57637-22) in maintenance and cleaning. The Division of Gaming Enforcement (Division) takes no position with regard to a recommendation of licensure; however, it states that the petitioner is statutorily disqualified from licensure by reason of certain criminal convictions in 1978 and 1983.

The Division also questions whether petitioner possesses the requisite good character, honesty and integrity for licensure, pursuant to N.J.S.A. 5:12-89(b)2 as incorporated within Section 90b of the Casino Control Act (Act). Mr. Bumpass asserts rehabilitation pursuant to Section 90h of the Act.

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PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) on September 17, 1986. The petitioner requested a hearing on October 27, 1986. On November 12, 1986, the Commission transmitted the within matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 20, 1987, and the matter was scheduled for hearing. The matter was heard on March 13, 1987 at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

The facts in this matter are totally undisputed. Mr. Bumpass's egregious criminal behavior prior to May 1983 is extensively documented and acknowledged:

On February 10, 1962 the petitioner was arrested by the Atlantic City Police Department and was charged with assault and battery. The charge was dismissed. (J-2).

On May 16, 1968 the petitioner was arrested by the Atlantic City Police Department and was charged with possession of a controlled dangerous substance (marijuana), in violation of N.J.S.A. 24:21-20a(4). He was indicted for this offense on August 29, 1968. On April 18, 1969, he received a suspended sentence of an indeterminate term to the Youth Reception Center in Yardville, a \$250 fine and two years' probation. (J-2, J-3, J-10)

On January 5, 1969, the petitioner was arrested by the New Jersey State Police and was charged with conspiracy (comparable to N.J.S.A. 2C:5-2), uttering counterfeit currency (comparable to N.J.S.A. 2C:21-1) and possession of counterfeit currency (comparable to N.J.S.A. 2C:21-1). The petitioner and another individual purchased gasoline with a counterfeit \$10 bill in Atco, New Jersey. They were subsequently apprehended and 70 counterfeit \$10 bills were found in the trunk of the car. The petitioner was indicted for the above offenses on June 23, 1969. The petitioner entered a guilty plea to all the charges on April 28, 1970, and received a suspended sentence of two to

three years in state prison for each charge and was placed on probation for five years. On September 11, 1972, the previous sentences were set aside based upon the petitioner's violation of his probation and he was sentenced to two to three years on each charge (to be served concurrently). (J-2, J-3, J-11).

On September 28, 1969, the petitioner was arrested by the Atlantic City Police Department for breaking and entering (N.J.S.A. 2A:94-1, comparable to N.J.S.A. 2C:18-2). The petitioner was indicted on February 18, 1970. The charges were later dismissed (J-2).

On June 7, 1972, the petitioner was arrested by the Philadelphia Police Department and charged with involuntary manslaughter (comparable to N.J.S.A. 2C:11-5). The petitioner was sentenced to a prison term for a minimum of 18 months and a maximum of three years. Petitioner was paroled on June 18, 1974 (J-2).

The petitioner was arrested on April 5, 1973, by the U.S. Marshalls in Camden, New Jersey, for his failure to file an income tax return. The petitioner advised that he was held in custody for one day and was released (J-2).

On August 20, 1976, the petitioner was arrested by the Atlantic City Police Department and was charged with possession of a controlled dangerous substance (heroin), in violation of N.J.S.A. 24:21-20a(1), and possession of a controlled dangerous substance with intent to distribute (N.J.S.A. 24:21-19a). This arrest stemmed from the petitioner's sale of heroin to undercover police officers on June 9, 1976 and June 11, 1976. The petitioner was indicted on the above charges on August 19, 1976. He entered a not guilty plea to the charges. In May 1977, the case was placed on the inactive list and an order dismissing the indictment was filed in December 1980. (J-2, J-3, J-13, J-14).

On March 25, 1977, the petitioner was arrested by the New Jersey State Police in Newark for possession of a controlled dangerous substance (heroin)

(N.J.S.A. 24:21-20a(1)) and possession of a controlled dangerous substance (valium) (N.J.S.A. 2A:170-77.8). The petitioner was stopped by a New Jersey State Trooper on the Turnpike for his erratic driving. A search of the petitioner revealed eleven glassine bags of heroin. A vial containing five valium pills was also found in the vehicle. The petitioner was indicted for possession of a controlled dangerous substance (N.J.S.A. 24:21-20a(1)) and possession of a controlled dangerous substance with intent to distribute (N.J.S.A. 24:21-19a(1)). The petitioner was tried by a jury and was found guilty of both charges on October 3, 1978. He received a suspended sentence with a minimum of two years and a maximum of four years and was placed on probation for four years, with his probation conditioned upon his enrollment in a drug counselling program. He was also fined \$2,000. On February 27, 1981, the petitioner's probation was extended an additional year because of his violation of the probation. The Division asserts that the conviction for possession of a controlled dangerous substance with intent to distribute statutorily disqualifies petitioner from licensure (J-2, J-3, J-4, J-5).

On March 8, 1979, the petitioner was arrested by the Pleasantville Police Department and was charged with robbery (N.J.S.A. 2A:141-1, comparable to N.J.S.A. 2C:18-1, for robbing a cashier at a Thrift Drug store. The cashier identified the petitioner in a photo lineup. On February 5, 1979, the petitioner was indicted for the above charge as well as charges of armed robbery, conspiracy and assault with intent to rob. The petitioner entered a not guilty plea to the charges. On February 2, 1980, a hearing was held in order to determine the validity of the witness's original statements. At the conclusion of the hearing on the motion of the prosecutor, the indictment against the petitioner was dismissed (J-2, J-3, J-15, J-16).

On February 26, 1980, the petitioner was arrested by the Atlantic City Police Department and was charged with conspiracy (N.J.S.A. 2C:5-2); forgery (N.J.S.A. 2C:21-1(a)); uttering a forged instrument (N.J.S.A. 2C:21-1(a)); criminal attempt (theft) (N.J.S.A. 2C:5-1); possession of stolen credit cards (N.J.S.A. 2C:21-6c(a)); possession of a controlled dangerous substance (heroin) (N.J.S.A. 24:21-20a(1)) and possession of a controlled dangerous substance (methamphetamines) (N.J.S.A. 24:21-20a(1)). The petitioner was arrested by police officers responding to a complaint from a bank that

someone was attempting to cash a bad check. The petitioner and three others were apprehended in a car which contained what was later identified as heroin and methamphetamines. The petitioner was indicted on the above charges on April 1, 1980. On October 9, 1980 the indictment against the petitioner was dismissed (J-2, J-3, J-17, J-18).

On April 3, 1980, the petitioner was arrested by the Atlantic City Police Department and was charged with criminal attempt (theft) in violation of N.J.S.A. 2C:5-1; Forgery, in violation of N.J.S.A. 2C:21-1(a), and uttering forged instruments, in contravention of N.J.S.A. 2C:21-1(a). The petitioner was arrested when he attempted to cash a \$900 check which had been reported stolen. He was indicted on the above charges on April 17, 1980. On October 6, 1980, he entered a guilty plea to the charge of uttering a forged instrument. The other charges were dismissed. The petitioner was placed on probation for one year and received a 60-day jail term, as well as a \$25 penalty to be paid to the Violent Crimes Compensation Board (J-2, J-3, J-19, J-20).

On May 21, 1980, the petitioner was arrested by the New Jersey State Police and was charged with credit card theft (comparable to (N.J.S.A. 2C:21-6c(3)), and unlawful sale of credit cards (N.J.S.A. 2C:21-6c(3)). The petitioner was arrested on that date for committing the above offenses on three different occasions: May 21, 1980, when the applicant sold a bag containing stolen wallets, credit cards, checks and identification to undercover police officers; June 3, 1980, when an undercover police officer purchased credit cards from the petitioner after the petitioner had approached him and had advised that he had stolen credit cards in his possession; and July 11, 1980, when the petitioner entered an undercover storefront established by the State Police and offered to sell an undercover officer stolen credit cards (which transaction took place for \$160). The petitioner was indicted on the above charges on November 11, 1980. On February 23, 1981, he pled guilty to credit card theft and the remaining charges were dismissed. On February 27, 1986, he was sentenced to a 14-month prison term and was ordered to pay \$25 to the Violent Crimes Compensation Board (J-2, J-3, J-21, J-22, J-23, J-24, J-25, J-26).

On June 16, 1982, the petitioner was arrested by the Egg Harbor Police Department for aggravated assault (N.J.S.A. 2C:12-1b(1)). The petitioner's wife was the complainant and alleged that the petitioner had seriously injured her by punching her in the face while she slept, breaking her cheekbone. The complaint was dismissed based upon a statement by the petitioner's wife that she no longer wished to pursue the matter (J-27).

On July 2, 1982, the petitioner was arrested by the Egg Harbor Police Department and charged with theft by deception. The complaint charged that on July 2, 1982, the petitioner made a \$302.27 purchase using a check from a closed account. On January 3, 1983, the petitioner was found not guilty (J-28).

On May 10, 1983, the petitioner was arrested by the Pleasantville Police Department and was charged with conspiracy (N.J.S.A. 2C:5-2); receiving stolen property (N.J.S.A. 2C:20-7); uttering a forged instrument (N.J.S.A. 2C:21-1(a)) and criminal attempt (theft by deception) (N.J.S.A. 2C:5-1). The petitioner was arrested when he passed a stolen government treasury check in the amount of \$1,586.79. The petitioner attempted to use the check, which was payable to one David Lee Naif, to buy a television. When he presented the check, he also presented a Bally's Park Place Casino security identification card containing the petitioner's picture with the name of David Lee Naif. The salesman wrote up the petitioner's order for a television, kept the check, gave the petitioner \$100 and told him that the set and the balance of his money would be delivered to him the following day. A check was then conducted with Mr. Naif, who revealed that he had not been in the store. The petitioner was arrested the following day when he attempted to take delivery of the set. He was indicted on June 8, 1983, on the above charges. On July 11, 1983, he entered a guilty plea to the charges of uttering a forged instrument and Criminal Attempt (theft by deception). The other charges against him were dismissed. On August 19, 1983, the petitioner received three years' probation on each of the charges. This probation was conditioned upon Mr. Bumpass's successful completion of a program at Turning Point. He was further assessed a \$25 penalty to be paid to the Violent Crimes Compensation Board. The petitioner's probation was terminated on August 19, 1986. The petitioner satisfactorily performed his probation. (J-6, J-7, J-8, J-9).

The Division contends that the petitioner has been convicted of two statutory disqualifiers: possession of a controlled dangerous substance with intent to distribute (1978 conviction) and criminal attempt to commit theft (in excess of \$500) (1983 conviction).

Three witnesses described Mr. Bumpass as honest, inspiring, hard-working, and dedicated. Mr. Frank Kravitz is the recreation supervisor for the Camden County Center for Addictive Diseases. Mr. Lance Rogers is the director of the Weatherization Program for Atlantic County. Mr. James Evans is a crew supervisor for the Atlantic County Weatherization Program. The witnesses were uniformly effusive in their praise, and the common thread related by each is that Mr. Bumpass is fully rehabilitated as a productive citizen.

Mr. Bumpass related that he is 42 years of age and that until 1983 he had been a drug addict for 20 years. He described his arrest in 1983 as "a relief." Although Mr. Bumpass holds an associate's degree in Civil Engineering from the University of Pennsylvania, his lifestyle had always seemed to revolve around drugs. The counseling received at Turning Point enabled Mr. Bumpass to effectuate a complete change in his lifestyle. While at Turning Point, he was placed on work-release with the Weatherization Program. Although he has a 120-mile commute each day, he has never arrived late for work. He volunteers his time to lecture on the evils of drug addiction. Mr. Bumpass has, to date, given approximately 34 lectures. Mr. Bumpass related his complete commitment to the total abstinence from drug usage.

The above is uncontroverted, extensively documented and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)&(3)

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on June 8, 1983 to attempted theft by deception, in violation of N.J.S.A. 2C:5-1, and theft by deception, in violation of N.J.S.A. 2C:20-4 (third degree). (J-9). Based upon the Judgment of Conviction and petitioner's

testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to Section 86c(1) of the Act.

Section 86c(3) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a high misdemeanor" under N.J.S.A. 24:21-19 be disqualified from licensure. On October 3, 1978, petitioner was found guilty after a trial by jury of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1). Based upon the aforesaid conviction, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure pursuant to section 86c(3) of the Act.

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

Under section 89b(2) as incorporated within section 90b, Mr. Bumpass is required to demonstrate 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, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that the individual's actual character and attributes of good character, honesty and integrity are the key.

Prior to May 1983, Mr. Bumpass did not possess any of the attributes of good character, honesty and integrity, let alone by clear and convincing evidence. However, Mr. Bumpass underwent a startling metamorphosis while he was enrolled in the Turning Point Drug Rehabilitation Program. The former despair was replaced by positive goals. Mr. Bumpass became more focused and able to deal with life's trials and tribulations. His testimony, instead of being artificially contrite, spoke simple eloquence concerning his transition from drug dependence to being a productive citizen. A dry recitation of the transcript cannot adequately import the sincerity expressed by Mr. Bumpass. Mr. Lance Rogers, director of the Weatherization Program for Atlantic County, stated that he hired the petitioner as part of a work-release program. Although petitioner commutes each day from Woodbury to Atlantic City, petitioner is always punctual. Petitioner is uniformly characterized as honest and truthful. Mr. Bumpass has also been promoted to the position of crew chief. Both James Evans and Frank Kravitz expressed the opinion that petitioner has the requisite good character, honesty and integrity for casino licensure. Petitioner presented compelling and mesmerizing testimony and as a result thereof, I **CONCLUDE** that Mr. Bumpass has established by clear and convincing evidence, that he

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

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Bumpass is an applicant for a casino employee license in maintenance and cleaning. As such, he would have no responsibilities for actual gaming activities; however, he would have limited contact with patrons of the casino.

Second, the petitioner was convicted of the following disqualifying offenses:

1. On October 3, 1978, a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute;
2. On June 8, 1983, violations of N.J.S.A. 2C:5-1, attempted theft by deception, and N.J.S.A. 2C:20-4; theft by deception.

Under section 86c(3) of the Act, the possession of a controlled dangerous substance with intent to distribute is a statutory disqualifier. In addition, third-degree theft is a statutory disqualifier. Each of the enumerated incidents involved the use of drugs by the petitioner. Each of the incidences of misconduct was serious.

Third, the petitioner readily admits to a long history of drug abuse. However, in light of petitioner's extensive rehabilitative treatment efforts, I am persuaded that petitioner's misconduct has been mitigated to a significant degree.

Fourth, the petitioner committed various offenses from 1962 to 1983. The last offense occurred approximately four years ago.

Fifth, the petitioner committed offenses until he was 38 years of age. It is unlikely that his misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved the commission of various offenses over a period of 11 years. Petitioner attributes his misconduct to his extensive use of drugs.

Seventh, there were no apparent social conditions which contributed to the offenses other than the fact that Mr. Bumpass was raised as an orphan.

Eighth, the petitioner has demonstrated extensive rehabilitation. He satisfactorily completed the requirements of his probation. The Turning Point Drug Rehabilitation Program provided counseling and psychiatric treatment. His successful participation in a work-release program enabled him to continue employment with the Atlantic County Weatherization Program. Mr. Lance Rogers, director of the Weatherization Program for Atlantic County, and Mr. James Evans, petitioner's crew supervisor, state unequivocally that Mr. Bumpass has been rehabilitated from both drug dependency and criminal conduct. Mr. Bumpass's promotion to crew chief in May 1986 speaks for itself. Mr. Frank Kravitz, recreation supervisor for the Camden County Center for Addictive Diseases, testified that, in his opinion, Mr. Bumpass is fully rehabilitated. The fact that Mr. Kravitz drove approximately 65 miles in inclement weather to testify for Mr. Bumpass is impressive. Mr. Bumpass's lectures (approximately 34) on the evils of drug dependency also demonstrate his commitment to rehabilitation and to educating others about drug abuse.

I am persuaded that the petitioner has met his statutory burden to establish his rehabilitation beyond any doubt whatsoever. It is apparent that petitioner has a complete commitment to a total abstinence from misconduct and from the use of drugs. Further, the petitioner's rehabilitative efforts have been amazing. I am persuaded that Mr. Bumpass has established, by clear and convincing evidence, his rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation pursuant to Section 90h of the Act.

ORDER OF DISPOSITION

It is strongly **RECOMMENDED** that the application of William C. Bumpass for a casino employee license (DGE 57367-22) in maintenance and cleaning be **GRANTED**.

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

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

4-14-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

4-15-87
DATE

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 20 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the petitioner: -

Frank Kravitz
Lance Rogers
James Evans
William C. Bumpass

For the respondent:

Agent Charles Hale, Division of Gaming Enforcement

DOCUMENTS IN EVIDENCE

- J-1 Division of Gaming Enforcement letter, dated September 17, 1986
- J-2 Personal History Disclosure Form-2A, dated October 24, 1984
- J-3 Interrogatories propounded by Nancy P. Scharff, Deputy Attorney General to petitioner William C. Bumpass. Answers certified on February 24, 1987
- J-4 New Jersey State Police investigation report, dated May 25, 1977
- J-5 Judgment of Conviction, dated October 27, 1978, for possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19(a)(1) and possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20(a)(1)
- J-6 Pleasantville Police Department arrest report, dated May 10, 1983
- J-7 Atlantic County Superior Court Criminal Record No. I.6-657-83-C, dated June 8, 1983
- J-8 Indictment 6-657-83-C, Superior Court of New Jersey, Law Division - Criminal Atlantic County for conspiracy, theft by receiving stolen property, uttering a forged instrument, and attempted theft by deception
- J-9 Judgment of Conviction, dated August 19, 1983, for uttering a forged instrument in violation of N.J.S.A. 2C:5-1.
- J-10 Atlantic County Superior and County Court Criminal Record I.730-67M, dated August 29, 1968
- J-11 New Jersey State Police Investigation Report, dated January 5, 1969
- J-12 Judgment of Conviction, dated April 29, 1970
- J-13 Atlantic City Police Department Arrest Report, dated August 20, 1976

- J-14 Atlantic County Superior and County Court Criminal Record I.938-75-M, dated August 19, 1976
- J-15 Pleasantville Police Department Arrest Report, dated March 8, 1979
- J-16 Atlantic County Superior and County Court Criminal Record I. 433-78-J, dated February 5, 1979
- J-17 Atlantic City Police Department Investigation Report, dated February 26, 1980
- J-18 Atlantic County Superior and County Court Criminal Record I.648-79-J, dated April 1, 1980
- J-19 Atlantic City Police Department Investigation Report, dated April 3, 1980
- J-20 Atlantic County Superior and County Court Criminal Record I.722-79-J-4, dated April 17, 1980
- J-21 New Jersey State Police Investigation Report, dated May 21, 1980
- J-22 Atlantic County Superior and County Court Criminal Record I.336-80-S, dated November 11, 1980
- J-23 New Jersey State Police Investigation Report dated June 3, 1980
- J-24 Atlantic County Superior Court Criminal Record I.330-80-S, dated November 11, 1980
- J-25 New Jersey State Police Investigation Report, dated July 11, 1980
- J-26 Atlantic County Superior Court Criminal Record I.341-80-S, dated November 11, 1980
- J-27 Egg Harbor Township Complaint, dated June 16, 1982

J-28 Egg Harbor Township Complaint, dated July 2, 1982

J-29 Certification of Lori Mooney, Clerk of the County of Atlantic, dated May 1,
1986 .

For the petitioner:

R-1 Letter, dated March 14, 1984, from Freda Alper, Gloucester City Librarian

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-106
REGISTRATION NO. 53587-40
OAL DOCKET NO. CCC 8919-86

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

Complainant,

v.

MONICA CAMPER,

Respondent.

ORDER

A motion having been filed by the respondent to dismiss the complaint which seeks revocation of her casino hotel employee registration; and the Division of Gaming Enforcement having interposed no objection to the motion; and the Commission having considered the entire record of the proceedings at its public meeting of June 3, 1987,

IT IS on this 16th day of June 1987, ORDERED that the complaint filed by the Division of Gaming Enforcement against Monica Camper is dismissed for good cause shown.

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 8919-86

AGENCY DKT. NO. 85-106

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

Petitioner,

v.

MONICA CAMPER,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Robert P. Subranni, Esq., for respondent (Subranni & Doughty, attorneys)

Record Closed: April 10, 1987

Decided: April 30, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of Ms. Camper's casino hotel employee registration no. 53587-40, pursuant to section 129 of the Casino Control Act (Act). The Division alleges that Ms. Camper's activities in connection with an alleged terroristic threat in violation of N.J.S.A. 2C:12-3 constitutes conduct which would render her continued registration inimical to the policies of the Act pursuant to N.J.S.A. 5:12-86c(4), as incorporated within section 86g.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on March 20, 1985. On March 28, 1985, Ms. Camper requested that the Commission defer any decision based upon the complaint, pursuant to N.J.S.A. 5:12-86d.

On December 17, 1986, the within matter was transmitted to the Office of Administrative Law 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 before the Honorable Jeff S. Masin on February 19, 1987 and the matter was scheduled for a hearing on April 10, 1987. On April 9, 1987, the within matter was transferred to the undersigned for disposition. The hearing was held on April 10, 1987 at the Brigantine Municipal Building, Brigantine, New Jersey. The record closed on the hearing date.

ISSUE

At issue is whether Ms. Camper's activities in connection with an alleged incident of terroristic threats in violation of N.J.S.A. 2C:12-3 constitute conduct that would render her continued registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) as incorporated within section 86g. Furthermore, does the evidence concerning Ms. Camper's actions and conduct since the alleged incident of October 31, 1984, indicate positive steps in the nature of rehabilitation so as to permit a conclusion that continued registration would not be inimical to the policies of the act?

FINDINGS OF FACT

Monica Camper is 22 years of age and until October 31, 1984, was employed as a P.B.X. operator at the Trump Plaza Casino Hotel.

On October 31, 1984 at approximately 3:35 p.m., the respondent, Monica Camper, used an inside house telephone to call a fellow P.B.X. operator (Jan Pasqua) within the Trump Plaza Casino Hotel. Ms. Camper disguised her voice and informed Ms. Pasqua that a bomb would go off on the casino floor at 7:30 p.m. The operator asked the caller to identify herself. Ms. Camper responded, "Jack Rabbit," and started laughing. Trump security investigators were then notified of the threat. Agent John E. McLaughlin

of the Division of Gaming Enforcement was on the casino premises when the threat was received. He immediately proceeded to the P.B.X. room to investigate the call.

At approximately 4:10 p.m., Monica Camper called Kelly Goldsmith, another P.B.X. operator, to inquire about the bomb scare. Since no one outside the P.B.X. room knew about the threat, Ms. Camper was asked if she had made the call. Ms. Camper admitted making the call.

According to the testimony, Ms. Camper became upset when she realized that the threat was being taken seriously. Shortly thereafter, Ms. Camper was escorted to the Division of Gaming Enforcement office and was given a Miranda warning. Ms. Camper explained that she had made the phone call as a Halloween joke. According to Ms. Camper, it was customary at the casino for the P.B.X. operators to engage in horseplay and clowning. Although Ms. Camper was under the impression that her call was not being taken seriously, for a 30-minute period the casino was taking precautions with regard to the bomb threat. It is fortunate that the "joke" was discovered before the casino had to be evacuated.

Ms. Camper was charged by Agent John E. McLaughlin with a violation of N.J.S.A. 2C:12-3, terroristic threats, on October 31, 1984. She was immediately dismissed from her position as P.B.X. operator at Trump Plaza. Thereafter, she applied and was accepted into the Atlantic County pretrial intervention program. She successfully completed the requirements of the program and the charges were dismissed. After her termination from Trump Plaza Casino Hotel, Monica Camper was hired by the city of Atlantic City as a clerk-typist. She has since been promoted to a position in the Atlantic City Bureau of Vital Statistics.

The above is uncontroverted, believable, and is thus **FOUND AS FACT.**

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 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 danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business of financial arrangements incidental to gaming operations.

More recently, the Commission in Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986), clarified the analytical approach appropriate to cases involving disqualification pursuant to section 86c(4). The Commission stated at 314:

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 86c(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 86c(4).

An incident of terroristic threats against a licensed casino by placing a bomb scare call normally would be considered conduct so egregious as to warrant revocation, regardless of license classification. In this matter, however, the events surrounding Ms. Camper's actions persuade me that her continued registration would not be inimical to the policies of the Casino Control Act.

This was not the act of a disgruntled employee seeking revenge against an employer. This was the act of an immature 19-year-old P.B.X. operator intent on playing a practical joke (however misguided) upon her fellow P.B.X. operators. Agent John McLaughlin stated that Ms. Camper became very upset when she realized that her "joke" was being taken seriously. According to Agent McLaughlin, Ms. Camper was extremely cooperative and expressed deep remorse over the incident. Although the "scare" lasted approximately 30 minutes, Ms. Kelly Goldsmith, a fellow P.B.X. operator, described it as "a tense state of affairs."

Ms. Camper's conduct since the offense on October 31, 1984, has been impeccable. She started working in November 1984 as a clerk-typist for the city of Atlantic City, New Jersey. Since then she has been promoted to a position in the Bureau of Vital Statistics. Her immediate supervisor, Denise Dennis, states that respondent is an excellent worker and very trustworthy.

Rev. Coleman Gilchrist supervised Ms. Camper's pretrial intervention program requirement of 40 hours of community service. According to Rev. Coleman, Monica Camper performed her assigned tasks with diligence and devotion.

When viewed in light of all the circumstances, I am persuaded that participation by Monica Camper in the casino industry would neither undermine public confidence in the integrity of the regulatory process nor create or enhance the danger of unsuitable activities in the conduct of gaming operations.

It is axiomatic that Ms. Camper's "scare" could have led to life-threatening panic and possible harm to innocent bystanders. At first blush, the respondent's conduct would be inimical to the policy of the Casino Control Act. I can conceive of no action more fraught with the potential for disaster. However, under the exceptional circumstances presented in this case, after listening to both Ms. Camper and her coworkers, and having considered all of the mitigating and aggravating factors, including rehabilitation, I am persuaded that Monica Camper's continued registration would not be inimical to the policies of the Act. Respondent's conduct could best be described as aberrational inimicality. I therefore **CONCLUDE** that respondent's continued registration would not be inimical to the policies of the Act, pursuant to section 86c(4), as incorporated by section 86g.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of Monica Camper (no. 53587-40) be **DENIED** and is hereby **DISMISSED**.

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

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

4-30-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

May 1, 1987
DATE

Alfonso Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 5 1987
DATE

Ronald J. Parke
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESS LIST

For the Petitioner:

Agent John E. McLaughlin

For the Respondent:

Kelly Goldsmith

Denise Dennis

Reverend Coleman Gilchrist

Monica Camper

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

R-1 Pretrial intervention package, including several character references

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-21
OAL DOCKET NO. CCC 6092-86
LICENSE NO. 27302-22
REGISTRATION NO. 03328-40

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
THOMAS L. CARDWELL, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 3, 1987,

IT IS on this 11th day of June 1987, ORDERED that the initial decision is adopted;

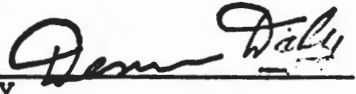
IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Thomas L. Cardwell are revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6092-86

AGENCY DKT. NO. 87-21

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

Petitioner,

v.

THOMAS L. CARDWELL,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Norma Plenty, Deputy Attorney General, appearing at the prehearing conference only)

Harry A. Goldenberg, Esq., for the respondent (Goldenberg, Mackler and Sayegh, attorneys; Mark E. Roddy, Esq., at the prehearing conference only)

Record Closed: February 17, 1987

Decided: April 2, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Thomas L. Cardwell, respondent and the holder of casino employee license no. 27302-22 and casino hotel employee registration no. 03328-40, had committed criminal misconduct which disqualified him from continued licensure and registration, under section 86c(1) of the Casino Control Act (Act), and established that the respondent no longer possessed the requisite good character, honesty and integrity for continued licensure, pursuant to section 90b; for which the Division seeks revocation of

both his license and registration, pursuant to sections 129 and 130. The respondent opposed the action, and in the alternative, contended that he was rehabilitated, pursuant to sections 90h and 91d.

PROCEDURAL HISTORY

The Division filed its complaint and an application for suspension of the respondent's license and registration with the Casino Control Commission (Commission) on July 29, 1986. By order dated August 19, 1986, the Commission suspended the respondent's license and registration pending the outcome of this matter. By letter dated August 27, 1986, the respondent requested a hearing. On September 12, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 22, 1986. The matter was heard on February 17, 1987, at which time the record closed. At the commencement of the hearing, the Division withdrew issue I.B.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Cardwell is 33 years of age and resides in Mamora. He is a 1972 high school graduate.

In 1979, the respondent obtained casino hotel employee registration no. 03328-40. In either 1980 or 1981, the respondent obtained casino employee license no. 27302-22.

From July 1979 to April 1985, the respondent was employed as a bartender by Boardwalk Regency Corporation (BRC).

From June 8, 1985 until approximately June 8, 1986, the respondent was employed as a bartender by Trump's Castle Hotel/Casino (Castle). Aside from one written warning, the respondent has earned excellent evaluation reports.

In the late summer of 1985, the respondent purchased a 1981 Mercedes Benz from Joseph Carfagno, his landlord. The respondent paid between \$15,000 and \$18,000 for the automobile, which had a book value of approximately \$30,000. The engine required substantial costly work. The respondent testified that he took advantage of a substantial financial opportunity. He did not receive title to the automobile at the time of the transaction; however, the landlord promised to deliver the title at a later date. Although the respondent believed his landlord was "shady," he did not believe that he would be cheated, because he was a long-term tenant. Nevertheless, he never received title to the automobile.

At the time of the purchase, the respondent also owned a 1967 Mercedes. In order to operate the 1981 vehicle, the respondent used the license plates and registration from the 1967 vehicle on the 1981 automobile.

The respondent acknowledged that as of June 1986, he was a methamphetamine addict and occasionally used marijuana. He first used methamphetamine in his early 20s and gradually became an addict. He used methamphetamine daily and just prior to work. The respondent testified that the drug made him feel more awake and he moved more quickly. The drug did not negatively affect his job performance. Further, the respondent testified that he occasionally used valium, provided by a friend, as a muscle relaxant at the end of the work day, because the muscles in his neck tightened from constantly bending over.

On June 8, 1986, the respondent was arrested by the New Jersey State Police in the Castle parking lot on suspicion of possessing a stolen motor vehicle (P-1). The State Police found methamphetamine and valium on the respondent and marijuana and methamphetamine in the vehicle. The respondent stated that he obtained the valium from another person for neck pain. The female passenger stated that the respondent had informed her that he had purchased the car from his landlord.

On May 20, 1986, the respondent was indicted by a state grand jury and was charged with violations of N.J.S.A. 2C:20-7, theft by receiving stolen property (automobile); N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - methamphetamine; N.J.S.A. 24:21-19a(1); possession of a controlled dangerous substance with intent to distribute - methamphetamine, and N.J.S.A. 24:21-20a(1), possession of a

controlled dangerous substance - diazepam (valium) (P-2). On June 16, 1986, the respondent pled not guilty. On July 24, 1986, the respondent retracted his plea of not guilty and pled guilty to counts 1 and 2, i.e., violations of N.J.S.A. 2C:20-7, theft by receipt of stolen property, and N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - methamphetamine. The remaining counts were dismissed. On September 12, 1986, the respondent was sentenced on each count to probation of three years and one day in the Atlantic County jail with credit, to run concurrently, and community service of 100 hours, a \$350 fine, forfeiture of the car, the requirement that he attend a drug program with unannounced drug screenings, and payment of \$30 on each count to the Violent Crimes Compensation Board.

The respondent is still on probation. He reports monthly and is subject to unannounced drug screenings. He is current in the payment of his fine and has a balance due of \$140. He completed his community service as an assistant peewee football coach for the Upper Township Recreation Department.

From August 4, 1986 to September 7, 1986, the respondent received inpatient treatment from Seabrook House (R-6). The respondent voluntarily entered this program prior to sentencing. His purpose was to get his life back together and get off drugs. The inpatient program included both individual and group counseling. The respondent also attended aftercare counseling at Seabrook House until December 3, 1986 (R-7 and R-2). Since then, the respondent has attended three to four Narcotics Anonymous meetings per week, or Alcoholics Anonymous, when there has been no alternative.

The respondent is currently employed as an insurance agent by Mutual of Omaha. He successfully completed a company course of studies and passed the state examination in late November 1986. This employment has been positive in all respects.

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

(B) DISPUTED FACTS

In dispute were the respondent's drug rehabilitation and his good character, honesty and integrity.

The respondent testified that his personal drug abuse was the cause of all of his problems and he accepted full responsibility therefor.

The respondent also testified that he has not used any controlled dangerous substances since August 4, 1986, nor has he consumed any alcoholic beverages. The respondent acknowledged that he will be a recovering addict for the remainder of his life and pledged that he will never again use drugs. The respondent observed that he is now short-tempered.

If successful in this matter, the respondent stated that he will attempt to return to the casino industry, and thereby prove to the Commission that he is a reformed and rehabilitated addict. He enjoyed being a bartender in the industry and wants a second chance. He has learned from his mistakes, which cost him substantially, both financially and emotionally.

The respondent offered several letters on his behalf. First was from Anna M. Cardwell, the respondent's mother, who stated that her son's drug rehabilitation has progressed well and that he was well regarded by his employers and coworkers (R-1). Joseph C. D'Intino, a lifelong friend, stated that the respondent is a good person, a hard worker and has met the challenge of his drug use in a positive manner (R-3). Michael C. Wolicki, a longtime friend, has observed a change in the respondent's personality and lifestyle following his release from Seabrook House (R-4). John Large, assistant beverage manager at the Castle, stated that the respondent was a reliable employee and voluntarily obtained a leave of absence in order to seek assistance at Seabrook House (R-5). Catherine L. Kauffmann, a supervisor/therapist with Seabrook House, stated that the respondent appears to be motivated towards recovery (R-7). Last, Gina C. Monaco, a close friend, stated that the respondent is determined to overcome his prior drug problems and is sincerely remorseful for his mistakes (R-8).

Inevitably, at issue was the respondent's credibility concerning his testimony. Initially, the respondent's position in this matter must be recognized. He is the holder of a license and registration. Accordingly, he has a direct interest in this outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with and corroborated by the documentary evidence and the fact that the respondent's explanation

for his conduct revealed a more severe drug dependency than alleged by the Division, I am persuaded to believe that he testified truthfully. His testimony was candid, straightforward, consistent and believable. In the final analysis, I am persuaded to accept his testimony in all respects. I so **FIND**.

In addition, I am persuaded to believe that the respondent is well regarded by close friends and coworkers. I so **FIND**.

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 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.

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

Section 86(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. N.J.S.A. 2C:20-7 is a disqualifying offense under section 86c(1).

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. 2C:20-7, which is a disqualifying offense under section 86c(1).

(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h;

N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the (registrant's) 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 (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 (registrant) under their supervision.

First, Mr. Cardwell holds a casino employee license and a casino hotel employee registration and was employed as a bartender. As such, he had direct and substantial contact with casino patrons, although he had no responsibilities for actual gaming activities.

Second, the respondent committed a violation of N.J.S.A. 2C:20-7, theft by receiving stolen property, and N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - methamphetamine. Because the theft offense is a listed disqualifier under section 86c(1), it is serious. However, the respondent's conviction for possession of methamphetamine is equally, if not more, serious by reason of the underlying circumstances, which will be discussed further.

Third, and most importantly, the seriousness of the misconduct must be viewed in its appropriate context. The respondent's believable explanation of the circumstances underlying the theft charge diminish significantly the seriousness of this offense. Although the respondent might have anticipated that something was amiss in the

transaction, there does not appear to be sufficient reason for him to have anticipated the magnitude of the problem. Nevertheless, had the respondent acted more prudently, the misconduct would have been avoided altogether. The more serious of the offenses is the possession charge. Although the degree of the charge does not appear individually to be overly serious, the respondent's underlying drug addiction and admitted use of illegal drugs on a daily basis and in direct conjunction with his casino-related employment exhibits that the scope of this misconduct is very severe.

Fourth, the respondent's misconduct occurred during the period preceding his arrest on June 8, 1986. However, the respondent testified that his drug use ceased upon his admission into Seabrook House in August 1986, only eight months ago.

Fifth, the misconduct occurred when the respondent was 32 years of age. There is no indication that his misconduct was due to immaturity.

Sixth, the respondent's drug abuse existed over a substantial period from his early 20s until the time of his arrest. Simultaneously, his addiction progressed. Accordingly, the respondent's drug addiction was not isolated and was repeated daily over a substantial period of time.

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

Eighth, the respondent has made substantial rehabilitative efforts. The respondent acknowledged his misconduct and pled guilty. Currently, he is on probation and has made timely payments on his fine. Although the respondent earned a very positive employment record within the casino industry prior to his indictment, this record is impaired by reason of his drug use during that time. The respondent has also pursued alternative employment and education subsequent to his arrest. Further, the respondent has expressed remorse for, and has no intention of repeating, his drug use. All indications for a full rehabilitation from his drug problems are positive. Also important is that the respondent sought medical assistance for his problem. However, the respondent remains on probation and his recovery from drug addiction has not been tested by a sufficient amount of time, especially in comparison to the extensive period during which he was an addict. Therefore, there is an insufficient basis upon which to conclude that the respondent no longer presents a risk to the industry. The respondent's rehabilitative

efforts do not yet outweigh the seriousness of his misconduct. It appears likely that continued rehabilitation would, in the future, enable the respondent to overcome the negative aspects of the past and again qualify for relicensure.

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

Aside from the respondent's conduct during the recent past, he appears to possess indicia of good character, honesty and integrity. However, because the respondent's rehabilitation has not been sufficiently tested by time and because the nature and extent of his drug use is inconsistent with the policies of the Act, he has failed to establish that he currently possesses the degree of good character, honesty and integrity required to maintain licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . .

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes a disqualifying offense under section 86c(1) and that he no longer possesses the qualifications for licensure. Accordingly, the respondent's license and registration must be **REVOKED**. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against Thomas L. Cardwell be **GRANTED**, and that casino employee license no. 27302-22 and casino hotel employee registration no. 03328-40 be **REVOKED**.

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

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

April 2, 1987
DATE

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

Receipt Acknowledged:

April 3, 1987
DATE

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1987
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 New Jersey State Police - Investigation Report, prepared by MPO Scott Shreaves, April 9, 1986 (3 pages - redacted)
- P-2 State of New Jersey v. Thomas Leonard Cardwell, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment, filed May 20, 1986; Judgment of Conviction and Order for Commitment (6 pages)
- R-1 Letter from Anna N. Cardwell, October 23, 1986 (2 pages)
- R-2 Letter from Catherine L. Kauffmann, December 12, 1986
- R-3 Letter from Joseph C. D'Intino, October 14, 1986
- R-4 Letter from Michael C. Wolicki, October 11, 1986
- R-5 Letter from John Large, October 11, 1986
- R-6 Letter from Sylvia P. Cohen, September 5, 1986
- R-7 Letter from Catherine L. Kauffmann, October 23, 1986
- R-8 Letter from Gina C. Monaco, October 22, 1986

WITNESS LIST

For the petitioner:

None

For the respondent:

Thomas L. Cardwell

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-147
OAL DOCKET NO. CCC 6434-85
REGISTRATION NO. 53771-40

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : FINAL ORDER
LEVI RALPH CARTER, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision on April 14, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this /5th day of April 1987, ORDERED that the initial decision in this matter is modified as follows:

- (1) The respondent's offense of possession of marijuana in violation of N.J.S.A. 24:21-20(a)(4) in the locker room of the Golden Nugget Hotel and Casino is an offense which renders his registration inimical to the policy of the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4); and

- (2) Considering the circumstances surrounding the offense, the unrefuted testimony of the respondent that he no longer uses controlled dangerous substances, the absence of any subsequent involvement with the criminal justice system and the respondent's position as a kitchen employee, the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

IT IS FURTHER ORDERED that the respondent is disqualified for the reason stated herein; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for any other registration, license, 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. NO. CCC 6434-85

AGENCY DKT. NO. 85-147

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

Petitioner,

v.

LEVI RALPH CARTER,

Respondent.

Ellen N. Hersh, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Levi Ralph Carter, respondent, pro se

Record Closed: March 3, 1986

Decided: March 25, 1986

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed a complaint on April 11, 1985, seeking to revoke the respondent's casino hotel registration on grounds of inimicality because he is alleged to have smoked marijuana in a lockerroom at the Golden Nugget. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing order entered December 3, 1985, and the matter was heard and concluded on March 3, 1986, at the Court House in Atlantic City.

FACTUAL DISCUSSION

Michael Bailey, now a Trump Castle security officer, but on October 25, 1984, a security officer at the Golden Nugget, entered a bathroom on that day and smelled the burning odor of marijuana coming from the changing room. He saw Wayne R. Harrod smoking. Levi Ralph Carter, the respondent, entered and was offered a toke (puff) on the marijuana cigarette. He accepted the offer and took one or two puffs, at which time Bailey identified himself, obtained identification from the two men and confiscated the marijuana cigarette. Thereafter, Bailey sealed the evidence and placed it in the safe. He later turned it over, still sealed, to Detective Frederick Paugh of the New Jersey State Police, who placed the sealed envelope in an evidence bag and eventually had the cigarette analyzed at the New Jersey State Police Forensic Science Bureau, South Regional Laboratory, by Randy Alberts, forensic chemist. Her laboratory report identified the cigarette as containing 0.15 grams of marijuana. The chain of custody and laboratory report appear to be in the usual form and were admitted into evidence because they are relevant.

Mr. Carter denied smoking the marijuana cigarette, both to Detective Paugh when he was subsequently interviewed and at the hearing, probably because he equated an admission to deregistration based on his experience to date with the Division and with hotel security. Nevertheless, I believe the testimony of Officer Bailey and not the testimony of Levi Ralph Carter.

I **FIND** that Levi Ralph Carter smoked marijuana in the lockerroom of the Golden Nugget Hotel Casino on October 24, 1984.

LEGAL DISCUSSION

The Division relies on Division of Gaming Enforcement v. Brian K. Worthy, OAL DKT. CCC 7866-84 (decided March 19, 1985), modified, Casino Control Commission (May 7, 1985), in seeking a penalty of deregistration. Brian Worthy possessed 0.2 grams of cocaine. Levi Ralph Carter possessed 0.15 grams of marijuana. They are both small amounts.

The Division argues that despite the small amount of marijuana, Carter should be deregistered following the rationale of Judge Armstrong in the Worthy case, where she concluded

...that the Casino Control Act does not permit such "line-drawing" to be done with regard to the issue of possession of illegal drugs in a licensed casino facility. (Id. at 6.)

Nevertheless, this case is readily distinguishable from Worthy on two grounds:

1. The possession of cocaine along with all other controlled dangerous substances is a criminal offense in New Jersey without regard to quantity; even a trace amount is sufficient to justify a finding of guilt, with two notable exceptions. Marijuana and hashish have been decriminalized by the New Jersey legislature if the amount possessed is less than 25 grams of marijuana or less than five grams of hashish. N.J.S.A. 24:21-20a(4).
2. Brian Worthy brought the drug into the casino on his person, although Judge Armstrong found his possession was inadvertent; he forgot it was there. Levi Ralph Carter did not bring the marijuana to the hotel; his possession was fleeting and temporary. The drug belonged to Harrod. Carter was offered, and on the spur of the moment accepted, a puff or two on the marijuana cigarette. This is not a distinction without a difference. Worthy admitted to prior use; Carter did not, and there is no evidence that Carter is a confirmed user. It is reasonable to suppose that Worthy was a habitual user. How else could a person "forget" he had an illegal drug in his possession?

INIMICALITY

The guidelines as to whether an offense is inimical have been identified by the Casino Control Commission as follows:

Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it,

including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses, which, when viewed in light of all the circumstances, 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.

I **FIND** the following facts: This offense is a disorderly persons offense not involving moral turpitude. It occurred on a chance encounter in the lockerroom. Mr. Carter is a "food runner." His job is to carry prepared foods from the kitchen to the employees' dining room; he is not involved in the business or financial arrangements incidental to gaming operations. He has nothing to do with gaming operations. The offense occurred approximately one and one-half years ago. The respondent is undereducated. He lacked the ability to adequately respond to interrogatories and a request for admissions. At the respondent's municipal court hearing, he obtained a conditional discharge after six months of urine sampling. His employment record since his termination has been spotty but he has been in the job market. There was a hint that the respondent may be involved in welfare fraud but there is certainly not enough evidence in this case to warrant such a finding. Since this appeared for the first time during cross-examination, the Division may wish to save that investigation for another day.

Based on these findings, I **CONCLUDE** that the respondent's continued registration is not inimical to the Casino Control Act or to casino operations.

Nevertheless, a penalty should be exacted in this case in order to impress upon the respondent and others that any use of controlled dangerous substances is impermissible by casino registrants on casino hotel property. I therefore **ORDER** that the respondent's casino hotel registration be suspended for 30 days.

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

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

March 25, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

3/26/86
DATE

Ruth Stout
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 31 1986
DATE

Ronald J. Parker / *ks*
OFFICE OF ADMINISTRATIVE LAW

ks/e

WITNESS LIST

For petitioner:

Michael Bailey
Frederick Paugh

For respondent:

Levi Ralph Carter

EXHIBIT LIST

P-1 Paugh investigation report
P-2 Paugh supplemental report
P-3 Paugh supplemental report
P-4 Laboratory report request
P-5 Laboratory report
P-6 Arrest report
P-7 Summons - Carter
P-8 Summons - Harrod
P-9 Judgment of Conviction

R-1 Request for admissions
R-2 Interrogatories

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-10
OAL DOCKET NO. CCC 5197-86

IN THE MATTER OF THE APPLICATION OF
VEOLA DELORES CHANDLER FOR RENEWAL OF ORDER
HER CASINO EMPLOYEE LICENSE

The hearing in this matter having been held before the Office of Administrative Law and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 15, 1987.

IT IS on this ^{10th} day of May 1987, 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 made a part hereof.

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 5197-86

AGENCY DKT. NO. 87-EA-10

VEOLA D. CHANDLER,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Murray N. Sufrin, Esq., for the petitioner (Sufrin & Zucker, attorneys)

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: January 15, 1987

Decided: February 20, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Veola D. Chandler, petitioner, applied to the Casino Control Commission (Commission) for renewal of her casino employee license no. 21900-22 (nongaming), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed relicensure by reason of its contention that the petitioner had committed a disqualifying criminal offense under section 86c(1) of the Casino Control Act (Act), and that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. In the event that the Division established a disqualifying offense, the petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Ms. Chandler filed her renewal application with the Commission for the 1984 renewal year. By letter, the Commission advised the petitioner that based upon a report received from the Division, dated July 8, 1986, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By letter filed on July 28, 1986, the petitioner requested a hearing. On August 6, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 29, 1986. The matter was heard on January 15, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Chandler is 33 years of age. Since July 1985, she has resided with her 16 year old son in Atlantic City. The petitioner is sole support for herself and her son.

Currently, the petitioner holds casino employee license no. 21900-22 and a casino hotel employee registration.*

Since November 11, 1980, the petitioner has been employed by GNOC Corp. (Golden Nugget) as a cocktail server. She works six hour shifts. As a registrant, the petitioner was first employed in a lounge. Upon receipt of her casino employee license she was promoted to the casino floor, where she continues to work to this date. The petitioner has received various commendations for her performance (P-1). She does not handle money. The petitioner has received two verbal warnings concerning a lateness and a "no call no show" which occurred as the result of a verbal change in schedules. Otherwise, the petitioner has performed her job well.

* The Division has taken no action against the petitioner's registration.

For approximately a three-year period commencing in 1979, the petitioner collected welfare benefits (Aid to Families with Dependent Children) for herself and her child from the Camden County Board of Social Services (Board) (J-1 and J-2). Initially, the petitioner was eligible for benefits. On January 1, 1980, the petitioner applied for unemployment benefits, which she received from January 24 until July 9, 1980. However, the petitioner did not advise the Board of the receipt of these benefits. Further, the petitioner continued to collect welfare benefits subsequent to her employment by the Golden Nugget and until December 1981 when the benefits were discontinued by reason of her intentional failure to report for a redetermination interview. This event coincided with the petitioner's promotion to the casino floor. Again, the petitioner did not disclose her employment to the Board, despite participating in several redetermination interviews at which time the petitioner certified her negative responses to inquiries concerning earnings. As a result of the petitioner's failure to notify the Board of receipt of unemployment benefits and earned income, the petitioner's household received a total overpayment of \$4,900.48. The overpayments were discovered during a wage verification check.

On January 26, 1982, the petitioner appeared at Board offices at its request (J-1). The petitioner signed a Miranda card and a statement, in which she admitted having knowingly not reported receipt of earned income and unemployment benefits (J-1).

On January 4, 1984, the petitioner was indicted by a grand jury and was charged with a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud (J-4). In February 1984, the petitioner was admitted into the Pretrial Intervention Program (PTI). On February 3, 1984, the petitioner entered into a reimbursement agreement with the Board (J-3). On April 1, 1985, and upon satisfactory completion of PTI, the charges against the petitioner were dismissed (P-2 and P-3). The petitioner's PTI obligation consisted of performing seven hundred hours of community service at Cooper Medical Center. More specifically, she helped feed patients, spoke with patients, made beds, etc. The petitioner has been making the required payments under the reimbursement agreement. Effective October 31, 1986, there is a balance due of \$3,458.09 (J-5).

The petitioner has not applied for nor received welfare benefits since December 1981.

The petitioner has not committed any other violations of the criminal laws.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's misconduct as well as her rehabilitation.

At the commencement of the hearing, the parties stipulated that the facts as set forth in the documentary evidence are true and establish the elements of a violation of N.J.S.A. 2C:20-4 in the third degree.

Ms. Chandler testified that she knowingly received welfare benefits to which she was not entitled because she had incurred substantial debts. The petitioner had obtained a student loan in order to attend Wilfred Academy, during which time she accrued additional debt. The welfare benefits were used to reduce her overall debt.

Ms. Chandler further testified that her misconduct has haunted her ever since. Prior to her indictment she lived in constant fear of being caught and, after initiation of charges, the petitioner endured the humiliation associated with involvement in criminal proceedings. In addition, the petitioner was humiliated because she had to tell her son of her misconduct. She informed her son so that he might learn from her mistakes. Last, the petitioner testified that her prior misconduct has taught her a valuable lesson. On the advice of a psychologist, the petitioner has not informed her coworkers or supervisors of her misconduct. Therefore, the petitioner could not obtain a letter from her supervisor for purposes of this hearing.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident as well as her rehabilitation, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As an applicant for relicensure and as a holder of a registration, she has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the petitioner's demeanor, the plausibility of her testimony and my examination of the

documentary evidence, that the petitioner testified truthfully in every regard. Her description of the event as well as her conduct since were consistent with the documentary evidence. Further, the petitioner candidly admitted her misconduct. Accordingly, I am persuaded to accept her testimony in all respects. I so **FIND**.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86g provides that a person be disqualified from licensure because of the commission of any act which would constitute an offense under 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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. The parties stipulated that the proofs established a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud, third degree.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed a disqualifying criminal offense under section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;

- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Ms. Chandler is an applicant for renewal of a casino employee license in order to continue her employment as a cocktail waitress on the casino floor. Although she does not handle money, she has substantial contact with casino patrons.

Second, the petitioner's criminal misconduct is serious as a disqualifying offense under section 86c(1). In addition, the amount of the theft over an extended time period knowingly committed and, partially, during a period of employment within the casino industry, enhance the seriousness of the misconduct.

Third, the offense was committed knowingly by a licensee during the early stages of her employment in the casino industry. Although the petitioner had a substantial debt, this does not serve to mitigate her misconduct.

Fourth, the misconduct occurred between January 24, 1980 and July 9, 1980, and between November 1980 and December 1981, when it ceased.

Fifth, at the time of the misconduct the petitioner was 27 years of age. There was no indication that her misconduct was due to immaturity.

Sixth, the petitioner's misconduct occurred over approximately a two-year period. Given the absence of any other criminal misconduct, the criminal activity was isolated.

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

Eighth, the petitioner has made substantial rehabilitative efforts. Upon confrontation by the Board, the petitioner waived her Miranda rights and voluntarily signed a statement in which she fully acknowledged her misconduct and accepted responsibility therefore. At the time she was charged, the petitioner was accepted into PTI and executed a reimbursement agreement. The petitioner satisfactorily completed PTI and on April 1, 1985, the charges were dismissed. She has continued to make payments under the reimbursement agreement, although there remains a substantial obligation. However, the petitioner has not repeated her misconduct. Ms. Chandler has earned a positive employment record within the casino industry in the capacity in which she seeks relicensure. Also, it was evident that the petitioner has become fiscally responsible and avoided the pitfalls which contributed to her earlier misconduct. Absent having fully satisfied the reimbursement agreement, there is little more the petitioner could have done to establish her rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her rehabilitation, pursuant to section 90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Chandler was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the

regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

It was evident that upon her promotion to the casino floor in 1981 and continuing to the present that the petitioner has gained control over her financial affairs and has not repeated her misconduct. In addition, she has earned a positive employment record within the casino industry. Accordingly, there is little likelihood, if any, that the petitioner will commit any unlawful acts in the future. She presents no risk to the public nor to the integrity of the gaming industry in this State. She has earned the privilege of relicensure. An examination of the whole person clearly and convincingly establishes that Ms. Chandler is a person of good character, honesty and integrity and is suitable for relicensure. Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity, under sections 90b and 89b(2).

DISPOSITION

It is **ORDERED** that the application of Veola D. Chandler for relicensure as a casino employee be **GRANTED**.

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

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

February 20, 1987
DATE

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

February 24, 1987
DATE

Receipt Acknowledged:

Adrian Zayas
CASINO CONTROL COMMISSION

FEB 25 1987
DATE

Mailed to Parties:

Epifanio P. Pagan
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 New Jersey Department of Institutions and Agencies, Division of Public Welfare, Bureau of Assistance Summary Report, Delores Chandler, January 26, 1982; Statement of Delores Chandler, January 26, 1982; Warning and Waiver of Rights, Delores Chandler, January 26, 1982 (4 pages)
- J-2 Camden County Board of Social Services - Report of Criminal Investigation, Delores Chandler, January 27, 1982 (2 pages)
- J-3 Camden County Board of Social Services - Reimbursement Agreement, Delores Chandler, February 3, 1984
- J-4 State of New Jersey v. Delores Chandler, Superior Court of New Jersey, Law Division, Camden County - Criminal, no. I-0028-01-84, Indictment, filed on January 4, 1984, with attachments (4 pages)
- J-5 Letter from Mary Jane McQuaid, November 12, 1986, with attachment (2 pages)
- P-1 Golden Nugget - Notice of Commendation, Veola Chandler June 25, 1986
- P-2 State of New Jersey v. Delores Chandler, Dkt. No. 0028-01-84, Order of Dismissal, April 1, 1985 (2 pages)
- P-3 Letter to Murray N. Sufrin, Esq., from Richard J. Twigg, Probation Officer, November 17, 1986

WITNESS LIST

For the petitioner:

Veola D. Chandler

For the respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-196
OAL DOCKET NO. CCC 05427-86
LICENSE NO. 21644-21
REGISTRATION NO. 20336-40

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

Complainant, :

: FINAL ORDER

v.

RONALD R. CHICANO,

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 4, 1987,

IT IS on this 13th day of February 1987, ORDERED that the initial decision of the Office of Administrative Law is adopted; and

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

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 5427-86

AGENCY DKT. NO. 85-196

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

Petitioner,

v.

RONALD R. CHICANO,

Respondent.

**Barth F. Aaron, Deputy Attorney General (W. Cary Edwards, Attorney General of
New Jersey, attorney) for petitioner**

Bertram Saxe, Esq., for respondent

Record Closed: December 5, 1986

Decided: December 18, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of respondent Ronald R. Chicano's employee license No. 21644-21 and casino hotel employee registration No. 20336-40, pursuant to Section 129 of the Casino Control Act(Act). The Division instituted its action based upon petitioner's arrest for allegedly distributing a controlled dangerous substance, possession of a controlled dangerous substance with intent

to distribute in violation of N.J.S.A. 21:19a(1) and possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20(a)1. The Division also contends that Mr. Chicano does not possess the requisite good character, honesty and integrity for casino employee licensure, pursuant to Section 89b(2). The respondent asserts rehabilitation pursuant to Section 90h and 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 20, 1985. On June 11, 1985, the Commission issued an Order suspending Mr. Chicano's casino license and registration. Mr. Chicano requested reinstatement of his license and registration by letter, dated June 20, 1986. The letter was received by the Commission on July 9, 1986. By Order dated August 4, 1986, the Commission reinstated Mr. Chicano's license and registration; however, the Commission declined to dismiss the complaint. On August 11, 1986, the Division elected to proceed to a hearing before the Office of Administrative Law. On August 15, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 6, 1986, and the matter was scheduled for a hearing on December 5, 1986, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether the respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3) as incorporated within 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) as incorporated within Section 90b?
- C. Whether the respondent may demonstrate rehabilitation pursuant to Sections 90h and 91d of the Act?

FINDINGS OF FACT

The facts in this matter are totally uncontroverted. On January 14, 1985, respondent, Ronald Chicano, approached Barry Grasso in the Anacopa Lounge at Mississippi and Atlantic Avenues, Atlantic City, New Jersey. Mr. Chicano stated that he had a few "biscuits" (quaaludes) for sale. Unbeknownst to the respondent, Barry Grasso is a detective lieutenant in the Sea Isle City Police Department. Detective Grasso was at that time assigned to the Atlantic City Police Department as an undercover narcotics officer. After a short discussion, respondent offered Detective Grasso six quaaludes for \$30. Detective Grasso then handed Mr. Chicano \$30 and received in return six tablets marked "Temon 714." Detective Grasso then handed the tablets to Detective Larry Ross.

The tablets were then forwarded to the New Jersey State Police Laboratory in Hammonton for analysis. A laboratory report dated February 26, 1985, established that the tablets contained diazepam (commonly referred to as valium). Diazepam is a Schedule IV controlled dangerous substance, available only by prescription.

On April 5, 1985, Mr. Chicano was arrested and charged with the distribution of a controlled dangerous substance, possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 21:19-a(1) and possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1). An Atlantic County Grand Jury returned an indictment on all charges.

Mr. Chicano applied for, and was granted acceptance into, the Pre-Trial Intervention Program on January 23, 1986. Mr. Chicano was required to submit periodic urinalysis tests and to perform 25 hours of community service. All five of Mr. Chicano's required urinalysis reports proved negative (R-8). Mr. Chicano performed his community service at the Salvation Army, 22 South Texas Avenue, Atlantic City, New Jersey. Thressa Fair, program director, characterized Mr. Chicano's community service as outstanding. He performed his assigned tasks with enthusiasm and diligence.

Mr. Chicano testified as to the circumstances underlying his criminal conduct. He explained that a friend had supplied him with ten quaalude tablets on a consignment basis approximately five days earlier. He sold four tablets on January 13, 1985, and the other six to Detective Grasso on the morning of January 14, 1985. Although Mr. Chicano

was unaware that he sold drugs to an undercover officer until his arrest on April 5, 1985, he testified that he had ceased his participation in the distribution of drugs after selling the ten tablets. He explained that his conscience bothered him. It appears from his testimony that Mr. Chicano may have been motivated by peer acceptance rather than monetary gain.

Mr. Chicano has an excellent work record in the industry. In 1980 he started at Bally's Casino as a busboy. He graduated from the casino school institute(CSI) and became a craps dealer for the Atlantis Casino Hotel (formerly Playboy) in August 1981. He eventually was offered a part-time position as a craps boxman. After his arrest on April 5, 1985, Mr. Chicano was terminated from his employment with the Atlantis Casino Hotel. The Commission issued an order suspending Mr. Chicano's license and registration on June 11, 1985. Subsequently, he became the manager of the lounge at Copsey's Restaurant in Absecon, New Jersey. During this period he returned to Casino School Inc. to learn to deal blackjack. He completed the course work; however, there is an outstanding tuition bill of \$120. Mr. Chicano successfully completed the terms of the Pre-Trial Intervention Program and was released from the program on June 12, 1986, by the Honorable Manual H. Greenberg, J.S.C. At Mr. Chicano's request, his license and registration were restored by the Commission on August 4, 1986. On August 26, 1986, Mr. Chicano commenced employment with the Claridge Casino Hotel as a craps dealer. His work was of such high caliber that he was one of approximately 20 craps dealers chosen out of more than 200, to participate in the first blackjack championship tournament at the Claridge Casino Hotel November 23-25, 1986(R-1). Mr. Chicano performed as a craps dealer in the blackjack tournament.

The above is undisputed, believable and is thus FOUND AS FACT.

DISCUSSION OF LAW AND CONCLUSION

A. N.J.S.A. 5:12-86c(3) as incorporated within Section 86g.

Section 86c(3) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be

disqualified from licensure. Respondent has admitted and stipulated that on January 14, 1985, he distributed a controlled dangerous substance to an undercover officer in violation of N.J.S.A. 24:21-19a(1). The Division contends that the admitted unprosecuted conduct renders respondent statutorily disqualified from holding either a casino employee license or a casino hotel registration. Based on the aforesaid admission, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure and casino hotel registration, pursuant to Section 86c(3) of the Act as incorporated within Section 86g.

B. N.J.S.A. 5:12-90h/91d

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure and/or registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h/91b. These Sections set the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, respondent is employed as a craps dealer at the Claridge Casino Hotel. The position requires impeccable credentials since there is constant interaction with patrons of the casino.

Second, Mr. Chicano admitted that on January 14, 1985, he distributed a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1). As such, he is statutorily disqualified from holding either a casino employee license or a hotel registration. The sale and distribution of drugs is not only a serious offense, but morally reprehensible. It draws the life blood out of the community and has repercussions far beyond a single sale. Normally, distribution of drugs would impose an almost insurmountable burden upon respondent to establish his rehabilitation.

Third, unlike the respondent in Division of Gaming Enforcement v. Winthers, OAL DKT. CCC-5148-85 (Decided January 3, 1986), respondent's testimony in this matter was candid, enlightening and believable. Mr. Chicano's sale on January 13, 1985, was never part of the record until he testified. It was either a courageous act or an act of stupidity. Mr. Chicano does not appear to be stupid. Respondent's motivation, although misplaced, mitigates his act somewhat. Casino employees, like many others, are subject to peer pressure. It appears that the nature of the industry fosters a certain degree of tolerance for drug usage among its employees. It is believable that Mr. Chicano was motivated by peer acceptance rather than monetary gain. The significant question then becomes: What is the likelihood of recidivism? Mr. Chicano testified that he was bothered by the sales of January 13 and 14, 1985. That explanation has some merit. From January 14, 1985, until his arrest on April 5, 1985, respondent had ample opportunities to continue his participation in the illegal acts. It is also believable that Mr. Chicano voluntarily quit his participation in the sale of drugs on January 14, 1985. This is not an instance where a person was arrested and stopped because of an arrest. Respondent was not arrested until April 5, 1985. His arrest was part of a major ongoing investigation into drug sales and usage, encompassing many months of undercover work. The fact that respondent apparently quit voluntarily lends credence to his testimony.

Fourth and fifth, the offenses occurred on January 13 and 14, 1985. At the time, respondent was 26 years of age. It is unlikely that his misconduct was due to immaturity.

Sixth, respondent's conduct on January 13 and 14, 1985, appears to be an aberration from a normally law-abiding existence.

Seventh, other than the peer pressure already articulated, there were no apparent social conditions which contributed to the misconduct.

Eighth, the respondent has demonstrated extensive rehabilitation. He admitted his misconduct and expressed remorse. Further, he satisfied the requirements of his probation (R-2). The caliber of his community service was outstanding (R-7) and the respondent appears to be drug-free (R-8). Mr. Chicano showed initiative by returning to Casino Schools, Inc. for a blackjack endorsement on his license, although there was a good possibility that he would never work in the industry again. His excellent employment record in the industry has already been established. Respondent's appearance and the manner in which he testified is another indication of respondent's rehabilitation. After weighing and assessing the various factors used in evaluating rehabilitation, I am persuaded by clear and convincing evidence that the respondent is rehabilitated. Some factors used in determining rehabilitation just cannot be adequately articulated. However, after observing and listening to Mr. Chicano at both the prehearing and the hearing, I am convinced that his criminal involvement will not be repeated.

I **CONCLUDE**, after evaluating the testimony presented by Mr. Chicano, the letters submitted on his behalf and considering his successful employment in the industry, that respondent has established by clear and convincing evidence, his rehabilitation pursuant to Sections 90h and 91b of the Act.

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

Under Section 89b(2) of the Act, Mr. Chicano was required to demonstrate by clear and convincing evidence good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an application, is not the determinative 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 reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and

convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk 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 for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corp., at 2.

On January 14, 1985, the respondent would not have been able to meet his statutory burden of establishing his good character, honesty and integrity. However, given the character of his testimony and the rehabilitation demonstrated by Mr. Chicano, I am persuaded that Mr. Chicano has established by clear and convincing evidence the requisite degree of good character, honesty and integrity for continued casino employee licensure.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division seeking to revoke the casino employee license (No. 21644-21) and casino hotel employee registration (No. 20336-40) of Ronald R. Chicano be **DENIED** and **DISMISSED**.

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

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

12 - 18 - 86
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

December 19, 1986
DATE

Bernadette T. Frigeni
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 23 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW /KS

ij/ee

WITNESS LIST

For the petitioner:

Lt. Barry Grasso, Sea Isle City Police Department
Sgt. John Mazzeo, Cumberland County Prosecutor's Office
Det. Larry Ross, Atlantic City Police Department

For the respondent:

Ronald R. Chicano
Theresa Fair, Program Director, Salvation Army

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Investigation Report, Atlantic City Police Department, dated January 14, 1985; Arrest Report, Atlantic City Police Department, dated April 5, 1985; Atlantic County Grand Jury Indictment Number 85-04-0558B; Request for Examination of Evidence and Laboratory Report by the New Jersey State Police, Special and Technical Services Section, dated February 26, 1985.

For the Respondent:

- R-1 Certificate of Appreciation
- R-2 Letter from Probation Officer Michael A. McLean Superior Court of New Jersey, Family Division, Atlantic County, New Jersey, dated October 14, 1986
- R-3 Undated letter from Ann Russo
- R-4 Letter from Ronni Chackler, Public Leasing Company, dated May 15, 1985
- R-5 Letter from Dr. Vincent E. Baldino, dated May 6, 1985
- R-6 Letter from Suzanne Webb, dated May 15, 1985
- R-7 Undated letter from Thressa Fair, Program Director, Salvation Army
- R-8 Five urinalysis reports with diverse dates.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-126
OAL DOCKET NO. CCC 3775-86
REGISTRATION NO. 53679-40

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

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 1, 1987,

IT IS on this 3rd day of April 1987, ORDERED that the initial decision is modified as follows:

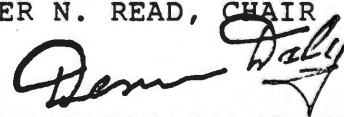
1. To correct the reference at p. 5 to "Section 86" to read, section 86c. As recognized by the ALJ in the course of the hearing, rehabilitation pursuant to N.J.S.A. 5:12-91d is not available to an individual disqualified on the basis of N.J.S.A. 5:12-86b for failure to provide information concerning his criminal record.
2. To correct the statutory reference on page two of the initial decision under "Issues, B." to read section 86b rather than section 90e and the statutory reference on page four,

"Discussion of Law and Conclusions, (B)" to refer to section 91b rather than 90e.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Freddie Colon is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3775-86

AGENCY DKT. NO. 86-126

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

Petitioner,

v.

FREDDIE COLON,

Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

William A. Thompson, III, Esq., for respondent

Record Closed: January 23, 1987

Decided: February 17, 1987

BEFORE **STEPHEN W. THOMPSON, ALJ:**

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of Mr. Colon's casino hotel employee registration no. 53679-40, pursuant to Section 129 of the Casino Control Act (Act). The Division alleges that Mr. Colon is statutorily disqualified from holding a casino hotel employee registration because of his guilty plea to a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. The Division also contends that Mr. Colon failed to disclose his arrest and subsequent conviction on his Personal History Disclosure (PHD) Form - 4. Respondent asserts rehabilitation, pursuant to Section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 21, 1986. Thereafter, the Commission advised respondent of his right to a hearing. Respondent's attorney, William A. Thompson III, requested a hearing on behalf of his client by letter dated May 29, 1986. On June 6, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 24, 1986, and the matter was scheduled for hearing on September 25, 1986, before Administrative Law Judge Lillard E. Law. The hearing was adjourned at the request of respondent. The hearing was rescheduled for December 15, 1986, and was again adjourned at the request of respondent because of illness. The matter was thereafter transferred to the undersigned and the hearing was held on January 23, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether respondent is disqualified as a registrant by virtue of his arrest, indictment and guilty plea to the charge of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1).
- B. Whether the respondent, with specific reference to his arrest and conviction for possession of a controlled dangerous substance with intent to distribute, has failed to reveal any material facts pertaining to the qualification criteria for his casino hotel registration within the meaning of Section 90e of the Act.
- C. With regard to the alleged statutory disqualifier, whether respondent may demonstrate rehabilitation, pursuant to N.J.S.A. 5:12-91d of the Act.

FINDINGS OF FACT

Freddie Colon was arrested and charged on August 31, 1983, with one count of possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1) and one count of possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19a(1). The police confiscated six plastic bags containing cocaine, marijuana and various pills.

On September 27, 1983, an Atlantic County Grand Jury indicted Mr. Colon on both counts (P-2).

Mr. Colon subsequently entered a plea of guilty to one count of possession of a controlled dangerous substance with intent to distribute and the possession of a controlled dangerous substance was dismissed.

On January 13, 1984, the respondent was sentenced to a 60 day jail sentence and placed on probation for a period of one year. Mr. Colon was also required to pay a \$250 fine (P-2).

Mr. Colon failed to disclose said conviction of his Personal History Disclosure Form - 4.

The above is documented, uncontested and **FOUND AS FACT**.

According to Mr. Colon, he went to work for the Tropicana Casino Hotel in early 1982. He stated that he filled out a PHD Form, but left the Tropicana before obtaining his casino hotel registration. In May 1983, he returned to the United States. Mr. Colon explained that he copied verbatim the information contained in the original PHD Form. His explanation is not supported by the evidence. The PHD Form - 4 filed by respondent on May 24, 1984, contains significant changes that could not possibly have been known to respondent in 1982 (i.e., questions 2 and 6).

Mr. Colon's evasiveness and hesitation concerning the circumstances of his May 1984 application leaves serious doubt as to Mr. Colon's credibility. In addition, Mr. Colon claims that he never intended to distribute drugs, yet acknowledges that his plea of guilty to the criminal charges were predicated on his admission in open court

under oath that, in fact, he, indeed, intended to distribute drugs. Furthermore, Mr. Colon stated that he did not understand the English language and, in fact, used the services of an interpreter. Yet, it appeared that Mr. Colon understood and responded to many questions in English.

Respondent's inability and/or reluctance to answer questions in a direct manner, his failure to establish eye contact and his general demeanor reflect poorly upon respondent's credibility. At best, respondent's testimony is rife with inconsistencies. At worse, respondent committed perjury. Therefore, I **FIND** respondent to be an incredible witness.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(3) as incorporated in Section 91b of the Act mandates that a person who has been convicted of any offense which is enumerated in the Section be disqualified from licensure. The Division contends that respondent's conviction of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute is a statutory disqualifier under Section 86c(3) of the Act.

Respondent concedes that he was convicted of a violation of possession of controlled dangerous substance with intent to distribute, and that he is statutorily disqualified from maintaining his hotel employee registration. However, respondent claims that he has been rehabilitated from his criminal conduct.

I **CONCLUDE** that the copy of the certified judgment of conviction, dated January 16, 1986, along with respondent's admission has established, by a preponderance of the credible evidence, that the respondent is statutorily disqualified from being a registrant pursuant to N.J.S.A. 5:12-86c(3).

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

Under Section 90e of the Act, which incorporates the provisions of 86(b), Mr. Colon was required to provide information, documentation and assurances required by the Act or requested by the Commission. Failure by the respondent to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as

to a material fact pertaining to the qualification criteria may result in the respondent's casino hotel registration being revoked, suspended, limited or restricted. I **CONCLUDE** from the incredible testimony of Mr. Colon, and the documentary evidence that the respondent willfully failed to disclose his arrest record on his New Jersey Casino Control Commission Personal History Disclosure Form - 4.

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

A registrant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This Section sets forth the following eight specific criteria to be evaluated when considering rehabilitation:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, 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.

Mr. Colon is successfully employed at Harrah's Trump Plaza (R-1). Notwithstanding that fact, respondent has failed to demonstrate any other aspect of rehabilitation. Mr. Colon is an incredible witness and his testimony must therefore be disregarded. While it is true that Mr. Colon only holds a casino hotel registration, the inconsistencies throughout his testimony make him unfit for casino registration. I am persuaded that Mr. Colon failed to demonstrate his rehabilitation by a considerable margin. Therefore, I

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

PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. Given the quality and nature of respondent's testimony and purported rehabilitation, I **CONCLUDE** that the registration of Freddie Colon must be revoked.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the hotel employee registration no. 53679-40, held by Freddie Colon, be and is hereby **REVOKED**.

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

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

2-17-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

February 19, 1987
DATE

Receipt Acknowledged:
Nicholas Zapp
CASINO CONTROL COMMISSION

FEB 20 1987
DATE

Mailed to Parties:
Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

For the Petitioner:

Freddie Colon

For the Respondent:

Freddie Colon

Oscar Calem

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Personal History Disclosure Form - 4

P-2 Certified Copy of Judgment of Conviction

For the Respondent:

R-1 Letter from Dennis Jerauld, Assistant Executive Steward

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-56
OAL DOCKET NO. CCC 2169-86

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

Complaint, : FINAL ORDER

v. :

TOBIN A. CONLEY, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 5, 1986,

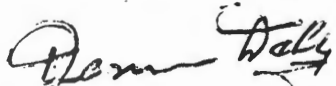
IT IS on this 4th day of February, 1987, ORDERED that the ALJ's recommendation to revoke the respondent's casino employee license based upon the finding that the respondent had not established by clear and convincing evidence his good character, honesty and integrity is rejected.

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Tobin A. Conley is dismissed based upon the factual findings contained in the initial decision of the Office of Administrative Law, which are incorporated herein by reference and made a part hereof, and upon the following finding:

The respondent has demonstrated by clear and convincing evidence that he currently possesses the good character, honesty and integrity required by N.J.S.A. 5:12-90(b) and 89(b)(2). This finding is based upon the reasons cited by the ALJ in his favorable finding on the issue of rehabilitation and also on the unrefuted testimony of the respondent's character witnesses.

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 2169-86

AGENCY DKT. NO. 86-56

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

Petitioner,

v.

TOBIN A. CONLEY,

Respondent.

**Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Deputy
Attorney General of New Jersey, attorney)**

Tobin A. Conley, pro se

Record Closed: July 8, 1986

Decided: September 22, 1986

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on February 25, 1986, seeking to revoke the respondent's casino employee gaming license because he was charged with violations of the controlled dangerous substance law. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on July 8, 1986.

FACTS

Tobin Conley admitted, and the Division proved, that on October 5, 1984, Tobin Conley delivered cocaine to an undercover agent in exchange for \$100.00.

I **FIND** that as a fact and **CONCLUDE** that Tobin Conley committed an offense enumerated in the Casino Control Act at N.J.S.A. 5:12-86c and is, therefore, disqualified from casino employee licensure unless rehabilitated, pursuant to N.J.S.A. 5:12-90h.

REHABILITATION

The police officer who purchased the drugs from respondent was of the opinion that Conley sold the drug to him on this occasion in order to impress a woman. He opined that Conley made no profit since Conley told him the price was \$100 and that is what Conley paid for the drug. The officer further asserted that, despite several requests, Conley was never able to supply drugs to him again, apparently because Conley lacked the requisite contacts. Conley quibbled with the officer over whether or not he, Conley, had asked the officer for a "line" of cocaine and how many times they met with each other after the deal went down.

Other evidence of rehabilitation offered by Conley was that expiration of his probation was due in July 1986, and the letters and testimony of supervisors who claim he is an excellent employee, sober, possesses good character, honesty and integrity. His brother said respondent was not a drug abuser and that he had thwarted his brother's drug use on one occasion when he observed him using marijuana.

The offense was not committed for any of the usual reasons. The applicant simply played out the role of a drug dealer in order to impress a woman of his acquaintance. He is neither a habitual user nor a dealer in drugs, and I am satisfied that he will not commit such an offense again. I, therefore, **CONCLUDE** that the respondent is rehabilitated.

GOOD CHARACTER, HONESTY AND INTEGRITY

The respondent's acts, affecting the pose of a drug dealer and actually committing a drug offense, for no other reason than to impress a woman indicates a lack of maturity, a reckless disregard for the law and abominable taste. These characteristics are not consistent with good character, honesty and integrity.

In addition, respondent chose to quibble with the police officer whose testimony convinced me that Mr. Conley was not a drug dealer. He quibbled the issue of the extent of his conversations with the officer about future drug sales and Mr. Conley's own use of cocaine. I accept the police officer's testimony in total. I do not wholly accept the testimony of respondent. Mr. Conley was not candid.

I **CONCLUDE** that the respondent lacks the good character, honesty and integrity required for casino licensure, pursuant to N.J.S.A. 5:12-89b(2).

I, therefore, **ORDER** that respondent's casino employee license be revoked, pursuant to N.J.S.A. 5:12-89b(1) and d.

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.

Sept. 22, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ *and*

Receipt Acknowledged:

September 23, 1986
DATE

Bernadette J. Frigon
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 25 1986
DATE

Ronald J. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESSES

Tobin A. Conley
Mark Emmer —
Glenford Cunningham
Demetrius Roussis
Mark Conley

EXHIBITS

R-1 Certified copy of indictment
R-2 Disposition and sentencing with respect to indictment
R-3 Copy of a police report

P-1 Letter of recommendation
P-2 Plea bargain agreement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-214
OAL DOCKET NO. CCC 4285-86
REGISTRATION NO. 53529-40

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

Complainant, :

v. :

FREEMAN A. DAVIS, :

Respondent. :

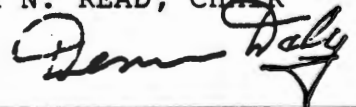
FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 4, 1987,

IT IS on this *11th* day of March 1987, 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 and made a part hereof.

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 4285-86

AGENCY DKT. NO. 86-214

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

Petitioner,

v.

**FREEMAN A. DAVIS,
Respondent.**

**Joanne Ciancimino, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Freeman A. Davis, respondent, pro se

Record Closed: December 9, 1986

Decided: January 28, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission on June 5, 1986, seeking revocation of the respondent's casino hotel employee registration because of his alleged criminal conviction for theft. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was conferenced on October 20, 1986, and heard in Atlantic City on December 9, 1986.

STATEMENT OF THE CASE

The Division proved and the respondent stipulated that he was convicted of theft in excess of \$500, a third degree offense and a statutory disqualifier from casino licensure, pursuant to N.J.S.A. 5:12-86c. Upon a finding that a registrant has been convicted of a crime enumerated in said section, the Casino Control Commission may revoke, suspend, limit or otherwise restrict the registration. N.J.S.A. 5:12-91b.

I **FIND** that the respondent was convicted of a third degree theft (N.J.S.A. 2C:20-1 et seq.), by his plea of guilty March 6, 1984, in the Atlantic County Superior Court, Criminal Part, to burglary and theft in the third degree. I **CONCLUDE** that the respondent's registration should be revoked.

A second issue in this case is whether or not the registrant is rehabilitated pursuant to N.J.S.A. 5:12-91d.

FACTUAL DISCUSSION

Dr. Pauline Jones owned the premises on 1926 Magellen Avenue in Atlantic City and kept an office there. She rented an upstairs apartment to the respondent's family. Dr. Jones resided in Pennsylvania and received her mail there for her Atlantic City office. A phone bill charged her for phone calls she did not make from her Atlantic City office to Egg Harbor, St. Paul, Wilkes Barre and Maine. When Dr. Jones called the Wilkes Barre number and asked the person there who that person knew in Atlantic City, the person named the respondent as her boyfriend. When Dr. Jones came to her office later in the month she found that in addition to someone using her telephone the place had been burglarized. She called the police. She told the police about the respondent's Wilkes Barre connection. The police confronted the respondent in his apartment. He admitted making the telephone calls.

The respondent was incarcerated for 72 days in default of bail after his arrest. He negotiated a plea bargain which called for incarceration for 72 days, the time he had already served in the county jail. He pled guilty to the indictment which charged both a burglary and third degree theft and went home.

Respondent now claims that he did not commit the crimes charged in the indictment; it was his brother and cousin who did them. He asserts that since he had a plea bargain for which he had already served the time there was no reason to turn in his brother and his cousin. The respondent does not rely on this assertion, however, but relies entirely on rehabilitation in order to keep his registration. N.J.S.A. 5:12-9ld.

REHABILITATION

- (1) The nature and duties of the registrant's position.

The registrant is a cook and seeks employment in a casino hotel restaurant.

- (2) The nature and seriousness of the offense.

A third degree theft in a burglary from an unoccupied office.

- (3) The circumstances under which the offense occurred.

The burglarized premises belonged to the respondent's landlady who used them for an office. The premises were downstairs from the respondent's home. He knew the premises were not in use at the time and took the opportunity to use the telephone to make long distance calls.

- (4) The date of the offense.

The offense occurred between November 12, 1983 and January 24, 1984.

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

Unknown.

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

This was a first offense.

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

No unusual social conditions.

8. Any evidence of rehabilitation, etc.

Since the respondent was released from the Atlantic County jail he has obtained a high school diploma (R-5) and completed a course in JTPA Hotel Management at Atlantic Community College for which he received a certificate (R-4). His pictures appear in The Key (R-6) the newsletter of the business and human resource center at Atlantic County Community College for fall of 1984 on page 4, bottom left, page 5, bottom right and in the upper right of the back page. He intends to continue at the college and take courses in French cuisine. His ultimate goal is to own his own restaurant. The respondent also produced three letters of recommendation from supervisors (R-1, R-2, R-3) which attest not only to his skill as a cook, but that he is a good person. In addition it shows that he is actively in the job market.

The respondent conducted his case intelligently and efficiently and at the same time managed his four month old infant (with a little help from Officer Louis) throughout the proceedings including feedings and diaperings. He is well motivated and organized for success.

I **CONCLUDE** that the respondent is rehabilitated pursuant to N.J.S.A. 5:12-91d.
I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

January 28, 1986
DATE

Edgar B. Holmes
EDGAR B. HOLMES, ALJ

January 28, 1986
DATE

Receipt Acknowledged:

Alfred J. Zapp
CASINO CONTROL COMMISSION

FEB 2 1987
DATE

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

SC

WITNESSES

For petitioner:

Officer Ronald C. Williams

For respondent:

Freeman A. Davis

EXHIBITS

- P-1 Indictment
- P-2 Judgment of Conviction

- R-1 Letter, dated August 6, 1984, Pat's Steaks
- R-2 Letter, dated September 23, 1985, Aubrey's
- R-3 Letter, dated June 7, 1986, World Tower
- R-4 Certificate of Achievement, July 2, 1986
- R-5 High School Diploma
- R-6 The Key Newspaper - Atlantic County College
- R-7 Application for an Order Granting Termination of Probation, May 13, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-133
OAL DOCKET NO. CCC 2701-85
LICENSE NO. 14684-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : FINAL ORDER
Complaint, :
V. :
DAVID DELVALLE :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 17, 1986,

IT IS on this 19th day of February 1987, ORDERED that the initial decision is modified as follows:

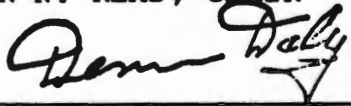
1. The ALJ's finding that Mr. DelValle's criminal record renders his licensure inimical pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. It is a misapplication of section 86(c)(4) to assert that a respondent's criminal record as a whole renders his licensure or registration inimical to the policies of the Casino Control Act. Rather, the inimical analysis is applied to a specific offense which although not enumerated in section 86(c)(1) or (3) nevertheless warrants disqualification. In this case we find

that none of the offenses committed by Mr. DelValle rise to the level of an inimical offense. However, for the reasons cited by the ALJ, Mr. DelValle's conduct considered as a whole does support the conclusion that he does not presently possess the good character, honesty and integrity required by N.J.S.A 5:12-90(b) and Mr. DelValle is therefore not qualified to continue to hold a casino employee license.

IT IS FURTHER ORDERED that the casino employee license held by David DelValle is revoked substantially for the reasons state in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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(a).

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 2701-85

AGENCY DKT. NO. 85-133

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

Petitioner,

v.

DAVID DEL VALLE,
Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

David DelValle, pro se

Record Closed: September 26, 1986

Decided: November 7, 1986

BEFORE JEFF S. MASIN, ALJ:

This matter comes before the Office of Administrative Law following transmittal from the Casino Control Commission. The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Commission requesting revocation of Mr. DelValle's casino employee license. The Complaint was filed with the Commission on March 27, 1985. Mr. DelValle requested a hearing on the matter and the case was transferred to the Office of Administrative Law as a contested case on May 13, 1985.

Mr. DelValle failed to appear for a prehearing in August 1985; however, the matter was rescheduled for hearing after he presented an excuse for his failure to appear. Thereafter, he again failed to appear in October 1985; however, the matter was again scheduled after Mr. DelValle indicated that he had moved and not received the notice for the October hearing. A prehearing conference was ultimately held on April 3, 1986. It established the issues for consideration as whether Mr. DelValle has the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)2 and 90(b) and whether his continued licensure would be inimical to the policies of the Casino Control Act and the interest of the casino industry, thus requiring revocation pursuant to N.J.S.A. 5:12-86(c)4.

A hearing on the matter was begun on May 22, 1986. Testimony revealed that a motor vehicle incident which had occurred on September 25, 1986 and which had resulted in a number of charges being filed against DelValle including drunk driving, eluding the police, reckless driving, driving on the revoked list, driving an unregistered vehicle and speeding, had not yet been completed and disposed of by the Franklin Township Municipal Court. As a result, the matter was continued in order to allow the complete disposition of all pending charges. Although the municipal court case was completed on June 30, 1986, because of difficulties in obtaining information concerning the disposition, the hearing was not rescheduled until September 22, 1986. At that point, the testimony was completed. The record was closed upon the receipt of a certified copy of Franklin Township Complaint No. 39440, which was provided in order to clarify the disposition of Complaint Summons SN89765, and which was received in September 26, 1986.

EVIDENCE

The original charges against Mr. DelValle arose from his having been convicted of two shoplifting offenses. Mr. DelValle agreed and stipulated that he had been convicted on December 2, 1983 of a shoplifting incident which occurred at the Bradlees Department Store in Egg Harbor Township on November 7, 1983. He was accused and plead guilty to attempting to remove an \$84.99 radio from the Bradlees Store without paying. He was fined \$100 and \$15 court costs. In addition, Mr. DelValle agreed and stipulated that he was found guilty on January 3, 1984 of shoplifting at a Sears Department Store on December 13, 1983. The Egg Harbor Township Municipal Court fined him \$500 and \$25 costs and stipulated that he have no further contact with Sears.

With respect to the motor vehicles matters which were first brought out at the time of the May 22, 1986 hearing, the ultimate disposition by the Franklin Township Municipal Court established that Mr. DelValle was found guilty of reckless driving in violation of N.J.S.A. 39:4-96, refusing a breathalyzer test, pursuant to N.J.S.A. 39:4-50.2; disregard of a traffic signal in violation of N.J.S.A. 39:4-81, and driving while suspended, in violation of N.J.S.A. 39:3-40. He was found not guilty of driving an unregistered vehicle, N.J.S.A. 39:3-4; attempting to elude the police, N.J.S.A. 2C:29-2.2b; speeding (merged with reckless driving), N.J.S.A. 39:4-98c, and driving while under the influence of alcohol, N.J.S.A. 39:4-50.¹

With respect to this action, the apparent thrust of the Division's interest in Mr. DelValle's activities in connection with the driving incident of September 25, 1986 was with his alleged attempt to elude the police. As noted, he was found not guilty of this charged by the Municipal Court judge. At the May 22, 1986 hearing, Patrolman Alex Illas of the Franklin Township Police Department testified that while on patrol on September 25, 1985 he clocked Mr. DelValle on his K-55 radar proceeding at 79 mph in a 55 mph zone. Illas was coming toward DelValle from the opposite direction and put on his overhead lights in an attempt to stop DelValle. DelValle continued to speed and Illas turned around and continued to follow with his overhead lights on. At one point, DelValle seemed ready to stop, but then kept his speed at 40 to 50 mph for about a quarter of a mile and then speeded up as Illas came within 75 yards of DelValle's vehicle. The respondent drove erratically, proceeded through a red light, nearly hitting a truck. He eventually was pulled over at a curb and arrested.

Mr. DelValle did not testify in connection with the eluding charge at the hearing of May 22, 1986 because of the pendency of the Municipal Court Complaint. When he testified on September 22, 1986 he did not testify with respect to the eluding matter.

In addition to the shoplifting and driving incidents, testimony at the September 22, 1986 hearing centered on a Complaint filed in the Mullica Township Municipal Court concerning an incident of May 9, 1986 in which Mr. DelValle was charged

¹ The eluding charge was merged with the reckless driving charge by the Municipal Court Judge who, according to the Municipal Court record, then found DelValle not guilty of the eluding, but guilty of reckless driving. See, P-14 in evidence.

with having "purposely, knowingly or recklessly caused bodily injury to Robert Nuneville specifically by punching him in the face about five or six times, a violation of N.J.S.A. 2C:12-1(a)(1), simple assault. Mr. DelValle was tried on the simple assault charge on July 22, 1986 and was found guilty and given a \$500 fine, which was suspended. He was placed on probation for one year and it was stipulated as part of the judgment that he have no contact at all with Mr. Nuneville.

Mr. DelValle testified concerning the assault. He stated that he hit Mr. Nuneville in self-defense. DelValle had gone to a bar after work. While waiting in line to get some beer at the take out area, an intoxicated man [who he did not know], later identified as Robert Nuneville, came up and pushed into the line. Nuneville was asking for money and would not let DelValle take out his beer. Nuneville shoved DelValle, who hit Nuneville in response. A fight broke out between the two men. No one else was involved. DelValle was uncertain as to how many times he might have hit Nuneville. To the best of his knowledge, neither man was injured.

Mr. DelValle explained that at the time of the Municipal Court hearing the judge, on imposing sentence, indicating his feeling that DelValle had been provoked and therefore determined to suspend the \$500 fine. According to DelValle, while he was provoked on this occasion, it was the only time that he had ever responded physically to such provocation. While he acknowledged that as a security officer in the casinos he is "often provoked," he "handles each situation very professionally" and has not been, nor would he be, provoked to a physical response by such matters.

Mr. DelValle acknowledged that his shoplifting activities in 1983 were the "wrong thing to do." At the time he had been unemployed for close to one year and had no income and was not receiving any unemployment benefits. He was married and "had to support himself and his wife." At the time he was 23 years old. He is now separated and has no children.

Mr. DelValle is employed at Trumps Castle Casino Hotel as a security guard. He has worked there for a year and a-half. He presented a statement from his supervisor, Vikki Cirigliano, who advised that DelValle:

has proven to be dependable and completes most assignments efficiently with little supervision. His attendance, with the exception of a medical leave of absence, has been good. I would recommend Mr. DelValle for re-hire should his new position be eliminated.

DalValle was previously employed as a public area attendant at Caesars and as a security guard at the Sands in 1980 to 82. He was hard count attendant for approximately one year and also serving as a security officer at the Tropicana.

DISCUSSION

A review of the facts and circumstances presented indicates that Mr. DelValle has had a number of run-ins with the law since 1983. As he acknowledged, his shoplifting activities in 1983, while perhaps provoked by a sense of desperation, were indeed quite wrong. In and of themselves, two shoplifting convictions [which occurred nearly three years ago] might give pause as to whether a licensed casino employee, particularly holding a position of responsibility in the security area, ought to be continued as a licensee. However, these incidents do not stand by themselves in regards to Mr. DelValle's continued fitness for licensure.

The motor vehicle incident of September 25, 1985 involved a number of motor vehicle violations which in and of themselves seem to be of little importance with respect to the licensure question. While driving in a reckless fashion, refusing a breathalyzer test, disregarding a traffic signal, and driving while suspended are all violations of the law which might indicate something about an individual's willingness to comply with the rules and regulations of society, Mr. DelValle was penalized in accordance with the applicable motor vehicle regulations for such violations and it would not seem appropriate in the absence of a continuing history of such actions to consider them as a basis for removing a license required for employment in the casino industry. With respect to the eluding charge, which from the standpoint of this case might be the most significant of the charges arising from that incident because of DelValle's "police" role in the casino, the fact that the Municipal Court entered a not guilty finding with respect to the charge appears to have resulted because it merged the charge with the reckless driving charge. From the standpoint of the proofs presented, which indicate, and I FIND, that DelValle was confronted by a police car travelling with its overhead lights on, first coming toward DelValle and then, more significantly, following DelValle on a road without public traffic

while DelValle was speeding well in excess of the speed limit, it appears that he did in fact attempt to out race the police car and in so doing went through a red light and nearly hit another vehicle. The standard of proof required in a Municipal Court for a finding of guilty on the eluding charge would have been beyond a reasonable doubt. With respect to this civil proceeding, the evidence does satisfy this judge by a preponderance of the evidence, that Mr. DelValle, in addition to driving recklessly, was intentionally attempting to flee the police officer travelling behind him in hot pursuit. Thus, I **FIND** that Mr. DelValle was attempting to elude the police.

Finally, with respect to the simple assault charge, Mr. DelValle has explained how he was provoked by Mr. Nuneville, and has indicated that the Municipal Court Judge took this into account in suspending the \$500 fine imposed. It is however significant that the Municipal Court Judge chose to place Mr. DelValle on one year probation. Although the exact details of the assault incident have not been presented in full, the fact that Mr. DelValle was found guilty of this offense, and was placed on probation for a period of one year, seems to indicate that perhaps the Municipal Court Judge viewed the matter a little more seriously than Mr. DelValle was willing to admit. Given his financial situation, the suspension of a fine where one is placed on probation is not unusual.

Having considered all of the evidence, including the nearly three year history of occasional run-ins with the law and violations of statutes and regulations governing his conduct in society, I **FIND** that Mr. DelValle has been guilty of criminal and quasi-criminal violations which, when viewed in their totality, strongly indicate that his continued licensure as a casino employee, particularly in a position of a security officer, would be inappropriate. Where one has a demonstrated history of recent criminal and quasi-criminal violations, including theft [for that is what shoplifting is] and assault, one's good character, honesty and integrity can surely be questioned. Having considered all of the evidence, I **CONCLUDE** that Mr. DelValle does not have the requisite good character, honesty and integrity for licensure as a casino employee, and therefore his license must be revoked pursuant to N.J.S.A. 5:12-89(b) and 90(b). Further, I **CONCLUDE** that his continued licensure would be inimical to the policies of the Casino Control Act and the interests of the casino industry, for the continued licensure of an individual with a recent history of repetitious violations of criminal and quasi-criminal statutes, including theft and physical violence, is not in keeping with the desire of the Legislature, as expressed in the Casino Control Act, of insuring that only those with good character,

honesty and integrity, and those capable of complying with rules and regulations governing their conduct, be licensed.

Given the above, I **CONCLUDE** that Mr. DelValle's license must be **REVOKED**. It is so **ORDERED**.

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

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

November 7, 1986
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

November 10, 1986
DATE

Nieves Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 13 1986
DATE

Ronald J. Parker x 5
OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

On behalf of petitioner:

- P-1 Egg Harbor Township Municipal Court Complaint SN97414, with attached Egg Harbor Township Police Department Arrest Report of November 7, 1983
- P-2 Egg Harbor Township Municipal Court Complaint, referencing incident of December 13, 1983, with attached Egg Harbor Township Police Department Arrest Report, dated December 13, 1983
- P-3 Photocopy of Franklin Township Municipal Court Complaint SN89765
- P-4 Franklin Township Municipal Court Complaint 39437
- P-5 Franklin Township Municipal Court Complaint 39438
- P-6 Franklin Township Municipal Court Complaint 39439
- P-7 Franklin Township Municipal Court Complaint 39440
- P-8 Franklin Township Municipal Court Complaint 39231
- P-9 Franklin Township Municipal Court Complaint 39232
- P-10 Franklin Township Municipal Court Complaint 39233
- P-11 Franklin Township Municipal Court Complaint SN89765
- P-12 Mullica Township Municipal Court Complaint, referencing incident of May 9, 1986 (assault)
- P-13 Franklin Township Municipal Court Complaint SN89765, with disposition
- P-14 Franklin Township Municipal Court Complaint 39440, with typed reference clarifying disposition at bottom

On behalf of respondent:

R-1 Letter of April 17, 1986 from Vikki Cirigliano

R-2 Letter of September 19, 1986 from Sara Guzman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-124
OAL DOCKET NO. CCC 3774-86
(6145-85 ON REMAND)
LICENSE NO. 07711-21

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

Complainant, :

: FINAL ORDER

v.

CRAIG A. DESIMONE,

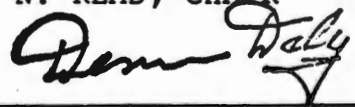
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of January 21, 1987,

IT IS on this 30th day of January 1987, ORDERED that the initial decision of the Office of Administrative Law is adopted; and

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

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 3774-86

AGENCY DKT. NO. 83-124

(OAL DKT. NO. CCC 6145-8

On Remand)

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

Petitioner,

v.

CRAIG A. DE SIMONE,
Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Daniel R. Kehler, Esq., for respondent (McCrink, Nelson & Kehler, attorneys)

Record Closed: October 14, 1986

Decided: December 8, 1986

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

STATEMENT OF THE CASE

On or about January 9, 1983, the respondent left his casino and went to a bar at approximately 5:00 a.m. He went to the bar to meet his sister and an old girlfriend. While he was there his sister told him that her husband had threatened her and forced her out of her apartment. His sister was drunk. The respondent also had too many drinks. He

was introduced to a young man at the bar whom he later learned was named Guy Lynch. At the urging of his sister, the respondent and Guy Lynch went to the sister's apartment to oust the sister's husband from the apartment and to "teach him a lesson."

When Guy Lynch and the respondent arrived at the apartment, the respondent's brother-in-law was sitting upright in a drunken stupor on the living room sofa. The respondent claims that he went to the back of the apartment to watch the children and Guy Lynch severely beat his brother-in-law. At the conclusion of the beating, Guy Lynch left the premises with the respondent's car and returned to the bar. The respondent, fearful for his safety if his brother-in-law woke up and saw him there, threw him out into the January night wearing nothing but his skivies; and called the police. He told the police that a man was trying to break into his home.

The police arrived and finding the brother-in-law in a bloodied condition, and unsuitably dressed, suspected that the respondent had something to do with it. The respondent told the police a series of improbable stories in an attempt to conceal his involvement, his sister's involvement and the involvement of Guy Lynch. The police were too smart for the respondent and eventually obtained from him a written confession which appears to be fairly accurate in most respects as to the events of that morning except for the important fact that Guy Lynch is named in the confession as one "Philip Rinaldi".

The police arrested Philip Ranallo, a friend of the respondent's sister. He quickly convinced the police of his innocence. The respondent and his sister were arrested and charged with the crime of giving false information to a police officer with the purpose to implicate another contrary to N.J.S.A. 2C:28-4a and the disorderly persons offense of filing a fictitious report with a police officer contrary to N.J.S.A. 2C:28-4b. They were indicted for the crime. The sister pled guilty to the indictment because she provided the respondent and the police with the name "Philip Rinaldi". The respondent was granted Pre-Trial Intervention. He claims that at the police station he assumed his sister was providing him with the correct name and he had no intention to implicate another person.

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on April 27, 1983 seeking to revoke the respondent's casino employee license

based on the indictment. The respondent requested a hearing at the conclusion of the underlying criminal case and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A pretrial conference was conducted on November 13, 1985 and the matter was scheduled for plenary hearing on January 16, 1986 in the Atlantic County Civil Courthouse in Atlantic City. An initial decision was rendered on February 18, 1986. In that decision I concluded that the Division had not established the existence of a statutory disqualifier pursuant to the Casino Control Act, section 86c, because the statute on which the indictment against DeSimone was based required knowledge and purpose to implicate another. I further concluded that the continued licensure of the respondent would not be inimical to the Casino Control Act or to casino operations and that he possessed the requisite good character, honesty and integrity for licensure despite the admitted lie that he made to the police officers. These conclusions were based upon the character of the victim, the circumstances of the offense, which involved passion, alcohol and family ties, the time that has elapsed since the events of January 9, 1983, the age of the respondent, the fact that the offense has never been repeated and the fact that the respondent has lead an otherwise blameless life.

This initial opinion was reviewed by the Casino Control Commission and, on June 5, 1986, the Casino Control Commission issued an Order of Remand. In the Order of Remand I was instructed to consider the disorderly persons offense with which the respondent had been charged and which I did not consider in my original opinion. I was further instructed to obtain more information regarding the actions of the respondent before, during and after the beating of his brother-in-law and to reconsider the good character, honesty and integrity of the respondent in light of any additional facts. The matter was conferenced on July 31, 1986 and the matter was heard a second time on October 14, 1986 in the Atlantic County Civil Courthouse.

STIPULATION

At the hearing the parties stipulated that the respondent committed the offense of filing a fictitious report with the police knowing that the report was fictitious, contrary to N.J.S.A. 2C:28-4b.

ADDITIONAL EVIDENCE

The Division produced additional testimony and evidence pursuant to the Remand Order. Officer Leonard Todd's testimony corroborated the testimony of Officer Mark Petti. He introduced an old mug shot of Guy Lynch (1974) a recent mug shot of Philip Ranallo and photographs taken of Joseph Dachille, Jr., the brother-in-law, subsequent to the beating of January 9, 1983. Officer Todd emphasized that the respondent told him that he came to Brigantine "with another male to teach Mr. Dachille a lesson". Officer Todd also advised that Guy Lynch is still a fugitive.

The Division also produced a letter purporting to be from Mr. Joseph Dachille, Sr., the brother-in-law's father, which was written to the Casino Control Commission and dated January 17, 1983. There was subsequent testimony that the letter was not written by Mr. Dachille, Sr., but by his wife. In any case, there is nothing in the testimony which corroborated the statement that the respondent struck Joseph Dachille, Jr. with a bottle and therefore I disregard the letter.

The balance of the testimony and proofs were offered on behalf of the respondent. His sister testified again. This time her testimony differed in some respects from her testimony at the prior hearing. I made no findings of fact based on her testimony at the prior hearing and I make none now. She is no more credible now than she was at the first hearing. She was the instigator of the respondent's trouble and has not been particularly helpful to him in the course of his interrogation and these hearings. She is nevertheless, his sister, and it was in her defense that the respondent acted on January 9, 1983.

The respondent testified again. It was evident from his testimony this time as well as last time that he acted shamefully on January 9, 1983. He admits as much. He characterized his behavior (when he threw his unconscious brother-in-law out in the cold with nothing on but his skivies) as "cruel". He still denies beating his brother-in-law and I believe him. He is obviously too afraid of his brother-in-law to have been involved in beating him. The respondent admits that he lied repeatedly to the police on the day in question during extensive interrogation. His recollection of what he finally told the police is confused. I characterized his final version to the police in the original opinion only as "a more accurate version of what occurred", not a true one.

Thereafter, the respondent produced his father, his mother, and his father-in-law as character witnesses on his behalf. They all described the incident as being totally out of character for the respondent. The victim of the beating, Joseph Dachille, Jr., writes that the respondent is a "good man", and should not be another victim of the events of January 9, 1983. All the witnesses confirm that Joseph Dachille, Jr. was formerly a drunk and a wife beater. He has apparently in fact learned a lesson.

I have compared the testimony adduced at the second hearing with the initial decision rendered by me on February 18, 1986. Nothing changes my view that this was a domestic dispute in which the respondent acted shamefully. But the event was so out of character for the respondent and so isolated an incident that compared to the rest of his life it should be discounted. Even the victim has benefited from the incident and requests that the respondent be licensed.

I, therefore, **CONCLUDE** that the respondent's continued licensure would not be inimical to the Casino Control Act or to casino operations and I further **CONCLUDE** that the respondent possessed the requisite good character, honesty and integrity for licensure. I, therefore, **ORDER** that the complaint filed be **DISMISSED**.

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

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

December 8, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Dec. 9, 1986
DATE

Nicholas Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 11 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESSES

For Petitioner:

Leonard C. Todd

For Respondent:

Cynthia Dachille
Craig A. DeSimone
Leonard DeSimone
Norma Miller
Michael Miller

EXHIBITS

PR-1 Summons - SJ62861
PR-2 thru
PR-10 Photographs - Joseph Dachille
PR-11 Police reports - 11 pages
PR-12 Mug shot - Guy Lynch
PR-13 Mug shot - Philip Rinaldo
PR-14 Letter to Casino Control Commission purportedly by Joseph Dachille, Sr.
PR-15 Statement by DeSimone

RR-1 Letter purportedly by Joseph Dachille, Jr.
RR-2 Order of Dismissal
RR-3 PTI Letter

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EL-33
OAL DOCKET NO. CCC 6302-84

IN THE MATTER OF THE EXCLUSION
OF JOHN DiGILIO FROM
CASINO HOTEL FACILITIES

:
:
:
:
:
FINAL ORDER

The Division of Gaming Enforcement (DGE) having filed a petition seeking preliminary and final placement of the respondent's name on the Commission's exclusion list; and the Commission having heretofore entered a preliminary order of exclusion dated May 31, 1984; and the matter having been transmitted to the Office of Administrative law (OAL) for a hearing; and the DGE subsequently having filed a motion to dismiss the petition; and an initial decision having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 21, 1987,

IT IS on this *9th* day of February 1987, ORDERED that the initial decision of the OAL is adopted and the petition for the exclusion of John DiGilio is dismissed; and

IT IS FURTHER ORDERED that the Commission's preliminary order of exclusion dated May 31, 1984, is vacated; and

IT IS FURTHER ORDERED that John DiGilio's name be removed from the list of persons excluded from casinos pursuant to N.J.S.A. 5:12-71.

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

WITHDRAWAL

OAL DKT. NO. CCC 6302-84

AGENCY DKT. NO. 83-EL-33

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

Petitioner,

v.

JOHN DI GILIO,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Alan Dexter Bowman, Esq., for the respondent

Record Closed: December 10, 1986

Decided: December 17, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, seeks to have the name of John DiGilio, respondent, placed upon the Casino Control Commission's (Commission) list of persons who are to be excluded or ejected from any licensed casino, pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq. The respondent opposed the action.

PROCEDURAL HISTORY

On December 18, 1983, the Division filed its petition with the Commission. By Order dated May 31, 1984, the Commission temporarily placed the respondent on the exclusion list pending the outcome of the hearing. By letter dated August 7, 1984, the respondent requested a hearing. On August 23, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1984, before the former Administrative Law Judge (now Commissioner) Valerie H. Armstrong. The matter was scheduled for hearing on numerous occasions all of which were adjourned, and was the subject of two orders of inactivity. The matter was most recently scheduled for hearing on various dates during November and December 1986, which dates were also adjourned. The record closed on December 10, 1986, upon receipt of a letter from the Division.

FINDINGS OF FACT AND CONCLUSION

By letter dated December 8, 1986, which is attached hereto and included herein as though fully set forth at length, the Division expressed its intent to dismiss voluntarily its petition.

Therefore, I **FIND** and **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against John DiGilio be **DISMISSED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

December 17, 1986
DATE

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

December 18, 1986
DATE

Receipt Acknowledged:

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

DEC 22 1986
DATE

Mailed to Parties:

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

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STATE OF N.J.
OFFICE OF ADM. LAW

State of New Jersey Dec 10 2 39 PM '86

W. CARY EDWARDS
ATTORNEY GENERAL

DONALD R. BELSOLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX

CN 047

TRENTON, NEW JERSEY 08625

December 8, 1986

ANTHONY J. PARRILLO
DIRECTOR

Honorable Richard L. Voliva, Jr., A.L.J.
Office of Administrative Law
Quakerbridge Plaza
Building No. 9
CN 049
Mercerville, New Jersey 08613

Re: Division of Gaming Enforcement, Department
of Law and Public Safety v. John DiGilio -
OAL DKT. NO. CCC 6302-84;
AGENCY DKT. NO. 83-EL-33

Dear Judge Voliva:

This will confirm my office's telephone conversation with you of last week in which we advised you that the Division wishes to dismiss its Petition for Exclusion against the above-named person.

After an extensive and exhaustive investigation, the Division has determined that it presently has insufficient evidence to prove its case.

Respectfully,

William E. Mountford, Jr.
William E. Mountford, Jr.
Deputy Attorney General

jc
c Alan D. Bowman, Esq.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 86-94 AND
86-EA-16 (CONSOLIDATED)
OAL DOCKET NO. CCC 3333-86
REGISTRATION NO. 63397-40
APPLICATION NO. 61820-22

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

Complainant,

v.

GEORGE P. DOWNING,

Respondent.

AND

APPLICATION OF GEORGE P. DOWNING

FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the
Office of Administrative Law (OAL) and the initial decision
of the administrative law judge (ALJ) having been filed with
the New Jersey Casino Control Commission (Commission); and
the Commission having considered the entire record of these
proceedings at its public meeting of December 23, 1986,

IT IS on this 4th day of March 1987,

ORDERED that the initial decision is modified as follows:

1. The ALJ's conclusion that Mr. Downing is disqualified pursuant to N.J.S.A. 5:12-86(c)(2) as a consequence of his conviction on February 4, 1980, for breaking and entering, contrary to N.J.S.A. 2A:94-1, and larceny, contrary to N.J.S.A. 2A:119-2, is rejected. The judge's analysis of the

disqualification issues is at variance with the Commission's accepted construction of N.J.S.A. 5:12-86(c). Having applied for a casino employee license in May 1985 and for a casino hotel employee registration in June 1985, Mr. Downing's criminal record must be evaluated under N.J.S.A. 5:12-86(c)(1) rather than -86(c)(2). See Application of Robert Ferrin for a Casino Employee License, Docket No. 79-EA-207, (Commission Decision January 1981).

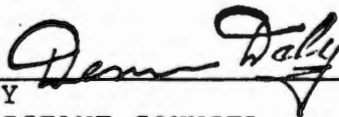
2. Mr. Downing's conviction on February 4, 1980, for larceny, in violation of N.J.S.A. 2A:119-2, is equivalent to a violation of N.J.S.A. 2C:20-2. According to the evidence in the record, the offense was a third degree crime and therefore a basis for disqualification pursuant to N.J.S.A. 5:12-86(c)(1). However, the Commission affirms the ALJ's finding that Mr. Downing has demonstrated his rehabilitation from this disqualifying offense pursuant to N.J.S.A. 5:12-90(h) and -91(d).
3. The breaking and entering offense, a violation of N.J.S.A. 2A:94-1, is equivalent to a violation of N.J.S.A. 2C:18-2. Burglary is a disqualification under N.J.S.A. 5:12-86(c)(1) only if it is in the second degree. The record contains insufficient facts to determine whether the event constituted second degree burglary. Therefore this offense is not a basis for disqualification under N.J.S.A. 5:12-86(c)(1).

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

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of George P. Downing is dismissed based upon the reasons stated in the initial decision as modified.

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 3333-86

AGENCY DKT. NOS. 86-EA-16

& 86-94

**APPLICATION OF GEORGE P. DOWNING
FOR A CASINO EMPLOYEE LICENSE**

AND

STATE,

v.

GEORGE P. DOWNING.

George P. Downing, petitioner, pro se

**Joanne Ciancimino, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: September 30, 1986

Decided: November 14, 1986

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

George P. Downing seeks licensure as a casino employee, permitting him to work in casino as a non-gaming employee. By letter to the Casino Control Commission, dated January 24, 1986, the Division of Gaming Enforcement objected to the licensure of the petitioner. On March 26, 1986, the Division filed with the Commission a complaint seeking revocation of the petitioner's casino hotel employee registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the petitioner's 1980 conviction for breaking and entering, larceny and carrying a concealed weapon. These are the issues to be resolved:

1. Should the petitioner's casino hotel employee registration be revoked and his application for a casino employee license be denied as a result of his 1980 conviction for larceny, which is a statutory disqualifier under section 86c of the Casino Control Act.
2. Has the respondent, if convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.
3. Does the respondent possess the requisite good character, honesty and integrity 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 April 23, 1986, the petitioner requested a hearing on the complaint of the Division of Gaming Enforcement and on his license application. On May 19, 1986, 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 prehearing conference was held on July 15, 1986, at which time the matter was set down for hearing on August 28, 1986.

At the request of counsel for the Division of Gaming Enforcement, the matter was adjourned prior to the August 28, 1986, hearing date because of the unavailability of a necessary witness. The hearing was then rescheduled for and held on September 30, 1986.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 28 year old resident of Bridgeton, New Jersey. He holds casino hotel employee registration no. 63397-40. The petitioner was employed by Resorts International Hotel and Casino as a bar porter for approximately 30 days beginning in August 1985. According to the petitioner, he was terminated from this position because he was unable to get along with his supervisor. The petitioner was also employed by Trump's Castle Hotel and Casino as a house attendant from October 1985 until February 1986. It was the testimony of the petitioner that he was terminated from this position because his supervisor did not care for his workmanship.

On February 20, 1979, when the petitioner was 20 years old, he was arrested by the City of Bridgeton Police Department and charged with breaking and entering, contrary to N.J.S.A. 2A:94-1, larceny, contrary to N.J.S.A. 2A:119-2, and possession of a dangerous weapon, contrary to N.J.S.A. 2A:151-41 (Exhibit R-2). The petitioner was indicted on these charges in Cumberland County on October 10, 1979 (Exhibit R-3).

On November 5, 1979, the petitioner entered a plea of not guilty to all counts of the indictment. However, on February 4, 1980, he retracted his plea of not guilty and entered a plea of guilty to one count of breaking and entering, one count of larceny and one count of carrying a concealed weapon. On February 15, 1980, the judgment of conviction was entered against the petitioner (Exhibit R-3). On each count he was sentenced to the Cumberland County Jail for a period of six months, with each jail term suspended. He was placed on probation for a period of two years and ordered to pay to the probation department a fine of \$300.

Testifying on his own behalf, the respondent acknowledged that he committed the offenses as charged in 1979. He did not dispute the contents of the police arrest report (Exhibit R-2) which indicated that he and another young man had broken into a business and taken a number of items having a total value of approximately \$720. However, he emphasized that although he was carrying a "nunchoka" weapon at the time of his arrest, he had not used this weapon during the larceny. According to the petitioner, he paid the \$300 fine imposed by the court and his probation was terminated early. The petitioner entered active duty in the United States Army on February 18, 1980, under the reserve enlistment program (Exhibit P-2). While on active duty at Fort Sill, Oklahoma, the petitioner was designated as an honor trainee and he was awarded a certificate of achievement in recognition of his outstanding performance as a member of the post colorguard (Exhibits P-3, P-4 and P-5).

At the hearing, Division of Gaming Enforcement Investigator Alan R. Weinstein testified concerning his investigation of the petitioner. According to the investigator, the petitioner was first arrested on August 19, 1976, when he was 18 years old, on a charge of contempt of court for failure to appear on a motor vehicle summons (Exhibit R-4). The warrant was satisfied upon the petitioner's payment of a \$35 fine. On May 27, 1977, the petitioner was arrested on a charge of simple assault and battery on a police officer, arising out of an incident which occurred when the petitioner was stopped on a warrant check (Exhibit R-1). According to Investigator Weinstein, the petitioner was found not guilty of the charge on February 14, 1978.

On April 18, 1978, the petitioner was again arrested on a contempt of court warrant for failure to appear on a motor vehicle summons (Exhibit R-5). The petitioner posted cash bail and satisfied the fine. On October 6, 1978, the petitioner was arrested on a contempt of court warrant for failure to pay a motor vehicle fine (Exhibit R-6). The petitioner posted cash bail and satisfied the fine. Similar arrests of the petitioner for contempt of court occurred on December 7, 1978, January 30, 1979, May 24, 1979, December 3 1981, June 10, 1982, and August 16, 1982 (Exhibits R-7 through R-12). In each instance, the petitioner posted cash bail and satisfied the fine or otherwise complied with the order of the court.

Investigator Weinstein testified that his investigation revealed two additional warrants on municipal contempt of court charges against the petitioner which remain outstanding. Both are for \$500 fines for moving violations. The petitioner acknowledged each of the contempt of court arrests and agreed that there are two warrants outstanding. It was his testimony that he has not satisfied these fines because of their amount and his lack of funds. He has contacted the courts and they have requested payment in full and will not accept payment on terms. It is the hope of the petitioner that he will be able to pay the outstanding fines soon. The petitioner further acknowledged that he had driven on the revoked list in 1982. He no longer has a driver license and he has not driven in four years.

The petitioner has not been arrested since 1982 and he has no criminal record whatsoever since his 1979 arrest and 1980 conviction on the indictable offenses. According to the petitioner, he has reformed considerably since that time. In support of this position, the petitioner referred to his achievements while on active duty in the United States Army. In addition, the petitioner testified that he is presently employed as a laborer in a packing house and he also is enrolled in an Electrical Technician Course at the Star Technical Institute in Marlton, New Jersey (Exhibits P-6 and P-7).

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

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and

convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c, the commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of certain enumerated statutes.

Pursuant to section 1b(8) of the Casino Control Act, participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Sections 91b and 129 of the act authorize the revocation of the registration of any registrant who is disqualified on the basis of his conviction of any offense which is specifically listed under section 86c of the act.

It is undisputed that the petitioner was convicted of the offenses of breaking and entering, contrary to N.J.S.A. 2A:94-1, and larceny, contrary to N.J.S.A. 2A:119-2, upon his plea of guilty entered on February 4, 1980. Both of these offenses are specifically enumerated as disqualifiers under section 86c(2) of the act. Thus, the petitioner is subject to denial of his application for a casino employee license and revocation of his casino hotel employee registration on the basis of his conviction of disqualifying offenses. Pursuant to sections 90h and 91b of the act, however, the petitioner shall not be denied a casino employee license, nor shall his casino hotel employee registration be revoked, on the basis of the otherwise disqualifying conviction, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence, with due consideration given to the rehabilitation factors set forth in those subsections of the act.

The petitioner is now 28 years old. His only criminal offense occurred nearly eight years ago, in February 1979. He satisfactorily completed the terms of his probationary sentence imposed following his plea of guilty in February 1980. The petitioner has been arrested on numerous occasions on municipal court contempt of court warrants for failure to appear on motor vehicle summonses or to satisfy motor vehicle fines. However, the last of these arrests occurred over four years ago, in August 1982. While the petitioner has two motor vehicle fines outstanding, it is his intention to pay them when he has sufficient funds.

Following his 1980 conviction, the petitioner served on active duty with distinction in the United States Army. He is presently employed full-time as a packer. In addition, he is enrolled in Technical School, pursuing a course in electronics. The petitioner contends that he is a changed man and that he has been rehabilitated.

I agree with the petitioner. Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of breaking and entering, contrary to N.J.S.A. 2A:94-1, and larceny, contrary to N.J.S.A. 2A:119-2, which are enumerated statutory disqualifiers from licensure and registration, within the meaning of section 86c(2) of the Casino Control Act. However, I further **CONCLUDE** that the petitioner has overcome his disqualification on the basis of his conviction of enumerated offenses under section 86c of the act, by demonstrating his rehabilitation, within the meaning of sections 90h and 91d of the act, by clear and convincing evidence. I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing, by clear and convincing evidence, that he presently 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.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against George P. Downing be **DISMISSED**. It is further **ORDERED** that the application of George P. Downing for a casino employee license, permitting him to work in a casino as a non-gaming employee be **GRANTED**.

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

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

November 14, 1986
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 14, 1986
DATE

M. Donczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 19 1986
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW / K.S.

bc

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Diploma
- P-2 Certificate of Discharge from Active Duty
- P-3 Certificate of Achievement
- P-4 Certificate of Achievement
- P-5 Letter of Commendation
- P-6 Enrollment Agreement
- P-7 Attendance History

For the respondent:

- R-1 Arrest Report dated May 27, 1977
- R-2 Arrest Report dated February 20, 1979
- R-3 Indictment and Judgement of Conviction
- R-4 Arrest Report dated August 19, 1976
- R-5 Arrest Report dated April 18, 1978
- R-6 Arrest Report dated October 6, 1978
- R-7 Arrest Report dated December 7, 1978
- R-8 Arrest Report dated January 30, 1979
- R-9 Arrest Report dated May 24, 1979
- R-10 Arrest Report dated December 3, 1981
- R-11 Arrest Report dated June 10, 1982
- R-12 Arrest report dated August 16, 1982

WITNESSES

For the petitioner:

George P. Downing

For the respondent:

Alan R. Weinstein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-196
OAL DOCKET NO. CCC 4451-86

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

Complainant, :

FINAL ORDER

v. :

ELSINORE SHORE ASSOCIATES, :
a/t ATLANTIS CASINO HOTEL, :

Respondent. :

Proceeding having been held in the Office of Administrative Law; and an initial decision incorporating a stipulation of settlement having been filed with the Casino Control Commission (Commission); and the parties having appeared before the Commission and argued the bases for reaching the instant settlement; and counsel for respondent having represented that, pursuant to the proposed settlement, the respondent has already held the alcoholic beverage employee training seminar and submitted quality control procedures to its internal control submission, and is seeking bankruptcy court approval to pay the proposed civil penalty; and the Commission having reviewed the entire record and the representations of counsel at its public meeting of March 25, 1987,

IT IS on this 3rd day of March 1987, ORDERED that the initial decision /stipulation of settlement is approved and incorporated by reference; and

IT IS FURTHER ORDERED that Elsinore Shore Associates pay a civil penalty of \$26,250 as provided in the initial decision/stipulation of settlement; and

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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 4451-86

AGENCY DKT. NO. 86-196

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

Petitioner,

v.

**ELSINORE SHORE ASSOCIATES,
T/A ATLANTIS CASINO/HOTEL,**

Respondent.

Wendy A. Way, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Harry Jay Levin, Vice-President and General Counsel, for the respondent, Elsinore
Shore Associates, t/a Atlantis Casino/Hotel

Record Closed: January 30, 1987

Decided: February 6, 1987

BEFORE **STEPHEN W. THOMPSON, ALJ:**

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent, Elsinore Shore Associates, t/a Atlantis Casino/Hotel (Elsinore). The Division of Gaming Enforcement (Division) alleges that Elsinore engaged in the illegal storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.S.A. 19:50-1.13(a), (b), (c)

NJAC

and (d) and N.J.S.A. 19:5-01.6(f); possessed twenty-nine (29) overfilled bottles of alcoholic beverages in violation of N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-23.23(a); and possessed six unlabelled bottles of alcoholic beverages in violation of N.J.S.A. 5:12-103(2) and, as a result thereof, Elsinore was not within the terms and conditions of its Casino Hotel Alcoholic Beverage (C.H.A.B.) license. Elsinore denied the allegations.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 27, 1986. Elsinore filed an Answer to the complaint on or about June 24, 1986. On July 2, 1986, 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 scheduled in Atlantic City, New Jersey, on August 25, 1986. The matter was scheduled for hearing on November 24, 25, 1986 and subsequently adjourned until December 29, 30, 1986. The December hearing dates were adjourned at the request of the parties until March 9, 10, 1987.

Prior to the hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the Office of Administrative Law on January 30, 1987. The record closed on January 30, 1987.

FINDINGS OF FACT AND CONCLUSION

The Division and Elsinore have prepared an extensive Stipulation of Facts (paragraphs 1-41, Stipulation of Settlement) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

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

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

February 6, 1987
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ *sh*

Receipt Acknowledged:

Feb. 9, 1987
DATE

Christina K. Heavze
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW *RLP*

ml

DOCUMENTS IN EVIDENCE

None

State of New Jersey
Casino Control Commission
OAL Docket No: CCC 04451-86
Agency Ref. No: 86-196

State of New Jersey, Department of Law
and Public Safety, Division of Gaming
Enforcement, .

Plaintiff,
vs.

Elsinore Shore Associates, t/a
Atlantis Casino/Hotel,

Respondent.

STIPULATION
OF
SETTLEMENT

RECEIVED
STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
JAN 30 5 41 AM '87

PLEASE TAKE NOTICE that the above-captioned matter has been discussed by and between the Parties involved, W. Cary Edwards, Attorney General of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Alice Way, Deputy Attorney General, and Harry Jay Levin, Esquire, Attorney for Respondent, Elsinore Shore Associates, t/a Atlantis Casino Hotel, and pursuant to said discussions the following facts have been agreed upon and stipulated:

1. Respondent, Elsinore Shore Associates, t/a Atlantis Casino/Hotel (hereinafter called "Atlantis" or "Respondent"), is now and at all times referenced herein has been a partnership 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 2500 Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Atlantis is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in

accordance with the Act and the regulations promulgated thereunder. The said license was issued and became effective on April 14, 1981 and has been renewed annually on that date. Atlantis has been conducting its casino hotel operations pursuant to said license continually to date since that time and including all times referenced hereunder.

3. Atlantis is the holder of, and operates pursuant to, a Certificate of Operation effective April 14, 1981. Said Certificate of Operation entitles Atlantis to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the rules and regulations promulgated thereunder.

4. By resolution dated April 14, 1986, the Commission renewed respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the operational year.

5. Pursuant to its C.H.A.B. license, Atlantis is authorized to serve patrons of its casino hotel alcoholic beverages as well as to store alcoholic beverage inventories on-site in certain specific areas authorized for same.

6. On or about June 27, 1985, the Division conducted an on-site inspection of Atlantis' casino hotel facility.

7. Said inspection resulted in the Division's discovery of ten (10) bottles of alcoholic beverages of various sizes and brands which had been placed in the Banquet Beverage Storage Room, located on the Third Level Mezzanine of Atlantis' casino hotel facility. This Banquet Beverage Storage Room is authorized for the storage of alcoholic beverages pursuant to N.J.S.A. 5:12-103(g) (7).

8. Each of these ten (10) bottles appeared to have been overfilled. The ten (10) bottles were impounded by the Division

and a receipt was executed therefore. A copy of this receipt is attached hereto and made a part hereof as Exhibit A.

9. During the on-site inspection as aforescribed in paragraph 6, the Division discovered that an L-shaped area, located outside of the aforementioned Banquet Beverage Storage Room contained a total of fifty-two (52) cases of an alcoholic beverage inventory of various size bottles and of various brands.

10. The Commission has never authorized this outer L-shaped area for the storage of alcoholic beverage pursuant to any provision of N.J.S.A. 5:12-103(g).

11. The use of this unauthorized storage area was acknowledged in writing by Thomas Rucci, then Beverage Director at Atlantis. A copy of said acknowledgement is attached hereto and made a part hereof as Exhibit B.

12. The Division also discovered a total of six (6) bottles of alcoholic beverages, placed with the other alcoholic beverage inventory in the aforementioned L-shaped area. None of these six (6) bottles of alcoholic beverages bore a label which described its contents.

13. On June 27, 1985, Leo Kessler, then Vice President of Food and Beverage at Atlantis issued an Interoffice Memorandum to Mr. Rucci and other Food and Beverage personnel at Atlantis reminding said personnel of the proper procedures involved in the handling of alcoholic beverages. A copy of this memorandum is attached hereto and made a part hereof as Exhibit C.

14. On or about July 2, 1985, the Division conducted a follow-up, on-site inspection of Atlantis' casino hotel facility.

15. Said inspection resulted in the Division's discovery of an additional thirty (30) bottles of alcoholic beverage of various sizes and brands which had been placed in the Banquet Beverage Storage Room, located on the Third Level Mezzanine of Atlantis' casino hotel facility. This banquet Beverage Storage Room is authorized for the storage of alcoholic beverages pursuant to N.J.S.A. 5:12-103(g) (7).

16. Each of these thirty (30) bottles appeared to have been overfilled. The thirty (30) bottles were impounded by the Division and a receipt was executed therefor. A copy of said receipt is attached hereto and made a part hereof as Exhibit D.

17. Notwithstanding the notice served to Atlantis by the Division on June 27, 1985 that Food and Beverage personnel had been engaging in unauthorized alcoholic beverage activity and notwithstanding the Interoffice correspondence issued to said personnel by Atlantis' Vice President of Food and Beverage, Atlantis Food and Beverage personnel had failed to cease the overfilling of bottles of alcoholic beverages. However, Atlantis personnel had ceased the practice of using unlicensed areas for the storage of alcoholic beverage inventories by July 2, 1985.

18. On or about July 3, 1985, the Division returned to the Atlantis facility to impound for purposes of comparison testing sealed, unused bottles of alcoholic beverages of the same brands which has been impounded on June 27, 1985 and July 2, 1985 and a receipt was executed therefor. A copy of said receipt is attached hereto and made a part hereof as Exhibit E.

19. On or about August 13, 1985, an additional sealed, unused bottle of an alcoholic beverage was impounded for purposes of

comparison testing from Atlantis and a receipt was executed therefor. A copy of said receipt is attached hereto and made a part hereof as Exhibit F.

20. The Division requested that the New Jersey State Police Laboratory ("State Police Laboratory") located in the City of West Trenton, County of Mercer and State of New Jersey conduct an examination of evidence of the contents of fifty-three (53) bottles of alcoholic beverages impounded by the Division from Atlantis' facility on June 27, 1985, July 2, 1985, July 3, 1985 and August 19, 1985 as well as additional bottle of a sealed, unused bottle of an alcoholic beverage obtained by the Division from another source for the purpose of comparison testing. A copy of the Division's Request for Examination of Evidence is attached hereto and made a part hereof as Exhibit G.

21. The contents a total of fifty-four (54) bottles of alcoholic beverages, as aforescribed in paragraphs 19 and 20, were tested and analyzed at the State Police Laboratory. A copy of the Reports of the State Police Laboratory which set forth the results of the Examination of Evidence is attached hereto and made a part hereof as Exhibit H.

22. As these Reports state, a total of twenty-seven (27) bottles of various brands of alcoholic beverages which has been impounded as evidence by the Division from Atlantis had been "overfilled" while the contents of same were determined to have been "genuine."

23. As these Reports also state, the contents of two (2) bottles of alcoholic beverages which were tested were determined to

be "not genuine" and two (2) other bottles tested were determined to be "not genuine" and "overfilled."

24. The Division has consulted with the Forensic Chemist who performed the Examination of Evidence. Said Chemist has advised the Division that (1) the determination of "not genuine" is attributed to natural causes such as evaporation and spoilage and not adulteration with any foreign or harmful substance nor dilution; (2) the determinations of "overfilled" and "genuine" are attributed to the consequences of illegal bottling; and (3) the determinations of "not genuine" and "overfilled" are attributed to the consequences of illegal bottling and not adulteration with any foreign or harmful substance nor dilution.

25. N.J.S.A. 5:12-103(f)(2) states:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage license to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

26. N.J.A.C. 19:50-1.6(u) states in pertinent part:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes...

27. N.J.S.A. 5:12-103(d) reads as follows:

Except as otherwise provided in this section, the provisions of Title 33 of the Revised Statutes and the rules, regulations and bulletins promulgated by the director of the Division of Alcoholic Beverage Control shall apply to a Casino Hotel and Casino Alcoholic Beverage Licensee licensed under this act.

28. N.J.S.A. 33:1-2(a) states in pertinent part:

It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of a license, or as otherwise expressly authorized, under this chapter...

29. N.J.A.C. 13:2-23.23(a) provides in pertinent part:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law...

30. N.J.S.A. 5:12-103(g) (7) provides:

In issuing a Casino Hotel Alcoholic Beverage License the Commission shall describe the scope of the particular license and the restrictions and limitations thereon as it deems necessary and reasonable. The Commission may, in a single Casino Hotel Alcoholic Beverage license, permit the holder of such a license to perform any or all of the following activities, subject to applicable laws, rules and regulations: [t]o possess or store alcoholic beverages intended but not actually exposed for sale in an area, room or location so licensed. The holder of a Casino Hotel Alcoholic Beverage License permitting such possession and storage shall be entitled, subject to applicable laws, rules, and regulations, to store any alcoholic beverage intended for sale at a fixed location on a casino hotel premises, not in a casino, and not otherwise licensed under this section; and to transfer or deliver such alcoholic beverage only to a licensed location for which such

licensee is licensed; provided, however, that no access to or from a licensed storage location shall be permitted except during the normal course of business by employees or agents of the licensee, or by licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a Casino Hotel Alcoholic Beverage License from obtaining an off-site storage license from the Division of Alcoholic Beverage Control.

31. N.J.A.C. 19:50-1.13(a) reads as follows:

A license may, in a class VII area or location authorized pursuant to N.J.S.A. 5:12-103(g)(7), store alcoholic beverages intended for sale at a fixed enclosed area or location on a casino hotel premises, not in a casino, and not otherwise licensed or authorized.

32. N.J.A.C. 19:50-1.13(b) states:

A licensee shall transfer or deliver such alcoholic beverages from a class VII area or location authorized pursuant to N.J.S.A. 5:12-103(g)(7) only to a licensed area or authorized location within a casino hotel complex.

33. N.J.A.C. 19:50-1.13(c) provides:

A licensee shall, in a class VII area or location authorized pursuant to N.J.S.A. 5:12-103(g)(7), provide no access to or from the licensed area or authorized location for employees or agents of the licensee or for licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes, Title 13 of the New Jersey Administrative Code, the Casino Casino Act and the regulations of the Commission, except as such access is necessary in the normal course of business.

34. N.J.A.C. 19:50-1.13(d) reads as follows:

A licensee shall maintain its class VII licensed areas and locations authorized pursuant to N.J.S.A. 5:12-103(g)(7) at an

appropriate temperature and in a secure manner.

35. N.J.A.C. 19:50-1.6(g) states:

No casino hotel alcoholic beverage licensee shall significantly alter any aspects of its physical plant without first submitting a description of such proposed alteration to the Commission and receiving a written permission therefor.

36. N.J.A.C. 19:50-1.6(f) provides:

No casino hotel alcoholic beverage licensee shall store any alcoholic beverage in, on, or about any portion of a casino hotel except at his licensed premises or subject to an arrangement with a casino hotel alcoholic beverage licensee which is licensed or authorized to store alcoholic beverages pursuant to a class VII license or N.J.S.A. 5:12-103(g) (7).

37. N.J.S.A. 5:12-103(f) (2) states:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

38. N.J.A.C. 19:50-1.6(u) (1) provides in pertinent part:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes, or any alcoholic beverage in any keg, barrel, can bottle, flask or similar container which: 1. Does not bear any label describing its contents...

39. N.J.A.C. 13:2-23.23(a)(1) states in pertinent part:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask, or similar container which: 1. Does not bear any label describing its contents...

40. N.J.A.C. 13:2-23.23(a)(2) provides in pertinent part:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which...2. Bears a label which does not truly describe its contents;...

41. N.J.A.C. 19:50-1.6(u)(2) states in pertinent part:

No retail hotel alcoholic beverage licensee shall possess, have custody or, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:...2. Bears a label which does not truly describe its contents;...

THEREFORE, the Parties hereby make application to the Honorable Stephen Thompson, A.L.J., as well as to the Honorable Walter Read, Chairman, Casino Control Commission, for permission to submit the following Stipulation of Settlement which has been agreed upon by the Parties for consideration by the Office of

Administrative Law and by the Casino Control Commission as a final resolution of the above captioned matter:

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charge Respondent for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as for various violations of Title 33 and the regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and Respondent admits that Respondent's possession of the twenty-seven (27) "overfilled" bottles of alcoholic beverages; Respondent's possession of the two (2) "overfilled" bottles of alcoholic beverages, the contents of which have been determined as "not genuine"; and Respondent's possession of the two (2) bottles of alcoholic beverages, the contents of which have been determined as "not genuine" constitutes illegal bottling prohibited by N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-23.23(a) as incorporated by reference into N.J.S.A. 5:12-103(d) as well as N.J.A.C. 19:50-1.6(u); and

WHEREAS, the Division contends and Respondent admits that Respondent's storage of an alcoholic beverage inventory in an area not licensed by the Commission for such storage constitutes the illegal storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.A.C. 19:50-1.13(a), (b), (c) and (d) and N.J.A.C. 19:50-1.6(f); and

WHEREAS, the Division contends and Respondent admits that such illegal storage of alcoholic beverages constitutes a significant alteration of Respondent's physical plant inasmuch as Respondent

has not received prior written Commission authorization for such storage areas in violation of N.J.A.C. 19:50-1.6(g); and

WHEREAS, the Division contends and Respondent admits that Respondent's possession of the six (6) unlabeled bottles of alcoholic beverages violates N.J.A.C. 19:50-1.6(u)(1) and N.J.A.C. 13:2-23.23(a)(1) as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and Respondent admits (1) that Respondent's activity of engaging in the practices of illegal bottling; (2) that Respondent's illegal storage of alcoholic beverage inventories in unauthorized areas; and (3) that Respondent's possession of six (6) unlabeled bottles of alcoholic beverages are not within the terms and conditions of Respondent's C.H.A.B. licensure in violation of N.J.S.A. 5:12-103(f)(2); and

WHEREAS, the Parties are desirous of amicably settling this litigation without the necessity for a full hearing; and

WHEREAS, the problems raised by the Division's Complaint have been addressed by the cessation of the aforementioned illegal practices by Respondent;

NOW THEREFORE, be it resolved that upon recommendation of the Office of Administrative Law and upon final approval of this Stipulation of Settlement by the Casino Control Commission the Respondent agrees to the following penalties:

First Count

For violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u) as well as N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-23.23(a), as incorporated by reference into N.J.S.A.

5:12-103(d), Respondent agrees to pay the sum of Thirteen Thousand Eight Hundred Dollars (\$13,800.00) as a civil penalty.

Second Count

For violations of N.J.S.A. 5:12-103(f)(2); 5:12-103(g)(7); N.J.A.C. 19:50-1.13(a), (b), (c) and (d); N.J.A.C. 19:50-1.6(g); and N.J.A.C. 19:50-1.6(f), Respondent agrees to pay the sum of Twelve Thousand Dollars (\$12,000.00) as a civil penalty.

Third Count

For violations of N.J.S.A. 5:12-103(f)(2) and N.J.A.C. 19:50-1.6(u)(1) as well as N.J.A.C. 13:2-23.23(a)(1), as incorporated by reference into N.J.S.A. 5:12-103(d), Respondent agrees to pay the sum of Seventy-five Dollars (\$75.00) per unlabeled bottle for a total sum of Four Hundred Fifty Dollars (\$450.00) as a civil penalty.

Fourth Count

In order to ensure that the contents of its alcoholic beverage inventory is genuine and that such instances of "not genuine" alcoholic beverage content not recur, Respondent shall:

1. Conduct seminars on the proper procedures for the service and storage of alcoholic beverage inventories which comply with the statutes, rules and regulations of the Casino Control Act and Title 33;
2. Require the attendance of Beverage Supervisory personnel at the aforescribed seminars; and
3. Submit, as a permanent amendment to its internal controls submission relative to alcoholic beverages, detailed procedures to maintain quality control of alcoholic beverage inventories.

As a debtor-in-possession and pursuant to the Bankruptcy Code, the respondent preserves and asserts all rights relative to payment of the settlement amount and the jurisdiction of the Bankruptcy Court for the prepetition violations stipulated to herein.

For the purposes of this Stipulation, the Division does not recognize the respondent's preservation and assertion of rights under the Bankruptcy Code, the jurisdiction of any Bankruptcy Court over this matter or any assertion that a Bankruptcy Court may have jurisdiction with respect to any civil penalty imposed by the Commission.

Upon payment of the total monetary penalty of Twenty Six Thousand Two Hundred Fifty (\$26,250.00) as a civil penalty; upon the completion of the aforescribed seminars; and upon submission of the aforescribed amendment to Respondent's internal control procedures, upon review and recommendation of same by the Division and upon final approval by the Commission of same, the matter shall be deemed fully adjudicated and resolved.

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of New Jersey

Dated: 1/28/87

By: Wendy Alice Way
Wendy Alice Way
Deputy Attorney General

Dated: 1/20/87

By: Harry Jay Levin
Harry Jay Levin, Esquire
Attorney for Respondent

A082786/28

471

EXHIBIT A



State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS P. OEREN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES P. FLANAGAN III
DEPUTY DIRECTOR
INVESTIGATIONS

ALCOHOLIC BEVERAGE CONTROL UNIT

RECEIPT

RECEIVED FROM: (Name)

Thomas Rucci

AGENCY: (Name and Address)

ATLANTIS CASINO Hotel

DESCRIPTION AND LIST OF PROPERTY:

- 1 - (7.50 ml) Man. Chablis - FULL - CLOSE
1 - (7.50 ml) " " - 6/10 FULL - OPEN
1 - Q (1 liter) Jim Bean Kent. Bourbon 3P Overfull
2 - Q (1 liter) Canadian Club (86SP) Overfull
1 - Q (1 liter) Bartons Gin (8CP) - Overfull
1 - Q (1 liter) Jack Daniels Tenn. Whisk (8CP) Overfull
1 - Q (1 liter) Early Times (8CP) Overfull
1 - Q (750 ml) Seagrams 7 (8CP) Overfull
1 - Q (1.5 liter) Chantecler Brandy (12.5SP) Overfull

(Place "X" in Appropriate Space)

RECEIVED: As Evidence 1 For Safekeeping On Loan

DATE:

UNIT/AGENCY

SIGNATURE:

6/27/85 - DGE - ABC Unit - [Signature]

EXHIBIT B



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

ALCOHOLIC BEVERAGE CONTROL UNIT

DAVID KIMMELMAN
SNEY GENERAL
MICHAEL R. COLE
ST ASSISTANT
SNEY GENERAL

THOMAS R. O'BRIEN
DIRECTOR
ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS
JAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

EX-18
7-8-85

K-18
7-8-85

ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

Unauthorized storage 12 cases of wine
Unauthorized storage 5 carts of
sorted liquor and wine approx 40 cases
Chest fulls - (Marrying) Liquor and Wines
Unauthorized equipment (filling) in
banquet storage room

I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

[Signature]
Investigator/Inspector

x *[Signature]* 6/27/85 4:00 PM
Name of Licensee

Investigator/Inspector
6/27/85
Date

Address of Licensed Premises
By Thomas Rucci
Employed as Bev. Lic.

EXHIBIT C



INTEROFFICE CORRESPONDENCE

Date: June 27, 1985



To: Tom Rucci, All Supervisors, Bartenders and Barporters

From: Leo Kessler

Subject: _____

This is a reminder to all personnel involved in the handling of alcoholic beverages:

1. It is illegal to store any kind of liquor in a non-licensed area.
2. It is illegal to store anything other than alcoholic beverages in a licensed area.
3. It is illegal to merge at any given time any type of alcoholic beverage. (i.e. you may not pour the contents of one bottle into another bottle)
4. Any bottle containing an alcoholic beverage with a missing label should be brought to the attention of management, accompanied by a return to stock form, immediately.

These are extremely severe violations of ABC, DGE, and CCC regulations--violations of any of the above will be grounds for termination.

LK:sf

cc: Trisha Bertsch, Vice-President, Operations
Nick Moles, Vice-President & General Counsel

K-17.
7-1-85

EXHIBIT D



State of New Jersey

RWYI KAMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS R. OBER
DIRECTOR

ANTHONY J. PARRILL
DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN
DEPUTY DIRECTOR
INVESTIGATIONS

ALCOHOLIC BEVERAGE CONTROL UNIT

RECEIPT

RECEIVED FROM: (Name)

SEIZED

AGENCY: (Name and Address)

SHELLY ROSENBERG, Beverage MGR. ATLANTIS CASINO/HOTEL
Supervisor

DESCRIPTION AND LIST OF PROPERTY:

- 2 - (1 liter) Bottles Kamchatka Vodka
- 2 - (1 liter) Bottles Stolichnaya Vodka
- 1 - (1 liter) " Courvoisier Cognac
- 1 - (1 liter) " Dewar's Scotch (White Label)
- 1 - (1 liter) " Gordon's Gin
- 1 - (1 liter) " Glenlivet Scotch Whisky
- 1 - (1 liter) " Espresso Italian Coffee Liqueur
- 6 - (1.5 liter) " Chantecler Rouge (Wine)
- 3 - (1 liter) " Dromberg
- 1 - (1 liter) " Segons V.O.
- 1 - (1.5 liter) " Chantecler White Wine
- 1 - (750 ML) " Remy Martin Cognac
- 1 - (1 liter) " Dubouche White

(Place "X" in Appropriate Space)

RECEIVED: As Evidence ☒

For Safekeeping ☐

On Loan ☐

DATE:

UNIT/AGENCY

SIGNATURE:

July 2, 1985 - DGE-ABC

William Schaefer, Agent

Shelly Rosenberg
Bar Supv

KEFILLS, TOPPED, MARRIED

EXHIBIT E



State of New Jersey

IRVING KAMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS H. GARDEN
DIRECTOR

ANTHONY J. PARRINO
DEPUTY DIRECTOR

JAMES F. PETERSON
DEPUTY DIRECTOR

ALCOHOLIC BEVERAGE CONTROL UNIT

RECEIPT

RECEIVED FROM: (Name)

AGENCY: (Name and Address)

SHELLEY ROSENBERG - Dev. Supervisor - ATLANTIS CASINO/Hotel.

DESCRIPTION AND LIST OF PROPERTY:

- 1 - (750 ML) bottle Marie Brizard Creme De Menthe
- 1 - (750 ML) " Seagrams V.O.
- 1 - (1 liter) bottle Canadian Club Whiskey
- 2 - (1 liter) bottles Jack Daniels Whiskey
- 1 - (1 liter) bottle Old Fitzgerald Bourbon Whiskey
- 1 - (1 liter) bottle Bacardi Rum
- 1 - (750 ML) bottle White Chantrelle Wine.

(Place "X" in Appropriate Space)

RECEIVED: As Evidence

For Safekeeping

On Loan

DATE:

UNIT/AGENCY

SIGNATURE:

July 2nd 1985 DGE (ABC)

[Signature]

KEHUS, TOPPED, MARRIED



ORIGINAL

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENTRICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625IRWIN I. KIMMELMAN
ATTORNEY GENERALMICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERALTHOMAS P. O'BRIEN
DIRECTORANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONSJAMES F. FLANAGAN III
DEPUTY DIRECTOR
INVESTIGATIONS

ALCOHOLIC BEVERAGE CONTROL UNIT

RECEIPT

Atlantic County

RECEIVED FROM: (Name)

AGENCY: (Name and Address)

ATLANTIS CASINO Hotel - (LEO KESSLER) Atlantic City, N.J.

DESCRIPTION AND LIST OF PROPERTY:

- 1 CHANTEFEUR (WHITE) WW
- 1 CHANTEFEUR (RED)
- 1 DRAKE BULIE
- 1 BACARDI RUM (W)
- 1 COURVOISIER (V.S.O.P)
- 1 EARLY TIMES Bourbon
- 1 MANISCHEWITZ - Pulled.
- 1 DUBONNET (W)
- 1 SEAGRAMS T. WW
- 1 JACK DANIELS
- 1 DEWAR'S WHITE LABEL Scotch
- 1 GLENDALE SCOTCH
- 1 REMY MARTIN V.S.O.P WW
- 1 EXPRESSO COFFEE LIQUER
- 1 GORDON'S GIN
- 1 MARIE BRIZARD CREME DE MENTHE
- 1 DARTON'S GIN

- 1 - JIM BEAM VODKA
- 1 - STOLICHNAYA VODKA
- 1 - KAMCHATKA VODKA
- 1 - SeAGRAMS V.O.
- 1 - CANADIAN CLUB
- 1 - OLD FETTER BLENDED BOURBON

(Full Sealed)
Goods

(Place "X" in Appropriate Space)

RECEIVED: As Evidence ☒For Safekeeping ☐On Loan ☐

DATE:

UNIT/AGENCY

SIGNATURE:

7/3/85 - DGE (DGE)

[Signature]

EXHIBIT F



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
ROBERTA J. ROBERTS JUSTICE COMPLEX
ON 607
TRENTON, NEW JERSEY 08646

ALCOHOLIC BEVERAGE CONTROL UNIT

THOMAS P. GRIFF
DIRECTOR
ANTHONY J. FAY
DEPUTY DIRECTOR
OPERATIONS
JAMES P. LAMAR
DEPUTY DIRECTOR
INVESTIGATION

THOMAS P. GRIFF
DIRECTOR
ANTHONY J. FAY
DEPUTY DIRECTOR
OPERATIONS
JAMES P. LAMAR
DEPUTY DIRECTOR
INVESTIGATION

RECEIPT

RECEIVED FROM: Atlantic (Leo Kessler) AGENT: (Name and Address)

AC. 104

DESCRIPTION AND LIST OF PROPERTY:

1 bottles (750 mL)
Marie Brizard
Menthe (Liquor)

(Place "X" in Appropriate Space)
RECEIVED AS EVIDENCE ☒ FOR SEIZURE ☐ ON LOAN ☐

DATE: 8/12/85 BY: D.G.F. SIGNATURE: W. K. Kessler
RECEIVED P.M. S.P. Fair

New Jersey is An Equal Opportunity Employer

for Controll

EXHIBIT G

REQUEST FOR EXAMINATION OF EVIDENCE

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

☐ North Regional Lab. ☐ South Regional Lab. ☐ East Regional Lab.
State Highway 46 Post Office Box 126 Sea Girt Avenue
Little Falls, NJ 07424 Hammonton, NJ 08037 Sea Girt, NJ 08750
(201) 256-7790 (609) 561-2060 (201) 449-0303

Submitting Agency (Case Number) Laboratory Number
1576620

RECEIVED BY SEP 10 1985
FROM LABORATORY

JUL 14 1985

SEP 10 1985

Special Services Section

NEW JERSEY STATE POLICE Laboratory Use Only

CRIME: BLENDING, REFILLING, MIXING, AND TOPPING ALCOHOLIC BEVERAGE
COUNTY OF: ATLANTIC

VICTIM: Age Sex Race SUSPECT: Age Sex Race

SUBMITTING AGENCY: (Address)
DIV. OF GAMING ENFORCEMENT (ABC Unit - B)

FORWARD REPLIES TO: (Name) (Address) Telephone Number:
SANDY SMITH, SUPERVISOR (Unit) 65 FIRE ROAD - APOSECON N.J. 08201 609-645-1713

INVESTIGATED BY: AGENT IRWIN SCHWEFEL
DELIVERED BY: (Signature of Person Delivering Evidence)

BRIEF HISTORY OF CASE: (Include Date and Location, If Applicable)
DURING AN INSPECTION AT AN ATLANTIC CITY CASINO HOTEL IT WAS DISCOVERED THAT ALCOHOLIC BEVERAGE WAS BEING BLENDED, BOTTLES BEING FILLED AND TOPPED.

EXAMINATION REQUESTED ON SPECIMENS LISTED BELOW:
ARE CONTENTS THE SAME AS THE LABEL IT BEARS?

Item #	* Code	LIST OF SPECIMENS	* SOURCE OF EVIDENCE CODE (V - Victim S - Suspect SC - Scene)
11	1LTR	DUBONNET	351-1LTR DUBONNET SEALED
12	1LTR	SEAGRAMS V.O.	361-1LTR SEAGRAMS V.O. SEALED
3 3/4	1LTR	DRAMBUIE	132-1LTR DRAMBUIE SEALED
7 6/12	150ML	CHATELAIN ROUGE (WINE)	55-750ML CHATELAIN R. SEALED
13	1LTR	EXPRESSO ITALIAN COFFEE LIQUEUR	37-1LTR EXPRESSO SEALED
14	1LTR	GLENDALE SCOTCH	140-LTR. GLENDALE SEALED
15	1LTR	GORDONS GIN	141-LTR GORDONS SEALED
16	1LTS	DEWAR'S WHITE LABEL	142-LTR DEWAR'S SEALED
17	1LTS	COURVOISIER COGNAC VSOP	143-LTR COURVOISIER SEALED
2 1/2	1LTS	STOLICHNAYA VODKA	144-LTR STOLICHNAYA SEALED
2 20	1LTS	KAMCHATKA VODKA	145-LTR KAMCHATKA SEALED
12 1/2	750ML	MARIE BRIZARD CREME DE MENTHE	146-M.B. CREME DE MENTHE SEALED
12 1/2	750ML	SEAGRAMS V.O.	147-LTR SEAGRAMS V.O. SEALED
3 3/4	1LTR	CANADIAN CLUB	148-LTR CANADIAN CLUB SEALED

RECUEST FOR EXAMINATION OF EVIDENCE

Submitting Agency (Case Number)

Laboratory Number

157662C

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

RECEIVED BY
FROM LABORATORY

T-04-85-027
SEP 10 1985

JUL 3 4 11 PM '85

☐ North Regional Lab. State Highway 46 Little Falls, NJ 07424 (201) 256-7790
☐ South Regional Lab. Post Office Box 126 Hammonton, NJ 08037 (609) 561-2060
☐ East Regional Lab. Sea Girt Avenue Sea Girt, NJ 08750 (201) 449-0303

Special & Technical Services Section
NEW JERSEY STATE POLICE

(Laboratory Use Only)

CRIME:

BLENDING - REFILLING, MIXING AND TOPPING
ALCOHOLIC BEVERAGE

COUNTY OF:

ATLANTIC

VICTIM:

Age

Sex

Race

SUSPECT:

Age

Sex

R.

SUBMITTING AGENCY: (Address)

DIV. OF GAMING ENFORCEMENT (ABC Unit B)

FORWARD REPLY TO:

(Name)

SANDY SMITH, SUPERVISING AGENT (ABC Unit)

(Address)

HOV. PARK - Suite B-12
65 FIRE ROAD - ABSECON, N.J. 08201

Telephone Number

609 645-1713

INVESTIGATED BY:

AGENT / RWIN SCHWEFEL

DELIVERED BY: (Signature of Person Delivering Evidence)

SWW Schwefel

BRIEF HISTORY OF CASE: (Include Date and Location, if Applicable)

During an inspection at an Atlantic City Casino Hotel, it was discovered that alcoholic Beverage was being blended, bottles being filled and topped.

EXAMINATION REQUESTED ON SPECIMENS LISTED BELOW:

Are contents the same as the
Label it bears?
ALL FULL

Item #	* Code	LIST OF SPECIMENS	LABORATORY OF EVIDENCE CODE	(V - Victim S - Suspect SC - Scene)
3	27	JACK DANIELS	481	LTR JACK DANIELS SEALED
	28	OLD FITZGERALD BONDED BOURBON	491	LTR OLD FITZGERALD SEALED
	29			
130	1LTR	BACCARDI RUM (WHITE)	501	LTR BACCARDI (W) SEALED
131	1LTR	BARTONS GIN	511	LTR BARTONS GIN SEALED
132	1LTR	JIM BEAN KENTUCKY BOURBON	521	LTR JIM BEAN SEALED
133	1LTR	EARLY TIMES KENTUCKY BOURBON	531	LTR EARLY TIMES SEALED
134	1LTR			

FOR ADDITIONAL INFORMATION USE FORM 631A AND ATTACH

Page 2 of 2 Pages

REQUEST FOR EXAMINATION OF EVIDENCE

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
☐ WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

☐ North Regional Lab. ☐ South Regional Lab. ☐ East Regional Lab.
State Highway 46 Post Office Box 126 Sea Girt Avenue
Little Falls, NJ 07424 Hammonton, NJ 08037 Sea Girt, NJ 08750
(201) 256-7790 (609) 561-2060 (201) 449-0303

Submitting Agency (Case Number) **I-64-85-027**

Laboratory Number **157 1.1.2. C**

RECEIVED AT
AUG 19 2 20 PM '85
NJSP-CENTRAL LAB
W. TRENTON NJ

(Laboratory Use Only)

CRIME: **BLENDING REFILLING MIXING AND TAPPING ALCOHOLIC BEVERAGE** COUNTY OF: **ATLANTIC**

VICTIM: Age Sex Race SUSPECT: Age Sex Race

SUBMITTING AGENCY (Address): **DIV. OF GAMING ENFORCEMENT (COMPLIANCE UNIT B (ABC))**

FORWARD REPLY TO: (Name) **MS. SANDY SMITH** (Address) **65 FIRE ROAD SUITE B-12 - ABSECON, N.J.** Telephone Number: **645-9884**

INVESTIGATED BY: **MR. IRWIN SCHUEFEL** DELIVERED BY: (Signature of Person Delivering Evidence) **MR. IRWIN SCHUEFEL**

BRIEF HISTORY OF CASE: (Include Date and Location, if Applicable)
DURING AN INSPECTION AT AN ATLANTIC CITY CASINO HOTEL IT WAS DISCOVERED THAT ALCOHOLIC BEVERAGE WAS BEING BLENDED, BOTTLES BEING FILLED AND TAPPED

EXAMINATION REQUESTED ON SPECIMENS LISTED BELOW:
ARE CONTENTS THE SAME AS THE LABEL BOTTLE BEARS?

Item #	Code	LIST OF SPECIMENS - SOURCE OF EVIDENCE CODE (V - Victim S - Suspect SC - Scene)
#54		CONTROL (SEALED) BOTTLE OF MARIE BRIZARD (TEAL) MENTHE (GREEN) TO CONTROL SEALED BOTTLE OF MARIE BRIZARD MENTHE (GREEN) #22 DELIVERED TO LAB ON JULY 3, 1985

FOR ADDITIONAL INFORMATION USE FORM 631A AND ATTACH

Page **1** of **1** Pages

REQUEST FOR EXAMINATION OF EVIDENCE

Submitting Agency (Case Number)

Laboratory Number

157662C

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE

SPECIAL AND TECHNICAL SERVICES SECTION

POST OFFICE BOX 7068

WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

9/13/85

I-04-85-027

☐ North Regional Lab. ☐ South Regional Lab. ☐ East Regional Lab.
State Highway 46 Post Office Box 126 Sea Girt Avenue
Little Falls, NJ 07424 Hammonton, NJ 08037 Sea Girt, NJ 08750
(201) 256-7790 (609) 561-2060 (201) 449-0303

(Laboratory Use Only)

CRIME:

ABC- BLENDING AND BOTTLING

COUNTY OF:

ATLANTIC

VICTIM:

Age

Sex

Race

SUSPECT:

Age

Sex

R

SUBMITTING AGENCY: (Address)

DIV. OF GAMING ENFORCEMENT - HOU PARK
65 FIRE ROAD

FORWARD REPLY TO:

SUPER AGENT SANDRA SMITH.

(Name)

SUITE B-12

Telephone Number

ROSELAND, N.J. 07068 609-441-57

INVESTIGATED BY:

IRWIN SCHWEIFEL AGENT

DELIVERED BY: (Signature of Person Delivering Evidence)

9/13/85

BRIEF HISTORY OF CASE: (Include Date and Location, If Applicable)

DURING AN UNANNOUNCED INSPECTION AT AN ATLANTIC CITY CASINO HOTEL (ATLANTIS), IT WAS DISCOVERED THAT ALCOHOLIC BEVERAGE WAS BEING BOTTLED AND BLENDED

EXAMINATION REQUESTED ON SPECIMENS LISTED BELOW:

ARE CONTENTS THE SAME AS THE LABEL BOTTLE BEARS?

Item # * Code LIST OF SPECIMENS *SOURCE OF EVIDENCE CODE (V - Victim S - Suspect SC - Scene)

#1 1 (LITER) - DUBONNET (OVER FILLED TO BRIM)
BLOWDE-DRY - 19° PROOF

#55 1 (LITER) DUBONNET (CONTROL) ORIGINAL
AND SEALED - BLOWDE-DRY - 19° PROOF

FOR ADDITIONAL INFORMATION USE FORM 631A AND ATTACH

Page 1 of 1 Pages

EXHIBIT II



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 832-2000

LABORATORY REPORT (ABC)

Laboratory Number

157662C

Submitting Agency Number I-04-85-027

Number DIV. GAMING ENF.

CASE

Date of Report

8/30/85

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed		By					
7/17/85 - 8/29/85		PENELOPE A. MOORE		Primer Forensic Chemistry			
SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
1	GENUINE - OVERFILLED	18.8%					
2	GENUINE - OVERFILLED		80.3	OK		OK	OK
3	GENUINE - OVERFILLED	38.5%		OK		OK	OK
4	GENUINE - OVERFILLED	36.6%		OK		OK	OK
5	GENUINE - OVERFILLED	39.1%		OK		OK	OK
6	GENUINE - OVERFILLED	12.1%					
7	GENUINE - OVERFILLED	12.3%					
8	GENUINE - OVERFILLED	12.3%					
9	GENUINE - OVERFILLED	12.1%					
10	GENUINE	12.0%					
11	GENUINE - OVERFILLED	12.2%					
12	GENUINE - OVERFILLED	12.2%					

Location of Specimen

Date

127



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

LABORATORY
REPORT (ABC)

Laboratory Number

157662C

Submitting
Agency
Number

I-04-85-027

CASE

Date of Report

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed

By

SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
13	GENUINE- OVERFILLED	24.2%		OK			OK
14	GENUINE		87.0	OK		OK	OK
15	GENUINE- OVERFILLED		80.2			OK	OK
16	GENUINE- OVERFILLED		87.4	OK		OK	OK
17	GENUINE- OVERFILLED		80.3	OK		OK	OK
18	GENUINE- OVERFILLED		99.9			OK	OK
19	GENUINE- OVERFILLED		99.6			OK	OK
20	GENUINE- OVERFILLED		80.3			OK	OK
21	NOT GENUINE OVERFILLED		80.4			OK	LOW
22	GENUINE	27.3%					OK
23	GENUINE- OVERFILLED		80.4	OK		OK	OK
24	GENUINE- OVERFILLED		86.6	OK		OK	OK

Signature of Chemist

Date



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

LABORATORY REPORT (ABC)

Laboratory Number 157662C

Submitting Agency Number I-04-85-027

CASE

Date of Report

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed		By					
SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
25	NOT GENUINE		85.9	OK		OK	OK
26	GENUINE - OVERFILLED		86.4	OK		OK	OK
27	GENUINE - OVERFILLED		90.1	OK		OK	OK
28	GENUINE - OVERFILLED		90.2	OK		OK	OK
29	GENUINE		90.2	OK		OK	OK
30	NOT GENUINE		100.1	Low		Low	Low
31	GENUINE - OVERFILLED		80.2			OK	OK
32	GENUINE - OVERFILLED		80.4			OK	OK
33	GENUINE - OVERFILLED		80.1	OK		OK	OK
34	GENUINE - OVERFILLED		79.9	OK		OK	OK
35	NOT ANALYZED						
36	CONTROL		80.3	OK		OK	OK

Signature of Chemist

Date



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

LABORATORY
REPORT (ABC)

Laboratory Number

157662C

Submitting
Agency
Number

I-04-85-027

ASE

Date of Report

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed

By

SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
37	CONTROL	37.7%		OK		OK	OK
38	CONTROL	12.1%					
39	CONTROL	25.7%		OK			OK
40	CONTROL		87.4	OK		OK	OK
41	CONTROL		80.6			OK	OK
42	CONTROL		87.4	OK		OK	OK
43	CONTROL		80.4	OK		OK	OK
44	CONTROL		100.6			OK	OK
45	CONTROL		80.6			OK	OK
46	NOT ANALYZED						
47	CONTROL		86.5	OK		OK	OK
48	CONTROL		89.9	OK		OK	OK

Signature of Chemist

Date



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

LABORATORY REPORT (ABC)

Laboratory Number 157 662C

Submitting Agency Number I-04-85-027

CASE

Date of Report

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed		By					
SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
49	CONTROL		99.8	OK		OK	OK
50	CONTROL		80.3			OK	OK
51	CONTROL		80.5			OK	OK
52	CONTROL		79.8	OK		OK	OK
53	CONTROL		80.0	OK		OK	OK
54	CONTROL	27.4%					OK

Signature of Analyst

Anthony A. Moore

Date

8/30/35

5-11-35 (35)



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
SPECIAL AND TECHNICAL SERVICES SECTION
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

LABORATORY
REPORT (ABC)

Laboratory Number

157662C

Submitting Agency I-04-85-027

Number DIV. GAMING ENF.

CASE

Date of Report

9/26/85

Specimens in this case were submitted to the Forensic Science Bureau for examination.
See attached Request for Examination of Evidence (S.P. 631) for list of specimens.

RESULTS OF EXAMINATION

Date Analyzed

9/25/85

By PENELOPE A. MOORE

Principal Forensic Chemist

SPECIMEN NUMBER	ALCOHOLIC BEVERAGE	% ALCOHOL BY VOLUME	PROOF	TOTAL COLOR	ORGANIC SOLUBLE COLOR	GRAMS PER 100 LITERS	
						ACIDS	SOLIDS
1	NOT GENUINE OVER FILLED	18.8%		Low		OK	OK
2 (55)	CONTROL	18.6%		OK		OK	OK

Signature of Chemist

496

S.P. 635 (6-80)

Date

9/26/85

TRD

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

v.

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the parties having consented to the admission into evidence of the order of dismissal in State v. Tyler Pauline Fitzgerald, dated April 23, 1987 (R-5 in evidence); and the Commission having considered the entire record of these proceedings at its public meeting of June 17, 1987,

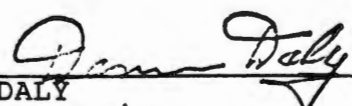
IT IS on this 23rd day of June 1987, ORDERED that
the initial decision is adopted; and

497

decision, which is incorporated herein by reference and made a part hereof.

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 8684-86

AGENCY DKT. NO. 87-38

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

Petitioner,

v.

TYLER P. FITZGERALD,

Respondent.

**William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Gary Mangel, Esq., for respondent

Record Closed: April 3, 1986

Decided: April 27, 1987

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division"), filed a complaint with the Casino Control Commission ("Commission") on August 12, 1986 seeking the revocation of the casino employee license No. 52339-21 and casino hotel employee registration No. 40089-40 which had previously been issued to Tyler P. Fitzgerald. According to the complaint, Ms. Fitzgerald had been arrested and charged with theft by deception in violation of N.J.S.A. 2C:20-4, as a result of work-related incidents which occurred on various dates between December 1, 1983 and July 11, 1984 while she was employed at the Sands Hotel/Casino as a tour greeter.

Ms. Fitzgerald requested a hearing on the proposed revocation and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Edgar R. Holmes on February 6, 1987 and a prehearing order was issued by Judge Holmes on February 10, 1987. A hearing was then held before Administrative Law Judge Jeff S. Masin on April 3, 1987 at the Ventnor Municipal Court. The record closed on the day of the hearing.

The prehearing order established issues for consideration at the hearing. Specifically, the issues were whether the respondent had committed acts constituting statutory disqualifiers pursuant to N.J.S.A. 5:12-86c (which had not been prosecuted in the criminal courts and which the Division intended to prove, pursuant to N.J.S.A. 5:12-86g); whether the respondent's continued licensure and registration would be inimical, pursuant to N.J.S.A. 5:12-86c; whether the respondent possessed the requisite good character, honesty and integrity required for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) and whether the respondent could demonstrate rehabilitation pursuant to sections 90h and 91b of the Act. In addition to the above listed issues, the respondent indicated an intention to contend that since she had been granted Pre-Trial Intervention in the criminal courts the Division was preempted from seeking to impose disqualification criteria against her. This latter issue was abandoned prior to the hearing on April 3, 1987.

EVIDENCE

Detective John Wild, a New Jersey state police officer who had been assigned for six years to the Division of Gaming Enforcement's Criminal Investigation Section, testified that in November 1985 he received confidential information from an informant concerning irregular activities by Ms. Fitzgerald, who had been a bus greeter at the Sands Hotel until July 1984. The information he received indicated that she had engaged in illicit activities involving bus drivers and coupons which are normally provided to bus patrons who can exchange the coupons at the casino for specified amounts of cash. Detective Wild began an investigation of the information which he had received from the confidential informant. He confirmed that Ms. Fitzgerald had been employed as a bus greeter at the Sands. He checked books and records, interviewed bus greeters and other personnel and checked records of the bus company employing a Tim Scott, a bus driver named by the confidential informant. Despite this investigation, Wild was unable to turn up sufficient information to confirm Ms. Fitzgerald's involvement in any illegalities. On

January 7, 1986, he arranged to interview Ms. Fitzgerald at the Division of Gaming Enforcement's office at the Trump Plaza Casino, where she was then employed. Detective Wild explained to her the allegations which had been made against her without revealing his source. He "told her what he thought had occurred." He explained that his information was that she had received tickets from drivers and had exchanged them for bus coupons when the tickets had not in fact been purchased by passengers. He told her that she received monies from the bus driver who had cashed in the coupons. After receiving her Miranda warnings, Ms. Fitzgerald admitted her involvement in the scheme. When asked why she did it she said that she did not want to, but that the bus driver had been persistent and she gave in. According to her, she did receive tickets from the driver and she gave him coupons, but she received no more than \$300 from him in return for her involvement. The incidents occurred on diverse dates.¹

Ms. Fitzgerald declined to give a formal written statement concerning her involvement. According to Wild, she appeared candid and did not try to fool him. She made no mention at the time that she had been physically abused by anyone or that she had received any threats from anyone, commenting only concerning the persistence of the bus driver's request that she help him with the scheme.

As a result of her confession, Ms. Fitzgerald was charged in Atlantic City Municipal Court Complaint S405535, with theft by deception in violation of N.J.S.A. 2C:20-4. She was indicted by a State Grand Jury. She eventually received Pre-Trial Intervention. According to information received by letter of February 3, 1987 from Probation Officer Vincent Walker, who was her PTI counselor, Ms. Fitzgerald was ordered to volunteer 20 hours to a non-profit organization and pay the Sands Hotel/Casino \$225. She completed her community service with the United Way of Atlantic County and paid the restitution. Mr. Walker indicated that in approximately 60 days from the date of the February 3 letter he would recommend to Honorable Robert Neustadter, J.S.C., that the theft by deception charge be dismissed.

¹ As an example, she indicated that if the bus had 25 passengers the bus driver would give her 48 tickets and she would give him 48 coupons, leaving him with an additional 23 beyond those which had to be given to the passengers. He would then redeem the coupons and split the money with her. She described the split as uneven and indicated that she had not received a "fair share."

On cross-examination, the witness acknowledged that he knew Rich Highlander, who was in fact the "confidential informant" who had advised him of Ms. Fitzgerald's participation. Mr. Highlander was never mentioned during the conversation with Ms. Fitzgerald at which she confessed her involvement. According to Wild, Highlander gave him the information concerning Fitzgerald's involvement at least six months after Fitzgerald had left the Sands employment.

The witness explained that as a result of his contacts with Highlander and Fitzgerald, he felt that he was "in the middle of a soap opera." He knew there had been a "relationship" between them and felt that Highlander appeared to be engaged in a vendetta against Fitzgerald. He tried to independently establish what had occurred through his investigation in order to obtain independent substantiation of the claims made by Highlander, but he was unable to do so until he talked to Fitzgerald. In his view, Highlander was "out to get her."

To the best of Wild's recollection, during his discussions with Ms. Fitzgerald on January 7, 1986, Highlander's name was never mentioned by Fitzgerald. Subsequent to the admission of Fitzgerald's activities, the officer "cut himself off" from Highlander and introduced him to another individual because he did not want to deal with Highlander anymore.

Tyler Pauline Fitzgerald testified on her own behalf. She is now 25 years old and was 21 at the time she became involved in the illegal activities at the Sands. She became employed there in March 1983. She came to know Tim Scott, who was a bus driver. Scott asked her to give him coupons in exchange for tickets which had in fact not been sold to bus patrons. She did not agree despite persistent requests by Scott. He persisted in his requests from sometime in March through the summer. According to Fitzgerald, she told her supervisor at the Sands about his requests. It was "common knowledge" among the bus greeters that this type of scheme was going on.

Ms. Fitzgerald first met Highlander outside the Sands while she was working as a bus greeter and he was running a hot dog stand. She began to see him in August of 1983 and started dating him on a regular basis. Highlander came to know Scott, probably through Fitzgerald. She told Highlander about Scott's persistent request that she engage in the bus coupon scam and she thought that he would tell Scott to stop harassing her. Sometime in September, Highlander asked her why she did not participate and she said

that she didn't feel it was right. He then told her that he wanted her to become involved. About the second or third time he mentioned the idea he threatened her. Thereafter, as a result of her refusal to participate in the scam, which refusal persisted until December 1983, and apparently for other reasons as well, Highlander continued to verbally threaten Ms. Fitzgerald, beat her, kick her, threaten to kill her and otherwise abuse her. She persisted in refusing to agree to the illegal conduct until December, but by that time was so afraid of Highlander that she ultimately gave in to his threats and abuse and began to give Scott coupons. Whatever money was received went to Highlander.

On questioning by the administrative law judge, Ms. Fitzgerald noted that among other incidents of violence against her during the period prior to her agreeing to participate, Highlander kicked her in the eye, which resulted in her having blurred vision in one eye for about a week. Although she had been living with her parents, she stayed at Highlander's apartment during that week because she did not want her family to see her eye. During the several months before her final agreement to participate, her fear "accumulated."

The actual coupon exchange scam involving Fitzgerald and Scott went on for about four or five months and occurred approximately eight or ten times during that period. Eventually Ms. Fitzgerald had the impression that her supervisors might be catching on and she refused to continue. Although Highlander insisted that she at least engage in the activity a few more times, she finally quite her job in July 1984. She went to work at the Lafayette Hotel and worked for the Comptroller's Office under Walter H. Ziegler, C.P.A., who wrote a letter of September 19, 1986 in support of her position in this case (R-2 in evidence).

According to Ms. Fitzgerald, she broke up with Highlander in August 1985. Since that time he has continued to harass her, calling her at work numerous times a day, threatening her parents, bothering her mother at her job, etc. She has filed complaints against him in the Atlantic City Municipal Court during the past two years, which to this date have not yet come to trial. She has spoken to the Atlantic County Prosecutor's Office about Highlander's activities.

The witness acknowledged that she never mentioned the threats, beatings, harassment and pressure put upon her by Highlander in her discussions with Detective Wild. According to her recollection, she asked Wild during the interview whether he knew

Highlander and when he denied that he knew him she dropped the subject of his name or involvement. She did not mention the Highlander involvement when she went before the Superior Court Judge before whom she entered a plea of guilty prior to receiving her Pre-Trial Intervention. She never tried to contact the state police about Highlander's activities during the time following her involvement. She was so afraid of him, and so certain of his violent nature and the realistic possibility that he would in fact cause her serious harm, that she stayed with him after leaving the Sands for slightly more than a year and did not mention the details of his involvement when she spoke with Detective Wild.

THE RESPONDENT'S POSITION

It is the respondent's position that despite her acknowledged participation in the bus coupon scam and despite the fact that she entered a plea of guilty on the charge of theft by deception she should not lose her license and registration because in fact her will to avoid participation in the incident was overcome by the serious physical and emotional pressure put upon her by Highlander such that she was in fact unable to form a mens rea with respect to involvement in the criminal conduct. As such, she contends that it would be inappropriate to remove her license and registration since, although she participated in the activities, she did so only because of the threats and beatings and not out of any personal desire to engage in illegal conduct.

DISCUSSION

The Division contends that Ms. Fitzgerald's involvement in the coupon scam makes her continued licensure and registration inimical and that the conduct constituted a statutory disqualifying offense. In addition, it questions whether she has the requisite good character, honesty and integrity for licensure. Her defense to the allegations, which consists of a submission that her conduct occurred only because she was placed in duress and would not have occurred otherwise, suggests that if the duress defense is accepted that she cannot be considered to be one whose character is questionable or whose presence in the industry might be against the interests of the industry or the policies of the Act since her conduct was in essence involuntary in nature and therefore she bears no culpability for it. Indeed, the criminal law provides that duress may constitute a defense to a charge of criminal conduct. N.J.S.A. 2C:2-9a states that:

...it is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

Subparagraph b provides:

The defense provided by this section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was criminally negligent in placing himself in such a situation, whenever criminal negligence suffices to establish culpability for the offense charged. In a prosecution for murder, the defense is only available to reduce the degree of the crime to manslaughter.

The first question which must be addressed in connection with the asserted defense is whether indeed Ms. Fitzgerald was ever threatened or physically abused in order to induce her involvement in the coupon scam. The credibility of her assertion is fundamental. If she was not so threatened, and was a willful participant without threat, then clearly she is both culpable and in serious jeopardy with respect to her license and registration.

An assessment of Ms. Fitzgerald's testimony must take into account the fact that she did not reveal the purported threats and violence against her to either Detective Wild or the Superior Court judge who accepted her plea and granted her PTL. Her explanation for her failure to reveal Highlander's participation and his threats to Detective Wild was that he denied knowing Highlander. In addition, one must take into account the credibility of Ms. Fitzgerald's claims that she and her family have been continually harassed by Highlander since their breakup.

Having given careful consideration to Ms. Fitzgerald's version of the facts, including her failures to speak up concerning the Highlander threats prior to this hearing, I am nevertheless convinced that this lady did suffer both mental and physical harassment and abuse from Highlander during the fall of 1983 and that by December of that year she had become so fearful of her situation that she gave into his persistence and agreed to participate in the scheme with Scott and Highlander. Although she had resisted Scott's inducements from March through the summer of 1983, he apparently had never done more than verbally persist in his requests. The added leverage of physical and mental threats, beatings, and threats of more serious harm rained upon her by Highlander during the fall ultimately overwhelmed her conscience. Although there is no indication that

Ms. Fitzgerald actively attempted to separate herself from Highlander during the period or that she ever went to the authorities during the fall or thereafter to report Highlander's conduct, her explanation as to why she did not do so, and why she did not see a physician concerning her eye injury or even a later stabbing, ring true in light of the terror which she apparently was suffering. While another individual might have acted sooner to break away from the threatening situation, apparently Ms. Fitzgerald was not strong, or brave enough, to do so. While she might be criticized for staying with Highlander as long as she did, such criticism, as hindsight, is of little value. Ultimately, the credibility of her story, although never revealed before in situations which should have induced her to speak clearly, is such that I am convinced that she did not desire to engage in the illegal conduct and would not have done so had she not been so terrified of Highlander's violent nature.

In view of my finding that she did in fact suffer serious harassment, threats, violence and that she was under a great terror, I **CONCLUDE** that Ms. Fitzgerald was not a willing participant in the criminal conduct. While she did of course actively engage in the illegal activities, she did not do so because she wished to steal or because she was trying to benefit herself. While in some respect, from a psychological standpoint, perhaps she was in some degree attempting to please her boyfriend, (the court is not intending to imply any expertise of a psychological nature) the clear and obvious element controlling her conduct at the time was her fear of Highlander. Thus, I **CONCLUDE** that she did act under duress when she engaged in this illegal conduct.

With respect to the Division's allegations, I **FIND** that Ms. Fitzgerald did engage in conduct which on its face constituted theft by deception, a statutory disqualifying offense under N.J.S.A. 5:12-86c(1). However, she was granted Pre-Trial Intervention on this charge and the matter will shortly be dismissed. Thus she has no conviction for the offense and I **FIND** that had the matter gone to trial and had she raised the duress offense which she has asserted in this proceeding there is a strong likelihood that she would have been acquitted of the charge. Thus, I **FIND** that she did not commit a statutory disqualifying offense. Further, in view of these findings with respect to the duress under which she acted, I do not **FIND** that her conduct indicates that her continued employment in the industry would be inimical. Given the nature of the actions taken against her, it would be unreasonable to conclude that merely because she ultimately gave in to such threats of violence that there was some character defect, otherwise unestablished by evidence, which would indicate that allowing her to remain in the

industry would be a threat to the policies of the Act. Although at one time it might have been a concern that she might knuckle under to the continued harassment against her by Highlander, her actions in bringing charges against him in the Municipal Court, in testifying about his conduct in this proceeding, and in breaking off her relationship with him some years ago all indicate that it is entirely unlikely that she would again succumb to his conduct and engage in illegal activities. As such, I **FIND** nothing inimical about her continued employment.

In view of the above findings, and in view of the character evidence presented by way of letters and her testimony concerning her continued uneventful employment in and outside the industry following her resignation from the Sands, I **CONCLUDE** that Ms. Fitzgerald has established by clear and convincing evidence that she has the requisite good character, honesty and integrity required for casino employee licensure.

In view of the above findings, it is **ORDERED** that the complaint against Ms. Fitzgerald be **DISMISSED**.

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

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

April 27, 1987
DATE

April 28, 1987
DATE

APR 30 1987
DATE

ks

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Al Louis Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

Donald L. Parker x.5
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioner:

P-1 Atlantic City Municipal Court Complaint, S405535

On behalf of respondent:

R-1 Letter of February 3, 1987 from Vincent Walker, P.O., PTI Counselor

R-2 Letter of September 19, 1986 from Walter H. Ziegler, C.P.A.

R-3 Letter of September 15, 1986 from Nancy Robertson

R-4 Letter of July 18, 1986 from J. Luis Gutierrez, Assistant Games Shift
Manager, Trump Casino Hotel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-23
OAL DOCKET NO. CCC 5575-85
LICENSE NO. 26322-21
REGISTRATION NO. 02705-40

STATE OF NEW JERSEY, DEPARTMENT	:	
OF LAW & PUBLIC SAFETY, DIVISION	:	
OF GAMING ENFORCEMENT,	:	
Complainant,	:	<u>FINAL ORDER</u>
v.	:	
WEBSTER S. FREDERICK, JR.	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings and having decided the matter at its public meeting of February 26, 1986,

IT IS on this 27th day of April, 1987, ordered that the initial decision is modified as follows:

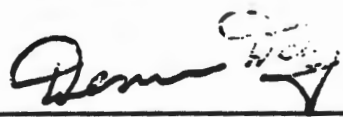
The respondent having established that, subsequent to the close of proceedings in the OAL, he has satisfied all obligations imposed upon him by court order dated October 17, 1983, following his conviction for assault contrary to N.J.S.A. 2C:12-1a(1), the

reservations expressed by the ALJ
are of no consequence, and the
complaint is dismissed.

IT IS FURTHER ORDERED that the complaint for revocation
of the casino employee license and casino hotel employee
registration of Webster S. Frederick, Jr., is dismissed
substantially for the reasons stated in the initial decision
as modified, which is incorporated herein by reference and
made a part hereof.

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 5575-85

AGENCY DKT. NO. 85-23

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

Petitioner,

v.

**WEBSTER S. FREDERICK, JR.,
Respondent.**

**William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,
Attorney General of New Jersey, attorney)**

Webster S. Frederick, Jr., pro se

Record Closed: December 20, 1985

Decided: January 10, 1986

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on February 1, 1985, in which it sought the revocation of Webster S. Frederick, Jr.'s casino employee license and casino hotel employee registration. Mr. Frederick requested a hearing on the proposed revocation and the matter was transferred to the Office of Administrative Law, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 25, 1985 and a prehearing order was issued on October 28, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin at the Longport Municipal Court on December 20, 1985.

ISSUES

Pursuant to the prehearing order, the issues for consideration in this hearing deal with whether the respondent has engaged in conduct which, had it been prosecuted, would have resulted in a conviction for an offense which is listed in the Casino Control Act, N.J.S.A. 5:12-86(c), as an automatic disqualifying offense; whether continued licensure and/or registration would be inimical to the policies of the Act and whether the applicant has the requisite good character, honesty and integrity required for licensure as a casino employee, pursuant to Section 89(b) and 90(b) of the Act. In addition, a further issue to be considered is whether the respondent has rehabilitated himself from the adverse affects of prior criminal activities such as to permit him to retain his license, pursuant to Sections 90(h) and 91(d) of the Act.

EVIDENCE

The principle allegations against Mr. Frederick arise out of an incident which occurred on May 21, 1983 in the City of Pleasantville. At that time, Mr. Frederick was charged with a simple assault, in violation of N.J.S.A. 2C:12-1(a)(1). The matter was referred to the prosecutor's office which determined that it should be handled as a simple assault despite the fact that the police officer had written the complaint up in language which spoke toward an aggravated assault. The matter was disposed of by plea of guilty on October 17, 1983 and Mr. Frederick was sentenced to a thirty-day jail term which was suspended, placed on probation for one year and fined \$50. In addition, as a condition of probation, Mr. Frederick was required to make restitution through the probation office for medical bills in the sum of \$146.10.

Patrolman Michael Skoczylas of the Pleasantville Police Department testified that on May 21, 1983 he was on patrol when he observed Mr. Frederick and a number of other people in the area of Portland Avenue and West Park Avenue. He noted a fight occurring in the middle of Portland Avenue and saw Mr. Frederick hit a man in the face with a four foot pipe. Skoczylas left his police vehicle and ordered Frederick to drop the pipe. When he did not Skoczylas told him again and when Frederick did not comply the officer drew his revolver. Frederick dropped the pipe and was then placed under arrest.

In describing the incident, the officer noted that a group of five or six people appeared to be involved in a tight bunch in the middle of Portland Avenue. No weapons

were observed other than Frederick's pipe. The victim of the assault was Robert Green, who suffered injury to his bottom jaw area including damage to a couple of teeth. Mr. Green had to be taken to the hospital as he was bleeding. Skoczylas noted that Frederick's action appeared to be "offensive." He recalled that Mr. Frederick did show him some marks on his body and claimed that he had been struck. He also told the officer that he had acted in self-defense and spoke of an ongoing altercation.

Mr. Frederick testified that the fight with Green had occurred when he, Frederick, had attempted to drive away from the area in his automobile and had been stopped by his then girlfriend. He had seen her somewhat earlier getting into a car and had tried to catch up with her. He caught up with this car on West Park Avenue and asked his girlfriend if she wanted to go back to Atlantic City with him. She said that she wanted to stay in Pleasantville and when he tried to leave she got in front of the car and would not move. He got out of the car and picked her up to move her out of the way. At this point, the girlfriend's uncle, who was with Mr. Green, thought that he was hurting the girl and came over and began hitting him with his hands. Frederick replied with his hands, but was hit with a pipe. During the ensuing altercation, the pipe was dropped on a lawn and Frederick ran over and got it and then hit Green.

Mr. Frederick, who is thirty-three years old and lives in Atlantic City, had prior police involvement in the early 1970's. In 1970, he was charged with breaking and entering, assault with intent to rob and possession of stolen property. He entered a plea of guilty to the possession charge and the other counts were dismissed. He was sentenced to State Prison for a term of two to three years. This sentence ran concurrently with a sentence on Indictment 763-71-J, in which Frederick was charged with atrocious assault and battery and robbery. He had been found guilty after a jury trial on these charges and was sentenced to a term of five to seven years on the robbery count with a consecutive two to three years on the atrocious assault and battery count, for a total of seven to ten years in State Prison. Mr. Frederick testified that he served exactly four years in prison and was released on May 11, 1976.

Since Mr. Frederick's release from prison in May of 1976, he has only one arrest besides the Pleasantville incident previously described. The other arrest involved a domestic dispute in 1980 and the charges were dismissed.

The respondent is the father of seven children. Five of the children have been born since he was released from prison. His children are sixteen, fifteen, seven, two, another child of two, nineteen months and seven months. Two of the children live with him and another one is with him "off and on." He supports three children through a wage execution, as well as the two children who live with him.

The respondent is currently employed at Harrah's Casino where he has been a dealer for fifteen months. Before that, he was employed at the Claridge as a casino porter for two months. He originally started working as a hotel houseman at Resorts in 1978 and also worked as a non-gaming employee doing cleaning in the casinos.

With respect to the 1983 probation imposed following the assault charge, Mr. Frederick testified that he failed to report to probation between February and July of 1984 because he "just forgot." He also did not make payments on his fine and restitution because he was, at the time "not making any money." He has been making about \$300 a week as a dealer for the past fifteen months, but has not paid the remainder of the restitution or fine. Again, he indicates that he "forgot about the fine."

DISCUSSION

A discussion of this respondent's continued licensure and registration must focus primarily on the 1983 incident. The 1970 and 72 incidents which resulted in Mr. Frederick's lengthy incarceration in State Prison are to some extent ancient history and it must be noted that at the time of those incidents Frederick was approximately eighteen and twenty years old respectively. Since his release from the State Prison, he has only had one involvement with the police of any real significance, that is the 1983 incident. With respect to that matter, the testimony of the police officer indicates clearly that Mr. Frederick was guilty of an assault, as he admitted when he pled guilty in court. The injuries suffered by Mr. Green were apparently not especially serious. The entire situation appears to have arisen out a "domestic" argument between Frederick and his girlfriend and perhaps out of some misunderstanding as to his conduct toward her. While the matter is not one to overlook, based on the circumstances involved, as best as can be drawn from the limited evidence presented concerning what occurred (there was no testimony by Green or any of the others involved, but only from the police officer, who observed only the tail end of the situation), it does not seem that this incident in and of itself is one which indicates any strong adverse consequences against Mr. Frederick.

While certainly his conduct cannot be applauded, at the same time, in the context of a licensing and registration proceeding, it in and of itself does not appear to be the type of conduct which would require that he not be continued as a registrant or licensee. With respect to whether the conduct rose to the level of an aggravated assault such as to constitute a violation of a statutory disqualifying offense under Section 86(c), I am not convinced by the evidence that the offense involved was sufficiently serious to constitute that type of serious assault. Although there was a breaking of the skin, although there was some damage to teeth, although this kind of injury might qualify as serious, whether the necessary elements of an aggravated assault, including recklessness and "manifest indifference" existed, is debatable.¹ It appears that the matter more properly constituted a simple assault, as indeed the prosecutor chose to treat it. In addition, and of some significance, in view of the limited evidence presented, it is not entirely clear that Mr. Frederick was not, as he said, acting in reaction to an assault upon him. While I do not believe from Frederick's own statements that he could have successfully defended his action in striking Green with the pipe as a self-defense situation since there is no evidence that he could not have fled or that he was in imminent danger of being struck with the pipe, given the totality of the circumstances, I **FIND** that the matter did not rise to the level of an aggravated assault.

With respect to the 1970 and 72 incidents, the State has not pursued these as being grounds for disqualification since they occurred more than ten years prior to this proceeding.

¹N.J.S.A. 2C:12-1 defines aggravated assault as:

- b. Aggravated assault. A person is guilty of an 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; or
 - (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
 - (3) Recklessly causes bodily injury to another with a deadly weapon; or
 - (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or

The most troubling aspect of this case deals with whether it is appropriate to continue Frederick as a licensee or registrant in view of the fact that he has not fulfilled the terms and conditions of his probation on the 1983 incident. He admittedly has not paid the fine and restitution, at least in full. The evidence reveals that at one time the probation office forwarded to the Court a request for a violation of probation proceeding, but there is no evidence from either party that the matter was ever proceeded upon and in fact Mr. Frederick said he never heard anything about any proposed violation. However, Frederick has been employed for sometime as a casino dealer and apparently he has not chosen to complete his financial obligation to the Court despite his earnings in that role. The impact of this failure on Mr. Frederick's good character, honesty and integrity must be considered.

As an overall matter, I am generally convinced that Mr. Frederick has, at least since 1976, exhibited himself to be a reasonably adequate citizen who has learned from his past mistakes. With the exception of the 1983 incident, the facts of which are not entirely clear from the record, Frederick has had no trouble with the law for almost ten years. He paid his debt to society for his serious youthful indiscretions long ago. He has been employed on and off in the casino industry since 1978 and apparently has had no problems within the industry, at least not in connection with anything of a serious nature.²

Were it not for the failure to make restitution, I would, under all the circumstances, **FIND** that Mr. Frederick has proven his good character, honesty and integrity by clear and convincing evidence, as required by the statute. Although the 1983 incident is not one to be overlooked, I do not **FIND** it to be of a sufficiently serious nature as to defeat Frederick's otherwise clear record since 1976 and his essentially clear record as a employee of the casinos since 1978. However, I strongly believe that if Mr. Frederick is to retain either his license and/or his registration he must clear up the outstanding fine and restitution. Therefore, I **CONCLUDE** that while Mr. Frederick has generally proven the requisite good character, honesty and integrity required, neither his license nor his registration should be permitted to remain in force until such time as he shall have presented proof that he has completed his obligations to the Court by paying his fine and his restitution.

² Frederick was apparently terminated from at least one job for lateness and absences. However, this does not impact to any great degree on the question of good character, honesty and integrity.

CONCLUSION

For the reasons expressed above, I **FIND** that the respondent has not been proven to have committed an offense which, if prosecuted, would have constituted a violation of a statutory disqualifying offense. In addition, I **FIND** no evidence that he has engaged in activity which would make his continued licensure and/or registration inimical to the policies of the Act or the interests of the casino industry. Further, I **FIND** that he has established that he has the requisite good character, honesty and integrity required for licensure by clear and convincing evidence, except for his failure to pay his fine or restitution. Since this matter can be cleared up quickly and easily enough, and since I believe it more appropriate that Mr. Frederick continue as a licensee than that he lose his license and/or registration, I **ORDER** that his license and registration be suspended until such time as he shall have satisfactorily established to the Commission that he has paid the outstanding fine and restitution in full. Upon presentation of satisfactory proof to this effect, the license and registration will be restored.

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

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

January 10, 1986
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

January 13, 1986
DATE

Signature of J. Figgins
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 15 1986
DATE

Ronald L. Parker & S.
OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of petitioner:

- P-1 Division of Gaming Enforcement, Investigative Report, five pages
- P-2 Indictment 696-70-J
- P-3 Superior and County Court Criminal Record, dated April 27, 1971
- P-4 Superior and County Court Criminal Record, dated February 15, 1972
- P-5 Presentence Investigation, two pages
- P-6 Presentence Investigation, two pages
- P-7 Pleasantville Municipal Court Complaint W-14169, dated May 21, 1983
- P-8 Letter of August 10, 1984 from Chief Probation Officer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-5
OAL DOCKET NO. CCC 5563-86
APPLICATION NO. 52184-21

APPLICATION OF PAUL GOLDBERG :
FOR A CASINO EMPLOYEE LICENSE :
(SOLE OWNER/OPERATOR - : ORDER
JUNKET ENTERPRISE) :
_____ :

A hearing having been held before the Office of Administrative Law; and an initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having reviewed the entire record at its public meeting of May 27, 1987,

IT IS on this 17th day of June 1987, ORDERED that the initial decision is modified as follows:

The parties have stipulated that the applicant's 1971 federal conviction is comparable to maintaining a gambling resort in violation of N.J.S.A. 2C:37-4, and his 1985 federal conviction is comparable to promoting gambling in violation of N.J.S.A. 2C:37-2, and that both are disqualifying offenses under N.J.S.A. 5:12-86(c)(1). Section 86(c)(4) provides that for convictions occurring ten years or more prior to the application, automatic disqualification will not result if the applicant demonstrates by clear and convincing evidence that automatic disqualification is not justified. The factors to be weighed in resolving this issue are coextensive with those considered in determining whether an offense renders

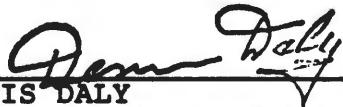
licensure inimical (see Application of Seymour Alter for a Casino Key License, 6 N.J.A.R. 584 (1980); and Application of Donna Davis for a Casino Key License, Docket No. 85-EA-40 (Commission decision December 27, 1985)).

Therefore, we find based on the ALJ's findings at p. 9 of the initial decision and his conclusion that the applicant has demonstrated his present good character pursuant to section 90(b), there is clear and convincing evidence in the record as a whole to find that the automatic disqualification provisions of section 86(c) should not apply to the applicant's 1971 federal gambling conviction and that he has established his rehabilitation from his 1975 criminal conviction.

IT IS FURTHER ORDERED that the casino employee license application of Paul Goldberg is granted based substantially on the reasons stated in the initial decision, as modified, which is incorporated by reference and made a part hereof.

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 5563-86

AGENCY DKT. NO. 87-EA-5

PAUL GOLDBERG,

Petitioner,

v.

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

Respondent.

Barry Krell, Esq., an attorney-at-law of the State of South Carolina, admitted pro hac vice, for petitioner (Uricchio, Howe, Krell, Jacobson & Toporek) (Neil B. Bogatz, Esq., attorney of record, Bogatz and Shore, attorneys)

Anthony V. D'Elia, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: February 25, 1987

Decided: April 9, 1987

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

STATEMENT OF THE CASE

Paul Goldberg, petitioner, applied to the Casino Control Commission (Commission) for licensure as a junket representative /sole owner-operator, pursuant to N.J.S.A. 5:12-102b. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, took no position regarding the application; however, the Division noted that Mr. Goldberg had a criminal record history, which raised issues

concerning his qualifications for licensure under sections 86c(4) and 90b of the Casino Control Act (Act). The petitioner contended that he was rehabilitated from his prior misconduct.

PROCEDURAL HISTORY

On February 15, 1984, Mr. Goldberg submitted his Personal History Disclosure Form - 2A (PHDF-2A) to the Commission (J-1). By letter, the Commission advised the petitioner that, based upon information received in a report from the Division, dated June 19, 1986, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. By letter dated August 8, 1986, Mr. Goldberg requested a hearing. On August 21, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on October 7, 1986. The matter was heard telephonically on February 25, 1987, at which time the record closed.

It should be noted that the matter was initially scheduled for hearing on February 23, 1987, at the Office of Administrative Law in Atlantic City. Mr. Goldberg and counsel were present in Atlantic City on that date. However, because of an unanticipated severe snow storm, this administrative law judge and the deputy attorney general were unable to be present for the hearing. Further, the petitioner and counsel were unable to remain in Atlantic City beyond the scheduled date. Therefore, the matter was heard by telephone. All parties consented to this procedure.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Goldberg is 49 years of age (J-1). He has been married for 29 years. The petitioner and his wife have five children, including two from her prior marriage, with one still at home, and three grandchildren.

The petitioner served in the U.S. Navy from January 6, 1955 until January 8, 1959. He earned an honorable discharge. Also, he earned a G.E.D. while in the Navy.

Thereafter, the petitioner was employed as a warehouse worker and as a salesman in a men's clothing store, each for periods of approximately one year.

The petitioner was next employed as a postal clerk by the U.S. Postal Service for approximately seven years. He left this position voluntarily, at which time his annual salary was \$7,000.

In 1969, the petitioner became employed by the Uptown Sports Center, which was a poolroom and restaurant, as well as an illegal bookmaking operation. The petitioner had been solicited for this position for over four months by William D. McEwen, the proprietor. The business was situated in the downtown business district in Charleston, South Carolina. The petitioner was to earn \$300 per week or 25 percent of the profits, whichever amount was higher. During the first year he earned \$14,000, and during the second year he earned \$16,000. At the time the petitioner took the job, he was the father of four children and his wife was pregnant.

The parties agreed to the following stipulation of fact:

On April 2, 1971, the applicant was arrested by the United States Marshall's office, and was charged with two counts of conducting an illegal gambling business, comparable to maintaining a gambling resort, N.J.S.A. 2C:37-4. The applicant was convicted of that offense in the United States District Court, District of South Carolina, and, on August 20, 1971, was sentenced to the custody of the Attorney General's office for a period of 18 months, and fined \$5,000. Due to the subsequent appeals, Mr. Goldberg did not begin serving this sentence until 1975.

On March 7, 1972, the applicant was arrested by the South Carolina Police Department and was charged with bookmaking, comparable to promoting gambling, N.J.S.A. 2C:37-2. That charge was subsequently dismissed, and Mr. Goldberg pled guilty to a lesser charge of possession of gambling paraphernalia, and as a consequence of his plea he forfeited his \$100 bail.

Also in March of 1972, the applicant was arrested by the United States Marshall's office, and was charged with conspiracy to conduct interstate gambling business, contrary to 18 U.S.C. §1084. That offense is comparable to promoting gambling, N.J.S.A. 2C:37-2. This matter was stayed pending final disposition of Mr. Goldberg's appeals following his earlier federal conviction. Finally, when Mr. Goldberg's 1971 federal conviction was upheld upon appeal, he pled guilty to conspiracy to carry on interstate gambling business, and received a four-year probationary sentence. That sentence was served concurrently with his sentence for the

earlier federal conviction, and contact with the United States District Court Probation Office revealed that Mr. Goldberg successfully completed that probationary sentence in January 1981.

The initial indictment concerned misconduct which occurred between May 1, 1969 and January 16, 1971 (R-1 and P-16). Following this indictment, the petitioner and Mr. McEwen returned to the Uptown Sports Center and resumed their illegal activities. The second federal indictment concerned misconduct between September 1, 1971 and January 8, 1972 (R-2 and P-16). This indictment was dismissed when the petitioner pled guilty to a superseding criminal information (R-3). The state action was initiated subsequent to the second indictment.

Following the second federal indictment, the premises were padlocked and the business was closed.

The petitioner did not enter a plea to the second federal charge until the culmination of his appeals from his initial conviction. The appeal process ceased when the United States Supreme Court rendered a decision in a substantially similar matter.

From January 1973 to June 1982, the petitioner was employed as the manager of the Embassy Supper Club in Charleston, South Carolina. This business was owned by the petitioner's wife and had been opened in the early 1970s. His employment ceased when the business was dissolved.

In 1975, the petitioner reported to Maxwell Air Force Base, a minimum security prison, where he remained for nine months. There were no difficulties during his incarceration and he was placed in charge of receiving and discharging prisoners. The following four and one-half months were spent at a prerelease center in Charleston, which was a halfway house. During this time, the petitioner was employed as a salesman at an exclusive men's wear shop. Thereafter, he returned to employment at the Embassy Supper Club. The petitioner completed the remaining four years of his probation without incident.

The petitioner's wife is currently licensed by the Commission as a junket representative. She conducts junkets to Trump's Castle Hotel/Casino. It is the

petitioner's intention to join his wife in business. The petitioner has not performed any junket-related work for his wife. The petitioner proposes to operate junkets under the name of Casino Travel.

The petitioner has not committed any subsequent violations of the criminal laws.

The petitioner has not been employed for the past several years.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's employment and misconduct at the Uptown Sports Center, and the petitioner's reputation for good character, honesty and integrity.

The petitioner described the circumstances underlying his involvement in the illegal gambling activity. The Uptown Sports Center had been the site of illegal bookmaking activities in an open and notorious manner for in excess of 20 years. It was located in the business district, and local police authorities had never enforced the gambling laws. In fact, local police officials often ate at the restaurant. Although the petitioner initially rejected Mr. McEwen's offer of employment, he eventually agreed because of the substantial increase in salary over that which he received as a postal clerk. In addition, Mr. McEwen had advised the petitioner that the establishment did not violate any federal laws because there were no interstate activities and because there were only two employees; i.e., 18 U.S.C. §371 required the participation of five persons. Also, the petitioner knew that local police authorities had never enforced the gambling laws. The petitioner functioned in the role of a clerk, i.e., he received bets in person and by phone. The petitioner was neither an owner nor a financier of the enterprise.

Concerning the state action, the petitioner testified that he received a telephone request from Mr. McEwen to unlock the premises and admit the city police who had a search warrant. The city police found one parlay card on the floor, which was the basis for the charge. No court appearance was required for the forfeiture of bail.

The petitioner also described his current attitude. All of his children are grown and his family has sufficient income. He does not want to violate any criminal laws again because he does not want to suffer the consequences. He is now older and smarter by reason of his experiences.

The petitioner also offered numerous letters and affidavits on his behalf. The deputy clerk of the United States District Court wrote that there are no pending civil or criminal cases against the petitioner nor are there any judgments outstanding (P-1). The clerk of the Court of Common Pleas and General Sessions for Charleston County stated that there is no record of any judgments or civil actions initiated in the state courts against the petitioner (P-2 and P-3). Also, there is no record of tax liens against the petitioner during the past ten years (P-4). Bernard P. Mendelson, D.D.S., an orthodontist and active in professional and civic organizations, has known the petitioner for 20 years and was of the opinion that the petitioner is a "devoted family man," "an honest and respected member" of the community and was a person of integrity (P-5). Abe Dumas, a businessman who is active in civic matters and has been a friend of the petitioner for 29 years, stated that the petitioner is trustworthy and a good family person (P-6). Shep Cutler, a senior partner in an insurance agency and a friend of the petitioner for 15 years, stated that the petitioner is honorable and dependable (P-7). David A. Molony, president of a credit adjustment bureau and active in civic associations, has known the petitioner since 1957, and stated that the petitioner is honest and honorable in every respect (P-8). Ernest J. Goer, president of a manufacturing company and active in civic activities, has known the petitioner for 25 years, and stated that the petitioner is a good family person and is a person of "the highest standards and character" (P-9). Daniel R. Molony, president of a credit bureau and friend of the petitioner for 15 years, stated his respect and admiration for the petitioner (P-10). Herbert A. Engel, president of a furniture company and active in civic matters, has known the petitioner for 25 years, and cited the petitioner's honesty and positive role as a family member and as a member of the community (P-11). Irving M. Robinson, a retired owner of a bicycle and toy store and active in civic matters, has known the petitioner for many years, and stated that the petitioner is an honest and straightforward person (P-12). It is also interesting to note that Mr. Robinson's business was located four doors away from the Uptown Sports Center. Melvin Solomon, chairman and president of an investment bankers company and active in civic and business organizations, has known the petitioner since 1966, and stated that the petitioner is a person of integrity and is well regarded by the community (P-13). Gordon B. Stine, D.D.S., is active in civic matters and has known the petitioner for more

than 20 years, and stated that the petitioner is a person of character and an asset to the community (P-14). John B. Carter, retired manager of the U.S. Post Office in Charleston and active in civic matters, has known the petitioner since the early 1960s, and stated that the petitioner was an excellent employee of the post office, is very civic-minded, and is dependable and honest (P-15).

Although the circumstances underlying the petitioner's involvement in illegal gambling activities and the reasons therefore were in dispute, technically, the Division offered no evidence to refute the petitioner's testimony. The petitioner appeared to be credible and his testimony was consistent with the documentary evidence. In essence, I am persuaded to believe that the petitioner testified truthfully. Accordingly, the petitioner's unrefuted testimony, which consisted of his explanations of the circumstances underlying his misconduct, the reasons therefore, and his subsequent remedial conduct, are **FOUND AS FACT**.

In addition, I am persuaded to believe that the respondent is well regarded by close friends, business and civic leaders in his community. I so **FIND**.

DISCUSSION OF LAW AND CONCLUSIONS

Under section 102b, Mr. Goldberg was required to meet the standards for licensure of a casino employee under section 90. In dispute were whether the petitioner's criminal misconduct rendered licensure inimical to the policies of the Act, pursuant to section 86c(4), and whether he possessed the requisite degree of good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2).

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 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 association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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), cert. 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.

It has been established by stipulation that the petitioner's convictions are comparable to violations of N.J.S.A. 2C:37-2 and 2C:37-4, promoting gambling and conducting an illegal gambling business, fourth-degree offenses, which are listed disqualifying offenses under section 86c(1). Accordingly, the offenses, especially in consideration of the duration of the misconduct and the fact that participation was the petitioner's sole means of support, appear to be inimical to the policies of the Act. However, the inimicality of the offenses must include consideration of the circumstances underlying the incident and the petitioner's subsequent conduct.

As indicated, the petitioner participated in the illegal activities as a means of employment. Nevertheless, the petitioner accepted full responsibility for his misconduct during the criminal prosecution and satisfied fully the sentence imposed. Further, the petitioner's stated commitment not to repeat his misconduct is supported by the absence of any criminal misconduct during the ensuing 14 years. It is evident that the incident has positively affected the petitioner and that he has successfully altered his attitudes and lifestyle as to lead one to believe that there is little, if any, likelihood of a repetition of such misconduct. Also, the petitioner has earned a positive employment record and a positive personal reputation within the industry in which he worked and in the community in which he lives. In addition, it is apparent that the petitioner has not attempted to inject himself improperly into his wife's junket activities with the casino industry in New Jersey. The most significant factor, however, is the extensive passage of time without any repetition of the misconduct. The petitioner's rehabilitative efforts now outweigh the negative aspects of his misconduct. In the final analysis, it is evident that licensure of this applicant would not be inimical to the policies of the Act.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that licensure of the petitioner would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Goldberg was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises

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

It is clear that Mr. Goldberg has established his qualifications for licensure. Although his misconduct was serious, the passage of 14 years without repetition of his misconduct and his high reputation for good character, honesty and integrity with which he is held in the community in which he lives and worked, as well as his efforts to avoid any involvement in his wife's business activities within the New Jersey gaming industry, establish his qualifications for licensure. An examination of the "whole man" clearly and convincingly establishes that Mr. Goldberg is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. Boardwalk Regency Corp. at 51, 52.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(B) Disposition

It is **ORDERED** that the application of Paul Goldberg for licensure as a junket representative/sole owner-operator be **GRANTED**.

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

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

April 9, 1987
DATE

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

Receipt Acknowledged:

April 10, 1987
DATE

William J. [unclear]
CASINO CONTROL COMMISSION

APR 14 1987
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Statement of Judith M. McDowell, Deputy Clerk of the United States District Court, for the District of South Carolina, January 29, 1987
- P-2 Statement of Howard A. Taylor, Clerk of the Court of Common Pleas and General Sessions for Charleston County, South Carolina, January 30, 1987
- P-3 Statement of Howard A. Taylor, Clerk of the Court of Common Pleas and General Sessions for Charleston County, January 30, 1987
- P-4 Affidavit of Alan D. Toporek, February 4, 1987
- P-5 Biographical Information concerning Bernard P. Mendelson; and Affidavit of Bernard P. Mendelson, February 2, 1987 (2 pages)
- P-6 Affidavit of Abe Dumas, January 30, 1987; Biographical Information concerning Abe Dumas (2 pages)
- P-7 Affidavit of Shep Cutler, November 18, 1986, together with Biographical Information concerning Shep Cutler (2 pages)
- P-8 Affidavit of David A. Molony, January 11, 1987, together with Biographical Information concerning David A. Molony (2 pages)
- P-9 Affidavit of Ernest J. Goer, January 29, 1987, together with Biographical Information concerning Ernest J. Goer (2 pages)
- P-10 Affidavit of Daniel R. Molony, January 11, 1987
- P-11 Affidavit of Herbert A. Engel, January 29, 1987, together with Biographical Information concerning Herbert A. Engel (2 pages)
- P-12 Affidavit of Irving M. Robinson, January 29, 1987, together with Biographical Information concerning Irving M. Robinson (2 pages)
- P-13 Affidavit of Melvin Solomon, January 29, 1987, together with Biographical Sketch of Melvin Solomon (2 pages)
- P-14 Affidavit of Gordon B. Stine, January 30, 1987, together with Biographical Information concerning Gordon B. Stine (2 pages)
- P-15 Affidavit of John B. Carter, February 4, 1987, together with Biographical Information concerning John B. Carter (2 pages)
- P-16 Letter to Barry Krell, Esq., from Ernest M. Comar, Supervising U.S. Probation Officer, April 19, 1983 (2 pages)
- R-1 United States of America v. Paul Goldberg, et al., District Court of the United States, District of South Carolina, Greenville Division, Cr. No. 71-99, Indictment filed on March 31, 1971 (18 pages)

- R-2 United States of America v. Paul Goldberg, et al., District Court of the United States, District of South Carolina, Charleston Division, Criminal No. 72-40, Indictment filed on March 8, 1972 (6 pages)
- R-3 United States of America v. Paul Goldberg, et al., District Court of the United States, District of South Carolina, Criminal No. 75-353, Information, filed on August 7, 1975
- J-1 New Jersey Casino Control Commission - Personal History Disclosure Form - 2A, Paul Goldberg, filed on February 15, 1984; sole owner/operator junket enterprise disclosure form, Paul Goldberg, filed on February 15, 1984 (45 pages)

WITNESS LIST

For the Petitioner:

Paul Goldberg

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-74
OAL DOCKET NO. CCC 2388-86
REGISTRATION NO. 29394-40

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

Complainant, :

v. :

ANNE K. GRANNIS, :

Respondent. :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 25, 1987,

IT IS on this *5th* day of March 1987, 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 and made a part hereof.

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 2388-86

AGENCY DKT. NO. 86-74

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

Petitioner,

v.

**ANNE K. GRANNIS,
Respondent.**

William E. Mountford, Jr., Deputy Attorney General appearing for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Mark E. Roddy, Esq., appearing for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: November 13, 1986

Decided: January 9, 1987

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission on March 7, 1986 seeking revocation of the respondent's casino hotel employee registration based on an indictment charging a controlled dangerous substance violation against the respondent.

A hearing was requested and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on November 13, 1986.

The issue in this case is whether or not the Division can prove that respondent committed an offense enumerated in N.J.S.A. 5:12-86c, despite her receipt of a conditional discharge, which the Division is permitted to do by virtue of N.J.S.A. 5:12-86g.

The State's proofs consist of police reports showing furtive activity in an automobile in which the respondent and another were driving. They were stopped. A search revealed approximately 28 grams of cocaine and paraphenalia indicative of distribution. Both driver and passenger were properly charged with possession of cocaine with the intent to distribute the same. There were other lesser charges, but this is the only charge enumerated in the disqualification criteria of N.J.S.A. 5:12-86c.

The police report says the furtive activity was an observation of respondent "snorting" cocaine. Respondent testified that she was not snorting cocaine; she was applying make-up at the time she was observed by the police. This is a credible statement in context. She elaborated by saying that the police knew immediately where to look for the contraband; suggesting that they were watching for any furtive activity resembling probable cause in order to conduct a search.

The laboratory report reveals that the cocaine attributable to this respondent is only 3.15 and .04 grams. All the balance of cocaine and other paraphenalia suggestive of distribution was attributed to the respondent's co-defendant in whose car they were.

The respondent testified that she had the cocaine for personal use and that she never possessed it inside the casino hotel in which she was formerly employed as a waitress in a restaurant not adjacent to a casino room.

She says she is presently employed as a waitress in Florida, has not used drugs since this incident, never dealt drugs or saw her co-defendant deal drugs. She does not intend to return to this area. This witness was entirely credible.

I **CONCLUDE** that the Division has failed to prove by a preponderance of the credible evidence that the respondent possessed cocaine with the intent to distribute it contrary to the law.

I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

January 9 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

January 12, 1987
DATE

Edgar R. Holmes
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 14 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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WITNESSES

For respondent:

Anne K. Grannis

EXHIBITS

P-1 Police Report
P-2 Laboratory Report

R-1 Letters
R-2 Plea Agreement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-134
OAL DOCKET NO. CCC 3857-86

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

Complainant, :

v. :

GREATER BAY HOTEL & CASINO, INC., :

Respondent. :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement (Division) having filed exceptions to the initial decision; and the respondent having filed a reply and cross-exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of February 25, 1987,

IT IS on this *6th* of March 1987, ORDERED that the initial decision is modified as follows:

- (1) at pp. 30 and 31, the citations to N.J.A.C. 13:2-23(a)2 and N.J.A.C. 13:2-12.12(a), respectively, are corrected to read: N.J.A.C. 13:2-23.23(a);
- (2) at p. 31, citation to the comparable Commission regulation, N.J.A.C. 19:50-1.6(u)(2) is added, for the violation of N.J.A.C. 13:2-23.23(a)(2) as found by the ALJ;

- (3) for the reasons stated in the initial decision, the Commission finds that the respondent illegally bottled wine in improperly labeled containers in violation of N.J.S.A. 33:1-2(a) as incorporated by N.J.S.A. 5:12-103(d);
- (4) the Commission holds that the imposition of sanctions and the standards by which they are imposed are governed by N.J.S.A. 5:12-129 and 130;
- (5) the Commission rejects the suggestion in the initial decision that the Division's alleged lack of diligence in prosecuting this violation is a basis for mitigation of the penalty to be imposed for the violations found. The bases for mitigation of penalty are the unintentional and unknowing violations and the respondent's prompt corrective action when notified of the violations. See N.J.S.A. 5:12-130(e) and (g);
- (6) given the nature of the violations and the surrounding circumstances, the Commission rejects as unnecessary the ALJ's recommendation that Sands submit an amendment to its casino hotel alcoholic beverage license application setting forth internal controls for quality and inventory control of its alcoholic beverages;
- (7) given the nature of the violations and the surrounding circumstances, the Commission rejects as unnecessary the recommendation that Sands conduct training seminars on alcoholic beverage law for its beverage supervisory personnel;

- (8) considering all the circumstances surrounding these violations and with particular reference to the mitigating factors set forth in paragraph (5) above, the Commission imposes a penalty of \$1,000, and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$1,000, for the reasons stated in the initial decision as modified, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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 3857-86

AGENCY REF. NO. 86-134

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

Petitioner,

v.

**GREATE BAY HOTEL AND CASINO,
INC., T/A SANDS HOTEL AND CASINO,**

Respondent.

**Wendy Alice Way, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Roberto Rivera-Soto, Esq., for respondent

Record Closed: November 3, 1986

Decided: December 18, 1986

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

Petitioner, the Division of Gaming Enforcement (Division), Department of Law and Public Safety, alleges that respondent Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel and Casino (Sands) violated New Jersey Alcoholic Beverage Control statutes and regulations, as incorporated by reference into the New Jersey Casino Control Act, by illegally decanting wine and illegally bottling wine in improperly labeled containers. Respondent Sands denies the allegations by way of answer and sets forth five separate affirmative defenses seeking dismissal of the Division's complaint.

PROCEDURAL HISTORY

On April 28, 1986, the Division filed its complaint against respondent. On May 23, 1986, respondent Sands filed its Answer and Request for Hearing before the Casino Control Commission (Commission). By way of letter dated June 9, 1986, the Commission advised the parties to the herein controversy that the matter had been transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Thereafter, on July 24, 1986, a prehearing conference was held at which, among other things, the parties agreed to enter into a stipulation of facts on or before September 12, 1986, and cross-moved for summary disposition of the dispute. The parties submitted the Stipulation of Facts in a timely manner, followed by Briefs of Law. The last submission was timely received by the undersigned on October 24, 1986. Oral argument was scheduled for November 6, 1986; however, it was adjourned by the undersigned on November 3, 1986, which constitutes the closing of the record to the herein matter.

Having carefully considered the criteria as set forth in Judson v. People's Bank and Trust Company of Westfield, 17 N.J. 67 (1954), I **FIND** and determine that the instant matter is ripe for summary disposition.

ISSUES

The issues agreed upon by the parties to be determined by this administrative tribunal are set forth below as follows:

1. Whether respondent's activity constitutes the illegal decanting of wine in violation of N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d).
2. Whether respondent's activity constitutes illegal bottling in improperly labeled containers in violation of N.J.A.C. 19:50-1.6(u)(2), as well as N.J.S.A. 33:1.2(a) and N.J.A.C. 13:2-23.23(a)(2), as incorporated by reference into N.J.S.A. 5:12-103(d).
3. Whether respondent's activity is not within the terms and conditions of its C.H.A.B. licensure in violation of N.J.S.A. 5:12-103(f)(2).
4. Whether petitioner's complaint is barred by the application of the de minimus doctrine.

5. Whether petitioner's complaint is barred by the application of the equitable doctrine of laches, estoppel or waiver.

STIPULATION OF FACTS

The parties agree and stipulate that the essential facts to this matter are not in dispute and are true and correct as follows:

1. The Division is now, and at all times material to Complaint No. 86-134 has been, a division of the Department of Law and Public Safety of the State of New Jersey, established pursuant to Section 55 of the New Jersey Casino Control Act ("the Act"), N.J. Stat. Ann. 5:12-55, and invested with such powers and duties granted to it as set forth in Sections 76 to 79, inclusive, of the Act, N.J. Stat. Ann. 5:12-76 to 79.
2. The Sands is now, and at all times material to Complaint No. 86-134 has been, a corporation duly organized and existing under the laws of the State of New Jersey, with its principal place of business located at Indiana Avenue & Brighton Park, Atlantic City, New Jersey.
3. The Sands is now, and at all times material to Complaint No. 86-134 has been, the holder of a Plenary Casino License ("the Casino License") issued by the New Jersey Casino Control Commission ("the Commission"), authorizing the Sands to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder.
4. The Sands is now, and at all times material to Complaint No. 86-134 has been, the holder of an Operation Certificate ("the Certificate"), entitling the Sands to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder.
5. The Sands is now, and at all times material to Complaint No. 86-134 has been, the holder of a Casino Hotel Alcoholic Beverage License ("the CHAB License") issued by the Commission effective August 12, 1980, and renewed annually thereafter, authorizing the Sands to possess, store or sell alcoholic beverages in accordance with the terms of such authorization, Section 103 of the Act, N.J. Stat. Ann. 5:12-103, and the regulations promulgated thereunder, N.J. Admin. Code 19:50-1.1, et seq.
6. At all times material to Complaint No. 86-134, the Sands has operated a licensed casino hotel complex pursuant to the Casino License, the Certificate and the CHAB License.

7. By a resolution dated September 18, 1985, the Commission authorized the renewal of the CHAB License for a one-year period from August 13, 1985 to August 12, 1986; a true and correct copy of the Commission Resolution ("the Resolution") is attached hereto as Exhibit "A" and is made a part hereof by reference.
8. Pursuant to the Resolution, the Commission issued Casino Hotel Alcoholic Beverage Control License Certificate No. 437 CHABC ("the 1985-86 CHAB License") to the Sands; a true and correct copy of the 1985-86 CHAB License is attached hereto as Exhibit "B" and is made part hereof by reference.
9. The Sands Mezzanine Pump Room is a secure area, with limited access, located on a non-public floor of the Sands casino hotel complex.
10. The Sands Mezzanine Pump Room is connected via pipes to retail service locations throughout the Sands.
11. In particular, when a bartender is asked for the house red wine at Casino Service Bar II, the bartender pushes a button marked "red wine" on a touch-pad, and the equipment automatically dispenses a pre-measured portion of red wine into a glass, which is then given to a cocktail server for delivery to the patron.
12. No consumer ever sees the inside of the Sands Mezzanine Pump Room or how the canisters therein are labeled.
13. All taxes due and payable on the wine dispensed by the Sands through its Mezzanine Pump Room have been paid in full.
14. In the course of its duties, the Division has inspected the Sands' Mezzanine Pump Room at least twice each year since 1980 and has found no violations nor caused the Sands to be cited for any violations of regulatory provision with respect to the dispensing of alcoholic beverages from the Sands Mezzanine Pump Room.
15. On December 4, 1985, the Division conducted an on-site inspection of the Sands Mezzanine Pump Room; a true and correct copy of the Division's Investigation Report concerning such inspection is attached hereto as Exhibit "C" and is made part hereof by reference.
16. As a result of such inspection, the Division noted for the first time that the Mezzanine Pump Room contained two (2) "ABC" containers, each of five (5) gallons, which had been refilled with red wine ("Burgundy") poured from Inglenook 18-liter wine cases, which was then pumped through the "ABC" system to Casino Service Bar II.

17. The two (2) "ABC" containers described in Paragraph 16, above, which originally contained a non-alcoholic mixer, were labeled "White Wine" and "Grenadine", when each actually contained "Burgundy wine".
18. Attached hereto as Exhibit "D" and made a part hereof by reference are four (4) "Polaroid" photographs taken contemporaneously with the Division's December 4, 1985 inspection.
19. Since 1980, the Sands has been in the practice of refilling the two "ABC" containers in the Mezzanine Pump Room in order to use the compatible couplings on such containers to the pump system.
20. On December 4, 1985, the Sands acknowledged in writing that the events described in Paragraph 11, above, and repeated in Paragraph 14, above, were indeed the case; a true and correct copy of such Acknowledgement is attached hereto as Exhibit "E" and is made a part hereof by reference.
21. On December 4, 1985, the Division representative conducting the inspection advised Sands personnel as to a simple means of making the "Burgundy wine" containers the Sands purchased compatible with its pump system.
22. On December 12, 1985, the Division representative who conducted the December 4, 1985 inspection re-inspected the Mezzanine Pump Room and reported that his December 4, 1985 advices had been complied with by the Sands; a true and correct copy of the Division's Investigation Report is attached hereto as Exhibit "F" and is made a part hereof of reference.

In the above-cited Stipulation of Facts is hereby adopted by reference as FINDINGS OF FACT in this matter.

The respective positions and legal arguments of the parties to this dispute are set forth below as follows:

THE DIVISION'S POSITION

By way of introduction, the Division articulates the public policy considerations with respect to the regulation of alcoholic beverage in this state.

The Division asserts that the potential evils of intoxicants and the difficulties of keeping them within legal bounds have long been recognized as warranting broad

exercise of State authority. Leisy v. Hardin, 135 U.S. 100 (1890). Apart from the Twenty-first Amendment, New Jersey's authority to regulate liquor stems from its traditional "police power" to regulate activities within its borders for the protection of its citizens. Epstein v. Lordi, 261 F. Supp. 921, 931 (D.N.J. 1966). The purposes of alcoholic beverage regulation in this State and the scheme of control which has been established to implement the aims and objectives of state regulation are specified in N.J.S.A. 33:1-3.1, as incorporated by reference into N.J.S.A. 5:12-103(d), as follows:

- (1) To strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.
- (2) To foster moderation and responsibility in the use and consumption of alcoholic beverages.
- (3) To protect the collection of State taxes imposed upon alcoholic beverages.
- (4) To protect the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages.
- (5) To protect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations. Participation in the industry as a licensee under this act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee.
- (6) To provide a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition.
- (7) To maintain trade stability.
- (8) To maintain a three-tier (manufacturer, wholesaler, retailer) distribution system.
- (9) To maintain primary municipal control over the retailing of alcoholic beverages.
- (10) To prohibit discrimination in the sale of alcoholic beverages to retail licensees.

In view of the "vast reservoir of power bestowed upon the states" to regulate liquor traffic and protect against its evil within their borders, New Jersey is not federally precluded from additional regulation of bottles and labels in furtherance of its policies and interests. Boller Beverages, Inc. v. Davis, 38 N.J. 138, 148-149 (1962).

LEGAL ARGUMENT

- I. RESPONDENTS PRACTICE OF TRANSFERRING WINE FROM AN ORIGINAL, TAX-PAID CONTAINER INTO IMPROPERLY LABELED CONTAINERS VIOLATES N.J.A.C. 19:50-1.6(u)(2) AS WELL AS N.J.S.A. 33:1-2(a) AND N.J.A.C. 13:2-23.23(a)(2), AS INCORPORATED BY REFERENCE INTO N.J.S.A. 5:12-103(d).

New Jersey may, by legislation or general rule, regulate the labeling of alcoholic beverages in furtherance of any of the general statutory purposes or pursuant to any specific statutory provision. Boller Beverages at 152. The Director of the New Jersey Division of Alcoholic Beverage Control ("State ABC") has promulgated N.J.A.C. 13:2-23.23(a)(2), which states:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which . . . bears a label which does not truly describe its contents.

The Commission expressly adopted this regulation and applied same to casino hotel alcoholic beverage ("C.H.A.B.") licensees. See, N.J.A.C. 19:50-1.6(u)(2). The fundamental purpose of the foregoing label regulations is to require the furnishing of full and accurate information to the consumer as to the exact nature, quality and quantity of the product in accord with the public policy set forth above in N.J.S.A. 33:1-3.1, which requires such rigorous consumer protections. Boller at 147-148.

The Division anticipates that Sands will argue that it is exempt from such labeling requirements because its patrons never see the containers which hold the wine pumped through the American Beverage Company dispenser system. The Division contends that such an argument is without merit. Whether or not a consumer ever sees how a container of an alcoholic beverage is labeled is irrelevant. A licensee's "mere possession of a container bearing a label which does not truly describe its contents" constitutes a violation of N.J.A.C. 13:2-23.23(a)(2), as incorporated by reference into N.J.S.A. 5:12-103(d), as well as N.J.A.C. 19:50-1.6(u)(2); such "mere possession is malum prohibitum." See, In re Desmond Ferrante, ABC Bulletin No. 2301, Item No. 1 (June 15,

1978); In re New Plus Two Corp., ABC Bulletin No. 2299, Item No. 1 (June 5, 1978); In re Freddy's Bar and Grill Inc., ABC Bulletin No. 2222, Item No. 4 (January 12, 1976). (Pursuant to N.J.S.A. 5:12-103(d), ABC Bulletins are incorporated by reference into the Casino Control Act.)

The Division asserts that a licensee is responsible for alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156, 159 (Sup. Ct. 1947). The Stipulation of Facts disclose that Sands possessed two American Beverage Company containers which bore the labels, "White Wine" and "Grenadine", respectively, which did not truly describe their contents, Burgundy wine, and which, pursuant to N.J.S.A. 33:1-88, is prima facie evidence that these two containers each contained an illicit beverage. See, The Panda v. Driscoll, 135 N.J.L. 164, 166 (E & A 1946). An "illicit beverage" is defined in N.J.S.A. 33:1-1(i) as:

Any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of this chapter, or on which any federal tax or tax imposed by the laws of this State has not been paid; and any alcoholic beverage possessed, kept, stored, owned or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport in violation of the provisions of this chapter. (Emphasis supplied.)

The fact that "[a]ll taxes due and payable on the wine dispensed by the Sands through its Mezzanine Pump Room have been paid in full" (Stipulation, Paragraph 13), does not overcome this presumption. See, State v. Cannizzaro, 133 N.J.L. 383, 385 (E & A 1945), wherein wine had been illegally transported in containers which bore neither labels, stamps nor other indicia of payment of tax although the tax had in fact been paid.

The Division contends that it is fundamental that a statute is to be construed in its entirety to clear up any obscurities and ambiguities in the law and to make whole of the law and every part of it harmonious and effective. In re N, 96 N.J. Super. 415, 421-422 (App. Div. 1967). It is basic in the construction of legislation that every effort should be made to harmonize the law relating to the same subject matter. State v. Green, 62 N.J. 547, 554-555 (1973). The legislative enactments constituting our alcoholic beverage law are statutes in pari materia and must be considered and interpreted together; conjunctively, they represent a unified state policy. Seip v. Mayor, etc. of Frenchtown, 79 N.J. Super. 521, 523-524 (App. Div. 1963). As one part of a statute is properly called

in, to help the construction of another part and is fitly so expounded, as to support and give effect, if possible, to the whole, so is the comparison of one law with other laws made by the same legislature, as upon the same subject, or relating expressly to the same point, enjoined in the same reason, and attended with a like advantage. Clifton v. Passaic County Board of Taxation, 28 N.J. 411, 421 (1958).

The Division cites N.J.S.A. 33:1-2(a), as incorporated by reference into N.J.S.A. 5:12-103(d), which provides that "[i]t shall be unlawful to...bottle...alcoholic beverages in the State, except pursuant to and within the terms of a license, or as otherwise expressly authorized under this chapter..." Thus, the bottling of alcoholic beverages—in the instant case, wine—is only permitted in two instances: (1) under the terms of licensure and (2) as expressly authorized by the statutory provisions of Title 33 and the regulation's promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d).

The Division asserts that only those who are issued and those who hold certain "Class A" licenses pursuant to N.J.S.A. 33:1-10 are permitted the privilege of engaging in the act of bottling alcoholic beverages, such as wine, under the auspices of licensure. Moreover, N.J.S.A. 33:1-78, as incorporated by reference into N.J.S.A. 5:12-103(d), expressly prohibits bottling without a license by providing that "[a]ny person, except a person holding a brewery, distillery, winery or rectifier's license under this chapter, who shall bottle alcoholic beverages for sale or resale shall be guilty of a misdemeanor." As discussed in more detail in Section III, *infra*, neither the State ABC nor the Casino Control Commission has ever issued such Class A licensure to the Sands.

The Division concedes that Absent Class A licensure, other licensees in New Jersey are expressly authorized, under certain terms and conditions, to bottle alcoholic beverages. Specifically, with regard to wine, N.J.A.C. 13:2-28.1 expressly permits a licensee to transfer wine "from an original, tax paid container" to another "container," provided that the latter container bear a label as prescribed by N.J.S.A. 13:2-28.2. The very act of the decanting transfer is the act of bottling inasmuch as the container into which the wine is transferred may be a bottle or any other receptacle, pursuant to N.J.S.A. 33:1-1(e). However, such acts of wine bottling are only permitted as expressly authorized and prescribed by N.J.A.C. 13:2-28.1 and 28.2.

If a licensee is not licensed to nor expressly authorized to engage in certain bottling activities, then a licensee is prohibited from engaging in certain bottling activities. A reading of N.J.A.C. 13:2-28.1 and 28.2, in pari materia with N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23(a)(2) and N.J.A.C. 19:50-1.6(u) (2), evinces that Sands' practice of transferring wine from an original, tax-paid container into another container which is falsely labeled is not expressly permitted and, therefore, expressly prohibited.

II. RESPONDENT'S PRACTICE OF TRANSFERRING WINE FROM AN ORIGINAL, TAX-PAID CONTAINER INTO IMPROPERLY LABELED CONTAINERS CONSTITUTES THE ILLEGAL DECANTING OF WINE IN VIOLATION OF N.J.A.C. 13:2-28.1, AS INCORPORATED BY REFERENCE INTO N.J.S.A. 5:12-103(d)

In support of its contention, the Division cites N.J.A.C. 13:2-28.1, which states:

The holder of any retail license authorizing the sale of alcoholic beverages for consumption on the licensed premises may transfer wine from any original tax paid barrel, cask, keg or other container on the licensed premises to another barrel, cask, keg, decanter, bottle or similar receptacle and serve such wine therefrom solely for consumption on the licensed premises, and not to be removed from the licensed premises under any circumstances whatsoever, provided, however, that the last barrel, cask, keg or other container from which the contents thereof were drawn shall have affixed thereto at all times a gummed label clearly identifying the contents thereof. [Incorporated by reference into N.J.S.A. 5:12-103(d).]

The foregoing regulation enables a licensee to decant wine from an original, tax-paid container to another receptacle, provided that the latter bears a label as described in N.J.A.C. 13:2-28.2 as follows:

This paid.....contains.....wine,

(Type of Container) (Type and Brand)

received from.....on

(Name and address of seller)

.....
(Date of receipt).

.....
(Signature)

Parenthetically, the Division notes that during the pendency of the instant cause of action, on December 11, 1985, the Commission adopted for publication a proposed amendment to N.J.A.C. 19:50-1.6 which would, in effect, expressly adopt the foregoing regulations and make same applicable to C.H.A.B. licensees. The Division further notes that on August 13, 1986, the Commission formally adopted N.J.A.C. 19:50-1.6(y), which provides:

The holder of any casino hotel alcoholic beverage license authorizing the sale of alcoholic beverages for consumption in an authorized location may transfer wine from an original tax paid barrel, cask, keg or other container in the authorized location to another barrel, cask, keg decanter, bottle or similar container for purposes of interim storage and serve such wine therefrom; provided, however, that each barrel, cask, keg, decanter, bottle or other interim storage container shall have affixed thereto at all times a gummed label clearly identifying the contents thereof; and provided further, however, that nothing herein shall be deemed to prohibit the transfer of wine to unlabeled carafes, glasses or similar open receptacles for immediate service to patrons for consumption in the authorized location. The prescribed label shall be substantially in the form set forth below, and each statement made shall be true:

This tax paid _____ contains

(Type of Container)

_____ wine, received from

(Type and Brand)

_____ on _____

(Name and Address of Seller) (Date of Receipt)

(Signature)

The Division asserts that prior to the adoption of this regulatory amendment in final form, the Commission solicited the guidance of the State ABC as to the application and interpretation of its parallel regulations, N.J.A.C. 13:2-28.1 and 28.2. In its response, the State ABC interpreted N.J.A.C. 13:2-28.1 "to require a specific label on the interim container utilizing the form set forth in N.J.A.C. 13:2-28.2," and further suggested that the Commission "specifically require the label to be placed on the jugs or interim

containers that are not directly served to the consuming patron or are not the 'original container' purchased by the retail licensee that do (sic) bear all required labels under Law." See, Letter of Robert Pinard, Deputy Director, Regulatory Bureau, State ABC (May 13, 1986). As can be seen by a reading of N.J.A.C. 19:50-1.6(y), such specifications were made by the Commission.

The Division argues that in light of the State ABC's interpretation and the Commission's adoption of a more specific version of the wine decanting regulation which is the subject of this cause of action, the circumstances under which a licensee may decant wine are well prescribed. It has been stipulated that Sands engaged in the practice of decanting Burgundy wine from original, tax-paid Inglenook 18-liter wine casks into two (2) American Beverage Company metal containers, each of five (5) gallons, which bore labels of "White Wine" and "Grenadine." The two (2) American Beverage Company containers are interim containers in that neither was the original, tax-paid container and neither was directly served to the consuming patron, as a licensee would, for example, serve a carafe of wine. However, neither bore a label of the form prescribed by N.J.A.C. 13:2-28.2. Consequently, Sands' activity constitutes the illegal decanting of wine in violation of N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d). Likewise, the Division notes that Sands' activity also did not adhere to N.J.A.C. 19:50-1.6(y).

III. RESPONDENT'S PRACTICE OF TRANSFERRING WINE FROM AN ORIGINAL, TAX-PAID CONTAINER INTO IMPROPERLY LABELED CONTAINERS IS NOT WITHIN THE TERMS AND CONDITIONS OF ITS C.H.A.B. LICENSURE IN VIOLATION OF N.J.S.A. 5:12-103(f)(2).

The Division observes that it is well settled that a license to sell alcoholic beverages is a privilege and that no person is entitled to such a license as a matter of law. Paul v. Gloucester County, 50 N.J.L. 585 (E & A 1888); Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935); Zickerman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). The history of New Jersey's liquor control activities is founded in the fundamental premise that a license to sell alcoholic beverages at a particular location is essentially a permit to pursue there an otherwise illegal undertaking. Based on this premise, the Legislature has conferred discretionary power to grant such privileges to designated governmental licensing agencies, and has vested them with extensive authority concerning the sale, supervision and control of alcoholic beverages. N.J.S.A. 5:12-103 vests in the Casino Control

Commission the exclusive power to grant, renew and amend licenses permitting the presence of alcoholic beverages in, on or about any premises licensed as part of a casino hotel.

N.J.S.A. 5:12-103(f)(2) states:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

The Division asserts that pursuant to the resolution dated September 18, 1985 (Exhibit A of Stipulation), and Casino Hotel Alcoholic Beverage Control License Certificate No. 437 (Exhibit B of Stipulation), the Commission has authorized Sands to sell and/or store alcoholic beverages in certain locations within its approved casino hotel. As evinced by its C.H.A.B. licensure, Sands may sell alcoholic beverages for on-premises consumption in opened containers in locations such as the casino area, pursuant to N.J.S.A. 5:12-103(g)(1); a showroom, pursuant to N.J.S.A. 5:12-103(g)(2); restaurants, pursuant to N.J.S.A. 5:12-103(g)(3); and pub rooms, pursuant to N.J.S.A. 5:12-103(g)(4). Sands is also permitted to store alcoholic beverages in original containers in locations authorized pursuant to N.J.S.A. 5:12-103(g)(7). However, there is no indicia in either the Commission Resolution or the C.H.A.B. licensure certificate that a permit, an authorization, or a license was issued to Sands may bottle alcoholic beverages, decant wine into labeled containers, or possess containers of alcoholic beverages which do not bear a label which truly describe their contents. By so engaging in these activities, the Sands violated the terms and conditions of its C.H.A.B. licensure pursuant to N.J.S.A. 5:12-103(f)(2).

IV. NO DEFENSE EXISTS TO BAR PLAINTIFF'S PRESENT CAUSE OF ACTION

- A. Petitioner's cause of action is not barred by the application of the defense of estoppel.

The Division observes that elements of equitable estoppel were stated in Clark v. Judge, 84 N.J. Super. 35, 54 (Ch. Div. 1964), aff'd o.b. 44 N.J. 550 (1965) as follows:

- (1) Conduct amounting to a representation or a concealment of material facts.
- (2) Facts known to the party allegedly estopped, or at least the circumstances must be such that knowledge of them can be necessarily imputed to him.
- (3) The truth concerning the facts must be unknown to the party claiming the estoppel at the time when acted upon by him.
- (4) The conduct must be done with the intention that it be acted upon by the other party.
- (5) The conduct must be relied upon by the other party, and must be led to act upon it.

The Division contends that the record of this case demonstrates that the various elements of an equitable estoppel are not present herein. There is nothing in the record to indicate that the Division intended to influence the conduct of the Sands to pursue an illegal course of action. There is nothing in the record to indicate that the Division misrepresented to or concealed from Sands any material fact. The facts, as stipulated, indicate otherwise. The Division notes that the American Beverage Company containers (pictured in Stipulation, Exhibit D) which "originally contained a non-alcoholic mixer" (stipulation, paragraph 17) are designed for use as containers of non-alcoholic liquids, such as Grenadine. Hence, when these American Beverage Containers are properly used as containers of non-alcoholic liquids to be pumped through a liquor dispensing system, said containers are not subject to Division inspection. Because these containers do not contain and are not labeled as containing alcoholic beverages, the Division would have no reason to inspect the containers nor the contents thereof in the course of its duties. An irrebuttable presumption thereby arises that, from September 1980 until December 4, 1985, Sands has been improperly using these containers to illegally decant wine into unlabeled or falsely labeled receptacles. Accordingly, by so using these containers, Sands may have been concealing material facts to the Division. There is nothing in the record to indicate that Sands made any inquiry of the Division during any inspection that the Division made from September 1980 to December 4, 1985. The knowledge of Sands' illegal activities regarding the use of these containers can in no way be imputed to the Division. The facts, as stipulated, demonstrate that on December 4, 1985, once the Division discovered the illegal use of the containers, Sands was advised immediately of the violations implicated thereby.

The Division observes that estoppel is applicable as a defense against the claim of a governmental entity as well as a private party, but is applied sparingly against governmental entities. Spring Lake Hotel & Guest House Ass'n v. Borough of Spring Lake, 199 N.J. Super. 201, 211 (App. Div. 1985). Such sparing application is exercised by the court in consideration of estoppel claims against the State government and public policy questions must also be considered. Cipriano v. Civil Service Dept., 151 N.J. Super. 86, 91 (App. Div. 1977). Estoppel may be invoked against public bodies to prevent "manifest wrong" and injustice and where it would not "hinder or prejudice essential governmental functions." Garcia v. Snedeker, 199 N.J. Super. 254, 264 (App. Div. 1985). In the instant case, the Division is asserting the public right to protect the consumer of an alcoholic beverage from being defrauded. The Division's assertion is consistent with the public policy of this State as set forth above in N.J.S.A. 33:1-3.1, as incorporated by reference into N.J.S.A. 5:12-103(d), and is consistent with the Division's duties mandated by N.J.S.A. 5:12-103(c). To bar the Division's cause of action through application of Sands' spurious defense of estoppel would both hinder and prejudice the Division's essential governmental function of enforcing all statutes, laws, rulings and regulations relating to Sands' C.H.A.B. licensure. N.J.S.A. 5:12-103(c).

The Division asserts that the defense of estoppel is subject to the application of the various equitable maxims and thus may be barred if interposed to protect an active wrongdoer. Gould & Eberhardt v. Newark, 6 N.J. 240, 244 (1951). Sands' defense of estoppel is barred by the application of the equitable maxim that "he who comes into equity must come with clean hands." Since Sands actively and surreptitiously engaged in the aforescribed illegal activity from September 1980 until it was caught on December 4, 1985, Sands is barred from claiming the defense of estoppel.

B. Petitioner's cause of action is not barred by the application of the defense of waiver.

The Division observes that waiver is an intentional relinquishment of a known right. West Jersey Title and Guaranty Co. v. Industrial Trust Co., 27 N.J. 144, 152 (1958). A waiver presupposes a full knowledge of the right and the intentional surrender thereof. Ibid. at 153. The record of this case is bereft of any indication that the Division intentionally surrendered its right and its duty "to enforce all statutes, laws, rulings or regulations" relating to Sands' C.H.A.B. licensure as mandated by N.J.S.A. 5:12-103(c).

Furthermore, the Division does not have the power nor the authority to waive the law. The Casino Control Act reposes that authority in the Commission. Pursuant to N.J.S.A. 5:12-103(a), "the authority to grant any license for, or to permit or prohibit the presence of, alcoholic beverages in, on or about any premises licensed as part of casino hotel shall exclusively be vested in the [C]ommission." Also, N.J.S.A. 5:12-69(a) expressly authorizes the Commission "to adopt, amend, or repeal such regulations, consistent with the policy and objectives of this Act, as it may deem necessary for desirable for the public interest in carrying out the provisions of this Act." N.J.S.A. 5:12-63(c) further empowers the Commission "to promulgate such regulations as in its judgment may be necessary to fulfill the policies of this Act."

The Division notes that, in the past, the Commission has granted waivers of certain regulations only after the filing of a petitioner and the holding of a hearing. Sands has never filed with the Commission a petition for declaratory ruling requesting either a waiver of any of the regulations which are the subject of the instant cause of action or an interpretation of the provisions thereof. Inasmuch as the Sands has never sought and the Commission has never granted a waiver of any of the provisions of the subject regulations, Sands' claim of the defense of waiver is scurrilous.

C. Petitioner's cause of action is not barred by application of the defense of laches.

The Division notes that laches is an affirmative defense which is applicable when inexcusable delay in commencing a suit causes prejudice to the defendant. Christian Science Bd. of Directors v. Evans, 191 N.J. Super. 411 (Ch. Div. 1983), affirmed in part, reversed in part, 199 N.J. Super. 160, 161 (1985). The violations in question were discovered during the Division's on-site inspection of the Sands on December 4, 1985. The instant cause of action was filed on April 28, 1986. The Division submits that a four-month interim does not constitute inexcusable delay.

An essential element of a laches defense is a showing of undue prejudice to the party against whom the action is brought. Student Public Interest Research Group v. Munsanto Corp., 600 F. Supp. 1479, 1487 (D.N.J. 1985). This prejudice can take the form of loss of evidence, Fox v. Haddon Twp., 137 N.J. Eq. 394, 398 (Chancery Div. 1945) loss of a witness's memory, Lutjen v. Lutjen, 64 N.J. Eq. 773, 781 (E. & A. 1902); the death of a witness, Pine V. Gardner, 103 N.J. Eq. 69, 73-74 (E. & A 1928); or change in position by

an innocent third party. Trusdell v. Lehman, 47 N.J. Eq. 218, 226 (Chancery Div. 1890). None of these circumstances apply to the instant case.

The Division contends that the record of this case demonstrates that the two essential elements of a laches defense, delay and prejudice, are not present herein. Furthermore, where the State is exercising a public right, laches may not be invoked. Bd. of Trustees of Bergen Comm. College v. J. P. Fyfe, 188 N.J. Super. 288, 293 (Law Div. 1982), *aff'd.* 192 N.J. Super. 433 (App. Div. 1983), *cert. den.* 96 N.J. 308 (1984). The Division has demonstrated in Section IV A that it is exercising the public right of consumer protection. Based on the foregoing discussion, Sands cannot claim the defense of laches to bar the Division's cause of action.

D. Petitioner's cause of action is not barred by application of the doctrine of de minimus non curat lex.

The Division argues that by definition, the doctrine of de minimus non curat lex provides that "the law does not care for, or take notice of, very small trifling matters." Black's Law Dictionary at 388 (5th ed. 1979). Sands' raising of this defense offends the regulatory process by such trivialization. It evinces Sands' cavalier disregard of explicit, prohibitory provisions of the Casino Control Act and Title 33, as well as the public policy upon which each are based. As Commissioner Zeitz noted in State v. Bally's Park Place, Inc., Casino Control Commission (November 16, 1983):

The Act affords great weight to the public policy of temperance and reflects an overriding legislative concern with strict control and effective regulation of the sale of alcoholic beverages. The importance of strict enforcement of this aspect of the gaming industry cannot be minimized. Further, the retail sale of alcoholic beverages in New Jersey existed as a closely regulated trade for almost five decades before the advent of casino gambling. Separate from casino gambling, anyone thus licensed to engage in the alcoholic beverage trade, including casino hotels, must abide by the well established statutes, regulations, policies and procedures governing that activity. [*Id.* at 13.]

As demonstrated above, Sands' activity contravenes the public policy of this State which mandates the strict regulation of alcoholic beverages "to protect the health, safety and welfare of the people" of New Jersey. N.J.S.A. 33:1-3.1. Further, Sands' activity was defiantly inconsistent with the purpose of the law "to protect the interests of consumers." Ibid. The threat to consumer protection posed by Sands' activity is compounded by Sands'

own admission that the Mezzanine Pump Room operated for over five (5) years under the covertly illegal conditions described above. Such conditions cannot be tolerated under public policy, the law upon which such policy is based nor by the regulatory agencies empowered to enforce same.

THE DIVISION'S CONCLUSION

The Division cites N.J.S.A. 5:12-130, which enumerates certain factors which the Commission shall consider in its determination of the appropriate sanction to be imposed for any given violation of the Casino Control Act. These factors include: the seriousness of the conduct; whether the conduct was purposeful and with knowledge that it violated the Act; the risk to the public and to the integrity of gaming operations created by the conduct; the corrective action taken by the licensee to prevent future misconduct of a similar nature from occurring; the prior history of the particular licensee; and whether there was any justification for such conduct.

The Division submits that Sands has committed serious infractions of the Act, the regulations promulgated thereunder, and the public policy upon which both are based. As discussed above, New Jersey has historically recognized the necessity of effective regulation and control of the sale of alcoholic beverages. That policy is reflected in the instant regulations. Any violations thereof cannot be deemed as anything but serious in nature.

The circumstances which give rise to the instant cause of action tests the Commission's authority to preserve the strict enforcement of alcoholic beverage control in an unique and sensitive setting. As Commissioner Zeitz noted in State v. Bally's Park Place, Inc.:

[t]he nature of casino operations generally requires more scrupulous enforcement and regulation. The mix of two closely regulated and otherwise proscribed business activities, casino gambling and retail alcoholic beverage sales, should heighten the sensitivity of those permitted to engage in them simultaneously of the need to comply fully with the requirement of regulatory governance. Id. at 16.

Due to Sands' willful violations of the statutes, rules and regulations with which it is bound to comply as a C.H.A.B. licensee, the Division recommends that these

violations warrant the Commission's imposition of a significant penalty. The Act mandates that any penalty imposed should be intended to provide a sufficient deterrent to prevent further episodes of non-compliance. N.J.S.A. 5:12-129(5). The Division seeks the following penalty and sanctions to be imposed upon respondent Sands:

1. A monetary penalty in an amount not to exceed \$15,000; and
2. An order requiring the Sands to conduct periodic seminars on alcoholic beverage control law and regulations with mandatory attendance required by all beverage supervisory personnel in respondents' employ; and
3. An order requiring the Sands to submit, as a permanent amendment to its internal controls, relative to alcoholic beverages, a detailed procedure by which quality control of its alcoholic beverage inventory may be maintained.

By the imposition of the above penalty and sanctions, the Division does not seek nor recommend that respondents' C.H.A.B. license be suspended or revoked.

RESPONDENT SANDS' POSITION

LEGAL ARGUMENT

- I. Complaint No. 86-134 fails to state a cause of action upon which relief can be granted.

Respondent Sands contends that the Division's first two prongs of attack deal with the allegation that the Sands engaged in the unlawful practices of decanting (or rebottling) and improper labeling of the wine in the pump system canisters. Indeed, the Sands concedes that it decanted red wine from its original containers into the pump system canisters and that such canisters were incorrectly marked. Hence, it would appear at first blush that the Division has sustained its burden and the only remaining issue is the determination of a proper penalty.

The Sands submits that falling prey to such simple lure is neither warranted nor appropriate here. Our Supreme Court has repeatedly stated that "[A] statute is to be construed as a whole with reference to the system of which it is a part." State v. Brown, 22 N.J. 405 (1956). Accord, Maritime Petroleum Corporation v. City of Jersey City, 1 N.J. 287 (1949); Smith v. U.S. Pipe & Foundry Co., 191 N.J. Super. 454 (App. Div. 1983);

Township of Millburn v. Block 1208, Lot 2, 189 N.J. Super. 523 (App. Div. 1983). Stated differently, "It is axiomatic that statutory language is to be construed with the context of the whole statute, its purposes and the circumstances under which the words were employed, and to be given the generally accepted meaning unless the contrary intent is clear." State v. McCall, 14 N.J. 538 (1954). Accord, General Public Loan Corporation v. Director of the Division of Taxation, 13 N.J. 393 (1953); Grogan v. DeSapio, 11 N.J. 308 (1953). Indeed, this principle of statutory construction is so well-settled that it was codified into the very first statute under the 1937 recodification of New Jersey law:

In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.

N.J.S.A. 1:1-1.

Furthermore, the Sands contends, it cannot be disputed that the statutes and regulations invoked here by the Division are penal in nature. See, Division of Gaming Enforcement v. Boardwalk Regency Corporation, OAL Dkt. No. CCC 6325-81 (June 8, 1982) at 13, citing State v. Perlman, 169 N.J. Super. 190, 196 (Law Div. 1979). Hence, a more stringent, but nevertheless equally time-honored canon of statutory construction must be observed:

It must be admitted that this is a penal statute, and that, in general, such statutes must be construed strictly, but it is equally well settled that this rule is not violated by adopting the sense of the words which best harmonizes with the object and intent of the legislature, and that the whole context of the statute must be construed together.

Strickler v. Pennsylvania R.R. Co., 60 N.J.L. 230, 235 (E. & A. 1897). Accord, State v. Meinken, 10 N.J. 248 (1952).

Here, the Sands argues, one is not left with the arduous task of seeking to divine the Legislature's intent, as the 1985 amendments to the New Jersey Alcoholic Beverage Control Act specifically find both the public policy of this State as well as the legislative purpose of the Alcoholic Beverage Control Law. N.J.S.A. 33:1-3.1. Since July

31, 1985, the public policy of New Jersey, as well as the legislative purpose of such Act, are as follows:

N.J.S.A. 33:1-3.1b:

- (1) To strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.
- (2) To foster moderation and responsibility in the use and consumption of alcoholic beverages.
- (3) To protect the collection of State taxes imposed upon alcoholic beverages.
- (4) To protect the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages.
- (5) To protect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations. Participation in the industry as a licensee under this act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee.
- (6) To provide a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition.
- (7) To maintain trade stability.
- (8) To maintain a three-tier (manufacturer, wholesaler, retailer) distribution system.
- (9) To maintain primary municipal control over the retailing of alcoholic beverages.
- (10) To prohibit discrimination in the sale of alcoholic beverages to retail licensees.

Of these, Sands contends, it is clear that only the first, third and fourth of such policies are implicated by the re-bottling or mislabeling regulations.

The Sands argues that a closer examination, however, reveals that none of those three policies is advanced here. First, there has been no allegation by the Division that the complained-of acts in any way jeopardized "the health, safety and welfare of the people of this State." Indeed, such argument is not even peripherally advanced by the Division. Further, while the re-bottling/mislabeling regulations have a direct bearing

upon the proper collection of taxes due and owing, the parties here have stipulated that all relevant taxes due and owing have been paid in full. [Stipulation, ¶ 13]. This leaves one with the only policy the Division asserts it seeks to enforce here—consumer protection against fraud.

The Sands contends that one must read three-quarters of the way into the Brief submitted by the Division to finally discover that, "[I]n the instant case, the Division is asserting the public right to protect the consumer of an alcoholic beverage from being defrauded." [Brief at 17.] While this is indeed a proper and laudable goal, one is at a loss to determine how the Division seeks to protect that public right here. It has been stipulated between the parties that no patrons see the containers and, it follows logically, the consumer cannot be misled. Undaunted, the Division seeks solace in various alcoholic beverage administrative decisions rendered prior to the 1985 amendments to the Alcoholic Beverage Control Act, which decisions are now rendered without meaning.

The Sands respectfully submits that, once the Legislature set forth the parameters of state policy where previously such parameters were absent, statutory interpretation must be governed accordingly. Therefore, this Court is now called upon to break with the blind adherence to the stark words of the relevant regulations and apply the appropriate standards thereon. The Sands further respectfully submits that, once such stark regulations are viewed against the proper public policy, it must be concluded that the complaint fails to state a cause of action upon which relief can be granted. The Sands submits that the authority advanced by the Division deals with bottles of liquor which were for public view and for direct public consumption, aspects conspicuously absent here. Hence, since the Division's complaint cannot be viewed as serving any legitimate or expressed public policy of this State, judgment in favor of the Sands and against the Division must be entered. To do otherwise is tantamount to the vindication of rights in a vacuum.

Notwithstanding this, the Division presses the argument that the re-bottling/mislabeled regulations should nonetheless be deemed actionable by reason of (1) the theory that liquor law violations are malum prohibitum, and (2) a recently adopted Commission regulation dealing with the decanting of wines or spirits. Once again, the Sands must dispute the Division's argument. In the first instance, whether liquor law violations are malum prohibitum or malum in se does not advance any relevant understanding here. As one leading commentator has noted:

Crimes are divided for certain purposes into crimes mala in se (wrong in themselves; inherently evil) and crimes mala prohibita (not inherently evil; wrong only because prohibited by legislation). LaFave & Scott, Criminal Law (1972), at 29.

The Sands observes that it is obvious that liquor law violations are malum prohibitum, for they do not find a genesis in the common law, but instead in a statute. Ibid. Therefore, the Sands submits that the characterization of the rebottling/mislabelling regulations as malum prohibitum supports the position advocated by the Sands; a review of the statutory scheme shows that such "prohibitions" are inapplicable here.

By the same token, the Sands submits that the Commission's adoption of N.J.A.C. 19:50-1.6(y) also supports the position of the Sands. Although not even published for comment before the operative acts here occurred, such new regulation makes clear that rebottling is permissible, provided an appropriate label is affixed to the new container setting forth (1) the contents of the container, and (2) a statement that the appropriate tax on the contents has been paid. As noted earlier, neither aspect of such label is at issue here, since any label on the wine is far from the consumer's view, thereby obviating any question as to consumer fraud, and parties have stipulated that all taxes have been paid.

In summation, the Sands contends that it is instructive to review what this case is and is not. This matter is not about untaxed rotgut being bottled as fine champagne and sold to the public as such. This matter is not about adulterated or contaminated beverages. This matter is about making a container compatible with a licensed, approved system, whereby the consumer received exactly what he asked for and upon which all taxes were paid. Under such circumstances, it behooves this court to find in favor of the Sands and against the Division.

II. There has been no violation of the terms of the Sands' liquor license.

The Sands observes that it is further argued by the Division that, since the Sands' casino hotel alcoholic beverage license/resolution does not specifically authorize the acts in question here, such violations must be violations of the terms of such liquor license. While such superficial logic appears indisputable, it cannot withstand closer scrutiny.

Stated differently, while earlier arguing that the Sands performed acts which by themselves are objectionable, the Division here argues the opposite. Assuming that such acts were not per se objectionable, they are nonetheless actionable because they were not specifically allowed by the terms of the Sands' liquor license. However, in its zeal to "cover all the bases," the Division fails to acknowledge one salient concern—the Sands' liquor license requires it to comply with the relevant law. Hence, in the absence of a special condition, the acts in question here must be gauged against what the law allows or disallows. Since it has been earlier shown that the acts in question here are not violative of the law, the same result must be obtained in this instance.

III. The complaint must be barred by the application of the de minimus doctrine.

The Sands argues that, by resorting to rhetoric and legerdermain, the Division proposes to argue that the complained-of acts were not subject to the doctrine of de minimus non curat lex, a doctrine defined generally as "[T]he law does not care for, or take notice of, very small or trifling things," Black's Law Dictionary (rev. 4th ed. 1968) at 482, and which finds expression in New Jersey's civil and criminal jurisprudence. See also, Winkler v. Hartford Accident and Indemnity Co., 66 N.J. Super. 22 (App. Div. 1961), N.J.S.A. 2C:2-11. Indeed, one must question whether a sense of proportion is present, when a comparison is sought to be made by the Division between this cause and a case where the respondents (1) engaged in a patently illegal promotion over a two-month period; (2) converted the use of two separate licensed areas without approval; (3) expanded a service area without approval and thereafter served on unlicensed premises; and (4) utilized an area as a liquor storage area without being so licensed, all under the aegis of protecting consumers.

The Sands argues that as seen earlier, it simply cannot be said that there was a threat to consumers here; hence, the Division's arguments in that vein ring desperate and reaching. What can be said is that the complained-of acts: (1) were not inconsistent with the law; (2) did not cause or threaten the harm or evil sought to be prevented; and (3) were immediately corrected upon notice. These very elements make the required showing for dismissal of a criminal prosecution, N.J.S.A. 2C:2-11; certainly, nothing further can be required in a civil penalty context.

The Sands submits that:

While "sympathetic considerations play no part in determination under "the de minimus statute, [citation omitted], an objective consideration of surrounding circumstances is authorized." Judicial discretion... takes into account... the particular circumstances of the case before the court. State v. Smith, 195 N.J. Super. 468 (Law Div. 1984)

The Sands further submits that a review of all relevant surrounding circumstances, including the absence of an intent to harm, the effect on public policy, and the immediate curative measures taken, must lead to judgment in favor of the Sands and against the Division.

IV. Based on the application of various equitable principles, the complaint cannot be sustained.

The Sands submits that the application of any one or more of the doctrines of laches, estoppel and waiver to the complaint must render the same barred. These shall be examined ad seriatum.

(A) Laches.

It has been stipulated between the parties that the process of transferring the wine into the pump containers and using the same for the pump system had been in use at the Sands since 1980. [Stipulation, ¶19]. It has been further stipulated that the pump room was inspected by the Division at least twice per year since 1980, and that nothing untoward was noted until December 4, 1985. [Stipulation, ¶14-16.] These stipulated facts give rise to the application of the equitable defense of laches.

New Jersey has defined the application of the doctrine of laches as a "delay of a length of time which, unexplained and unexcused, is unreasonable under the circumstances and has been prejudicial to the other party." West Jersey Title and Guaranty Co. v. Industrial Trust Co., 27 N.J. 144, 153 (1958). See also, Lavin v. Bd. of Education, 90 N.J. 145, 152-53 (1982). An application of this doctrine to the case at bar yields the following: (1) there has been a delay of over five years since the cause of action first accrued; (2) no explanation or excuse that is reasonably believable has been tendered by the Division; (3) given the Division's right of access, use of such right of access, and statutory obligation to "promptly and in reasonable order... enforce the provisions of [the Casino Control Act]," N.J.S.A. 5:12-76(a), such delay is unreasonable

under the circumstances; and (4) the Sands has been prejudiced by being led to believe that, each time it satisfactorily passed an inspection, its alcoholic beverage operations were performing in conformity with law. Hence, judgment on the complaint should be entered in favor of the Sands and against the Division.

(A) Estoppel

By the same token, the Sands argues that the facts outlined above demonstrate that the complaint must also be barred by the application of the doctrine of equitable estoppel:

[E] quitable estoppel is commonly defined as "conduct, express or implied, which reasonably misleads another to his prejudice so that repudiation of such would be unjust in the eyes of the law." [citation omitted.] It embodies the doctrine "that one shall not be permitted to repudiate an act done or position assumed where that course would work an injustice to another who, having the right to do so, detrimentally relied thereon." [sic]. The objective conduct is the linch pin of estoppel. [Marley v. Borough of Palmyra, 193 N.J. Super. 271, 299 (Law Div. 1983).]

The Sands argues that by applying the more enlightened view, New Jersey uses this doctrine to bar actions by governmental units and agencies. Bayonne v. Murphy, 7 N.J. 298 (1951). The issue thus becomes whether the acts of the Division consisted of a course of conduct which, viewed objectively, caused the Sands to rely detrimentally thereon.

There can be no question that any impartial, objective observer would conclude that an area examined by governmental agents at least ten (10) times over a five-year period was in compliance with the laws such governmental agents were there to enforce; stated rhetorically, if the Division did not notice this open practice during its inspections, then what did it notice, if anything? Further, there can be no question that the Sands relied on such inspections as an aspect of its own system of compliance. Now, due to such reliance, the Sands is faced with a complaint seeking a civil penalty.

Given these facts, the Division should be estopped from seeking to prosecute Complaint No. 86-134 as a matter of equity; justice compels such result and fairness demands it. Thus, the Sands is entitled to judgment in its favor and against the Division.

(C) Waiver

Waiver, the equivalent of estoppel but without the need for detrimental reliance, also operates to bar Complaint No. 86-134. Here, a series of inspections over a period of years set the stage for the Division, by omission, relinquishing any right it may have had to prosecute the Sands for the acts in question herein. As noted by our courts:

Waiver is traditionally defined as the voluntary relinquishment of a known right evidenced by a clear, unequivocal and decisive act from which an intention to relinquish the right can be based. [Citation omitted.] It implies an election by the party to dispense with something of value or to forego some advantage which that party might have demanded and insisted on. [Citation omitted.] It is distinguished from estoppel inasmuch as the latter requires reliance. County Chevrolet, Inc. v. Township of North Brunswick Planning Board, 190 N.J. Super. 376 (App. Div. 1983).

Seeking to escape the application of this doctrine, the Division agrees that, since it vicariously asserts only public rights, it cannot be bound by the doctrine of waiver. However, such argument ignores the fact that it is by statute that the Division is given the right to prosecute this case, and not by some assertion on behalf of the general public good. See, N.J.S.A. 5:12-76(b)(4) "The Division shall...prosecute...such proceedings before the commission,...as the division may deem appropriate..." Hence, having had a right, and having voluntarily relinquished the same, the Division cannot now be heard to seek enforcement of that right. Hence, judgment should be entered in favor of the Sands and against the Division.

V. Assuming, arguendo, the imposition of liability, no penalty should be imposed.

Assuming, for purposes of argument, that this court were to find the Sands liable under Complaint No. 86-134, the Sands submits that no penalty should be imposed. While this court would have the discretion to impose any sanction authorized by Section 129 of the Casino Control Act Section 130 of the Act requires an examination of six certain penalty criteria. Upon review of the criteria set forth in Section 130, the Sands respectfully submits that no penalty should be imposed.

The Sands observes that Section 130 requires the following criteria to be evaluated against the offending acts:

- (a) the risk to the public and to the integrity of gaming operations;
- (b) the seriousness of the conduct and the state of mind by which such conduct was performed;
- (c) any justification or excuse;
- (d) prior history of the actor with respect to gaming activity;
- (e) any corrective action taken; and,
- (f) in the case of a monetary penalty, balancing between the severity of of the conduct and the actor's financial means.

Viewing these in order, it is clear that it has not been alleged that the Sands has, as it submits that it has not, engaged in violative conduct knowingly or intentionally; by the same token, the Sands submits that the complained-of conduct was not serious. Further, the Sands tenders as its justification for such conduct the fact that it relied on five years of Division inspections as a gauge of lawfulness of its conduct. Additionally, the Sands represents that this is the first time it has been formally cited with a violation of the liquor laws, and that the Sands goes to great lengths to ensure that its liquor operations are lawfully run. Moreover, the Sands took immediate corrective action once the violation was brought to its attention. Finally, the Sands submits that it should not be penalized in this instance due to the above-listed concerns.

In summation, the Sands submits that, even if liability is found, the instant cause is inappropriate for the imposition of a penalty. Therefore, the Sands submits that, should liability be found, no penalty should attach.

DISCUSSION AND CONCLUSIONS

In arriving at a determination to this matter, it is observed that the case is concerned with a disciplinary action which is purely civil in nature and not criminal. In re Schneider, 21 N.J. 272 (1956). Thus, the proofs must be supported by a preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Ann T. Murray, Inc. v. Mun. Bd. of Alcoholic Beverage Control, City of Clifton, A.B.C. Bulletin No. 2258, Item No. 2 (March 21, 1977). Here, I find and conclude that the Division has met its burden with respect to Issues Nos. 1, 2 and 3.

Preliminarily, it is observed that jurisdiction of this matter lies with the Commission by virtue of legislative fiat with the enactment of N.J.S.A. 5:12-103, whereby the Legislature: (1) Grants exclusive authority in the Commission for the licensure and control of alcoholic beverage in casino hotels under its direction and supervision; (2) Incorporates into the Casino Control Act (Act) those laws embodied in Title 33 of the Revised Statutes (Intoxicating Liquors) together with the rules and regulations promulgated under N.J.A.C. 13:2-1.1 et seq. (Division of Alcoholic Beverage Control) and the bulletins issued by the Director of the Division of Alcoholic Beverage Control (ABC); and, (3) Into those incorporated rules and regulations adopted by the Director of ABC, the Commission is granted the statutory authority to promulgate its own rules for the regulation and control of alcoholic beverages in casino hotels. N.J.A.C. 19:50-1.1 et seq. (Casino Hotel Alcoholic Beverage Control). Thus, the jurisdiction of this matter lies with the Commission rather than the Director of ABC.

Issue No. 1 raises the question as to whether the respondent Sands' activity of transferring wine from its original tax-paid 18-liter container into improperly labeled five-gallon American Beverage Company "ABC" containers constitutes the illegal decanting of wine. As the Division argues, the Sands failed to comport with the provisions of N.J.A.C. 13:2-28.1, whereby it neglected to affix a gummed label properly identifying, among other things, the contents of the transferred wine into its interim five-gallon ABC containers as described by N.J.A.C. 13:2-28.2.¹

The Sands does not dispute that its interim wine containers lacked the necessary and required indentifications pursuant to the cited regulations. Rather, the Sands contends, among other things, that the complained-of activity has been ongoing since 1980, to which it has been subjected to semiannual inspections by the Division. Notwithstanding such Division inspections twice each year, the Division found no violations nor caused the Sands to be put on notice or to be cited for any violations of regulatory provisions with respect to the labeling of alcoholic beverage from its pump room. For this, and other reasons, respondent Sands requests that the charge and allegation which forms the basis of Issue No. 1, be dismissed.

¹ See also; N.J.A.C. 19:50-1.6(y), adopted by the Commission, August 14, 1986, 18 N.J.R. 1840(a).

It is observed that the courts give effect to valid statutes and regulations which have the purpose of imposing requirements as to the labeling or branding the containers of intoxicants. 48 C.J.S. §231, Intoxicating Liquors. In support of this proposition, our Supreme Court stated, in part, in Boller Beverages, Inc. v. Davis, 38 N.J. 138, 152, that:

...we have no doubt that New Jersey may, by legislation or general rule, reasonably regulate bottles and labels in furtherance of any of the general statutory purposes or pursuant to any specific statutory provision.

The Directors of ABC and the Casino Control Commission have both promulgated regulations with respect to the transfer of wine from its original tax-paid container to another container. N.J.A.C. 13:2-28.1 and 28-2, N.J.A.C. 19:50-1.6(y). The respondent Sands, a licensee, is responsible for the conduct of its licensed premises. In re Olympic, Inc., 49 N.J. Super. 29 (App. Div. 1958), cert. den. 27 N.J. 297 (1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). This obviously involves abiding by the extant laws, rules and regulations under Title 33 of the Revised Statutes and Administrative Code Title 13 and 19. A licensee is not relieved of liability even if its employees violate explicit instructions to the contrary. Nor is the licensee relieved of liability where it has no knowledge of the offense. F & A Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

I **CONCLUDE**, therefore, that the respondent Sands violated N.J.A.C. 13:2-28.1 and 28.2 through its failure to affix a gummed label properly identifying the contents of its interim five-gallon ABC containers subsequent to the transfer of wine from its original tax-paid container, as prescribed by N.J.A.C. 13:2-28.2.

Issue No. 2 is similar to Issue No. 1, however, distinguished by virtue of different controlling regulatory and statutory provisions. Issue No. 2 asks whether respondents' activity constitutes illegal bottling in improperly labeled containers in violation of N.J.A.C. 19:50-1.6(u)(2), as well as violation of N.J.S.A. 33:1.2(a) and N.J.A.C. 13:2-23(a)2, as incorporated by reference into N.J.S.A. 5:12-103(d). There is no dispute, as stipulated, that respondent Sands possessed two American Beverage Company containers which bore labels "white wine" and "Grenadine" which, in fact, contained

Burgundy wine, contrary to N.J.A.C. 13:2-12.12(a) and N.J.A.C. 19:50-1.6(u). The regulation, N.J.A.C. 19:50-1.6(u), provides that:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:

1. Does not bear any label describing its contents; or
2. Bears a label which does not truly describe its contents; or
3. Does not bear any indicia of tax payments as required by the laws of the United States.

Respondent Sands argues, among other things, that due to the location of the controverted wine containers—i.e., reposed in a pump room outside of the public's view—its action to rebottle the alcoholic beverage did not jeopardize the health, safety and welfare of the people of this state." It further contends that its rebottling in no fashion created a threat to the consumers whereby the consumer received exactly what was requested.

Respondents' arguments and contention that no violation should be found, based upon its assertion that the consumer was neither threatened nor placed in jeopardy with adulterated or contaminated beverage as a consequence of its action to rebottle its wine, is irrelevant in that its rebottled wine containers were outside the view of its patron consumers. The relevant regulation upon which the complaint is grounded states, in pertinent part, that "No retail licensee shall possess...any alcoholic beverage... container which . . .2. Bears a label which does not truly describe its contents;..." N.J.A.C. 13:2-23.23(a)(2). The regulation is clear and unambiguous. Any deviation therefrom constitutes a violation. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947).

Accordingly, I **CONCLUDE** that the respondent Sands was in violation of N.J.A.C. 13:2-23.23(a) by virtue of its rebottling of alcoholic beverages into containers which bore labels which did not truly describe their contents.

With regard to Issue No. 3, a close examination of respondent's Casino Hotel Alcoholic Beverage Control License Certificate No. 437, reveals the limits and the extent to which respondent is authorized to dispense, sell and store alcoholic beverages. Neither the Commission's resolution nor the Sands C.H.A.B. License authorizes or permits respondent to rebottle alcoholic beverages, decant wine into labeled containers, or possess containers of alcoholic beverage containers which do not bear a label which truly describes their contents.

The applicable statutory provision which controls this activity is found at N.J.S.A. 5:12-103(f)2, which provides that:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the Director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

In the absence of explicit authorization to do so, I **CONCLUDE** that respondent is hereby held to have violated N.J.S.A. 5:12-103(f)2, by its action to rebottle alcoholic beverages, decant wines into labeled containers and/or to possess containers of alcoholic beverages which fail to bear labels which truly describe the contents therein.

By way of defense, respondent advances the argument that the alleged and complained-of acts committed by it are subject to the doctrine of de minimus non curant lex. The Division argues to the contrary.

The stipulated facts set forth by the parties to this action and the conclusions reached by this administrative tribunal clearly demonstrate that the Sands violated certain statutory provisions under Title 33 and Title 5 of the Revised Statutes, together with violations under Titles 13 and 19 of the Administrative Code. Such violations, given the nature and character of the regulated activity, are neither small nor trifling. As Judge Goldman observed in his opinion in the matter of In re Olympic, Inc. 49 N.J. Super. 299 (App. Div. 1958), cert. den. 27 N.J. 279, 306 (1958) that:

Our courts have long recognized the sui generis character of the liquor trade, and the Legislature has from the earliest times treated that subject in an exceptional manner, Mazza v. Cavicchia,

above, 15 N.J. at page 505. As was there pointed out, the right to regulate the sale of intoxicating liquors is within the police power and practically without limit, and that power has uniformly been accorded liberal judicial support. . .

The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the Alcoholic Beverage Act. [at 306].

Within the strict ambit of this supervision and oversight, the Director of ABC has been constrained to impose penalties upon licensees even where minimum violation has occurred. In re R & M Lounge, Inc., ABC Bulletin No. 2284, Item No. 2 (January 12, 1978), the Director imposed a suspension of fifteen days rather than the normal twenty days for failure to keep true books of account where there were no inaccuracies in those records that were kept and there was no intent to deceive. Thus, minor violations or infractions of ABC law are viewed, not as de minimus or trifling but, rather, as incidents warranting strict scrutiny under the law, coupled with appropriate penalty.

Accordingly, I CONCLUDE, pursuant to Olympic, that the defense of de minimus non curat lex is without merit, and therefore, must fail. Respondent Sands' defense, as set forth at Issue No. 4, is hereby DENIED.

By way of Issue No. 4, respondent Sands seeks to bar the Division's complaint through the application of the equitable doctrines of laches, estoppel and waiver. It is the considered judgment of this administrative tribunal that, under the circumstances of this case, none of these theories acts as a bar to the herein action. This is so because of the public policy considerations in issue, which demand that the mandate of the law should override the equitable doctrines. Montgomery v. Wilmarding, 26 N.J. Super. 214, 220 (Chanc. Div. 1953), 31 C.J.S. §138. The consideration of one or more of the doctrines may, however, act to mitigate the penalties sought by the Division.

Laches is said to be an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party. Massie v. Asbestos Brake Co., 95 N.J. Eq. 298. Our courts have long held that while there is not a strict time period during which there must be an assertion of an alleged denial of rights, the assertion must be made promptly without unreasonable delay. Auciello v. Stauffer, 58 N.J. Super. 522 (App. Div. 1959). The application of the doctrine lies, moreover, with the discretion of the Court. This was observed in another administrative proceeding, where

the Commissioner of Education in Aeschbach v. Bd. of Ed. of the Town of Secaucus, 1938 S.L.D. 598, 604, said:

. . .I do not understand that mere delay in bringing a suit will deprive a party of his remedy, unless such neglect has so prejudiced the other party by loss of testimony or means of proof or changed relations that it would be unjust to now permit him to exercise his right.' Tyman v. Warren, 53 N.J. Eq. 313 (Emphasis in text).

And further,

. . .If, however, upon the other hand, it clearly appears that lapse of time has not in fact changed the conditions and relative positions of the parties, and that they are not materially impaired, and there are peculiar circumstances entitled to consideration as excusing the delay, the Court will not deny the appropriate relief, although a strict and unqualified application of the rule of limitations would seem to require it. Every case is governed chiefly by its own circumstances. Wilson v. Wilson, 41 Or. 459, Quoted in 4 Pomeroy's Equity Jurisprudence, page 3423...

Thus, the unique character and circumstances of the instant matter—i.e., ongoing statutory and regulatory violations as opposed to actions arising out of contract or tort theories, among others—dictate that the defense of laches is inappropriate and inapplicable. A similar conclusion may be reached with respect to the defense of waiver. Cf., Bd. of Ed. of the Twp. of Egg Harbor v. Bd. of Ed. of the Greater Egg Harbor Reg. Dist. and State of New Jersey Dept. of Ed., 188 N.J. Super. 92 (App. Div. 1982).

In Lavin, which respondent Sands cites in support of its defense of laches, our Supreme Court, in fact, affirmed the Appellate Division of Superior Court on the theory that laches barred plaintiff Lavin's claim for retroactive recovery of past sums due under a statute. There, however, the Supreme Court made a policy decision not to view plaintiff's claim exclusively but, rather, it considered the total cost impact upon other local boards of education and to the taxpayers where others, similarly situated, would advance claims and found those projected costs to the taxpaying public to be substantial. Consequently, the Court denied retroactive relief but allowed prospective relief to Lavin in anticipation of other similar claims.

Respondent now contends that the Division is estopped from asserting its charges against the Sands because the Division's course of conduct not to notice respondent's open practice of decanting/rebottling wine over a five-year period of inspections constitutes detrimental reliance thereon. Respondent asserts that it relied

upon the Division's inspections as an aspect of its own system of compliance with the statutes and regulations governing alcoholic beverage control. Respondent argues, therefore, that the Division should now be estopped from prosecuting its complaint as a matter of equity, and that justice and fairness compels judgment in its favor and against the Division.

Respondent's assertion of equitable estoppel may be viable under contract theory; however, it is inapplicable here where public policy is at issue. It is the public policy of New Jersey to "strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State." N.J.S.A. 33:1-3.1. Notwithstanding the Division's lack of diligence to discovery of respondent's statutory and regulatory violations, public policy of strict compliance demands that the mandate of the law should override the doctrine of estoppel. Montgomery v. Wilmarding. In Montgomery, the Honorable Alfred A. Stein, J.S.C., observed, "The doctrine of estoppel or waiver cannot be invoked when the law violated is not purely a matter of private right, but one which is aimed to protect the public." Id. at 220.

Accordingly, I **FIND** and **CONCLUDE** that respondent Sands' defenses of laches, waiver and estoppel are inapplicable in this matter and, therefore, are **DENIED** and **DISMISSED**.

PENALTY

Our law demonstrates that the penalty imposed in disciplinary proceedings brought by a local issuing authority rests within its sound discretion in the first instance, with the power to reduce or modify the penalty on appeal exercised sparingly, and only when such penalty shows an abuse of discretion. Barnes and Mazyck, t/a B & M Tavern v. Jersey City Municipal Board of Alcoholic Beverage Control, A.B.C. Bulletin No. 2155, Item No. 4 (June 7, 1974). The power of the Director of A.B.C. (or Commission) to reduce the penalty is limited to circumstances where it is manifestly unreasonable. Sventy and Wilson, Inc. v. Point Pleasant Beach, A.B.C. Bulletin No. 1930, Item No. 1 (July 13, 1970); Bacet Corp. v. Cliffside Park, A.B.C. Bulletin No. 2195, Item No. 3 (June 20, 1975).

The Director of A.B.C. has professed the existence of a uniform standard of penalties for violations of A.B.C. laws and regulations. It is noted, however, that many of the Director's decisions demonstrate a deviation from the purported standards, which

deviations cannot be satisfactorily explained by the facts of a given case. Further, the Commission is under no obligation or requirement to adopt the Director's standards. However, the decisions may be useful as guidelines for assessing a penalty for violations of N.J.A.C. 19:50-1.1 et seq., and the provisions under the Act.

Factors to be considered in the assessment of a penalty include, but are not limited to: (1) the nature and severity of the offense (acts of violence, drug trafficking, lewd and immoral activity, sales to minors, etc.); (2) prior violations; and (3) mitigating circumstances. Here, the Division is not seeking to suspend or revoke respondent's C.H.A.B. license. Rather, the Division requests a monetary penalty, not to exceed \$15,000, together with an order to compel respondent to conduct in-house seminars on A.B.C. law and regulations, and, the submission of an amendment to its C.H.A.B. license with respect to detailed internal controls in regards to quality control and inventory of its alcoholic beverages.

The Division's recommended penalty of a monetary fine, not to exceed \$15,000, is hereby **GRANTED**. However, \$10,000 is hereby **SUSPENDED**, with an actual penalty in the amount of \$5,000 imposed. The fine and its suspension is based upon a variety of factors which include the nature and gravity of the offense, the lack of evidence of prior A.B.C. laws and regulations, and the mitigating circumstances surrounding the discovery of the violations.

First, the violations do not rise to that of a criminal offense which would mandate a suspension or revocation of respondent's C.H.A.B. license together with a substantial monetary fine. Rather, the violation might be viewed as ministerial in nature where respondent failed to comport with the regulations and properly identify the contents of its A.B.C. containers pursuant to N.J.A.C. 13:2-28.2 and N.J.A.C. 19:50-1.6(y). While this does not minimize the offensive conduct, the record does show that no demonstrable harm was caused to the consumer by respondent violations. Therefore, a fine is warranted here, however, not to the extent as recommended by the Division.

Second, there is no record before this tribunal of prior violations of A.B.C. laws and regulations committed by the Sands or its agents. Prior violations would call for the imposition of the recommended fine. In addition, prior violations of a similar offense

could lead to an enhanced penalty in an amount equal to the original violation. See, In re Eisenhower's Musical Bar, Inc., A.B.C. Bulletin No. 2289, Item No. 2 (February 9, 1978); In re R & C Willis, Inc., A.B.C. Bulletin No. 2287, Item No. 3 (February 3, 1978); In re Lahuta, Inc., A.B.C. Bulletin No. 2277, Item No. 2 (October 3, 1977). The absence of any record of prior violations of similar or other offenses mitigates against the imposition of the full recommended monetary penalty.

Third, it is undisputed that respondent's proscribed conduct was carried on in the open, not concealed, for the direct observation and inspection by agents of the Division for a period of five years. The Division, through lack of diligence, either ignored or neglected to detect the offense in a timely fashion. The Division's excuse that respondent's A.B.C. containers were not subject to inspection because the containers did not originally contain alcoholic beverages really begs the question. The evidence before this tribunal clearly demonstrates that while one A.B.C. container is mislabeled "Grenadine," the second container is labeled, albeit inappropriate, "White Wine." The latter identification obviously placed the container under the scrutiny of the Division's inspection although it remained undetected (Stipulation 17, Exhibit D). Further, the Division's inspector knew, or should have known, of the method by which respondent dispensed its wine from the Mezzanine Pump Room to its Casino Service Bar II.

Accordingly, it is hereby **ORDERED** that respondent Sands be and is subject to a fine of \$15,000, \$10,000 of which is hereby suspended. Therefore, it is **ORDERED** that respondent Sands remit to the Commission the amount of \$5,000 in penalty for the found and declared offenses to the Act and the controlling regulations thereunder.

It is further **ORDERED** that respondent Sands immediately incorporate training seminars in regards to alcoholic beverage control law and regulations, with mandatory attendance by all of its beverage supervisory personnel.

It is finally **ORDERED** that respondent Sands submit to the Commission a permanent amendment to its C.H.A.B. license application, setting forth, in detail, its internal controls relative to quality control, and the maintenance of its inventory controls with respect to alcoholic beverages.

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

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

December 18, 1986
DATE

Lillard E. Law ALJ
LILLARD E. LAW, ALJ

Receipt Acknowledged:

December 18, 1986
DATE

Mary D. Smith
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 23 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bc/ee

EXHIBITS

Stipulation of Facts

Exhibit A New Jersey Casino Control Commission Resolution No. _____ Reviewing and Amending the C.H.A.B. License of Greate Bay Hotel and Casino, Inc., pursuant to N.J.S.A. 5:12-103

Exhibit B Casino Hotel Alcoholic Beverage Control License No. 437

Exhibit C Division Investigation Report, dated December 6, 1

Exhibit D Four (4) photographs

Exhibit E Acknowledgment of Inspection, dated December 4, 1985

Exhibit F Division Investigation Report, dated December 13, 1985

Division's Exhibits

Exhibit 1 Letter, dated May 13, 1986, from Robert Pinard, Deputy Director, Regulatory Bureau, N.J. Division of A.B.C.

Exhibit 2 Final draft of amendment to N.J.A.C. 19:50-1.

Exhibit 3 Conclusions and Orders in

a. In re Desmond Ferrante

B. New Plus Two Corp.

C. Freddy's Bar and Grill, Inc.

Exhibit 4 Initial Decision and Final Order in State v. Bally's Park Place

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

Complainant, :

FINAL ORDER

v. :

GREATE BAY HOTEL & CASINO, INC. :

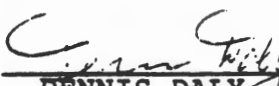
Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision settlement by the Office of Administrative Law resolving the complaint of the Division of Gaming Enforcement against the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of February 11, 1987,

IT IS on this 27th day of FEBRUARY 1987, ORDERED that the initial decision settlement is adopted; and

IT IS FURTHER ORDERED that Greate Bay Hotel & Casino, Inc., pay a civil penalty in the amount of \$15,000, as stipulated in the settlement, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 6603-86

AGENCY DKT. NO. 87-77

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

Petitioner,

v.

**GREATE BAY HOTEL AND
CASINO, INC.**

Respondent.

**Wendy A. Way, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Roberto Rivera-Soto, Vice-President and Corporate Counsel, for the respondent,
Greate Bay Hotel and Casino, Inc.**

Record Closed: December 11, 1986

Decided: December 17, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act(Act) by the respondent, Greate Bay Hotel and Casino, Inc. (Sands). The Division of Gaming Enforcement (Division) alleges that Sands engaged in the illegal storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.S.A. 19:50-1.13(a), (b), (c) & (d) and

N.J.S.A. 19:50-1.6(f) and as a result thereof, Sands was not within the terms and conditions of its Casino Hotel Alcoholic Beverage (C.H.A.B.) license. Sands denies the allegations.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 15, 1986. Sands filed an Answer to the complaint on or about September 29, 1986. On September 29, 1986, 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 scheduled in Atlantic City, New Jersey, on December 11, 1986.

Prior to the pre-hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the Office of Administrative Law on December 1, 1986. The record closed on December 11, 1986.

FINDINGS OF FACT AND CONCLUSION

The Division and Sands have prepared an extensive stipulations of facts (paragraphs 1-24, Stipulation of Settlement) which is attached hereto and made a part of this Initial decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

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

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

12-17-86
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

December 19, 1986
DATE

Bernadette J. Fieger
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 22 1986
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

DOCUMENTS IN EVIDENCE

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-31
OAL DOCKET NO. CCC 2170-86
APP. NO. 59334-22
REG. NO. 56925-40

APPLICATION OF FILBERT GREEN :
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 12, 1986,

IT IS on this 24th day of January 1987, ORDERED that the initial decision is affirmed; and

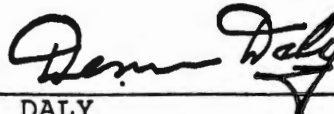
IT IS FURTHER ORDERED that the application of Filbert Green is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Filbert Green from retaining his casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2170-86

AGENCY DKT. NO. 86-EA-31

FILBERT GREEN,
Petitioner,

v.

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

Filbert Green, petitioner, pro se

**Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: August 5, 1986

Decided: October 1, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division objected to the petitioner's licensure as a casino gaming employee by letter to the Casino Control Commission dated March 14, 1986 and the petitioner requested a hearing. The matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There were two issues specified in a prehearing conference on May 13, 1986: did the petitioner fail to provide information concerning prior arrests on his P.H.D. contrary to N.J.S.A. 5:12-86b and does

the petitioner possess the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90b and 89b(2)?

STIPULATED FACTS

The petitioner acknowledged at the hearing that the seven arrests referred to in the Division's complaint actually happened to him. He also acknowledged that he did not list them on either his P.H.D. 4 or P.H.D. 2a.

CONTESTED FACTS

The Division alleges that the petitioner's failure to list these arrest on his Personal History Disclosure Form and failure to provide the Division interviewer with the information concerning his arrests when specifically requested to do so was willful.

The petitioner asserted at the hearing that he did not list the arrests for the following reasons:

1. He forgot about them.
2. Some of them were thrown out.
3. Some of the charges are not right.
4. He misunderstood the question.
5. He interprets a criminal record to mean "stealing" or "drugs" and "things like that."
6. He had personal and domestic problems.
7. These are only "incidents", not crimes.
8. He misunderstood the time period.

9. His mother filled out the form (P.H.D. 4?)
10. A lady at Harrah's helped him fill out the form (P.H.D. 2a?)
11. It skipped his mind.
12. He goofed up.

Based upon the petitioner's catalogue of excuses and dissembling demeanor while listing them, I **FIND** that he purposely concealed his criminal record on his Personal History Disclosure Forms and during his interview with Division investigators. Based on this finding, I **CONCLUDE** that he does not possess the good character, honesty and integrity required for casino licensure despite his letters of recommendation from his U.S. Army Reserve Sergeant and Lieutenant.

ORDER

It is hereby **ORDERED** that the petitioner's application for casino employee license is **DENIED**.

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

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

October 1, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

October 2, 1986
DATE

Receipt Acknowledged:

Reilous Zayas
CASINO CONTROL COMMISSION

OCT 6 1986
DATE

Mailed to Parties:

Ronald L. Parke / x.5
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

Filbert Green

EXHIBIT LIST

- P-1 Letter of recommendation, dated May 20, 1986, from Louis Amico
- P-2 Letter of recommendation, dated May 17, 1986, from John P. Robinson
- R-1 Application number 4 form
- R-2 Application form for number 2 license

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 85-EA-91 AND
85-262 (CONSOLIDATED)
OAL DOCKET NO. CCC 4261-86
APPLICATION NO. 52102-21
REGISTRATION NO. 22089-40

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. :
FREDERICK D. GREEN, : FINAL ORDER
Respondent. :
AND :
IN THE MATTER OF THE APPLICATION OF :
FREDERICK D. GREEN FOR A :
CASINO EMPLOYEE LICENSE :

A hearing in this matter having been held before the Office of Administrative Law; and an initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 29, 1986,

IT IS on this ^{1st} day of April 1987, ORDERED that the initial decision is modified as follows:

(1) To correct the following errors:

- (a) The reference to Indictment No. 02-0215C at page 3 of the initial decision should read Indictment No. 02-0219C;

- (b) At page six of the initial decision the citation to "N.J.S.A. 2C 10-3" should read N.J.S.A. 2C:20-3.
- (c) At page eleven of the initial decision Exhibit P-3 should be described as Indictment No. 85-02-0215C rather than as Indictment No. 85-02-0214C.
- (2) The basis for disqualification pursuant to N.J.S.A. 5:12-86(c)(1) is modified to include the two additional convictions for third degree theft defenses on Indictment No. 85-02-0213C, count II, and Indictment No. 85-02-0214C, count II.
- (3) The Commission rejects as contrary to the regulatory scheme as reflected in N.J.S.A. 5:12-91(d) that portion of the initial decision which asserts that a disqualified registrant who is well on the road to rehabilitation should be permitted in the absence of other compelling reasons to retain his casino hotel employee registration and should only have the registration revoked upon a demonstration that he has not continued on the straight path. (Init. dec. at 8).
- (4) The Commission finds that Frederick Green had failed to demonstrate by clear and convincing evidence that he is rehabilitated pursuant to N.J.S.A. 5:12-90(h) and -91(d) from his convictions on May 3, 1985, for three third degree theft offenses.
- (5) Because the Commission concurs with the ALJ's assessment that the respondent is "well on the road to rehabilitation" (init. dec. at 8), the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

IT IS FURTHER ORDERED that the application of Frederick D. Green for a casino employee license is denied substantially for the reasons stated in the initial

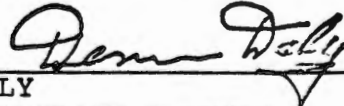
decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), Frederick D. Green, Jr. is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Frederick D. Green, Jr. is prohibited from reapplying for or obtaining any other registration, license, 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4261-86

AGENCY DKT. NO. 85-EA-91 and
85-262

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

Petitioner,

v.

**FREDERICK D. GREEN,
Respondent.**

**Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Frederick D. Green, pro se

Record Closed: September 11, 1986

Decided: September 15, 1986

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on June 12, 1985 seeking an Order revoking the casino hotel employee registration previously issued to Frederick D. Green, number 22089-40. The complaint alleged that Mr. Green had committed a series of offenses for which he had been indicted by the Atlantic County Grand Jury in February 1985 and to which he entered pleas of guilty resulting in a sentence to the Youth Reception Correction Center, Yardville, for an indeterminate term with a five year maximum. The complaint further alleged that Mr. Green had plead guilty to Theft By Unlawful Taking of Goods Valued in Excess of \$500.00, a crime of the third degree which automatically disqualified Green

from registration. In addition, the complaint argued that Green's continued registration would be inimical to the policies of the Casino Control Act and to casino operations in the State of New Jersey "inasmuch as such violation would unavoidably tend to erode public trust and confidence in the credibility, integrity and stability of casino operations and the regulatory framework created by the Casino Control Act." N.J.S.A. 5:12-86c(4).

Mr. Green requested a hearing on the proposed revocation of his registration 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.

In addition to the above-noted revocation proceeding Mr. Green had also applied to the Commission for licensure as a casino employee with a position designation as blackjack dealer. The application was filed with the Commission on February 14, 1984. On April 18, 1985, the Division of Gaming Enforcement filed a letter of recommendation with the Chairman of the Commission in which it recommended that Green's license application be denied. The basis for the proposed denial arose in part from the charges which were pending as of the date of the letter and which resulted in the indictments and convictions later forming the basis of the above-noted complaint seeking revocation of the hotel employee registration. Mr. Green requested a hearing on the proposed denial of his casino employee license and that matter was similarly transferred to the Office of Administrative Law as a contested case.

A telephone prehearing conference was held on August 7, 1986. A prehearing order was issued by the Honorable Stephen W. Thompson, ALJ on August 8, 1986. A hearing was held before Honorable Jeff S. Masin, ALJ on September 11, 1986.

ISSUES

As set forth in the prehearing order, the issues for consideration in this hearing are:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1)?
- 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)?

- C. With regard to the alleged statutory disqualifier, whether respondent may demonstrate rehabilitation pursuant to Sections 90h and/or 91b of the Casino Control Act?

EVIDENCE

The evidence presented during the hearing consisted of the Division's presentation of documentation supporting the charges and pleas of guilty entered by Mr. Green. These consisted of five indictments. Four of the indictments charged Green with incidents of burglary and theft by unlawful taking in violation of N.J.S.A. 2C:18-2 and 2C:20-3 respectively. The incidents involved, forming the basis for these indictments, occurred on October 23 and 24, November 15 and 23, 1984 and December 19, 1984. Indictment no. 85-02-0213C charged Green with entering a residence in Pleasantville and taking goods and chattels valued at more than \$500.00. Indictment no. 85-02-0214C charged Green with entering a building in Pleasantville and removing property valued between \$200.00 and \$500.00. Indictment no. 85-02-0215C charged illegal entry into a building in Pleasantville and the removal of property valued between \$200.00 and \$500.00. Indictment no. 85-02-0219C, which involved incidents occurring either on October 23 and 24 or December 23 and 24 (the first count says December and remaining counts October, but the same incident appears involved in each count) involves unlawful entry into four apartments located in Pleasantville on Noah's Road and the removal therefrom of property valued at more than \$500.00 from each apartment.

Finally, indictment no. 85-02-0216C charges Green with criminal trespass for entry into a dwelling in Pleasantville.

According to Judgments of Conviction presented in evidence as well as the testimony elicited by the State from Mr. Green, he entered pleas of guilty to counts one and two of indictment no. 85-02-0213C and was sentenced to an indeterminate term at the Youth Reception Correction Center at Yardville with a maximum of five years. He entered a plea of guilty to counts one and two of indictment no. 85-02-0214C and was again sentenced to run concurrent with his sentence on indictment no. 85-02-0213C. The respondent plead guilty to each of the two counts of indictments no. 85-02-0215C and 85-02-0215C and was sentenced on his plea to the first count of no. 85-02-0215C to a five year indeterminate term at Yardville with a maximum five years to run concurrent with

indictment no. 85-02-0214C and on the second count to an indeterminate term at Yardville with a maximum of 18 months to run concurrent with count one. On indictment no. 85-02-0219C Green was sentenced to Yardville indeterminate with an 18 month maximum to run concurrent with his other sentences. Finally, he entered a plea of guilty to indictment no. 85-02-0216C and was sentenced to an indeterminate term at Yardville with a maximum of 18 months to run concurrent with the sentence he received on indictment no. 85-02-0215C.

As noted, the Division called Mr. Green as a witness on its behalf. In his testimony, Green, who is twenty five years old, explained that he had indeed been involved to some degree with other individuals in-at least one incident of burglary and unlawful taking and had plead guilty to the various charges set forth in the five indictments against him. He explained that he entered his plea to the group of indictments because he was advised by his public defender that since he was admitting that he was indeed guilty of at least one incident in order for him to attempt to prove his innocence as to other incidents, including the indictments which he did not feel he was guilty of, it would be necessary for him to go to trial where he would quite likely be faced with the testimony of his co-defendants and he might wind up with a worse sentence than that which the public defender was able to negotiate in the form of a plea agreement. Therefore, Green, who readily acknowledged that he had been guilty of at least one of the incidents, plead guilty to all of them.

Mr. Green explained that his problem arose from his alcoholic condition. Although not charged in the complaint, the Division's letter to the Commission noted a number of incidents of disorderly persons character occurring prior to the criminal episodes detailed in the indictments which Green said arose because since the age of 17 he was frequently intoxicated and often went "crazy" under the influence of alcohol. The witness testified that during the time that he was involved with the individuals with whom he was implicated in the burglary ring he had been thrown out of his mother's home and was basically living on the street, sleeping in empty buildings or in the back seat of cars. He was generally drunk. He was hanging out with the "wrong people." Often these individuals would approach him, as he sat around in a more or less drunken condition, display the money which they had and suggest to him that he help them with their burglaries. Although Green at first said no, because of his intoxicated condition he eventually did go along. He testified that half the time he couldn't even remember what occurred. His understanding was that the other individuals, who were the only ones who

actually entered premises, were stealing "appliances." Green acted as a lookout. He never got any cash directly from the robberies, although he understood that his compatriots sold the appliances and they did give him \$50.00 or \$100.00 from the proceeds. Green described the locations robbed as "mostly condos in the construction phase." One of the other burglars had a father who owned a moving van and the van was used to transport the stolen merchandise from the scene of the crime.

Green believed that he was caught as a result of the police speaking with others involved in the burglaries who implicated him. He was arrested on the street while drunk and charged with the offenses.

The witness acknowledged that he had been a lookout for the "Noah's Landing" incident involving the robbery of several apartments charged in indictment no. 85-02-0219C. He denied any definite knowledge of involvement in any of the other burglaries, although at one point in his testimony he did say that he was so drunk that sometimes he did not know what happened the morning after.

As a result of his arrest and convictions Mr. Green was sent to Yardville and then assigned to the Annandale Facility. He received counselling, participated in group counselling, and attended meetings of Alcoholic Anonymous (AA). He served 14 months in jail and was released in February 1986. He has had no alcoholic drinks since January 1985. He is now on parole and reports to a parole officer in Atlantic City once a month. His parole officer recently was transferred and he now has a new parole officer whose name he does not know.

Mr. Green attends AA meetings twice a week, or more when he feels the urge to drink. He has been employed at several positions since leaving Annandale. He was first employed at McGees Restaurant in Atlantic City. He worked there for four months, but was then arrested on a bench warrant from Egg Harbor Township resulting from a mistake by the Court Clerk concerning some fines from a previous incident. Although the arrest turned out to be a mistaken one Green missed a weekend of work and was terminated. He then went to work for Universal Aluminum in Pleasantville, but only worked there one week because the job was too far away from his home and he had no transportation. He has been employed for three weeks at Jamesway Department Store as a stockperson. He is not married, but has a girlfriend who is expecting a baby in December. He lives with his mother and pays rent to her. He has no problems on parole and has reported whenever he has been required to.

The respondent was previously employed in the casino industry beginning in 1979 at Caesars where he worked as a porter. He was terminated because of his intoxication. He worked at Resorts in 1980 as a kitchen utility person and left to go to California. After returning to Atlantic City he worked at Bally's (perhaps in 1984) as a room service bus person. He was terminated for falling asleep on the job.

Mr. Green asserted that he would never have been involved in the criminal activities at all had it not been for his drinking. He does not "have a criminal mind" and only acted that way when he was "crazy" because of alcohol. Now that he no longer drinks he believes he is a changed person. He does not want his girlfriend and child to be on welfare and is quite anxious to have the opportunity to earn a better living than that which he currently does.

An examination of the police reports presented as evidence by the Division merely indicates the details of the method of burglary and the material found missing. No details were revealed as to the manner in which Mr. Green's involvement was uncovered other than reference to discovery through "investigation." There are no details as to the robberies at the Noah's Landing site other than the limited information contained in the indictments.

DISCUSSION

An evaluation of the evidence and testimony presented during this hearing establishes that Mr. Green was a participant in, by his own admission, at least one incident involving the burglary into a number of apartments of the Noah's Landing complex and the theft of items from that complex in excess of \$500.00 in value. Such activity constitutes a violation of N.J.S.A. 2C 10-3 which, pursuant to N.J.S.A. 5:12-86c(1), is a statutory disqualifying offense which renders Mr. Green ineligible for licensure or continued registration unless he can establish his rehabilitation. In addition, clearly with respect to the license which he seeks, where good character, honesty and integrity is required for licensure pursuant to Section 89b(2) of the Act, the Noah's Landing incident in and of itself would reflect strongly against a finding of good character, honesty and integrity, particularly since it only occurred within the past two years.

In addition to the one incident which the witness definitely acknowledged, there seems to be some confusion on his part as to whether he was a participant in other

incidents for which he was charged or perhaps others for which he apparently was not charged. It seems from his testimony that perhaps he did participate as a lookout or at least go along with the burglars on one or more other incidents other than the Noah's Landing theft, but either because he was so intoxicated as to have an uncertain memory or because he is unwilling to acknowledge his further involvement at this time Mr. Green defensively asserts that he was involved only in the one occasion, a fact which he asserts was confirmed to him by one of the other burglars who he spoke to after he got out of jail, an individual who is now in a coma. Although the seeming hesitancy of Green to acknowledge involvement in more than one episode of criminality might at first blush seem to indicate some deficit in his honesty, given all the circumstances, including the fact that he already admitted his guilt during the plea negotiations and presumably in statements to the Judge at the time of his plea and the fact that he had really little to gain by denying the involvement in some but not all of the incidents at this hearing, I **FIND** that Mr. Green was involved in the Noah's Landing incident, and may have been involved in more than that incident, but that the exact number of burglaries in which he participated in and of itself is not the crucial point to be considered in deciding this case.

The evidence establishes, to my satisfaction, and by a preponderance of the evidence, that Mr. Green, from 1977 onward, had a serious drinking problem and was by all reasonable definition, an alcoholic. I **FIND** that he participated in criminal activity while under the influence of alcohol and served as a lookout during burglaries. I **FIND** no evidence which would clearly establish that he actually entered the premises and was involved in the direct removal of property from the burglarized locations. However, he was clearly part and parcel of the burglary as he served as the lookout for the actual entrants.

I **FIND** that the respondent has not been drinking since the time of his incarceration. He has undergone various forms of counselling and has been a participant in AA meetings during and after his jailing. He continues to attend AA on a fairly regular basis, the frequency of his attendance varies only when his feelings of desire for alcohol cause him to go more regularly than twice a week.

The respondent appears to have made a proper adjustment to society since returning from jail. He has been employed since his release, although there have been breaks in his employment. He appears to sincerely desire to establish himself in a manner which will allow him to help his girlfriend and his expected child. He has been faithful to his parole obligations.

Given all of the evidence, and having given careful consideration to both the credibility and the demeanor of Mr. Green, I **CONCLUDE** that (1) he has committed a statutory disqualifying offense and (2) he is beginning the road to rehabilitation. The question which must be considered is whether it is now appropriate for the Commission to strip him of his registration and deny him his casino employee license. In making these determinations I believe that the most reasonable manner in which to proceed would be to deny Mr. Green a casino employee license at this time, but to permit him to retain his casino registration. With respect to this conclusion, I **FIND** that at the present time it is impossible to conclude by clear and convincing evidence that Mr. Green does possess the necessary good character, honesty and integrity for licensure because his prior involvements with criminal activities, influenced as they were by his drinking, reflect adversely to a sufficient degree upon his good character, honesty and integrity as to necessitate some lengthy period within which he can prove that he has indeed changed sufficiently so that one may safely say he has these positive attributes. While it may well be that he will never again run afoul of the law, I believe that it is a little too soon to be certain enough to permit a finding that he has established the necessary character traits by the necessary standard of proof. Thus, I **CONCLUDE** that he has failed to establish the necessary good character, honesty and integrity required by Section 89b(2) and cannot receive a casino employee license. However, with respect to his casino hotel registration, while recognizing that in the past the respondent did commit a statutory disqualifying offense, and that his rehabilitation is not yet complete, I strongly believe that given his satisfactory progress on parole to this date and his apparently satisfactory battle against his alcoholism, that Mr. Green has demonstrated a sufficient degree of rehabilitation to permit him to retain the casino hotel employee registration. In making this determination, it seems quite significant that the Legislature, in determining the qualifications for licensure and registration, deemed it appropriate to include a good character, honesty and integrity requirement for casino employees, but not for registrants. Given the fact that registrants are not required to prove their good character, honesty and integrity, someone such as Mr. Green, who committed a disqualifying offense and who now appears well on the road to rehabilitation but still is under the strictures of parole, should be permitted, in the absence of other compelling reasons, to retain his casino employee registration during the parole period and should only have said registration revoked upon a demonstration that he has not continued on the straight path, that is by evidence of parole violations or new criminal offenses. Since the licensing requirements for a casino employee require the greater demonstration of fitness implied by the necessity to demonstrate by affirmative proof to a clear and convincing

degree good character, honesty and integrity, it is not inappropriate for the Commission, while permitting a parolee to retain registration, to deny licensure, at least until such time as the parolee has successfully completed a lengthy parole and even beyond that has demonstrated an ability to keep along the straight and narrow path after the constraints of parole are removed.¹

For the reasons expressed, I **CONCLUDE** that Frederick Green's casino hotel employee registration should not be revoked, but that he should be denied licensure as a casino employee at this time. If he can continue to successfully conduct himself during the remainder of his parole he may well look forward to the day when the Commission can award him a casino employee license. At this time, however, he should be permitted to retain his registration. It is so **ORDERED**.

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

¹ The argument in favor of permitting a continued registration in the face of a denial of licensure is supported by the differences in function generally found between those working as registrants and those working as licensees.

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

September 15, 1986
DATE

September 17, 1986
DATE

SEP 18 1986
DATE

bc

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parkey/xs
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS

On behalf of petitioner, Division of Gaming Enforcement:

- P-1 Indictment no. 85-02-0213C and Judgment of Conviction, with attached police reports
- P-2 Indictment no. 85-02-0214C and Judgment of Conviction, with attached police reports
- P-3 Indictment no. 85-02-0214C and Judgment of Conviction, with attached police reports
- P-4 Indictment no. 85-02-0216C and Judgment of Conviction
- P-5 Indictment no. 85-02-0219C and Judgment of Conviction

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-405(a)
OAL DOCKET NO. CCC 2451-86
LICENSE NOS. 02484-11,
08784-21 (INACTIVE)
AND 00273-60

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

Complainant,

v.

BARRY HAMMOND,

Respondent.

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 7, 1987,

IT IS on this 14th day of January 1987, ORDERED that the initial decision is rejected for the following reasons:

- (1) The ALJ equated rehabilitation from drug addiction with rehabilitation as defined by section 90(h) of the Act. However, evidence of rehabilitation from addiction is only one of the factors which should be considered before the issue of rehabilitation for licensing purposes can be decided.
- (2) The initial decision failed to evaluate the eight criteria to be considered for rehabilitation as required by section 90(h). With respect to those criteria the Commission finds as follows:

- (a) The respondent is licensed as a gaming instructor and pit boss, positions which the Commission considers important to the actual as well as the perceived integrity of the casino industry.
 - (b) The offense committed by the respondent, falsification of records in violation of N.J.S.A. 2C:21-4a, is a disqualifying offense pursuant to sections 86(c) and (g) of the Act.
 - (c) Although the respondent was able to resist the temptation to falsify player rating forms when offered money to do so on two occasions, he was unable to sustain his resistance.
 - (d) The offense occurred during February and March of 1983.
 - (e) The respondent was approximately 31 years old at the time the offense was committed, obviously a mature person at that stage.
 - (f) The offense was repeated on more than 10 different occasions.
 - (g) Although the respondent's drug addiction undoubtedly contributed to his offense, the Commission does not believe that this is the type of social condition which should be considered a mitigating circumstance.
 - (h) The respondent has been rehabilitated from his drug addiction and has introduced testimony from witnesses who attest to his good character, honesty and integrity.
- (3) After considering all these factors the Commission concludes that the mitigating factors in this case do not outweigh the aggravating factors, especially in light of the nature and seriousness of this offense

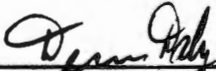
and the importance of the positions the respondent seeks to hold in the industry.

IT IS FURTHER ORDERED that the gaming instructor and casino key employee licenses held by Barry Hammond are revoked; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY:



DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2451-86

AGENCY DKT. NO. 84-405(a)

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

Petitioner,

v.

BARRY HAMMOND,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Lionel Frank, Esq., for respondent (Kirsten, Friedman & Cherin, attorneys)

Record Closed: October 6, 1986

Decided: November 19, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission on November 30, 1984, seeking revocation of the respondent's casino employee license, instructors license and casino key employee license based on an indictment charging him and others with conspiracy, theft by deception and falsifying records. At the conclusion of the underlying criminal case the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a

prehearing conference on May 20, 1986 in Trenton and the matter was heard on October 6, 1986 in Atlantic City.

FACTUAL DISCUSSION

Barry Hammond at the age of 31 and a pit boss at the Tropicana Casino, began to use cocaine for recreational purposes. Soon he needed extra cash to buy it. He learned that he could make extra cash by falsifying certain player rating cards. Player rating cards are a means of recording how much money an individual spends in a casino. They are used to award complimentary meals and to identify so called "high rollers", among other uses.

Apparently the operators of bus junkets to Atlantic City were not paid unless their patrons spent a predetermined amount of money in the casino. I am advised that this was a permitted arrangement. Player rating cards were the method selected to keep track of the money spent by bus riders. Some bus operators insured themselves against loss by paying casino employees to inflate the player rating cards for their bus patrons. This scam was discovered and Barry Hammond, who was neither a target of the investigation or a principal in the scam, was nevertheless indicted with several other persons.

Barry Hammond is a sympathetic figure. He had at first resisted the temptation to join the conspiracy and, after participating in it for three weeks, withdrew from the conspiracy in February 1983 because he knew that what he was doing was wrong. Thereafter he admitted himself to a New York City drug clinic for a 28 day in-patient rehabilitation program followed by a similar program in Minnesota. He has successfully rehabilitated himself from drug abuse. He has done this by following the rules of Narcotics Anonymous. He attended 90 meetings of Narcotics Anonymous in 90 days and continues to attend meetings four and five times a week. In periods of stress he attends more frequently. He still considers himself a recovering addict although he has been drug free for two and one-half years.

When Barry Hammond was arrested he admitted his criminal involvement and cooperated fully with the prosecuting authorities. He was granted Pretrial Intervention and successfully completed it.

Barry Hammond's efforts to rehabilitate himself have been so sincere that the State Police Detective in charge of the investigation likes him, respects him, and opined during his testimony that Barry Hammond was not a threat to the casino industry.

In addition, Barry Hammond enjoys a good reputation for character, honesty and integrity. His former supervisor at the casino and his present supervisor in private employment testified to this.

Barry Hammond was forthright on the witness stand about his involvement in the conspiracy. By his own admission he disqualified himself from casino licensure by admitting that he had knowingly falsified player rating cards in February 1983 on approximately 10 occasions. He said that he knew it was wrong.

I **FIND**, pursuant to N.J.S.A. 5:12-86g, that Barry Hammond committed an act, to wit: falsification of records knowing that it would deceive his employer contrary to N.J.S.A. 21-4(a), which act constitutes an offense under subsection c of N.J.S.A. 5:12-86, which disqualifies an actor from casino employee and casino key employee licensure pursuant to section 89d and 90e of the Casino Control Act.

REHABILITATION

The Casino Control Act permits casino employee licensees to escape the onerous burden of disqualification in case the licensee or applicant can affirmatively establish his rehabilitation pursuant to N.J.S.A. 5:12-90h. There is no equivalent statute for casino key employees.

Based on the fact that Barry Hammond has rehabilitated himself from drug addiction, I **CONCLUDE** that he has satisfied the requirement of section 90h of the Casino Control Act. His criminal involvement was a result of his drug addiction. I believe that, absent drug addition, Barry Hammond would not have committed the offense charged, and I believe he will not commit an offense in the future.

CHARACTER, HONESTY AND INTEGRITY

Every applicant for casino employee licensure must prove by clear and convincing evidence that she or he possesses the good character, honesty and integrity required for casino licensure by N.J.S.A. 5:12-89b(2). This implies a standard. No one would suggest that applicants meet a higher standard than that met by every decent law abiding citizen, or how would such persons, if found, be induced to work in gambling houses?

Decent law abiding citizens occasionally make mistakes. Sometimes these mistakes are of criminal magnitude. In common parlance when a person is "big enough" to admit his or her mistake, and takes all of the painful steps necessary to correct it, his or her reputation for good character, honesty and integrity is often enhanced.

This is or should be the case with Barry Hammond. He withdrew from the conspiracy, he cooperated with the police, he entered two consecutive drug programs, he faithfully attends N.A. He is gainfully employed. His employer thinks he is a good man. The police officer who arrested him thinks he is a good man. I think he is a good man. I **FIND** that he possessed the requisite good character, honesty and integrity for casino licensure.

It is **ORDERED** that the casino key employee license of Barry Hammond be **REVOKED**. It is further **ORDERED** that so much of the complaint that deals with respondent's casino employee license and instructors license be **DISMISSED**.

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

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

Nov 19, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Nov 20, 1986
DATE

Rodolfo Guyas
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 24 1986
DATE

Ronald J. Park / x. s.
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-260
OAL DOCKET NO. CCC 858-86
LICENSE NO. 24513-21

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

:
:
:
:

Complainant,

:

FINAL ORDER

v.

:

SYLVESTER A. HART, III,

:

Respondent.

:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and 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 August 20, 1986,

IT IS on this 5th day of January 1987, ORDERED that the findings of fact in the initial decision are modified as follows:

The respondent was initially licensed in April 1981, as a casino employee, rather than as a casino hotel employee as stated in the initial decision (Initial Decision at 1).

IT IS FURTHER ORDERED that the following conclusion of law is modified:

Based on the testimony of the Tropicana security officer, Mark Berardi, Frank Callio, sergeant with the Atlantic City Police Department, and the respondent, the Commission finds that the Division has established by a preponderance of the credible evidence in the record that the respondent has engaged in conduct constituting the offense of theft in the third degree, in violation of N.J.S.A. 2C:20-4. Therefore the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

IT IS FURTHER ORDERED that the following conclusion of law is rejected:

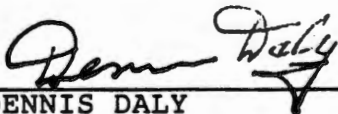
The conclusion that the respondent has demonstrated by clear and convincing evidence his rehabilitation from his disqualifying conduct pursuant to N.J.S.A. 5:12-90(h) is rejected. The Commission finds that the seriousness of the offense, the circumstances under which it occurred and the fact that it resulted, in part, from the respondent's compulsive gambling problem outweigh the respondent's present efforts of rehabilitation.

IT IS FURTHER ORDERED that the casino employee license of Sylvester A. Hart is revoked; and

IT IS FURTHER ORDERED that Sylvester A. Hart, III, is prohibited from applying for any license, registration, qualification or approval 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. NO. CCC 0858-86

AGENCY DKT. NO. 83-260

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

Petitioner,

v.

SYLVESTER A. HART, III,
Respondent.

Norma Plenty, Law Assistant, on behalf of petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)

Sylvester A. Hart, III, respondent, pro se

Record Closed: June 9, 1986

Decided: July 9, 1986

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 hotel 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.

Most of the facts are undisputed. Respondent was licensed as a casino hotel employee in April 1981, and had been employed as a dealer. On July 16, 1983, at approximately 1:00 p.m., he was in the Tropicana Hotel and Casino. He reached into the

pit area behind a gaming table and grabbed a handful of chips. The exact dollar value of the chips taken is unclear, but it was either \$4,500 or \$5,100. He fled the premises with security personnel giving chase. Respondent was apprehended by Atlantic City Police shortly thereafter. He was arrested and charged with theft in violation of N.J.S.A. 2C:20-3. At the station, respondent was asked to answer various questions for the police incident report. He indicated that he was unemployed, though at the time, he was a dealer at Resorts. He was admitted to a Pre-Trial Intervention (PTI) program, which he successfully completed.

There is one area of factual dispute. While in custody on the day of the offense he provided the police with identification in the form of a temporary drivers license giving his name as Sylvester A. Hat, III, not Hart. One of the arresting officers, Sergeant Frank Callio of the Atlantic City Police, testified that he believed at the time that false identification was being presented.

Respondent also testified. He acknowledged his crime and that he had not been forthcoming when police asked him about his employment. He testified that he had never been in trouble with the police before or since. At the time he was 23 years old and earning more money as a dealer then he had ever earned before. He began to gamble and fell into debt. On the day in question, he did not enter the Tropicana with an intent to steal. He was agitated and when he saw the chips on the table, he acted impulsively. Respondent indicated that the misspelling on his temporary driver's license was simply an error which was later corrected when he received his permanent license.

Respondent testified that he has now completed a course of study at the New York Food and Hotel Management School and is presently a chef at the Sheraton Hotel in Elizabeth, New Jersey. He supervises three employees and has a great deal of responsibility. Letters from the executive chefs at Colonia Country Club and the Westwood Restaurant praise his work and attitude.

This is the substance of the record. The case presents a close question. Respondent's crime took place in a casino and as such there is reason for special concern. Financial and other stresses do arise periodically, and the casino presents an excited atmosphere. We may wonder legitimately whether at such times he will again see the casino as a quick solution. Nevertheless, the site of the crime ought not to weigh so

heavily that it negates all other factors and makes it impossible to look at this person as a whole. Respondent was a credible and convincing witness. He has no other record of criminal involvement. Moreover, he is gainfully employed and appears to be on a career path. I accept his statement that he did not enter the casino with any plan to steal. That the act was impulsive is apparent by its foolishness. It is difficult to see how anyone, particularly a dealer, could imagine that he could grab a handful of chips from behind a gaming table and escape through the extensive security of the casino. This could only have been a desperate or unplanned act.

Though respondent's deception at police headquarters concerning his employment status adds to petitioner's case, it does not substantially change the character of what occurred on that day. I believe that this should be considered as part of the same incident.

Finally, though respondent's name is misspelled on his temporary license, I see nothing false in this. Respondent explained that this was simply an error, and there is nothing in the record to indicate that this was anything more.

Based on the foregoing, it is my conclusion that respondent has established his rehabilitation pursuant to N.J.S.A. 5:12-90h. It is thus **ORDERED** that this matter be **DISMISSED**.

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

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

DATE

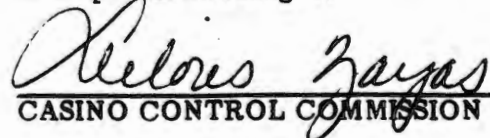
7/9/86


SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

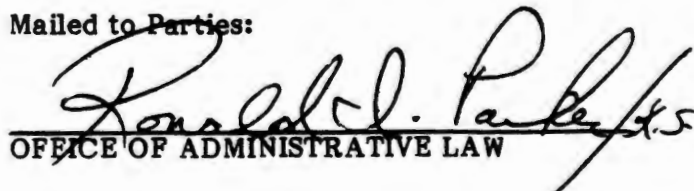
July 10, 1986


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 14 1986


OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Mark Berardi
Sergeant Frank Callio
Sylvester A. Hart, III

EXHIBITS

For petitioner:

- P-1 Waiver of Rights
- P-2 Temporary Driver's License
- P-3 Investigation Report, with attachment
- P-4 Investigation Report, with attachments
- P-5 Complaint
- P-6 Order of Dismissal Under Rule 3:28, with attachment

For respondent:

- R-1 Letter from Stephen J. Imperiale to Sylvester A. Hart, III, dated May 23, 1984
- R-2 Letter from Daniel Rucci, dated October 4, 1985
- R-3 Letter from Ralph Alderman, dated October 23, 1985
- R-4 GMAC Financing Coupon Book
- R-4A GMAC, payment no. 47

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-99
REGISTRATION NO. 14213-40
OAL DOCKET NO. CCC 7175-86

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

Complainant, :

v. :

RUFUS J. HUGHES, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 15, 1987,

IT IS on this *6th* day of May 1987, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Rufus J. Hughes is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

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 7175-86

AGENCY DKT. NO. 87-99

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

Petitioner,

v.

RUFUS J. HUGHES,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Rufus J. Hughes, respondent, pro se

Record Closed: February 13, 1987

Decided: March 5, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of respondent Rufus J. Hughes' casino hotel employee registration no. 14213-40, pursuant to section 129 of the Casino Control Act (Act). The Division alleges that the respondent committed an aggravated assault in violation of N.J.S.A. 2C:12-1b(1) on September 10, 1985, which renders respondent statutorily disqualified from being a registrant pursuant to N.J.S.A. 5:12-86c (1). Mr. Hughes asserts rehabilitation pursuant to section 91d of the Act.

PROCEDURAL HISTORY

A complaint was filed with the Casino Control Commission (Commission) on September 24, 1986. Mr. Hughes requested a hearing on October 8, 1986. On October 21, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 11, 1986, and the matter was scheduled for a hearing on February 6, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The hearing was held as scheduled; however, the record remained open for one week in order to allow Mr. Hughes an opportunity to obtain additional documentation. The record closed on February 13, 1987.

FINDINGS OF FACT

On September 10, 1985, members of the Pleasantville Police Department were dispatched to 12 North 3rd Street, Pleasantville, New Jersey, in response to a report of a street fight. Upon arrival, the police discovered that Andrew Hevalow had been stabbed by the respondent, Rufus J. Hughes. The victim, Andrew Hevalow, and Margo Santiago were siblings who resided at 12 North 3rd Street, Pleasantville, New Jersey. Margo Santiago was the girlfriend of respondent. According to Detective Walter Kelley, Pleasantville Police Department, an altercation developed between Hevalow, Margo Santiago and their mother about money. Respondent happened to be in another room at the premises. Hevalow went into the kitchen and returned with a knife and threatened respondent. Mr. Hughes then left the premises and went to his mother's house at 6 North 3rd Street, where he obtained his work knives. Mr. Hevalow accosted Mr. Hughes on the street, provoking a fight. Mr. Hughes first cut Mr. Hevalow in the hand and when Mr. Hevalow kept coming forward, he stabbed him in the stomach. Mr. Hughes then ran from the scene. After Mr. Hughes was apprehended, he advised the police of the whereabouts of the knife. Detective Kelley remarked that Mr. Hevalow remained in the hospital for three days and was then discharged. Mr. Hevalow has since died of a drug overdose.

Detective Kelley stated that Mr. Hughes has resided in Pleasantville for at least 10 years and has not been a problem to the police. The Detective opined that the incident involving Messrs. Hevalow and Hughes appeared to be an isolated incident.

Mr. Hughes was indicted on October 8, 1985, for possession of a weapon in violation of N.J.S.A. 2C:39-5(d); possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4; aggravated assault in violation of N.J.S.A. 2C:12-1b(1), and terroristic threats in violation of N.J.S.A. 2C:12-3b. On December 9, 1985, respondent, Rufus J. Hughes, entered a plea of guilty to possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4, and aggravated assault in violation of N.J.S.A. 2C:12-1b(2).

On January 10, 1986, the respondent was sentenced by the Honorable Robert Neustadter, J.S.C., to eight months in the Atlantic County Jail, probation for a period of eighteen months and was fined \$25 for the Violent Crimes Compensation Board. The respondent served three months of his jail sentence before being released for good behavior. During his period of incarceration, he was placed under the work-release program. Mr. Hughes would work at Trump Plaza during the day and return to the Atlantic County Jail at night. Mr. Hughes appears to have been a model citizen during his incarceration.

Mr. Hughes testified as to the veracity of the above and expressed deep remorse over the incident. He explained that he was provoked into a situation that he had wished to avoid and advised that his behavior of September 10, 1985, would never be repeated. He explained that he has resided in Pleasantville for the past 10 years and has not been in any trouble with the police. He started working for Bally's Hotel Casino in 1980 and worked in the kitchen there until 1984. On May 11, 1984, he transferred to the Trump Plaza Casino Hotel, where he has been employed ever since. He states that he is an excellent cook, that he enjoys cooking and that he gets along well with others in his workplace. He recognizes the fact that his employment is in serious jeopardy and asks to be given another chance. He produced a letter from a Mr. Carlos Ramirez, who is the night chef at Trump Plaza Casino Hotel (R-1).

Although respondent would have benefited from the assistance of counsel, Mr. Hughes impressed me as a forthright individual who is truly sorry for the incident of September 10, 1985. His demeanor and appearance lent credibility to his testimony.

Essentially, the above is uncontroverted, credible and is **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Respondent pled guilty on December 9, 1985 to aggravated assault in violation of N.J.S.A. 2C:12-1b(2). Furthermore, respondent pled guilty to possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4.

The Division contends that the Judgment of Conviction for aggravated assault (N.J.S.A. 1C:12-1b(2)) renders respondent statutorily disqualified from being a registrant.

Based upon the aforesaid Judgment of Conviction, I **CONCLUDE** that respondent is statutorily disqualified from being a casino hotel registrant, pursuant to Section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure or registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets 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;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocation schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

Mr. Hughes is employed as a cook at the Trump Plaza Casino Hotel. He is 25 years old and has been successfully employed in the industry for approximately seven years.

Respondent concedes that on September 10, 1985, he committed an aggravated assault in violation of N.J.S.A. 2C:12-1b(2). Mr. Hughes argues that this was an isolated incident not likely to be repeated. Mr. Hughes impresses me as a forthright individual. It is my "gut" reaction that a culmination of events led to the altercation. I seriously doubt that his conduct of September 10, 1985, will ever be repeated.

Respondent will remain on probation until July 1987. However, the fact that respondent obtained work-release privileges while incarcerated demonstrates a degree of rehabilitation.

In addition, the letter from respondent's supervisor, Mr. Carlos Ramirez, has substantial probative value.

Given the totality of the circumstances, the testimony presented and the mitigating circumstances which make the likelihood of recidivism appear remote. I **CONCLUDE** that respondent has established by clear and convincing evidence his rehabilitation, pursuant to Section 91d of the Act.

ORDER OF DISPOSITION

It is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against the casino hotel employee registration (no. 14213-40) held by Rufus Hughes be **DISMISSED**.

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

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

3 5 87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

3/6/87
DATE

Bernadette J. Fayer
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 10 1987
DATE

Philip J. Lopez
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

For the Petitioner:

Walter Kelley, Pleasantville Police Department

For the Respondent:

Rufus Hughes

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 State of New Jersey v. Rufus Hughes, Indictment No. 85-10-1692-C, Superior Court, Atlantic County, dated October 8, 1985

P-2 Pleasantville Police Department Investigation Report, dated September 10, 1985

For the Respondent:

R-1 Letter, dated February 6, 1987, from Mr. Carlos Ramirez, Night Chef, Trump Plaza Casino Hotel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-248
OAL DOCKET NO. CCC 02405-86
LICENSE NO. 08482-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Complainant, : ORDER
v. :
PATRICIA ANNE HUNT, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and an 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 November 19, 1986,

IT IS on this 26th day of May 1987, ORDERED that the ALJ's conclusion that the respondent has adequately demonstrated her rehabilitation and his recommendation that the Division's complaint be dismissed as modified, as stated on the record of the November 19, 1986, Commission meeting, for the following reasons:

- (1) It appears that the ALJ equated recovery from substance abuse with rehabilitation under section 90(h). Init. dec. at 2. However, such evidence of rehabilitation is but one of eight factors enumerated in section 90(h) which must be addressed before the issue

of rehabilitation for licensing purposes can be decided.

- (2) The respondent's commission of the offense of distribution of CDS as stipulated by the respondent and found by the ALJ, is a disqualifying offense under sections 86(c)(3) and 86(g). The circumstances of the offense involved the sale of CDS to an undercover agent in Smithfield, New Jersey; the offense occurred on March 27, 1984; the respondent was then 31 years of age and admittedly had had a drug abuse problem for approximately two years before her arrest; the respondent has subsequently completed an extensive drug rehabilitation program and is a life member of Narcotics Anonymous group which she has attended daily for 90 days and currently attends twice weekly; she is currently employed; finally, the respondent, upon completion of the PTI program and dismissal of the indictment, has satisfied all obligations to the criminal justice system. Upon consideration of all of these factors, the Commission concurs with the ALJ's conclusion that the respondent is rehabilitated pursuant to N.J.S.A. 5:12-90(h).

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Patricia Anne Hunt is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference.

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 2405-86

AGENCY DKT. NO. 85-248

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

Petitioner,

v.

PATRICIA HUNT,
Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Mark Vasser, Esq., for respondent (Vasser, Spitalnick, Bloom, Mazin & Stein, attorneys)

Record Closed: August 20, 1986

Decided: October 3, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission on June 5, 1985 seeking to revoke the respondent's casino gaming license because she was indicted for drug offenses including distribution.

The respondent requested a hearing by letter filed with the Casino Control Commission on March 21, 1986 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.

PREHEARING STIPULATION

A prehearing conference was held in Trenton on March 27, 1986 at which time the respondent stipulated that she sold methamphetamine to an undercover agent on March 27, 1984, was arrested, indicted and granted P.T.I. At the hearing the respondent and her attorney reiterated these facts and advised that P.T.I. had been completed.

I **CONCLUDE** that the respondent committed an offense listed in Section 86c of the Casino Control Act, to wit: distribution of a controlled dangerous substance contrary to N.J.S.A. 24:21-19, and is therefore disqualified from casino licensure unless she is rehabilitated pursuant to Section 90h of the Act.

REHABILITATION

The respondent is 33 years old and this was a first arrest although she had a drug problem for approximately two years prior to her arrest. After her arrest she attended Operation Junction and Narcotics Anonymous. She has completed Operation Junction and intends to be a life member of Narcotics Anonymous. She presently attends two meetings a week but has attended as many as 90 meetings in 90 days, the so-called 90/90 requirement of N/A for addicts. She is not an alcoholic but she claimed that she could become alcoholic if she was to drink. This self observation alone convinced me that the respondent is rehabilitated, but she has presented much more evidence than this.

Her employers and supervisors recommend her.

Her ex-husband has returned to her now that she is drug free. They live together as man and wife. He writes that their separation occurred in part because of her drug use and his "lack of knowledge concerning this disease." He adds that she has been drug free for "some time now".

A patient for whom the respondent cared when employed at Independent Life Springs, a group home for physically disabled persons, writes about her kindness to others.

A certified abuse counsellor writes about her sincere effort to break old patterns and her development of life coping skills.

A nurse who supervised her writes about her as an excellent role model for disabled adults at Life Springs.

A satisfied customer writes about the excellent job she did remodelling his home.

The director of a drug and alcohol counselling unit considers her a "credit to his agency and to herself."

The respondent has favorably impressed persons everywhere that she is rehabilitated and has good character, honesty and integrity.

I CONCLUDE that she is rehabilitated.

I CONCLUDE that she possesses the requisite good character, honesty and integrity for casino licensure.

ORDER

I ORDER the complaint filed by the Division be **DISMISSED**.

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

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

Oct. 3 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ (R)

Receipt Acknowledged:

Oct. 6, 1986
DATE

M. Gurevich
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 8 1986
DATE

Ronald J. Park / x 5
OFFICE OF ADMINISTRATIVE LAW

SC

WITNESS LIST

Patrick Gerbig

Patricia Hunt

EXHIBIT LIST

P-1 Lab report

P-2 Indictment

R-1 Letter, dated December 24, 1985, to Patricia Hunt from Stephen J. Imperiale

R-2 Letter to William Mountford from Kenneth C. Schafer

R-3 Letter, dated June 10, 1986, entitled "Operation Junction" from Edward J.
Olwell

R-4 Letter of recommendation from Mary Hunt

R-5 Letter of recommendation, dated August 13, 1986, from Theresa Held

R-6 Letter of recommendation, dated August 10, 1986, from George Abram

R-7 Letter of recommendation, dated August 18, 1986, from Howard Sudin

R-8 Letter of recommendation from Mary Federico, R.N.

R-9 Letter of recommendation, dated August 15, 1986, from Vi Heddy

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-343
OAL DOCKET NO. CCC 2168-86
REGISTRATION NO. 52256-40

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

Complainant,

ORDER

v.

JEWEL A. JACKSON,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision on January 27, 1987; and the Commission having considered the entire record of these proceedings at its public meeting of February 4, 1987,

IT IS on this 28th day of May 1987, ORDERED that the ALJ's conclusion that Jewel A. Jackson has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A.

5:12-91(d) be rejected for the reasons stated in the record and based upon the following:

(1) The respondent was convicted of four disqualifying offenses committed between June 18, 1983, and March 11, 1984.

Although the respondent's excellent work record is one of the factors which must be considered in determining whether he has been rehabilitated, we cannot agree with the ALJ that a good work record alone is sufficient to outweigh the serious nature of the offenses committed in this case. In making our determination with respect to rehabilitation, we considered all of the factors listed in N.J.S.A. 5:12-91(d), including the respondent's successful participation in various programs while incarcerated, such as AA meetings, GED courses and work release programs--all of which are relevant under N.J.S.A. 5:12-91(d)(8). Considering all pertinent factors, the Commission finds that the mitigating circumstances do not outweigh the serious nature of the respondent's offenses particularly in light of the fact that his last offense occurred on March 11, 1984, and the fact that the respondent is presently on parole.

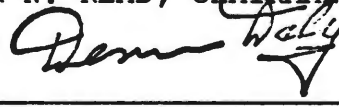
(2) However, in view of the respondent's substantial efforts towards rehabilitation, albeit insufficient for purposes of N.J.S.A. 5:12-91(d), this disqualification is waived in the interests of justice and consistent with the public policy of the Act pursuant to N.J.S.A. 5:12-91(e) and the respondent is permitted to retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the respondent is disqualified for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Jewel A. Jackson is prohibited from reapplying for any other registration, license, 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
WALTER N. READ, CHAIRMAN

By: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2168-86

AGENCY DKT. NO. 85-343

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

Petitioner,

v.

JEWEL A. JACKSON,
Respondent.

**Joanne Ciancimino, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Jewel A. Jackson, respondent, pro se

Record Closed: November 10, 1986

Decided: December 19, 1986

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The respondent obtained a casino hotel registration and a casino hotel job as a kitchen steward during a period of incarceration while in a halfway house in Camden, New Jersey. This was in February of 1985. In August 1985, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of the respondent's registration based on his conviction for criminal offenses. He requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard

as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on May 13, 1986. There were several postponements while the respondent sought, unsuccessfully, to obtain legal counsel. A final hearing was convened in Ventnor, New Jersey on October 10, 1986. The record was held open for receipt of additional documentary evidence. The record was closed on November 10, 1986.

CRIMINAL CONVICTIONS

An issue in the case was whether or not the respondent committed offenses enumerated in N.J.S.A. 5:12-86c. The Division proved and the respondent admitted four convictions for offenses so enumerated. The Division also produced testimony on the facts underlying the convictions.

First Conviction

The facts concerning the first conviction are sketchy but the respondent admits his conviction. He denies the underlying basis for the conviction, however. That conviction was for possessing marijuana with the intent to distribute the same contrary to N.J.S.A. 24:21-19. The offense occurred on June 18, 1983.

Second Conviction

On October 31, 1983, the respondent was found to be in possession of more than 25 grams of marijuana. He was indicted on Indictment No. 11-1466-83-A for possession of marijuana and possession of marijuana with intent to distribute it. He pled to possession with intent to distribute marijuana contrary to N.J.S.A. 24:21-19a(1), and was incarcerated for 180 days concurrent with a violation of probation on Indictment 7-822-83 (presumably the first conviction described above).

Third and Fourth Convictions

On March 11, 1984, the respondent was again arrested in possession of marijuana over 25 grams and indicted for possession of marijuana and possession of marijuana with intent to distribute the same. He also was charged with assault on the arresting officer

and with resisting arrest. The indictment was #473-4-84-A. On May 21, 1984, the respondent pled to possession of marijuana with intent to distribute the same, contrary to N.J.S.A. 24:21-19a(1) and to assault on a police officer, third degree, contrary to N.J.S.A. 2C-16(5). He was incarcerated for 180 days concurrent with his violation of probation on his second marijuana conviction (Indictment 11-1466-83) and given an additional but concurrent sentence of 30 days on the assault.

DISQUALIFICATION FOUND

I FIND that the respondent was convicted of four offenses enumerated in N.J.S.A. 5:12-86c(1) and (3), to wit: N.J.S.A. 24:21-19 on three occasions and N.J.S.A. 2C:12-1b on one occasion. I FIND that these offenses were all committed within the calendar years 1983 and 1984 and represented ongoing criminal activity. I CONCLUDE that the respondent's casino registration should be revoked pursuant to N.J.S.A. 5:12-86 and N.J.S.A. 5:12-91b unless saved by rehabilitation pursuant to N.J.S.A. 5:12-91d.

THE RESPONDENT

Jewel Jackson was born on April 20, 1956 in Philadelphia, Pennsylvania. He is the second child of eleven. His father was a career navy man and seldom home. The respondent attended but did not graduate from Olney High School in Philadelphia. He joined the U.S. Army at an early age. His MOS was "vehicle mechanic". He was with the 82nd Airborne and rose to the rank of Sergeant E5. He is married with three children.

In 1979, he reenlisted in the Army and with his reenlistment bonus check he bought some merchandise stolen from a Sears Roebuck store in North Carolina. The goods were traced to him; he was arrested and convicted in North Carolina, and sentenced to probation and restitution in the amount of \$395. He claims that because he was a "good trooper" with no disciplinary record at all, he was not subjected to military discipline for the offense.

On August 4, 1982, after completing nine years active duty the respondent voluntarily left the Army and was honorably discharged. Several factors were involved in this decision; which hindsight reveals was not a wise one. He claims that he was using

marijuana regularly and was fearful of discovery by the Army. Another factor was the death of his mother. In addition, the respondent's father asked him for help in raising a younger brother still in high school. His father apparently could not cope.

The respondent was discharged during a period of time in which unemployment benefits were not paid to separating servicemen. A job which the respondent had counted on fell through and he found himself unemployed with a wife and three children to feed. He went first to Philadelphia but was unable to find work. He eventually moved into a family home in Pleasantville with some cousins.

Shortly after arriving in Pleasantville, his first arrest occurred on June 18, 1983. The respondent claims he did not sell marijuana or possess it with the intention to do so, but took the plea bargain offered to him to save his wife and cousins from a conviction since marijuana was found all over the house in a raid.

The respondent worked a hot dog stand in Atlantic City. He claims that his second arrest came about in the following way: A friend of his hurt his leg and asked the respondent to operate his hot dog stand on March 11, 1984. The respondent did so and the friend sat nearby in the respondent's car. The friend "shot up" and was discovered unconscious by the police. In the respondent's car was a quantity of marijuana. The respondent denied ownership in this hearing but pled guilty in criminal court.

Subsequent to this arrest the respondent's home burned down and he and his wife and three children were left homeless. They were placed in a welfare motel.

The respondent claims he now began to sell marijuana in earnest to get the family out of the welfare motel. He was caught by the same police officer who got him the first time. There was an attempt by the respondent to get away. The officer physically restrained the respondent and was punched for his troubles.

This time the respondent was placed in the New Jersey Prison System. The classifications section sent him to Jones Farm as a cook. Jones Farm is a unit utilized for the incarceration of convicted judges, lawyers, police officers and prison guards. It is a minimum security facility.

While at Jones Farm the respondent attended A/A meetings and took GED courses. He was transferred from the Farm to the Volunteers of America house in Camden. The VOA operates a halfway house there under contract to the state and federal government. Prisoners are placed there during good behavior. Each prisoner makes an individual contract which includes rehabilitation goals with the VOA. As part of his contract, and in order to support his family, the respondent obtained a job loading ships in Camden.

The respondent applied for a kitchen steward job at a casino and was hired by Trump Castle. He commuted from the Camden VOA facility to Trump Castle every day to work until he was released from prison and the VOA. In his job at the casino hotel he is employed in the kitchen. His main duty is to clean all of the heavy rubber mats in the kitchen daily. When not so employed, he washes dishes. He is well liked on the job and his supervisors claim he is an excellent employee who is a self-starter and a leader. He is due for a promotion. The respondent also works when he can on the hot dog carts. He is enrolled for the October class at Pennco Tech in Blackwood, New Jersey. He says he has made arrangements for a split shift so that he can leave work at 6:00 a.m. and be at school by 8:30 a.m.

During his time in prison and in a halfway house the respondent has supported his family. Since he has been fully employed at the casino he has not had any police contact.

REHABILITATION FACTORS

91d(1) The nature and duties of the registrant's position.

He is a scullery worker responsible for cleaning rubber floor mats and dishes in a casino hotel restaurant.

91d(2) The nature and seriousness of the offense.

Street level sales of marijuana over a period of nine months.

91d(3) The circumstances under which the offense occurred.

On three occasions the respondent was in possession of his inventory of marijuana when apprehended by the police, he was not arrest for actual sales.

91d(4) The date of the offense.

These offenses occurred on June 18, 1983, October 31, 1983 and March 11, 1984.

91d(5) The age of the registrant when the offense was committed.

The registrant was born on April 20, 1956 and was 27 years old when the offenses occurred.

91d(6) Whether the offense was an isolated or repeated incident.

These offenses were repeated over a period of nine months.

91d(7) Any social conditions which may have contributed to the offense.

The death of the respondent's mother, the inability of his father to cope with his siblings, the homelessness caused by a fire and the respondent's inability to find suitable employment in order to properly support his wife, three children and siblings may have contributed to the offenses.

91d(8) Any evidence of rehabilitation, etc.

The respondent had good conduct in prison. He was classified to Jones Farm, a minimum security facility where he attended A/A meetings and GED courses. He was permitted to transfer to the Volunteers of America so that he could obtain full employment prior to his release from prison (work release). He worked at the Camden Shipyard and at Trump Castle Casino in the kitchen during work release. He is well recommended by his supervisors at Trump Castle and has had no police contact since his release from prison in the spring of 1985.

On the other hand, the respondent denied participating in the first two crimes to which he pled guilty in criminal court. This may be seen as evidence that the respondent is not yet rehabilitated. He is also still on parole and urine monitoring.

CONCLUSIONS

BUT FOR the respondent's successful employment in the kitchen at Trump Castle, I would not find him rehabilitated. He has, however, shown that he can do his job well and remain free of criminal involvement. These should be the overriding considerations when determining the fitness of a scullery man to work in a nongaming, no-guest contact position.

I **CONCLUDE** that the respondent is rehabilitated from the convictions of 1983 and 1984 and I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

December 19, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

December 22, 1986
DATE

Receipt Acknowledged:

Al Loris Zayas
CASINO CONTROL COMMISSION

DEC 24 1986
DATE

Mailed to Parties:

Ronald J. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESSES

For Petitioner:

Mark Pincus
Walter Coleman

For Respondent:

Jewel A. Jackson

EXHIBITS

- P-1 Indictment and Judgment of Conviction
- P-2 Indictment 0473-4-84-A and Judgment of Conviction
- P-3 Complaint
- P-4 Arrest report

- R-1 Letter to Judge Holmes from Jewel Jackson (sent to the DGE)
- R-2 Appointment card from Pennco Tech
- R-3 Letter, dated September 15, 1986, from Ted C. Weiner
- R-4 Letter, dated March 13, 1986, from Greg Farquharson
- R-5 Letter, dated July 7, 1986, from David Glover
- R-6 Letter, dated March 13, 1986, from David Glover
- R-7 Letter, dated March 17, 1986, from David Soltis

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-82
OAL DOCKET NO. CCC 2571-86
REGISTRATION NO. 30388-40
LICENSE NO. 32227-21 (INACTIVE)

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

Complainant, :

ORDER

v. :

ALLEN K. JACOBS, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision-settlement of the administrative law judge having been filed with the Casino Control Commission (Commission); and the settlement having been modified with the consent of the Division of Gaming Enforcement (Division) by letter from the respondent's attorney dated January 8, 1987; and the Commission having considered the entire record of the proceedings at its public meeting of January 14, 1987; and

IT IS on this *19th* day of June 1987, ORDERED that pursuant to the terms of the settlement:

- (1) The Division concedes that it can not prove, pursuant to N.J.S.A. 5:12-86(c)(3) and (g) by a preponderance of evidence, that the

respondent was guilty of the disqualifying offense of possession of a controlled dangerous substance (CDS) with intent to distribute in violation of N.J.S.A. 24:21-19a(1).

- (2) The respondent concedes that as a result of his conviction for possession of cocaine in violation of N.J.S.A. 24:21-20a(1), he can not establish by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).
- (3) Although the respondent's casino employee license (32227-21) has expired, he agrees not to reapply for a casino employee license for a period of five years from October 7, 1986.

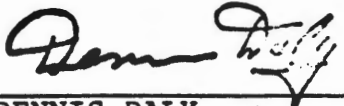
IT IS FURTHER ORDERED that the respondent is disqualified from licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b), based upon his failure to affirmatively demonstrate the requisite good character, honesty and integrity; and

IT IS FURTHER ORDERED that the initial decision-settlement, as modified, is adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division seeking revocation of the respondent's casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision-settlement, as modified, which is incorporated herein by reference and made

a part hereof, and the respondent is permitted to retain his casino hotel employee registration.

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

SETTLEMENT

OAL DKT. NO. CCC 2571-86

AGENCY DKT. NO. 86-82

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

Petitioner,

v.

**ALLEN K. JACOBS,
Respondent.**

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Gerald F. Miksis, Esq., for respondent

Record Closed: October 7, 1986

Decided: October 14, 1986

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

STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission on March 5, 1986 seeking revocation of the respondent's casino employee license #32227-21 and casino hotel registration #30388-40 based upon an indictment charging the respondent with possession of cocaine in an automobile with the intent to distribute the same.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The parties were convened at the Absecon Municipal Court on October 7, 1986.

SETTLEMENT AGREEMENT

The parties agreed to enlarge the prehearing order to include the issue of good character, honesty and integrity pursuant to Section 89b(2) and 90b of the Casino Control Act and which the Division pled at paragraph 7 of the complaint. This motion was granted.

The Division conceded that it could not prove by a preponderance of the evidence pursuant to Section 86g of the Casino Control Act that the respondent possessed cocaine with the intent to distribute it contrary to the law.

The respondent conceded that as a result of his conviction for possession of cocaine he could not establish by clear and convincing evidence his reputation for good character, honesty and integrity required for casino licensure by Section 89b(2) and 90b of the Casino Control Act.

The Division agreed to dismiss so much of the complaint which seeks revocation of the respondent's casino registration.

The respondent agreed to withdraw his answer and defense to so much of the complaint as seeks revocation of his casino gaming license.

I **FIND** that the parties freely and voluntarily entered into the above recited agreement. I further **FIND** that the agreement is fair and dispositive of all issues.

I **ORDER** that so much of the Division's complaint as seeks revocation of the respondent's casino hotel registration be **DISMISSED**

I **ORDER** that the respondent's casino gaming license be **REVOKED**.

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

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

Oct. 14, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ (2)

Receipt Acknowledged:

October 15, 1986
DATE

Melores Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 17 1986
DATE

Ronald D. Parker / 25
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-35; 86-EA-101
OAL DOCKET NOS. CCC 4508-86
AND 5619-86
REGISTRATION NO. 53261-40
APPLICATION NO. 59242-21

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

Complainant, :

V. :

DONALD L. JONES, JR., :

Respondent. :

AND :

APPLICATION OF DONALD L. JONES, JR. :

FOR A CASINO EMPLOYEE LICENSE :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 1, 1987,

IT IS on this ^{3rd} day of April 1987, ORDERED that the initial decision is modified as follows:

(1) The ALJ's separate conclusion at page 7 of the initial decision that the respondent failed to establish his rehabilitation pursuant to N.J.S.A. 5:12-90(h) or 91(d) is deleted. In Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (Commission decision August 15, 1985), the Commission held that the notion of rehabilitation

is subsumed in inimical analysis. Just as it is inappropriate to consider rehabilitative factors after concluding that an offense is inimical it is inappropriate to draw conclusions on the issue of rehabilitation before coming to a conclusion on the issue of inimicality.

(2) Considering the nature, date and seriousness of the offense which involved the theft of a co-employee's paycheck, the respondent's subsequent conviction in 1985 on two counts of assault in violation of N.J.S.A. 2C:12-1a(1) and the absence of any significant evidence of rehabilitation, the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4).

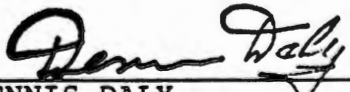
(3) Because the respondent has applied for a casino employee license (See N.J.S.A. 5:12-90), the ALJ's conclusion that the respondent failed to establish by clear and convincing evidence that he possesses the requisite degree of good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-89(b)(2) should also include a citation to N.J.S.A. 5:12-90(b).

IT IS FURTHER ORDERED that the casino hotel employee registration held by Donald L. Jones, Jr. is revoked and his application for a casino employee license denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4508-86
AGENCY DKT. NO. 86-EA-101
OAL DKT. NO. CCC 5619-86
AGENCY DKT. NO. 87-35
(CONSOLIDATED)

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

Petitioner-Respondent,

v.

DONALD L. JONES, JR.,
Respondent-Applicant.

Joanne Ciancimino, Deputy Attorney General, for petitioner-respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Donald L. Jones, Jr., respondent-applicant, pro se

Record Closed: January 12, 1987

Decided: February 3, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter, dated May 27, 1986, with the Casino Control Commission (Commission) objecting to the issuance of a casino employee license to Donald Leroy Jones, Jr., alleging, among other things, that his arrest, charge, finding of guilt and conviction of possession of stolen property in violation of N.J.S.A. 2C:20-7, renders his conduct to be inimical to the policies of the Casino Control Act (Act), pursuant to

N.J.S.A. 5:12-86c(4). Further, that by his conduct, he does not possess the requisite good character, honesty and integrity to hold a casino employee license, pursuant to N.J.S.A. 5:12-89b(2).

Subsequently, on August 7, 1986, the Division filed a complaint before the Commission seeking the revocation of respondent's casino hotel employee registration grounded upon his violation of N.J.S.A. 2C:20-7, alleging that such conduct is inimical to the policies of the Act, pursuant to N.J.S.A. 5:12-86c(4).

PROCEDURAL ASPECTS

The Commission transmitted the matters to the Office of Administrative Law (OAL) with the request to consolidate and for determination as contested cases, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing was held on September 3, 1986 and, thereafter, a hearing was conducted on January 12, 1987, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. At the conclusion of the hearing the record in the matter was considered closed on January 12, 1987.

ISSUES

The Division, by leave on oral motion granted, amended the Issues as set forth in the Prehearing Order to read as follows:

- A. Whether Donald L. Jones, Jr.'s conduct, by reason of his arrest, charge, finding of guilt and conviction of possession of stolen property in violation of N.J.S.A. 2C:20-7, renders his application for licensure and his continued registration to be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4)?
- B. Whether respondent's conduct, as alleged in Section A above, establishes that he does not possess the requisite good character, honesty and integrity as an applicant for licensure pursuant to N.J.S.A. 5:12-89b(2)?

UNDISPUTED FACTS

On or about June 20, 1984, respondent, Donald Leroy Jones, Jr., was employed as a motor vehicle parking valet by the Tropicana Hotel and Casino (Tropicana), Atlantic City, New Jersey, under his casino hotel registration number, DGE No. 56261-40. On that date, respondent received his paycheck from Tropicana. Adhered to respondent's paycheck was a paycheck payable to a Wayne R. Jones in the amount of \$143.10. Upon his discovery of the Wayne R. Jones paycheck, respondent did not turn it over to his supervisor or return it to the cashier of the Tropicana. Rather, respondent gave the unauthorized paycheck to Vincent Street, a then employee of the Playboy Hotel/Casino, with whom respondent travelled to and from Bridgeton and Atlantic City. Street asserted to respondent that he knew of an employee at a liquor store who would cash the Wayne Jones paycheck without requiring any identification. The two men proceeded to the City Liquor Store, Millville, New Jersey, where respondent cashed his personal paycheck and where Street forged the signature of Wayne Jones to the unauthorized paycheck and cashed it with a purchase of beer.

It is noted here that there is a factual dispute with regard to the distribution of the proceeds of the forged and cashed check payable to Wayne Jones. Vincent Street reported to Detective Ronald J. Harvey, Millville Police Department, that he turned over all of the money, except approximately \$10, to respondent. Respondent asserts that Street gave him either \$40 or \$50 from the unauthorized cashed check. In any event, there is no dispute that respondent was in receipt of proceeds from the forged and cashed check. (P-2).

On July 4, 1984, respondent was arrested and charged with possession of stolen property, N.J.S.A. 2C:20-7; forgery, N.J.S.A. 2C:21-1 and theft of property, N.J.S.A. 2C:20-6. On August 23, 1984, respondent was found guilty of violating N.J.S.A. 2C:20-6 with the forgery charge dismissed. The offense, for which respondent was convicted, provides as follows:

N.J.S.A. 2C:20-6. Theft of property lost, mislaid, or delivered by mistake

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.

Respondent was fined \$150 and court costs of \$25. He was also required to pay \$25 to the VCCB and make full restitution of \$143.10 within 30 days of entry of the guilty plea. Thereafter, his employment with Tropicana was terminated.

There is no dispute that respondent has evidenced a lengthy arrest and conviction record of criminal offenses. Respondent does, however, dispute certain circumstances by which some of the arrests were effectuated and the adjudicated results. Notwithstanding, the herein record demonstrates respondent's arrests, charges and dispositions as follows:

On October 28, 1979, respondent was placed under arrest by the City of Bridgeton Police Department (P-3) and charged with theft by unlawful taking, N.J.S.A. 2C:20-3; criminal trespass, N.J.S.A. 2C:18-3; Criminal mischief, N.J.S.A. 2C:17-3; and possession of burglar tools, N.J.S.A. 2C:5-5. On October 29, 1979, respondent was found not guilty of the N.J.S.A. 2C:17-3 and N.J.S.A. 2C:5-5 offenses, however, he was found guilty of criminal trespass, N.J.S.A. 2C:18-3b1 and theft by unlawful taking, N.J.S.A. 2C:20-3 and fined \$100 on each count together with \$25 court cost on each count. (P-4).

On December 6, 1983, respondent was arrested by the City of Bridgeton Police and charged with the crime of assault and battery contrary to N.J.S.A. 2C:12-1 and disorderly conduct in violation of N.J.S.A. 2C:33-2. Respondent was found guilty on both counts and fined a total of \$325 on both counts, plus \$50 court costs and \$25 toward VCCB. (P-5).

On the following day, December 7, 1983, respondent was arrested by the City of Bridgeton Police and charged with criminal trespass, N.J.S.A. 2C:18-3, he was found guilty and fined \$50, together with \$25 in court costs and \$25 VCCB. (P-6).

On April 17, 1985, respondent was arrested by the City of Bridgeton Police and charged with two counts of assault in violation of N.J.S.A. 2C:12-1a(1). Respondent was found guilty of one count and fined \$100 in addition to \$50 court cost on both counts and \$25 VCCB. (P-7, P-8).

Respondent asserts that all of the assault charges and the criminal trespass charge of December 7, 1983, arose out of and as a consequence of domestic disputes he had had with his girlfriend.

This concludes a recital of the undisputed facts in this matter, based upon the testimony of Detective Ronald J. Harvey, of the Millville, New Jersey Police Department, and Yolette C. Ross, State Investigator for the Division, together with the documents marked into evidence P-1 through P-8. These undisputed facts are hereby adopted, by reference, as **FINDINGS OF FACT**.

TESTIMONIAL EVIDENCE

Respondent testified on his own behalf and admitted to his participation in the offense with regards to the theft of property under N.J.S.A. 2C:20-6; i.e., the taking of the Wayne Jones paycheck and conversion to his own use. Respondent asserted, he knew he should have returned the Wayne Jones paycheck when he discovered it was stuck to his own paycheck; however, he gave it to Vincent Street instead. Respondent testified that he did not consider or think about the trouble it would cause him when he participated in the cashing of the check.

Respondent asserted, among other things, that he is now twenty-six (26) years old and that he was twenty-two (22) years of age at the time he committed the N.J.S.A. 2C:20-6 offense. Subsequent to the Millville Police investigation and charge, respondent was terminated from Tropicana's employ and has not been employed in the casino industry since. He has held seasonal employment in the agriculture business in southern New Jersey and on the date of hearing respondent was collecting unemployment insurance compensation as the result of a layoff from Seabrook Brothers, a food processing firm. Respondent is not married; however, he is under a court order to provide \$40 per week in child support payments for one child, three and one-half years of age.

FINDINGS OF FACT

Having reviewed and considered the testimony and documents offered in this matter and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I make these additional **FINDINGS OF FACT**:

1. Respondent testified on his own behalf and admitted to the N.J.S.A. 2C:20-6 offense.
2. Respondent manifested no remorse for the committed offenses other than his assertion that he did not consider the adverse consequences it would cause him when and if the offense was detected.
3. Respondent offered no testimony by others or documentation to demonstrate a satisfactory employment record with Tropicana or other employers.
4. Respondent offered no evidence by others attesting to his good character, honesty and integrity.
5. Respondent's arrests and convictions, subsequent to his conviction of the N.J.S.A. 2C:20-6 offense, does not demonstrate a degree of rehabilitation required to attain and hold licensure as a casino employee.

DISCUSSION AND CONCLUSIONS

The Division contends, among other things, that respondent's conduct, specifically with reference to the N.J.S.A. 2C:20-6 offense and generally with reference to his continued criminal behavior, are inimical to the policies of the Act which disqualifies him from casino employee licensure and provides sufficient grounds for the revocation of his casino hotel registration, under N.J.S.A. 5:12-86c(4). The Division argues that the nexus of the N.J.S.A. 2C:20-6 crime with the casino industry; i.e., the theft and conversion of a casino hotel registrant's paycheck, is so serious it is inimical to the policies of the Act to an extent that it precludes respondent from holding licensure as a blackjack dealer for which he has applied. It asserts that in such a position respondent would be entrusted with money and goods; responsibilities which he is incapable to handle or assume. The Division finally argues that respondent produced no evidence of his good character, honesty and integrity nor evidence of his rehabilitation. Consequently, it argues, his application for casino employee licensure should be denied and his present casino hotel registration be revoked.

This administrative tribunal is mindful of the Commission's admonition that rehabilitation under sections 90h and 91d of the Act are not applicable to the issue of inimicality, pursuant to section 86c(4). Davis v. Div. of Gaming Enforcement 8 N.J.A.R. 301, 313. Moreover, it is further aware that the eight rehabilitation factors enumerated in sections 90h and 91d are appropriate for consideration within the inimical analysis. Id. at 313-314.

Having carefully considered the total record before me, I **CONCLUDE** that respondent has failed to establish his rehabilitation under either section 90h or 91d. This is so because of the gravity of the N.J.S.A. 2C:20-6 offense with the lack of any remorse on the part of respondent together with his subsequent and continued disregard for the law.

I further **CONCLUDE** that the circumstances of this case clearly demonstrates respondent's conduct to be inimical to the Act for the following reasons:

Upon his discovery of the Wayne Jones paycheck adhered to his own paycheck, respondent was aware and knew it should be returned to the Tropicana. However, he turned the paycheck over to his companion Vincent Street knowing it was wrong to do so. Despite his protestations that he wanted nothing more to do with the matter, respondent's conduct is further aggravated by allowing Street to forge and cash the unauthorized check and sharing in the ill-gotten proceeds. There are no mitigating factors to excuse or condone respondent's behavior. Respondent's actions were no mere accident but, rather, they were carried out in a knowing, purposeful and intentional fashion for his own financial gain.

As the Commission observed In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, DKT. NO. 79-CL-1 (Commission Decision February 26, 1979) at 15, respondent's offenses is one "which, when viewed in light of all the circumstances, indicate that participation by that person. . . would justifiably undermine public confidence in the integrity of the. . . gaming operations" if he were granted licensure as a casino employee to perform as a blackjack dealer.

I further **CONCLUDE** that respondent has failed to demonstrate he possesses the requisite good character, honesty and integrity by clear and convincing evidence or, for that matter, any other standard of proof.

ORDER

Accordingly, it is **ORDERED** that the application of Donald J. Jones, Jr. for a casino employee license be and is hereby **DENIED**.

It is further **ORDERED** that respondent's casino hotel registration number DGE No. 56261-40 be and is hereby **REVOKED**.

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

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

3 February 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

February 4, 1987
DATE

Richard Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 6 1987
DATE

Donald J. Parks
OFFICE OF ADMINISTRATIVE LAW

bc/ee

DOCUMENTS IN EVIDENCE

- P-1 Complaint and Summons. The State of New Jersey vs. Donald Jones, July 6, 1984
- P-2 Police Department-Investigation Report by Detective Ronald J. Harvey, Millville Police Department, June 28, 1984, July 5 and 6, 1984.
- P-3 City of Bridgeton Police Department Arrest Report October 28, 1979
- P-4 Complaint and Warrant, The State of New Jersey vs. Donald L. Jones, October 28, 1979
- P-5 Complaint and Summons, The State of New Jersey vs. Donald Jones, December 7, 1983 .
- P-6 Complaint and Summons, The State of New Jersey vs. Donald Jones, December 7, 1983
- P-7 Complaint and Summons, The State of New Jersey vs. Donald Jones, April 18, 1985
- P-8 Complaint and Summons, The State of New Jersey vs. Donald Jones, April 18, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-147 &
84-EA-69 (CONSOLIDATED)
OAL DOCKET NO. CCC 4730-84
APPLICATION NO. 44263-21
REGISTRATION NO. 30440-40

APPLICATION OF STEVEN C. KIRTSOS

FOR A CASINO EMPLOYEE LICENSE;

AND

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

FINAL ORDER

Complainant,

v.

STEVEN C. KIRTSOS,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 23, 1985,

IT IS on this 4th day of March, 1987 ORDERED that the initial decision is modified as follows:

1. The ALJ's finding that Mr. Kirtsos' March 27, 1981, conviction for distribution of controlled dangerous substances in violation of N.J.S.A. 24:21-19a(1) is a disqualifying offense under N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary in view of the ALJ's finding,

with which the Commission concurs, that this same offense is disqualifying under N.J.S.A. 5:12-86(c)(3).

2. Considering the nature and date of the disqualifying offense, the fact that the respondent has seemingly resolved his drug dependency and the respondent's educational and eleemosynary activities subsequent to his disqualifying offense, the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

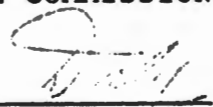
IT IS FURTHER ORDERED that Mr. Kirtsos is disqualified and his application for a casino employee license is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Steven C. Kirtsos is prohibited from reapplying for or obtaining any other registration, license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.S.A. 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. NO. CCC 4730-84

AGENCY DKT. NOS. 84-147 and

84-EA-69

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

Petitioner,

v.

STEVEN C. KIRTSOS,

Respondent.

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

Steven C. Kirtsos, respondent, pro se

Record Closed: October 22, 1984

Decided: December 4, 1984

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as "Division") with the Casino Control Commission on May 7, 1984 seeking the revocation of the respondent's casino hotel registration and the recommendation of the Division that the respondent not be granted a casino employee license (craps dealer) for the reasons set forth in its letter to the Casino Control Commission, dated March 22, 1984. The respondent requested hearings regarding both matters and the combined matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held on August 14, 1984, the parties agreed that the issues are:

- (a) Whether the respondent is disqualified from licensure and/or registration pursuant to N.J.S.A. 5:12-86c due to certain alleged criminal convictions.
- (b) Whether the respondent's actions relating to the alleged criminal offenses makes his continued registration and/or his licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- (c) Whether the respondent can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee by N.J.S.A. 5:12-89(b)2.
- (d) Whether the respondent can establish that he has been rehabilitated as provided by N.J.S.A. 5:12-90h and 91d.

The hearing in this matter took place on October 22, 1984. Based on the testimony and exhibits admitted into evidence, I **FIND** that the following facts are not in dispute:

- (1) On April 22, 1977, the respondent was arrested in Egg Harbor Township for the possession of stolen property (gasoline credit card) (P-2). After he was indicted, the respondent was accepted into the Pretrial Intervention Program and successfully completed this program. Mr. Kirtsos stated that he found a wallet containing credit cards and he used the gasoline credit card.
- (2) On January 15, 1979, the respondent was arrested in Atlantic City for the possession of a weapon without a permit (P-3). The respondent was indicted, pled guilty and was incarcerated for eight days in the county jail. Mr. Kirtsos stated that he had been mugged and robbed while employed as a cab driver by the Yellow Cab Company and that he had purchased the gun for his own defense. Approximately two weeks before he was arrested, Mr. Kirtsos bought the gun on the street for \$30 and he did not apply for a gun permit because he felt that he would be denied a permit due to his drug problem and prior arrest. On January 15, 1974, the respondent was waiting to pick up a customer in front of Resorts Hotel and Casino and he observed police officers heading in his direction.

Because he felt that the officers were going to search his cab, Mr. Kirtsos placed the gun in the cab driven by Paul Altshuber. One of the policemen saw him place something into Mr. Altshuber's cab, they searched this cab and found the gun.

- (3) On November 6, 1980, Mr. Kirtsos was arrested in Atlantic City for selling three pills, which were later established to be Dalmane, a controlled dangerous substance, to an undercover New Jersey State Police Officer for \$5 on February 19, 1980 (P-4). Mr. Kirtsos was indicted for the distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19a(1) and b(3), pled guilty and was placed on probation for 18 months, was fined the sum of \$200 payable during the first six months of probation and was required to report every three months to Narco or a clinic for examination (P-1). Mr. Kirtsos stated that he wanted to fight the charge but that he could not afford to hire an attorney and that he followed the advice of the public defender assigned to him and plead guilty.
- (4) Mr. Kirtsos admitted that he had taken cocaine and heroin periodically over a number of years and that he has not taken any drugs since the later part of 1981. Mr. Kirtsos voluntarily took a 21-day detoxification program in November 1979 at the Institute For Human Development in Atlantic City (R-2). After completing this program, Mr. Kirtsos was in an out-patient methadone maintenance program from October 2, 1979 through March 31, 1982 (R-2); however, during that period he periodically would take drugs.
- (5) While Mr. Kirtsos was on probation for the drug conviction (P-1), he failed to complete the payment of the fine and was convicted of a violation of probation (P-1). Mr. Kirtsos was given the choice of paying the balance of the fine or spending 30 days in the county jail (P-1). Mr. Kirtsos paid the fine.

- (6) Mr. Kirtsos gave up being a cab driver because he considers it to be a dangerous job in view of all the robberies and muggings of cab drivers.
- (7) Between June 1, 1981 and October 1981, Mr. Kirtsos was employed as an assistant manager by Buten Paint Company. He quit this job one week after the management of the paint company found that \$200 was missing and that there were no signs of a burglary.
- (8) For a period in 1980, Mr. Kirtsos was employed by Bayard Candy Company in Pennsauken, New Jersey; however, he quit the job because of the commuting distance between Pennsauken and his residency in Atlantic City.
- (9) From October 6, 1983 to February 1984, Mr. Kirtsos was employed by Inteleplex Company and was fired from his position.
- (10) From February 1984 to the date of the hearing, Mr. Kirtsos has not been regularly employed. Mr. Kirtsos has been unsuccessful in his attempts to find employment as a casino hotel employee. He worked for several weeks as a condominium salesman and has done odd jobs as a carpenter. Just prior to hearing in this matter, Mr. Kirtsos fell and fractured his wrist while he was painting.
- (11) At the time of the hearing, Mr. Kirtsos was 34 years old. He lives with his mother and pays her rent whenever he can afford to do so. Mr. Kirtsos periodically helps organize children's softball teams.
- (12) Mr. Kirtsos attended a program for career employment in Atlantic City for approximately two weeks in 1979, and he completed the craps dealer course in April 1983.

There are certain factual disputes in this matter. As to his employment with Buten Paint Company, Mr. Kirtsos testified that he cooperated with the company's investigation regarding the missing money before he left the company and that he quit while the investigation was still going on because of his dissatisfaction with his position. Mr. Kirtsos stated that he had decided to quit several months before it was discovered that the money was missing.

According to Thomas E. Hollinger, the employee of the Division assigned to investigate this matter, representatives of Buten Paint Company told him that only three people, including the respondent, could have taken the \$200 and that the respondent was the only one who did not cooperate in the investigation and that the respondent refused to answer any questions regarding the missing money. There was no proof that the respondent had taken the money and Buten Paint Company did not file a criminal complaint against the respondent.

As to his employment with Inteleplex Company, Mr. Kirtsos stated that he was doing a good job and was surprised when he was fired. In response to his request for an explanation, Mr. Kirtsos' supervisor allegedly said that he was told to fire the respondent. Mr. Hollinger testified that an employee of Inteleplex Company told him that Mr. Kirtsos was terminated for insubordination.

During the hearing, Mr. Kirtsos did not deny that he sold the undercover policeman drugs on February 19, 1980. However, Mr. Kirtsos stated that on that day he was not taking any drugs, except for Valium, which had been prescribed for his nervous condition, and that he did not have any drugs in his possession. The respondent stated that he had never heard of Dalmane before his arrest on November 6, 1980. Also, the respondent noted that his arrest occurred more than six months after the alleged incident and that he could not recall what happened that night and that he was working long hours during that period because he needed the money. In addition, during his testimony, Mr. Kirtsos made conflicting statements as to when he was taking drugs during 1980. Mr. Kirtsos was regularly receiving methadone during 1980 as part of the out-patient detoxification program (R-2).

As part of his proofs, Mr. Kirtsos submitted sheets on which a large number of persons had signed their names in attestment to the respondent's good character, honesty and integrity. Mr. Kirtsos stated that he knew the people who signed the lists, that they were aware of his arrests and convictions and that they knew about the present matter. Deputy Attorney General D'Elia randomly selected several names and Mr. Kirtsos was unable to identify one signature that appeared on one of the sheets. Mr. Kirtsos indicated that the person may have been a friend of a person he knew who had signed his name without the respondent's knowledge.

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

- (1) Since he gave up being a cab driver, Mr. Kirtsos has held several jobs and is currently unemployed. As to his employment with Buten Paint, it is obvious that the respondent quit his job in order to avoid further questioning regarding the missing \$200.
- (2) During his testimony, Mr. Kirtsos made conflicting statements regarding his drug use during 1980 and I believe his statement that he could not recall what occurred on the day he was accused of selling drugs to an undercover policeman. However, based on his own testimony, I have no reason to doubt that he did in fact sell drugs to an undercover policeman on February 19, 1980.
- (3) As to the list of names (R-1), Mr. Kirtsos failed to establish that all of the persons who signed these sheets knew him well enough to make a statement as to his good character, honesty and integrity.

In closing, Mr. D'Elia argued that the Division had established the existence of a statutory disqualifier and that Mr. Kirtsos had not shown that he had been rehabilitated and specifically that Mr. Kirtsos had not shown any remorse regarding his prior criminal activities. Mr. D'Elia stated that the respondent would have continued to illegally use the gasoline credit card if he were not caught and that he made no attempt to get a permit to have a handgun and tried to hide the gun in another person's vehicle to avoid arrest. As to the drug conviction, Mr. D'Elia stated that Mr. Kirtsos' testimony was confusing as to when he was taking drugs and that he probably would not have continued the drug detoxification program had he not been ordered to do so by the court. Mr. D'Elia also noted that Mr. Kirtsos did not pay the fine as ordered by the court until the judge threatened to incarcerate him.

In his argument, Mr. D'Elia stated that little weight should be given to the list of persons who signed on behalf of Mr. Kirtsos, since apparently Mr. Kirtsos tried to get many signatures and did not limit himself to people who knew him well enough to attest to his character. Lastly, Mr. D'Elia argued that Mr. Kirtsos had not established that he

has the necessary reputation for good character, honesty and integrity needed for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b(2), and that he has not shown that his continued registration and/or licensure would not be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

On his own behalf, Mr. Kirtsos stated that he has stopped taking drugs and wants to proceed with his life. Mr. Kirtsos would like to improve his position and get a job in either the casino industry or in real estate. Mr. Kirtsos denied that he asked just anyone to sign the petition on his behalf.

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

The Casino Control Act provides that a person can overcome the prohibition against registration and licensure by affirmatively demonstrating his or her rehabilitation, and the law sets forth certain criteria to be considered in determining whether or not a person has been rehabilitated, N.J.S.A. 5:12-90h and 91d. Having reviewed the facts in this matter, I **CONCLUDE** that Mr. Kirtsos has not shown by clear and convincing evidence that he has achieved the level of rehabilitation necessary for his continued registration and for the granting of a casino employee license. Although apparently the respondent has not been involved in any recent criminal activities, insufficient time has passed and there has been no showing that he has changed his lifestyle.

Further, I **CONCLUDE** that Mr. Kirtsos has not shown that his continued registration and/or licensure would not be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4), nor has he established that he has a current reputation for good character, honesty and integrity, which is necessary for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b(2). Although I was impressed by Mr. Kirtsos' ingenuity in gathering the lists of persons' signatures, he was unable to show that all of the persons who signed know him well enough to make a statement regarding his character, honesty and integrity. Further, an issue of this nature cannot be decided on the number of persons willing to sign their names. Mr. Kirtsos would have been better served if he had asked several people to submit letters indicating how long and under what circumstances they have known him as well as giving their opinion regarding his character, honesty and integrity.

Therefore, I **ORDER** that the registration of Steven C. Kirtsos as a casino hotel employee be **REVOKED** and that his application for licensure as a casino employee be **DENIED**.

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

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

December 4, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DEC 5, 1984
DATE

Paul W. [Signature]
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 07 1984
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Indictment filed against Steven C. Kirtsos and the dispensation on the indictment, and the judgment of conviction on violation of probation.
- P-2 Egg Harbor Township Investigation Report, dated April 22, 1977.
- P-3 Atlantic City Investigation Report, dated January 15, 1979, and Arrest Report, dated January 19, 1979.
- P-4 New Jersey State Police Investigation Report, dated February 20, 1980, and Supplemental Investigation Report, dated June 18, 1980.
- P-5 Personal History Disclosure Form-2A, submitted by Steven C. Kirtsos.

FOR THE RESPONDENT:

- R-1 Petition on behalf of Steven Kirtsos consisting of five pages.
- R-2 Letter from Warren Rogers, Outpatient Unit Supervisor, Institute for Human Development, to Anthony D'Elia, dated September 12, 1984.

WITNESSES

FOR THE PETITIONER:

Thomas E. Hollinger

FOR THE RESPONDENT:

Steven C. Kirtsos

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1987

M - Z

PREPARED BY THE LEGAL DIVISION

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57. <u>State of New Jersey v. Charles M. Martinez</u>	OAL CCC 4511-86 Agency 86-36	01/30/87	732
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60. <u>State of New Jersey v. Michelle Mingle</u>	OAL CCC 7856-86 Agency 87-121	05/29/87	770
61. <u>Application of Rafael A. Monagas for Renewal of his Casino Employee License</u>	OAL CCC 4262-86 Agency 86-EA-72	05/26/87	779
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63. <u>Application of Walter C. Mullins for a Casino Employee License</u>	OAL CCC 1892-86 Agency 86-EA-21	02/18/87	799
64. <u>State of New Jersey v. James J. Nerney</u>	OAL CCC 6146-85 Agency 84-118	01/13/87	811
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69. <u>Application of Bobby Lee Rhea for Renewal of his Casino Employee License</u>	OAL CCC 8918-86 Agency 87-EA-82	06/09/87	862
70. <u>State of New Jersey v. Janet S. Roy, a/k/a Jane S. DeWitt</u>	OAL CCC 4405-85 Agency 85-172	04/01/87	880
71. <u>State of New Jersey v. Alfred L. Royal</u> and <u>Application of Alfred L. Royal for a Casino Employee License</u>	OAL CCC 6771-86 CCC 4413-86 (consolidated) Agency 87-113 83-EA-108	06/09/87	889
72. <u>State of New Jersey v. Stephen J. Soltowski</u>	OAL CCC 8545-83 Agency 82-39	03/20/87	904
73. <u>State of New Jersey v. John A. Spadavecchia</u>	OAL CCC 6676-85 (CCC 1710-85 (On Remand) Agency 85-87	01/15/87	916
74. <u>State of New Jersey v. Ronald F. Staines</u>	OAL CCC 4024-85 Agency 84-387	03/04/87	924
75. <u>Application of Susan C. Terrell for a Casino Employee License</u>	OAL CCC 4935-86 Agency 86-EA-113	03/13/87	935
76. <u>State of New Jersey v. Guy Walker</u>	OAL CCC 7176-86 Agency 87-73	03/10/87	950
77. <u>Application of Martha Walker for a Casino Employee License</u>	OAL CCC 1695-86 Agency 86-EA-14	05/26/87	954
78. <u>State of New Jersey v. Benjamin H. Waters</u> and <u>Application of Benjamin H. Waters for a Casino Employee License</u>	OAL CCC 7470-86 Agency 87-114 87-EA-151	06/12/87	960

<u>NAME OF CASE</u>	<u>DOCKET NOS.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
79. <u>State of New Jersey v. Michael P. Waters</u>	OAL CCC 3933-86 Agency 84-419	06/12/87	969
80. <u>State of New Jersey v. William E. White</u>	OAL CCC 3716-85 Agency 84-47	05/13/87	983
81. <u>State of New Jersey v. Florence Wiessner</u>	OAL CCC 4437-85 Agency 85-293	03/26/87	992
82. <u>State of New Jersey v. Douglas C. Wiggins</u>	OAL CCC 4510-86 (CCC 7532-85 On Remand) Agency 85-369	04/01/87	1002
83. <u>State of New Jersey v. Theodore Williams</u>	OAL CCC 4266-86 (CCC 7817-85, CCC 4334-85 and CCC 7456-84 on Remand) Agency 84-288	05/01/87	1013
84. <u>State of New Jersey v. Lendell C. Wilson</u>	OAL CCC 6017-86 Agency 85-370	06/03/87	1028
85. <u>State of New Jersey v. Theresa Ann Winther</u>	OAL CCC 2635-86 Agency 86-99	02/25/87	1039
86. <u>Application of Allen O. Woody, III for a Casino Employee License</u>	OAL CCC 2189-85 Agency 85-EA-67	06/30/87	1048
87. <u>State of New Jersey v. Elizabeth Yoachum (see, State of New Jersey v. Adamar, et al)</u>			53

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-205
OAL DOCKET NO. CCC 3001-86
LICENSE NO. 21682-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
WILSON MALDONADO,
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 20, 1987,

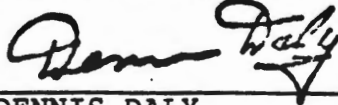
IT IS on this ^{10th} day of June 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license held by Wilson Maldonado is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; 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
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3001-86

AGENCY DKT. NO. 85-205

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

Petitioner,

v.

**WILSON MALDONADO,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards, Attorney
General of New Jersey, attorney) for petitioner**

John J. Zaryck, Esq., for respondent

Record Closed: March 13, 1987

Decided: April 8, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The State alleges by way of a complaint filed with the Casino Control Commission on May 20, 1985, that Wilson Maldonado, the respondent, a Student Relations Assistant in the Pleasantville School District, responsible for 530 children from kindergarten through eighth grade, does not possess the requisite good character, honesty and integrity to deal playing cards in a casino pursuant to N.J.S.A. 5:12-89b(2) and 90b. Moreover, the State alleges that the respondent's license (gaming) to do so should be revoked because it (the State) can show, pursuant to N.J.S.A. 5:12-86g, that the respondent committed acts which are equivalent to one of the offenses listed in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19, sale of cocaine; thus rendering him disqualified from

casino employee licensure unless he can affirmatively show his rehabilitation pursuant to N.J.S.A. 5:12-90h.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on June 6, 1986, and, after several adjournments the parties convened in the Ventnor City Hall Court Room on February 13, 1987 for a hearing. The record was held open until March 13, 1987 in order to give the respondent an opportunity to file a therapist's report.

STATE'S EVIDENCE

The State produced numerous exhibits without objection; an investigation report by Larry Ross (P-1), an investigation report by Sergeant Santoro (P-2), arrest reports (P-3), and two Atlantic County Indictments together with their dispositions (P-4). The State also called detective Larry Ross who swore that his reports were true and accurate.

The reports reveal that the respondent sold \$100 worth of cocaine to undercover agent Detective Larry Ross on February 6, 1985 and \$50 worth on February 13, 1985. At the time of the second transaction, Maldonado told Ross that he earned \$104,000. selling drugs the previous year and that he maintained his records on a home computer.

On February 27, 1985, a raid at Maldonado's house produced computer tapes, ten bags of suspected marijuana and 50 bags of suspected cocaine plus paraphernalia and \$837 dollars in cash. Later testimony revealed that Maldonado's budget appeared on the tapes and confirmed his boast that he earned a substantial income from drug sales.

I **CONCLUDE** that the respondent committed acts which are equivalent to a violation of N.J.S.A. 24:21-19, sale of a controlled dangerous substance, to wit: cocaine; a crime listed in N.J.S.A. 5:12-86c.

I **CONCLUDE** that the respondent's casino employee gaming license should be revoked unless saved from revocation by rehabilitation pursuant to N.J.S.A. 5:12-90h and by proof of his good character, honesty and integrity by clear and convincing evidence as required by N.J.S.A. 5:12-90b.

RESPONDENT'S EVIDENCE

The respondent did not contest the essential facts stated in the police reports. He did however seek to minimize the amount of money he earned as a drug dealer.

The respondent also offered proof of drug rehabilitation by way of letters from Dr. Frederick A. Earle, CAC, of the Therapeutic Intervention Center (R-1 and R-2) which advise that the respondent has satisfactorily completed a 30 day in-patient treatment for chemical dependency, is cooperating in after care, attending AA and NA and has (which is a rare thing) a good prognosis from the disease of addiction.

In addition, the respondent testified that he is attempting to complete 90 meetings of NA in 90 days, a key element in successful after care.

As additional evidence that the respondent is rehabilitated he described his cooperation with the New Jersey State Police. He made a purchase of a controlled dangerous substance and identified his source to the State Police. He claims, and his claim is uncontroverted, that he was offered the return of his dealers license if he continued to cooperate with the State Police. He does not insist that equity compels the reissuance of his license, because he was unable to complete his end of the bargain. He claims that he was so closely surveilled that everyone recognized him for an informant. But, he says, his willingness to cooperate is evidence of rehabilitation.

The rehabilitation statute requires findings in the following eight categories:

- 1) The position applied for is blackjack dealer.
- 2) The offense respondent was convicted of was simple possession of marijuana over 25 grams and simple possession of cocaine. He actually sold these drugs.
- 3) The respondents conviction resulted from a negotiated sentence in exchange for his cooperation in identifying other drug dealers. His actual offense was regular and repeated sales of drugs, over a period of at least one year during which time he had no other means of support. During this time he lived quite well. He was motivated entirely by greed.

- 4) The offense for which respondent was convicted occurred on February 27, 1985. There were numerous prior unprosecuted offenses.
- 5) The respondent was 27 years old when the offenses were committed.
- 6) The respondent has one conviction which has not been repeated.
- 7) No unusual social conditions contributed to this offense.
- 8) The respondent may be rehabilitated from drug use.

I CONCLUDE that the respondent has failed to affirmatively show his rehabilitation pursuant to N.J.S.A. 5:12-90h. Until he has completed 90 and 90, he is at great risk. He still minimizes his crime. There is no evidence that his greed has abated.

THE OFFER AND ACCEPTANCE

The use of criminal informants is not a universally acclaimed police practice although it is an absolutely necessary one. The vast majority of witnesses to criminal acts are only other criminals. The practice is sometimes abused. Police officers sometimes offer more than they can deliver. The respondent claims he was offered his license in exchange for making a number of drug buys. Such a bargain, if made, is unenforceable. The Casino Control Commission does not sell licenses neither does it barter for them. An applicant is either qualified for licensure or an applicant is not; and that is the end of the matter.

GOOD CHARACTER, HONESTY AND INTEGRITY

The fact that a criminal is selected by the police to inform on his peers is no evidence of his good character, honesty and integrity. More often it is only one more proof that there is no honor among thieves. The respondent did not urge his employment status as proof of character. Perhaps he felt the less said about it, the better. Ironically, it is unaffected by this decision.

I **CONCLUDE** that the respondent does not possess the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-90b and 89b2.

I **ORDER** that the respondent's casino employee gaming license be **REVOKED**.

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

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

April 8, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

April 10, 1987
DATE

Victoria Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESS LIST

For the petitioner:

Larry Ross

For the respondent:

Wilson Maldonado

EXHIBIT LIST

For the petitioner:

P-1 Investigation report prepared by Larry Ross

P-2 Investigation report prepared by Sgt. Santoro

P-3 Atlantic City Police Department arrest report P-4 Two Atlantic County
Indictments

For the respondent:

R-1 Progress report

R-2 Letter from Dr. Earle dated March 5, 1987

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

Complainant,

v.

MARINA ASSOCIATES, HARRAH'S ASSOCIATES (NOW TRUMP PLAZA ASSOCIATES) AND HARRAH'S ATLANTIC CITY, INC.

FINAL ORDER

Proceedings having been held in the Office of Administrative Law; and an initial decision/settlement having been filed by the administrative law judge; and the parties with the Casino Control Commission (Commission); and the parties having submitted a supplemental stipulation of settlement (S-1) and consented to the admission of four documents (J-1, J-2, J-3 and J-4) referenced in the original stipulation; and the Commission having considered the entire record at its public meeting of October 22, 1986,

IT IS on this 15th day of January 1987, ORDERED that the initial decision/settlement, as supplemented by S-1, is approved; and

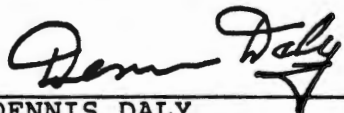
IT IS FURTHER ORDERED that the casino licensees are assessed civil penalties, due and payable upon receipt of an

invoice from the Commission's Division of Financial
Evaluation and Control, in the following amounts:

Marina Associates.....	\$18,500
Harrah's Atlantic City, Inc.....	19,000
Harrah's Associates.....	20,000
(Now Trump Plaza Associates)	

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

SETTLEMENT

OAL DKT. NO. CCC 0919-86

AGENCY DKT. NO. 85-10

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

Petitioner,

v.

**MARINA ASSOCIATES; HARRAH'S ASSOCIATES;
AND HARRAH'S ATLANTIC CITY, INC.**

Respondents.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Nicholas Casiello, Jr., Esq., for the respondents (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Record Closed: July 28, 1986

Decided: August 8, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Marina Associates, Harrah's Associates and Harrah's Atlantic City, Inc., with the commission of various violations of the provisions of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties. N.J.S.A. 5:12-1 et seq. and N.J.A.C. 19:40-1.1 et seq. The respondents opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on January 21, 1985. The respondents filed their answer with the Commission on February 13, 1985. On February 11, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on March 18, 1986, and the matter was scheduled for hearing.

FINDINGS OF FACT AND CONCLUSION

At the request of the parties, two negotiation sessions were conducted in an attempt to mediate a resolution of the various issues. The negotiations were extensive and included an in-depth analysis of the seriousness and extent of the alleged violations, as well as the defenses to the charges and other mitigating factors. Also considered was the prior disciplinary history of the respondents, which is set forth in an attachment hereto and is fully incorporated herein. Ultimately, the parties agreed to a settlement which, includes an extensive stipulation of facts in regard to each allegation, has been set forth in a Stipulation of Facts and Settlement, and is attached hereto and fully incorporated herein. I have reviewed the submissions and the terms of the settlement and

I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by the stipulation which contains the signatures of counsel for each party.
2. The settlement represents a just and equitable resolution of, and imposes an appropriate penalty for, each of the allegations, which is supported by a detailed stipulation of facts regarding each charge.
3. The proposed settlement, including the assessment of monetary penalties, is fully consistent with the prior disciplinary history of each licensee.
4. The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

August 8, 1986
DATE

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

Receipt Acknowledged:

Aug 12, 1986
DATE

Nelson Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 13 1986
DATE

Ronald J. Parker x.5
OFFICE OF ADMINISTRATIVE LAW

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	<u>Date Filed</u>	<u>Docket Number</u>	<u>Licensee(s)</u>	<u>Subject</u>	<u>Status</u>
1)	July 29, 1983	83-245	Marina Associates	Record Storage <u>N.J.S.A. 3:12-96(e)</u> and <u>N.J.A.C. 19:45-1.2(a)</u>	\$4,000.00 fine by Stipulation of Settlement approved by the Commission on May 14, 1986
2) and 3)	November 16, 1984	84-375 84-376	Marina Associates Harrah's Associates	Combination sale of alcoholic beverages <u>N.J.S.A. 5:12-103(d)</u> ; <u>N.J.A.C. 19:50-1.6(r)</u> , <u>1.3(b)</u> and 13:2-23.16 (a) (2)	Proposed Stipulation of Settlement Calling for a fine of \$7,000.00 per licensee filed with the Commission on March 25, 1986
4)	December 21, 1984	84-430	Marina Associates	Advertising; Alleged violations of <u>N.J.S.A. 31.12-70(o)</u> , <u>N.J.A.C. 19:51-1.2(f)</u>	Pending
5)	April 1, 1986	86-98	Harrah's Associates	Alleged improper off-site Collection of Markers	Pending
6)	May 16, 1986	86-185	Marina Associates	Alleged marrying of alcoholic beverages	Pending

W. CARY EDWARDS, ESQUIRE
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625
By: Paul A. Vagianos, Deputy Attorney General

NICHOLAS CASIELLO, JR., ESQUIRE
HORN, KAPLAN, GOLDBERG, GORNY & DANIELS
A Professional Corporation
Fifth Floor, CitiCenter
1300 Atlantic Avenue
Atlantic City, New Jersey
(609) 348-4515

Attorneys for Harrah's Associates, Marina Associates and
Harrah's Atlantic City, Inc.

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STATE OF NEW JERSEY
CASINO CONTROL
COMMISSION

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

Plaintiff,

vs.

MARINA ASSOCIATES, HARRAH'S
ASSOCIATES, and HARRAH'S ATLANTIC
CITY, INC.,

Respondents.

DOCKET NO. 85-10

STIPULATION OF FACTS
AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Paul Vagianos, Deputy Attorney General, and Nicholas Casiello, Jr., of Horn, Kaplan, Goldberg, Gorny and Daniels, attorney for respondents, Marina Associates, Harrah's Associates and Harrah's Atlantic City, Inc., and certain factual

matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

COUNT ONE

1. Respondent, Marina Associates ("Marina"), is now and at all times referenced herein has been a partnership 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 1725 Brigantine Boulevard in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Marina is now the holder of a casino license issued by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act ("Act") and the regulations promulgated thereunder. Said license was issued to Marina on November 27, 1981, renewed effective on November 23, 1982, November 23, 1983, May 26, 1984, May 26, 1985 and May 26, 1986. Marina has been conducting its casino hotel operations pursuant to said license continually to date since that time, including all times referenced hereunder.

3. Marina is the holder of and operates pursuant to an operation certificate effective December 11, 1980, at which time Marina was the holder of a temporary casino permit. Said operation certificate entitles Marina to operate Harrah's Marina Hotel Casino ("the Marina") in accordance with the provisions of the Act and regulations promulgated thereunder.

4. Respondent, Harrah's Associates ("Trump"), is now and at all times referenced herein pertinent to Trump has been a

partnership organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein pertinent to Trump had its principal place of business located at Mississippi Avenue and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

5. Trump is now the holder of a casino license issued 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 Trump on May 26, 1984, and renewed effective on May 26, 1985 and on or about May 16, 1986. Trump has been conducting its casino hotel operations pursuant to said license continually to date since that time.

6. Trump is the holder of, and operates pursuant to, an operation certificate effective May 26, 1984. Said operation certificate entitles Trump to operate Trump Casino Hotel ("the Trump") in accordance with the provisions of the Act and regulations promulgated thereunder.

7. Respondent, Harrah's Atlantic City, Inc. ("HAC"), 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 all times referenced herein had its principal place of business located at 115 38th- Street in the City of Brigantine, County of Atlantic and State of New Jersey.

8. HAC is now the the holder of a casino license issued by the Commission authorizing it to provide certain services to Marina and Trump in accordance with the Act and the regulations promulgated thereunder. Said license was issued to HAC on May 26, 1984, and renewed effective May 26, 1985 and May 26, 1986. HAC has

been providing certain services to Trump and Marina pursuant to said license in support of their respective casino/hotel operations continually to date for Marina and to May 16, 1986, for Trump.

9. By submission approved effective April 19, 1984, the employee licensing functions for both Marina and Trump became the responsibility of HAC's Department of Human Resources which reported to the Vice President - Support Services. Between April 19, 1984, and April 17, 1985, it was the responsibility of HAC's Human Resources Department to monitor and ensure compliance with all employee licensing matters at Marina and Trump and it was the responsibility of the Vice President and General Counsel of HAC to supervise the employee licensing and compliance functions.

10. It was the responsibility of HAC that all employees of HAC would be licensed pursuant to N.J.S.A. 5:12-89, 90 and registered pursuant to N.J.S.A. 5:12-91 depending upon the nature and scope of each employee's responsibilities.

11. The individuals set forth in Exhibit "A" were employed by either Marina, Trump or HAC, but were specifically named on the Restricted Application List distributed to each casino licensee by the Casino Control Commission staff. Said listing, which is distributed to each casino licensee on a quarterly basis by the Commission staff, informed the casino licensees of individuals who are prohibited from employment in the casino industry. These individuals have also been named on final orders issued by the Commission which specifically indicated their prohibition from employment. HAC personnel failed to properly check these notices to determine whether or not these individuals were on the

Restricted Application list. Exhibit "A" is attached hereto and made a part of the record hereof.

12. The individuals set forth in Exhibit "B" were working at either Marina, Trump, or HAC even though their licenses or registrations had expired or even though they have never been issued a casino employee license or hotel registration by the Commission at the time in which they were employed by one of the licensees. Exhibit "B" is attached hereto and made a part of the record hereof.

13. The individuals set forth in Exhibit "C" were issued hotel registrations by the Commission but were employed by either Marina, Trump, or HAC in positions requiring casino employee licensure according to the approved jobs compendium. Eight of these twelve positions were erroneously inputted into HAC's computer systems as requiring hotel registrations by HAC personnel. Exhibit "C" is attached hereto and made a part of the record hereof.

14. The individuals set forth in Exhibit "D" were employed by either Marina, Trump or HAC in positions for which they were not appropriately endorsed by the Commission. Exhibit "D" is attached hereto and made a part of the record hereof.

14A. The license of Antoinette Cosmi, License No. 1530-11, listed in Exhibit "D", was improperly endorsed for the position of Slot Cashier Shift Manager due to the fact that Ms. Cosmi inadvertently entered the position of Casino Cashier Supervisor on her Personal History Disclosure Form - 1.

14B. Joanne Procopio, License No. 2531-21, listed in Exhibit "D", was employed at the Marina in November of 1980 and was

transferred into the position of Accountant in September of 1983. At that time , the position of Accountant required only a hotel registration. At the time Ms. Procopio possessed a valid casino employee license with a gaming endorsement. Ms. Procopio's license was no longer adequate when, in April of 1984, the jobs compendium was revised such that the position of Accountant was required to be filled by a licensed casino employee with the endorsement of Accountant/Auditor. On August 22, 1985 Ms. Procopio applied for and was subsequently granted the endorsement of Accountant/Auditor, some seven months after the filing of this complaint. This additional delay in filing for the proper endorsement was caused by an error in the Work Permit Report which indicated that Ms. Procopio possessed the proper endorsement.

14C. Thelma Scott, License No. 1063-11, listed in Exhibit "D", whose license was improperly endorsed for the position of Slot Cashier Shift Manager, was authorized to continue to work in this position by Principal Inspector Joseph Carlini pending a request by Marina for the proper endorsement submitted to the Commission on February 1, 1985. It should be noted however, that such authorization was granted subsequent to the filing of the complaint in the captioned matter.

15. The individuals set forth in Exhibit "E" were employed by either Marina, Trump or HAC in positions which have not been submitted to or approved by the Commission pursuant to N.J.S.A. 5:12-99(a)3 and 99(b). Exhibit "E" is attached hereto and made a part of the record hereof.

16. N.J.S.A. 5:12-89(a), which was effective at all times referenced herein, requires that:

No person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the Commission.

17. N.J.S.A. 5:12-90(a), which was effective at all times referenced herein, requires that:

No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

18. N.J.S.A. 5:12-91(a), which was effective at all times referenced herein, requires that:

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.

19. N.J.S.A. 5:12-99(a)3, which was effective at all times referenced herein, requires that:

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 90 days before gaming operations are to commence or 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:

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;

20. N.J.S.A. 5:12-99(b), which was effective at all times referenced herein, requires that:

...No casino licensee shall commence gaming operations, or alter in fact its internal controls unless and until such system of controls is approved by the commission

21. N.J.S.A. 5:12-106(a), which was effective at all times referenced herein, requires that:

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...

22. N.J.S.A. 5:12-106(b), which was effective at all times referenced herein, requires that:

A casino licensee shall within 24 hours of receipt of written notice thereof, terminate their appointment or employment of any person whose license or registration has been revoked or has expired...

23. N.J.A.C. 19:41-1.3(a) to (c) and 19:45-1.3(a) to (c) inclusive repeat the statutory requirements as set forth in paragraphs 16 through 20.

24. The employment of individuals on the Restricted Application List, as set forth in paragraph 11 of this Count, constitute violations of N.J.S.A. 5:12-90(a) and/or 91(a), 106(a) and 106(b).

25. The employment of individuals with expired licenses or without valid licenses and/or hotel registrations, as set forth in paragraph 12 of this Count, constitute violations of N.J.S.A. 5:12-90(a), or 91(a) as well as N.J.A.C. 19:41-1.3(b) or (c).

26. The employment of individuals possessing only casino hotel employee registrations in positions requiring casino employee licenses, as set forth in paragraph 13 of this Count, constitute violations of N.J.S.A. 5:12-90(a), 106(a), and N.J.A.C. 19:41-1.3(b).

27. The employment of individuals in positions for which their licenses were not appropriately endorsed, as set forth in

paragraphs 14 through 14C of this Count, constitute violations of N.J.S.A. 5:12-89(c) or 90(d).

28. The employment of individuals in positions which have not been approved by the Commission as part of the approved jobs compendium by Marina, Trump, and/or HAC, as set forth in paragraph 15 of this Count, constitute violations of N.J.S.A. 5:12-99(a)3 and 99(b) and N.J.A.C. 19:45-1.3(a), (b) and (c).

COUNT TWO

1. The stipulations set forth in Paragraphs 1 - 9 of Count One are incorporated herein by reference.

2. The table of organization approved by the Commission on April 4, 1984, for the Surveillance Department of Marina, Trump, and HAC, pursuant to N.J.S.A. 5:12-99(a)(3), is set forth as Exhibit "F". Exhibit "F" is incorporated herein and made a part of the record hereof.

3. On July 15, 1984, the Director of Surveillance of HAC resigned suddenly. Due to the vacancy, HAC President Philip Satre, by memorandum dated July 20, 1984, notified all employees that the position of Director of Surveillance would not be refilled and that the then current Surveillance Managers at the Marina and the Trump had been promoted to the position of "Director of Surveillance" at their respective casino hotels, "subject to applicable approvals by the New Jersey Casino Control Commission". By letter dated August 10, 1984, HAC requested approval of these changes. Subsequent to July 20, 1984, but prior to approval by the Commission, Surveillance Managers at the Marina and the Trump reported directly

to the Audit Committee of the Board of Directors of Holiday Inns, Inc. and indirectly to the President of HAC instead of reporting directly to the Director of Surveillance of HAC who reported directly to the Audit Committee. The Surveillance Manager job titles were changed to Director of Surveillance in the interim, although no change in their respective duties was effected. The reporting lines for these positions were, however, altered without the consent or knowledge of the Commission. And although no incompatible functions resulted from this change, prior approval of such changes is necessary so as to prevent the implementation of reporting lines with incompatible functions. At the request of the Commission staff, the title of Director of Surveillance was subsequently changed back to Surveillance Manager.

4. The result of these changes was that on or about July 20, 1984, HAC changed the organizational structure of the Surveillance Department at Marina and Trump without the prior approval of the Commission.

5. Instead of having the Surveillance Manager at Marina and Trump report to a single Director of Surveillance, a separate Director of Surveillance for Marina and Trump was established by HAC.

6. N.J.S.A. 5:12-99(a)3, which was effective at all times referenced herein, requires that each licensee submit to the Commission, and receive approval prior to implementation, of a description of its system of internal procedures relating to job descriptions of its system of personnel and chain of command, establishing the diversity of responsibility among employees engaged in casino operations and identifying primary and secondary

supervisory positions for areas of responsibility which areas shall not be so extensive as to be impractical for an individual to monitor.

7. N.J.S.A. 5:12-99(b), which was effective at all times referenced herein, requires that:

...No casino licensee shall commence gaming operations, or alter in fact its internal controls unless and until such system of controls is approved by the Commission.

8. N.J.A.C. 19:45-1.3(a) to (c) inclusive repeat the statutory requirements as set forth in paragraphs 6 and 7.

9. The modification of the Surveillance Department reporting procedures without prior approval of the Commission, as set forth in paragraphs 2 through 5 of this Count, constitute violations of N.J.S.A. 5:12-99(a)3 and b and N.J.A.C. 19:45-1.3(a), (b) and (c).

COUNT THREE

1. The Stipulations set forth in Paragraph 1 - 9 of Count One are incorporated herein by reference.

2. N.J.S.A. 5:12-11, which was effective at all times referenced herein, defines the term "casino security employee" as any natural person employed by a casino or its agent to provide physical security in a casino hotel.

3. N.J.S.A. 5:12-90(f), which was effective at all times referenced herein, requires that employees within the casino licensee's Security Department be licensed as casino employees pursuant to N.J.S.A. 5:12-90(a).

4. N.J.S.A. 5:12-90(a), which was effective at all times referenced herein, requires that:

No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

5. N.J.A.C. 19:41-1.3(b)8, which was effective at all times referenced herein, states that:

(b) 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.

6. Upon opening of the Trump for test purposes, the Fire Inspector of the city of Atlantic City instructed the Trump that it must place a security person on each floor of the hotel as a condition of issuance of a Certificate of Occupancy. This was necessitated by a malfunctioning of fire alarms in the hotel tower.

7. As a result of the Fire Inspector's instructions, and in spite of Trump's best efforts to expedite licensing of Security Department personnel prior to opening, eleven (11) individuals listed on Exhibit "G" were employed by Trump as security officers and functioned as such at Trump from May 14, 1984, to on or about June 5, 1984 without being appropriately licensed in accordance with N.J.S.A. 5:12-90(f). Exhibit "G" is attached hereto and made a part of the record hereof.

8. One (1) individual whose name is listed on Exhibit "G" was employed by the Trump as a security officer and functioned as such at the Trump intermittently from May 14, 1984 through June 22, 1984 without being appropriately licensed in accordance with N.J.S.A. 5:12-90(f).

9. Prior to May 18, 1984, representatives of the Division brought the fact that the aforementioned security guards were

employed without appropriate licenses to the attention of the Director of Security.

10. Between May 18, 1984, to on or about June 5, 1984, representatives of the Division repeatedly brought this matter to the attention of the Trump's Director of Security and Associate General Counsel, who attempted to resolve this matter.

11. On or about June 5, 1984, the security officers referred to in Paragraph 7, supra., were transferred out of the Security Department to another assignment while they awaited licensure as casino employees. The security officer referred to in Paragraph 8, supra., was terminated on June 22, 1984.

12. The individuals set forth in Exhibit "G" worked without casino employee licenses as security officers at the Trump for the periods indicated herein.

13. By employing the 12 security guards as set forth herein in the position of security officer, Trump violated N.J.S.A. 5:12-90(a) and (f) and N.J.A.C. 19:41- 1.3(b)8.

COUNT FOUR

1. The Stipulations set forth in Paragraphs 1 - 9 of Count One are incorporated herein by reference.

2. The table of organization approved by the Commission on April 4, 1984, pursuant to N.J.S.A. 5:12-99(a)3 for the Human Resources Department for HAC, is set forth in Exhibit "H". Exhibit "H" is attached hereto and made a part of the record hereof.

3. Subsequent to the opening of the Trump the positions of Licensing Manager and Licensing Supervisor had become vacant. These

vacancies-- resulted in a situation whereby the Licensing Coordinators were, in fact, supervised on a day-to-day basis by the Personnel Manager, Debra Mara. This situation continued up until the filling of the position of Licensing Supervisor on October 29, 1984.

4. This resulted in a modification of the organizational structure of the Human Resources Department in practice which is depicted in Exhibit "I". Exhibit "I" is incorporated by reference herein and made a part of the record hereof.

5. This modification to the organizational structure, and jobs compendium associated with this modification to the Human Resources Department, were neither submitted to the Commission nor approved by the Commission prior to the implementation of said changes.

6. N.J.S.A. 5:12-99(a)3, which was effective at all times referenced herein, requires that:

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 90 days before gaming operations are to commence or 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:

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;

7. N.J.S.A. 5:12-99(b), which was effective at all times referenced herein, requires that:

...No casino licensee shall commence gaming operations, or alter in fact its internal controls unless and until such system of controls is approved by the Commission.

8. N.J.A.C. 19:45-1.3(a) to (c) inclusive repeat the statutory requirements as set forth in paragraphs 6 and 7.

9. The restructuring of the Human Resources Department, as described in paragraphs 3 through 5 of this Count, was in violation of N.J.S.A. 5:12-99(a)(3) and (b) and N.J.A.C. 19:45-1.3(a), (b) and (c).

COUNT FIVE

1. The Stipulations set forth in Paragraphs 1 - 9 of Count One are incorporated herein by reference.

2. The table of organization for the Executive Department at Marina as approved by the Commission on April 4, 1984, is set forth as Exhibit "J". Exhibit "J" is incorporated by reference herein and made a part of the record hereof.

3. As hereinafter explained, in August of 1984, Marina modified its table of organization, as set forth in Exhibit "K", by creating the unapproved position of Vice President-Operations. Said position did not exist at the time the Commission approved the table of organization on April 4, 1984. Exhibit "K" is incorporated by reference herein and made a part of the record hereof.

4. Such change to the table of organization was not submitted to or approved by the Commission prior to its implementation.

5. At all times referenced herein the position of Vice President-Operations was not an approved position at the Marina.

6. Should the position of Vice President-Operations have existed, it would have required casino key employee licensure.

7. At all times referenced herein Kevin Malley, License #3210-11, did not hold a casino key employee license issued by the Commission but had been a qualifier in the position of Vice President-Operations and Administration of Holiday Inns, Inc., Gaming Group. The aforementioned license number was issued to him subsequent to the within incident.

8. Between August 29 to on or about October 11, 1984, Mr. Malley was functioning as Vice President-Operations of Marina even though the position was not approved by the Commission and even though Mr. Malley did not hold a valid casino key employee license. This situation occurred when, in late August of 1984, Kevin Malley, Vice President-Operations and Administration of Holiday Inns Inc., Gaming Group, was transferred to Atlantic City and set up an office at the Marina. At that time Mr. Malley was an applicant for a casino key employee license and had previously been found qualified by the Commission as a person who must be found qualified as an officer of a holding company of casino licensees Trump, Marina and H.A.C. At no time pertinent hereto was Mr. Malley on the payroll of either Trump, Marina or H.A.C. Mr. Malley's responsibility as Vice President-Operations and Administration of Holiday Inns Inc., Gaming Group, included responsibility for providing staff support

to Special Casino Programs, Planning and Administration, Food and Beverage, Purchasing, Casino Games, Slots, Facilities and construction operations at all Harrah's properties including the Marina and the Trump.

9. On September 17, 1984, H.A.C. submitted to the Commission a request that the position of Vice President-Operations be reestablished in Marina's organizational structure.

10. By interoffice correspondence dated September 19, 1984, Senior Vice President-General Manager of the Marina, Edward Posey, advised Mr. Malley that until the position of Vice President-Operations had been approved and he had received his casino key employee license, Mr. Malley's authority at the Marina would be limited to the responsibilities performed in connection with his position as Holiday Inns Inc., Gaming Group Vice President. By copy of said interoffice correspondence, Mr. Posey directed that the persons reporting to Mr. Malley should direct their reports to Mr. Posey until such time.

11. By notice of violation dated October 10, 1984, Marina Commission Principal Inspector Joseph Carlini cited Marina for improper employment of Mr. Malley. Subsequent thereto, Mr. Posey instructed Mr. Malley not to return to the Marina during the pendency of his license application and the reestablishment of the position of Vice President-Operations. Mr. Malley complied with that instruction and was not present at the Marina subsequent to October 11, 1984.

12. On December 3, 1984, the Commission approved Marina's request that the position of Vice President-Operations be reestablished in Marina's organizational structure.

13. N.J.S.A. 5:12-89(a) which was effective at all times referenced herein, states that:

No person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the Commission.

14. N.J.S.A. 5:12-99(a)3, which was effective at all times referenced herein, requires that:

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 90 days before gaming operations are to commence or 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:

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;

15. N.J.S.A. 5:12-99(b), which was effective at all times referenced herein, requires that:

... No casino licensee shall commence gaming operations, or alter in fact its internal controls unless and until such system of controls is approved by the Commission.

16. N.J.A.C. 19:41-1.3(a) repeats the statutory requirements as set forth in paragraph 13.

17. N.J.A.C. 19:45-1.3(a) to (c) inclusive repeat the statutory requirements as set forth in paragraphs 14 and 15.

18. By permitting Mr. Malley to function in a position which was not approved by the Commission, Marina violated N.J.S.A. 5:12-99(a) 3 and (b) and N.J.A.C. 19:45-1.3(a), (b) and (c).

19. By permitting Mr. Malley to function as Vice President-Operations from August 29 to October 11, 1984, without having first been appropriately licensed, Marina violated N.J.S.A. 5:12-89(a) and N.J.A.C. 19:41-1.3(a).

COUNT SIX

1. The Stipulations set forth in Paragraphs 1 - 9 of Count One are incorporated herein by reference.

2. According to the approved jobs compendium for Marina, the position of Casino Manager requires a casino key employee license with an accompanying endorsement for that position.

3. Dual Cooper, license #901-71, was at all times pertinent hereto a licensed casino key employee pursuant to N.J.S.A. 5:12-89(a).

4. Dual Cooper's casino key employee license was endorsed for the position of Casino Manager by the Casino Control Commission on September 7, 1984.

5. From May 7, to September 7, 1984, Mr. Cooper performed the functions of Casino Manager at Marina even though his valid casino key employee license was only endorsed for the position of pit boss.

6. At all times pertinent hereto, Mr. Cooper met the experiential requirements for the endorsement of Casino Manager. Marina ultimately applied for the proper endorsement on July 23, 1984.

7. N.J.S.A. 5:12-89(c) which was effective at all times referenced herein, states that:

The Commission shall endorse upon any license issued hereunder the particular positions as defined by this act or by regulations which the licensee is qualified to hold.

8. By employing Mr. Cooper as Casino Manager prior to his casino key employee license endorsement for said position, Marina violated N.J.S.A. 5:12-89(c).

COUNT SEVEN

1. The Stipulations set forth in Paragraphs 1 - 9 of Count One are incorporated herein by reference.

2. The table of organization at Trump as approved by the Commission on April 4, 1984, is set forth as Exhibit "L." Exhibit "L" is incorporated by reference herein and made a part of the record hereof.

3. Said table of organization establishes the position of Assistant General Manager (AGM) Casino Operations and also establishes the separate position of Vice President (VP) of Operations.

4. On or about August 29, 1984, Charles "Hap" May, License #00021-11, was promoted by Trump to the position of VP of Operations from the position of AGM Casino Operations. In his capacity as VP of Operations Mr. May continued to perform the functions of AGM Casino Operations because the position remained vacant.

5. On October 5, 1984, the position of Assistant General Manager Staff Services, to whom the Director of Security reported, became vacant due to the resignation of Andrew Sutor. As a result of these vacancies, the Director of Security reported to May as VP

of Operations until approval of an organizational structure revision on December 3, 1984.

6. As set forth in Exhibit "L," the approved organizational reporting lines required that the Security Department report to the AGM Staff Services and AGM Staff Services report to the Vice President of Operations.

7. The promotion of Mr. May as described in paragraphs 3 through 5 created a situation whereby the Director of Security reported directly to the individual who served as both VP of Operations and AGM Casino Operations.

8. By letter dated November 28, 1984, Trump submitted to the Commission a proposed revision to its organizational structure whereby, inter alia, the Director of Security would no longer report to the AGM Staff Services (who in turn previously reported to VP of Operations) but would instead report directly to the Senior Vice President-General Manager. Said submission was approved by the Commission on December 3, 1984.

9. N.J.S.A. 19:45-1.11(b) (2) requires the "segregation of incompatible functions so that no employee is in a position to perpetuate and conceal errors or irregularities in the normal course of his duties."

10. N.J.A.C. 19:45-1.11(c) (7) establishes the Security Department and requires that department to perform independently of other departments.

11. By performing the functions of AGM Casino Operations and VP of Operations simultaneously, Mr. May was performing incompatible functions under N.J.S.A. 19:45-1.11(b) (2).

12. By having the Security Department report to an individual performing the functions of AGM Casino Operations, the independence of the Security Department was compromised under N.J.S.A. 19:45-1.11(c) (7).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein in Counts One through Seven, above are true and did, in fact, occur;

2. In recognition of the above and other alleged violations as set forth in this Stipulation relating to improper licensure and license endorsements of employees, Marina, Trump, and HAC have taken corrective action in the form of reorganization of the organizational structure of HAC. This structural change has entailed removing the Licensing Department from the direct supervision of the Department of Human Resources. On April 7, 1985, the Commission approved the change whereby the Licensing Department now reports directly to the Legal Department, under the direct supervision of the Vice President-General Counsel;

3. That in addition and subsequent to the occurrence of said facts the Division stated in its annual operational audits of 1985 and 1986 that licensing compliance has improved since the reorganization of the Human Services Department and the hiring of additional staff at H.A.C., Marina and the Trump;

4. All other allegations in the complaint in this matter have been resolved;

5. In consideration of the foregoing violations, mitigating circumstances and corrective action taken by the Respondent, the

parties agree that the Respondents shall pay the following sums to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5):

<u>Count I</u> - Various employee licensing violations	39 violations at \$500 per violation	\$19,500
<u>Count II</u> - Unauthorized alteration of the table of organization of the Surveillance Department		\$6,000
<u>Count III</u> - Employment of Security Officers without casino employee licenses	12 violations at \$500 per violation	\$6,000
<u>Count IV</u> - Unauthorized alteration of the table of organization of the Human Resources Department		\$6,000
<u>Count V</u> - Employment of Vice-President of Operations without a casino key employee license		\$8,000
<u>Count VI</u> - Employment of Casino Manager without proper license endorsement		\$5,000
<u>Count VII</u> - Performance of incompatible functions by Assistant General Manager of Casino Operations		\$7,000
TOTAL FINE		<u>\$57,500</u>

6. The parties agree that such penalty is 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 set forth in the Division's complaint.

7. 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 and Settlement.

State of New Jersey,
Department of Law and Public
Safety, Division of Gaming
Enforcement

By: Paul A. Vagianos
Paul A. Vagianos,
Deputy Attorney General

DATED: 7/3/86

Marina Associates,
Harrah's Associates
Harrah's Atlantic City, Inc.

BY: Nicholas Casiello, Jr.
Nicholas Casiello, Jr., Esq.
Horn, Kaplan, Goldberg, Gorny
& Daniels,
Attorney for Respondents

DATED: 7/23/86
A041886/39

The following list of individuals were listed on the Restricted Application List at their time of hire.

<u>NAME</u>	<u>LICENSE #</u>	<u>WORKED*</u>	<u>PROBLEM</u>	<u>LICENSEE</u>
1. Davis, Thomas C.	14648-21	Cleaning Person 5/14/84 5/27/84	Denied license; on Restricted App. List	Trump
2. Gonzalez, Jose A.	24794-22 17045-40	Steward 4/30/84 to 7/15/84	Denied license and inactive hotel; on Restricted App. List	Trump
3. Mack, Giana	41906-21	Foodrunner 5/23/84 to 7/30/84	Denied license and regis.; on Restricted App. List	Trump
4. Samuels, Sandra	05480-21 03050-40	Room Attd. 5/2/84 to 7/26/84	Denied Regis. and inactive lic.; on Restricted App. List	Trump

*These dates are approximate

The following individuals were listed as working, but either have an expired license or registration, or whose licenses were pending at the time of employment, i.e., had not been licensed. (Work Permit 10/6/84)

	<u>NAME</u>	<u>LIC. #</u>	<u>EXP. DATE/PDG.</u>	<u>EMPLO. POS.</u>	<u>REQ. LIC.</u>	<u>LICENSEE</u>
1.	Cotton, Eric	9017-40	7/81	Foodrunner	Hotel	Trump
2.	D'Angelo III, John	15060-40	7/81	Valet Parker	Hotel	Trump
3.	Doyle, Mark	52441-22	Pending	Bar Helper	N-G/Hotel	Trump
4.	Hollis, Lance	6910-40	1/82	Clean. Person	N-G/Hotel	Trump
5.	Lee, Frankie	52091-22	Pending	Hvy.Duty Clean.Special.	N-G/Hotel	Trump
6.	MacLaughlin, Anit	9343-40	5/81	Mirofilm Oper.	Hotel	HAC
7.	Moore, Eric	44444-22	Pending (L 10/17/84)	Hvy. Duty Clean. Special.	N-G/Hotel	Trump
8.	Sharpe, Clare	22063-21	1/83	Ward. Clerk	Hotel	Trump
9.	Spina, Clement	28617-21	6/84	Hotel Capt.	Hotel	Trump
10.	Stapleton, Thomas	12153-40	7/81	Food & Bev. Cashier	Hotel	Marina
11.	Villareal, Raul	4691-21	3/83	BJ Floor	BJ Floor	Marina

EXHIBIT "B"

The following individuals have hotel registrations, but the position they were employed in requires a gaming or non-gaming license. (Work Permit 10/6/84)

<u>NAME</u>	<u>RESIGRATION</u>	<u>EMPLO. POS.</u>	<u>LIC. REQ.</u>	<u>LICENSEE</u>
1. Barnes, William	51662-40	Construction Acct.	Non-gaming	HAC
2. Collins, Mary	33421-40	Grp. Service Opera. Supr.	Non-gaming	HAC
3. Cowan, Linda	3728-40	Adv. Deposit/ Cash Con. Clk.	Non-gaming	Trump
4. Gorz, Sandra	36387-40	Grp. Service Shift Supr.	Non-gaming	HAC
5. Jensen, Lisa	31627-40	Grp. Service Shift Supr.	Non-gaming	HAC
6. Kelly, Elizabeth	50215-40	Adv. Deposit/ Cash Con. Clk.	Non-gaming	Trump
7. Kolczynski, Mary	51839-40	Accounts Rec. Clerk	Non-gaming	HAC
8. MacKintosh, Budrene	26182-40	Grp. Service Opera. Supr.	Non-gaming	HAC
9. Pace, Mark C.	48152-40	General Ledger Acct. Clerk	Non-gaming	Marina
10. Read, Michael	53519-40	Operations Analyst	Gaming Acct./Aud.	Marina
11. Rodriquez, Diane	48622-40	Grp. Service Shift Supr.	Non-gaming	HAC
12. Rougeau, Sandra J.	57111-40	Casino Secretary	Non-gaming	Marina

EXHIBIT "C"

FOR THE EMPLOYED
POSITION THE
FOLLOWING IS THE
ENDORSE. REQ

LICENSEE

<u>NAME</u>	<u>APPROVED LIC. #/ENDORSE.</u>	<u>EMPLO. POS.</u>	<u>ENDORSE. REQ</u>	<u>LICENSEE</u>
1. Cosmi, Antoinette	1530-11 Cage Supr.	Slot Cashier Shift Mgr.	Coin Cage Supr.	Marina
2. Dryer, Martin	<u>Boss</u> 214-11 Cage Shift Mgr., Credit Exec.	<u>BJ</u> Mgr. Casino Credit	<u>BJ</u> Credit Mgr.	Marina
3. DuBois, Barbara	49882-21	Cash Control Acct.	Acct./Aud.	HAC
4. Procopio, Joanne	25319-21 Gaming	Accountant	Acct./Aud.	Marina
5. Scott, Thelma	1063-11 Cage Supr.	Slot Cashier Shift Mgr.	Coin Cage Supr.	Marina

The following individuals were working in positions not approved by the Commission. Therefore, the proper license or endorsement cannot be assessed at this time.

<u>NAME</u>	<u>LICENSE #</u>	<u>EMPLOYED POSITION</u>	<u>LICENSEE</u>
1. Gulbert Jr., Russel	24178-22	General Services Sup.	Marina
2. Shanker, Gloria	13861-40	Bus Sales Rep.	HAC
3. Stockton, Lyndon	46631-40	Bus Sales Rep.	Marina
*4. Fernandez, Shirley	22950-22	Community Relations Coor.	HAC
5. Glazier, Devi	50652-22	Training Specialist	HAC
6. Marrandino, Paul	01305-11	Char. Bus Sales Mgr.	HAC
7. Sinopoli, Joyce	54221-22	Bus Program Reservationist	HAC

*Unapproved job title only

EXHIBIT "E"

The C.C.C. approved Table of Organization which encompasses the Surveillance Department as of 1/21/85 is as follows:

AUDIT COMMITTEE OF BOARD OF DIRECTORS HOLIDAY INN, INC.

DIRECTOR OF SURVEILLANCE
(VACANT)

SURVEILLANCE MANAGER
TRUMP

SURVEILLANCE MANAGER
MARINA

"EXHIBIT "F"

<u>NAME</u>	<u>LICENSE NUMBER</u>	<u>POSITION</u>	<u>LICENSE STATUS AT TIME OF HIRE</u>	<u>LICENSEE</u>
Dean P. Danley	51463-21	Security	Pending	Trump
Wayne, L. Doran	50559-21	Security	Pending	Trump
Martin E. Graser	51286-21	Security	Pending	Trump
Allan S. Kane	53068-21	Security	Pending	Trump
John B. MacKay	50685-21	Security	Pending	Trump
Sarah Meyers	50791-21	Security	Pending	Trump
James O'Dare	53298-21	Security	Pending	Trump
Mary Pavone	50623-21	Security	Notice	Trump
Joseph Sage	52484-21	Security	Pending	Trump
Michael Still	52146-21	Security	Pending	Trump
*Shirley Wallace	51616-21	Security	Pending	Trump
Victor Winters	50743-21	Security	Pending	Trump

*Employed in Security intermittently from March 19, 1984 through June 22, 1984

EXHIBIT "G"

The C.C.C. approved Table of Organization for the Human Resources Department for Harrah's Atlantic City as of 9/27/84 is as follows:

PRESIDENT HARRAH'S EAST
(PHIL SATRE)

VICE PRESIDENT OF SUPPORT SERVICES
(VACANT)

DIRECTOR OF HUMAN RESOURCES
(LARRY FOWLER)

ASSISTANT DIRECTOR OF HUMAN
RESOURCES
(VACANT)

MANAGER OF
LICENSING
(VACANT)

PERSONNEL MANAGER
(DEBRA MARA)

LICENSING
SUPERVISOR
(VACANT)

PERSONNEL SUPERVISOR
(PATRICK BROWN)

LICENSING
COORDINATORS
(LINDA MUSITANO)
(ABDUL ALI)
(DARLENE CYPRA)
(MARIA CONTESSE)
(TERRY MOORE)

DIRECTOR OF HUMAN RESOURCES
(LARRY FOWLER)

PERSONNEL MANAGER
(DEBRA MARA)

LICENSING COORDINATORS
(LINDA MUSITANO)
(ABDUL ALI)
(DARLENE CYPRA)
(TERRY MOORE)
(MARIA CONTESSE)

PERSONNEL SUPERVISOR
(PATRICK BROWNE)

The C.C.C. approved Table of Organization for the Executive Department of Marina Associates as of 1/21/85 is as follows:

SENIOR VICE PRESIDENT
GENERAL MANAGER
(ED POSEY)

DIRECTOR OF
SECURITY
(WALT ERTILE)

ASSISTANT GENERAL MANAGER
OF CASINO OPERATIONS
(ART SCHIRIPA)

ASSISTANT GENERAL MANAGER
OF HOTEL OPERATIONS
(STUART PLATT)

SENIOR VICE PRESIDENT
GENERAL MANAGER
(ED POSEY)

VICE PRESIDENT OPERATIONS
(KEVIN MALLEY)

DIRECTOR OF
SECURITY
(WALT ERTILE)

ASSISTANT GENERAL MANAGER
OF CASINO OPERATIONS
(ART SCHIRIPA)

ASSISTANT GENERAL MANAGER
OF HOTEL OPERATIONS
(STUART PLATT)

A112585/23.2

EXHIBIT "K"

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-36
OAL DOCKET NO. CCC 4511-86
LICENSE NO. 62625-21
REGISTRATION NO. 46471-40

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

Complainant,

v.

CHARLES M. MARTINEZ,

Respondent.

FINAL ORDER

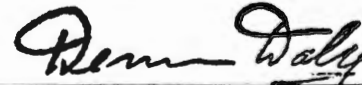
This matter having been transmitted to the Office of Administrative Law (OAL) for a hearing; and the Division of Gaming Enforcement (DGE) subsequently having filed a motion to dismiss the complaint; and an initial decision having been filed with the Commission; and the Commission having considered the entire record in this matter at its public meeting of January 14, 1987,

IT IS on this 30th day of January 1987, ORDERED that the initial decision of the OAL is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the DGE against Charles M. Martinez is dismissed.

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 4511-86

AGENCY DKT. NO. 86-36

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

Petitioner,

v.

CHARLES M. MARTINEZ,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Record Closed: November 21, 1986

Decided: December 1, 1986

BEFORE EDGAR R. HOLMES, ALJ:

On ~~January~~ 27, 1986, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking the revocation of respondent's casino employee license and/or casino hotel employee registration based upon his arrest for possession of a controlled dangerous substance. 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 in the matter on August 22, 1986 during which the issues were identified and the matter set down for plenary hearing on November 17, 1986. The parties were convened on November 17, 1986 at the Longport Boro Hall, Longport. At the time of hearing, petitioner advised the undersigned that it wished to dismiss the complaint filed against respondent due to substantial proof problems which would make it impossible for the Division to meet its burden of proof. This was confirmed by letter dated November 19, 1986, received by my office November 21, 1986, a copy of which is attached.

Therefore, it is **ORDERED** that the complaint filed against Charles A. Martinez by the Division of Gaming Enforcement be **DISMISSED**.

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

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

December 1, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Dec 2, 1986
DATE

Richard J. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 4 1986
DATE

Ronald J. Parker / x.5.
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

None



RECEIVED
STATE OF N.J.
OFFICE OF ADM. LAW

State of New Jersey Nov 21 2 46 PM '86

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX

CN 047

TRENTON, NEW JERSEY 08625

ANTHONY J. PARRILLO
DIRECTOR

W. CARY EDWARDS
ATTORNEY GENERAL

DONALD R. BELSOLE
FIRST ASSISTANT
ATTORNEY GENERAL

November 19, 1986

Honorable Edgar Holmes, A.L.J.
Administrative Law Judge
Quakerbridge Plaza #2
Building No. 9
CN-049
Mercerville, New Jersey 08613

Re: State of New Jersey

v

Charles Martinez
OAL Docket No. CCC 4511-86
Agency Docket No. 86-30

Dear Judge Holmes:

Pursuant to my conversation with you, please be advised that the Division wishes to dismiss its complaint due to substantial proof problems which makes it impossible for the Division to meet its burden of proof in this matter.

Respectfully,

William E. Mountford, Jr.
William E. Mountford, Jr.
Deputy Attorney General

jc

c Daniel L. Cohen, Esquire

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-374
OAL DOCKET NO. CCC 2784-86
(CCC 7451-85 ON REMAND)
REGISTRATION NOS. 54640-40 AND
5757-40 (INACTIVE)

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

Complainant, : FINAL ORDER

v. :

JULIO MARTINEZ, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its meeting of October 29, 1986,

IT IS on this 31st day of March 1987, ORDERED that the initial decision is modified as follows:

- (1) In 1980, following the respondent's guilty plea to count II, alleging possession of controlled dangerous substance (CDS) with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), the remaining seven counts of Indictment No. 691-79-J-4 were dismissed; and
- (2) According to the judgment of conviction entered February 2, 1984, with respect to Indictment No. 10-1239-83-C (P-4), the respondent was convicted on one count of possession of CDS with intent to distribute

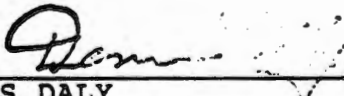
and one count of possession of CDS. Count III, alleging possession of CDS was merged into counts I and II, and count IV, alleging possession of CDS with intent to distribute, was dismissed; and

- (3) The reference at page 3 of the initial decision to the respondent's disclosure of an arrest and conviction on his application for registration (R-3) should be corrected to eliminate the word "arrest." The PHDF-4 form does not require disclosure of arrests nor, in fact, did the respondent disclose one on the form; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Julio Martinez is dismissed based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 2784-86

(CCC 7451-85 ON REMAND)

AGENCY DKT. NO. 85-374

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

Petitioner,

v.

JULIO MARTINEZ,
Respondent.

Joanne C. Ciancimino, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Gregory Imperiale, Esq., for the respondent (Harris and Fauntleroy, attorneys)

Record Closed: August 1, 1986

Decided: September 8, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter arises from a complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on September 10, 1985, seeking the revocation of respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on November 22, 1985, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference was scheduled for January 3, 1986, and on that date the respondent failed to appear. On February 20, 1986, Administrative Law Judge Richard L. Voliva, Jr., issued an initial decision and concluded that Mr. Martinez had abandoned his request for a hearing. By order, dated April 16, 1986, the Commission determined that Mr. Martinez had presented a credible explanation for his failure to appear at the prehearing conference and ordered that the matter be remanded to the Office of Administrative Law.

On June 6, 1986, there was a prehearing conference by way of a telephone conference call with the undersigned, and at that time the parties agreed that the issues in the matter are:

- A. Whether the respondent is disqualified from registration based on certain criminal convictions pursuant to N.J.S.A. 5:12-86c(3).
- B. Whether the respondent has established that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing took place on August 1, 1986, 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. On March 6, 1980, police officers employed by Atlantic City searched an apartment and arrested Mr. Martinez and one other person for the possession of controlled dangerous substances (P-1). Thereafter, Mr. Martinez was indicted and was charged with five counts of the possession of controlled dangerous substances (heroin, hashish, meprobamate, cocaine and amphetamine), violations of N.J.S.A. 24:21-20a(1), and with three counts of the possession of controlled dangerous substances (heroin, hashish and amphetamine) with intent to distribute, violations of N.J.S.A. 24:21-19a(1) (P-2). On October 1, 1980, Mr. Martinez pled guilty to one count of the possession of a controlled dangerous substance (heroin) with intent to distribute, and on November 14, 1980, the respondent was placed on

probation for one year, was fined the sum of \$1,500 and was required to pay a penalty of \$25 to the Violent Crime Compensation Board (P-2).

On June 22, 1982, after receiving a call from an informant, police officers employed by Atlantic City observed Mr. Martinez and another person sitting in a parked vehicle and selling small bags, later identified to contain heroin, to a number of persons. Mr. Martinez was arrested on that date (P-3). Thereafter, the respondent was indicted and was charged with two counts of the possession of controlled dangerous substances (heroin and cocaine), violations of N.J.S.A. 24:21-20a(1) and with two counts of the possession of dangerous substances (heroin and cocaine) with intent to distribute, violations of N.J.S.A. 24:21-19a(1) (P-4). After a jury trial, Mr. Martinez was found guilty of the charges, and on February 24, 1984, he was sentenced to be incarcerated for a term of three years and was required to make a payment to the Violent Crime Compensation Board (P-4).

After serving four months in prison, the respondent was accepted into the Intensive Supervision Program, which is operated by the Administrative Office of the Courts, and is known as the "prison without walls" program. Pursuant to this program, a select group of offenders are given early release from prison and are required to abide by certain rigid regulations. They are required to have a full-time job, perform community volunteer work, regularly meet with a counselor and comply with a curfew. During the first six months of Mr. Martinez's participation in this program, he was given a daily urine test for drugs, and thereafter the test was given monthly until he was discharged. He successfully completed the program in October 1985 (R-1, R-2).

At the time of his 1980 arrest, Mr. Martinez was working as a kitchen helper for Caesars Hotel and Casino (Caesars). Thereafter, Mr. Martinez changed jobs and he was working for Tropicana Hotel and Casino at the time of his second arrest in 1982. Apparently, his initial casino hotel registration expired and after being released from prison, Mr. Martinez applied for a new registration. In his application, he disclosed a drug arrest and conviction (R-3). Thereafter, on June 20, 1984, the respondent was rehired by Caesars. At the time of the hearing, the respondent was employed as a cook, with a net weekly salary of \$318, in the Italian Restaurant at Caesars, where he has maintained a good employment record for the last 26 months. One of his supervisors, Christine Amarosa, wrote that the respondent is a diligent and reliable employee (R-4).

On his own behalf, Mr. Martinez stated that he took heroin at various times during the period between 1979 and 1982, that he stopped taking drugs in 1983 and that he has not taken any illegal drugs since that date. The respondent stated that he sold drugs in order to support his habit and that he used the salary from his casino job to support his wife and two children. Mr. Martinez realized that he committed serious crimes, and he stated that he will never take illegal drugs again and he would be willing to take periodic drug tests in order to retain his job.

On behalf of the respondent, the Reverend Ronald S. Falotico, pastor of Holy Spirit Catholic Church, wrote that Mr. Martinez is a member of his parish and that he has worked on a number of parish community service projects (R-5). In addition, Iris Santiago, a neighbor of the Martinez family for about six years, wrote that the respondent is a nice person who deserves a second chance (R-6).

In closing, Deputy Attorney General Joanne C. Ciancimino stated that Mr. Martinez was convicted twice for the possession of controlled dangerous substances with intent to distribute, and that this offense is a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(3). Ms. Ciancimino noted that when a person applies for registration as a casino employee, the registration is issued immediately if there are no outstanding warrants against the applicant and, thereafter, the application is checked by the Division. Although two years have elapsed since the respondent received his registration, Ms. Ciancimino stated that he still has the burden to show rehabilitation by clear and convincing evidence, pursuant to N.J.S.A. 5:12-91d. Ms. Ciancimino argued that insufficient time has elapsed since Mr. Martinez's second conviction in 1984 to show rehabilitation.

Gregory Imperiale, Esq., on behalf of the respondent, noted that Mr. Martinez committed the offenses in 1980 and 1982 and that he stopped taking illegal drugs in 1983. Mr. Imperiale argued that the respondent has been punished for his crimes and that the evidence presented clearly establishes that Mr. Martinez has been rehabilitated. In addition, Mr. Imperiale argued that it was unfair for the Commission to now consider the revocation of Mr. Martinez's registration since he revealed his drug record in his 1984 application for a casino hotel registration and he has been allowed to work and advance himself at Caesars for the last two years.

CONCLUSIONS OF LAW

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Martinez was twice convicted for the crime of possession of a controlled dangerous substances with intent to distribute, a violation of N.J.S.A. 24:21-19a(1), which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3).

Since the Division has established a statutory disqualifier, the only issue in this matter is whether or not the respondent has shown his rehabilitation by clear and convincing evidence. N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining or retaining a casino hotel employee registration:

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

Based on the facts, I **CONCLUDE** that the respondent has shown his rehabilitation by clear and convincing evidence. Although Mr. Martinez was convicted twice of a serious offense, I accept his representation that he was selling drugs in order to support his habit and that he stopped taking drugs in 1983; further, I believe that Mr. Martinez has made a sincere commitment not to resume taking drugs in the future.

DISPOSITION

Therefore, I **ORDER** that the registration of Julio Martinez as a casino hotel employee **NOT BE REVOKED**.

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

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

September 8, 1986
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

September 9, 1986
DATE

Bernadette J. Friger
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 11 1986
DATE

Ronald L. Parker / s.
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Atlantic City Police Department Investigation Report, dated March 6, 1980, and the arrest report, dated March 6, 1980
- P-2 Indictment No. J-691-79-J-4 filed against Julio Martinez and the disposition as to the indictment
- P-3 Atlantic City Police Department Investigation Report, dated June 22, 1982
- P-4 Indictment No. 10-1239-83-C filed against Julio Martinez and the disposition as to the indictment

FOR THE RESPONDENT:

- R-1 Certification indicating that Julio Martinez successfully completed the Intensive Supervision Program
- R-2 Letter from Norman Ostroff and Ray Crowell to Julio Martinez, dated October 8, 1985
- R-3 Personal History Disclosure Form - 4 filed by Julio Martinez with the Casino Control Commission on August 22, 1984
- R-4 Letter from Christine Amarosa, dated July 29, 1986
- R-5 Letter from Reverend Ronald S. Falotico, dated July 28, 1986
- R-6 Letter from Iris Santiago

WITNESSES

FOR THE PETITIONER AND RESPONDENT:

Julio Martinez

of the application for licensure. In this case the respondent's license renewal application was filed in 1983. Since Title 2C of the New Jersey Code of Criminal Justice became effective on September 1, 1979, the offenses for which the respondent was convicted should be considered in terms of the section 86(c)(1), Title 2C list of offenses, rather than the section 86(c)(2), Title 2A list regardless of the particular provisions cited in the criminal proceedings.

(2) The evidence establishes that the respondent pled guilty to conduct constituting theft by deception which would be a violation of N.J.S.A. 2C:20-4, that the amount of the theft exceeded \$500 but was less than \$75,000 and is therefore a third degree offense. In view of the respondent's conviction, the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1). Further, in light of this finding, it is unnecessary to consider whether this same offense disqualifies the respondent from licensure pursuant to N.J.S.A. 5:12-86(c)(4). However, for the reasons stated by the ALJ at 11 to 15 of the initial decision, the respondent is rehabilitated from this disqualification pursuant to N.J.S.A. 5:12-90(h) and 91(d).

(3) The respondent's testimony, found credible by the ALJ, and the documentary evidence submitted by the parties fully supports the ALJ's finding that the respondent's failure to disclose his 1981 conviction was the result of his own carelessness and was neither intentional nor purposeful. Based on our review of the record in this case, we conclude that the respondent's nondisclosure did not evince a conscious disregard for the regulatory system and reject the ALJ's conclusion that the respondent is disqualified from continued licensure by operation of N.J.S.A. 5:12-86(b).

and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 7127-85

AGENCY DKT. NO. 85-413

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

Petitioner,

v.

SATURNINO MARTINEZ,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Andrew Kusnirik, Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference only)

Lorraine Gormley, Esq., for the respondent (Cape-Atlantic Legal Services Corporation, attorneys)

Record Closed: January 29, 1987

Decided: March 12, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Saturnino Martinez, respondent and the holder of casino hotel employee registration number 12186-40 and casino employee license number 20260-21, had committed a criminal offense, which disqualified him from continued registration and licensure, pursuant to sections 86c(1) and 86c(2) of the Casino Control Act (Act). The Division also charged that the offense revealed that the respondent did not possess the requisite good character, honesty and integrity under sections 90b and 89b(2) for

continued licensure. In addition, the Division alleged that the respondent failed to disclose his conviction on his 1983 application for renewal of his license in violation of section 86b. Accordingly, the Division seeks revocation of the respondent's license and registration, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that he was rehabilitated, pursuant to sections 90h and 91d.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 4, 1985. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed with the Commission on October 21, 1985, the respondent requested a hearing. On November 8, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 13, 1985. Following several adjournments, the matter was first heard on July 22, 1986. Again following adjournments, the matter was concluded on January 29, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Martinez was born in Texas and is 39 years of age (J-3). He has resided in Atlantic County for many years. The respondent last attended the tenth grade. He speaks both English and Spanish, although he has difficulty writing English.

During the late 1960s, the respondent was involved in an accident in which he suffered serious head injuries. His memory has since been affected.

The respondent's wife Carmen died on May 28, 1982, after an illness of one year. The respondent currently resides with Maria Echevarria, his fiancée, his six children by his wife and his two children by Ms. Echevarria. The respondent supports his entire family.

For many years the respondent was employed as a migratory farm laborer. He has a minor criminal record which occurred prior to 1970.

During the 1970s, the respondent's family frequently received Aid to Families with Dependent Children (AFDC) benefits. The family has not received benefits since December 1979.

Commencing on November 28, 1979, and for the ensuing seven and one-half months, the respondent was employed as a shuttle bus driver by the Boardwalk Regency Corporation (BRC). He left this position to attend dealers school. At this time, he held casino hotel employee registration no. 12186-40.

The respondent attended evening classes at Casino Career Institute and successfully completed a dealer course. He picked blueberries by day to support his family.

On July 11, 1980, the respondent applied to the Commission for a casino employee license (J-3). In response to question number 45, he disclosed his criminal record history to the best of his ability. Ultimately, he was issued casino employee license no. 20260-21.

From November 1980 to the present, the respondent has been employed by GNOC Corp. (Golden Nugget) as a blackjack dealer. He has performed well in this employment (J-5, J-6, R-1 and R-2). In 1984 and/or 1985, he received written reprimands for unauthorized absences.

On June 16, 1981, the respondent was indicted by an Atlantic County grand jury and was charged with violations of N.J.S.A. 2A:111-2, welfare fraud, for his failure to report earned income during the period from November 1977 to August 1979; and of N.J.S.A. 2C:20-4, theft by deception, for the period between September 1979 and November 1979 (J-1). On September 23, 1981, the respondent pled guilty to the indictment (J-2). On October 9, 1981, the respondent was sentenced to one day in the county jail, two years probation, a fine of \$500 and 200 hours of community service on each count, the second count to run concurrently with the first. The respondent paid his fine, performed his community service at Kessler Community Hospital and successfully completed his probation. Restitution was not ordered and was not made. The respondent appeared in court at the conclusion of his probation and was released. The respondent's probation officer advised that he had satisfactorily completed all of the requirements of his probation and sentence.

Records from the Atlantic County Welfare Board (Board) reveal that the respondent was employed during the periods of time identified in the indictment as a farm laborer and at a Cumberland Farms store (P-2). In addition, the respondent received unemployment benefits for approximately six months in early 1979. As a result, the respondent's family received an overpayment in benefits in the amount of \$5,413. The Board's records also include various affidavits of desertion submitted by Carmen Martinez, which concerned the respondent's absence from the home. As noted in the stipulation, the grants were in Carmen Martinez's name.

The parties agreed to the following stipulation of facts:

1. Respondent, Saturnino Martinez, and his deceased wife, Carmen Martinez, had received Aid to Families with Dependent Children (hereinafter, A.F.D.C.) for their six minor children from the Atlantic County Welfare Board at various times between 1970 and 1980.
2. According to the Atlantic County Welfare Board Investigation Report, Mr. Martinez was charged with an overpayment due to his failure to report earnings and Unemployment benefits at various times between November 1977 and November 1979.
3. The Atlantic County Welfare Board had charged the Martinezes with an earlier overpayment which was caused by Carmen Martinez's failure to advise the Atlantic County Welfare Board of Martinez's presence in the home. During the period of January 1975 to June 1977, Carmen Martinez received A.F.D.C. for herself and her children. Saturnino Martinez was not included on the A.F.D.C. grant at that time.
4. No criminal charges were brought against Carmen Martinez, now deceased, in conjunction with these overpayments.
5. The Atlantic County Welfare Board files do not now contain verification of Mr. Martinez's employment and receipt of Unemployment benefits during the period of November 1977 to November 1979.

6. Throughout the 1970s, A.F.D.C. checks were issued to Carmen Martinez as payee/applicant.
7. Mr. Martinez's family discontinued receipt of A.F.D.C. benefits on or about December 1980, at the request of the household.

In the fall of 1983, the respondent filed his Employee License Renewal Application with the Commission (J-4). In response to questions numbered 6 and 7 concerning any arrests, charges and/or convictions since the issuance of his license, the respondent answered in the negative and did not disclose his 1981 indictment and conviction.

In early 1986, the respondent received severe burns on his legs in a household accident and was unable to work for a period of three months. He returned to work on May 12, 1986.

In April 1986, the respondent again filed an Employee License Renewal Application with the Commission, which was completed with the assistance of Ms. Echevarria. The respondent disclosed his 1981 indictment and conviction. Both the respondent and Ms. Echevarria knew of the Division's complaint, including the allegation of failure to disclose on his 1983 renewal application.

The respondent testified that he enjoys working in the casino because he earns more money than as a farm laborer, the work surroundings are glamorous and clean, and he enjoys contact with the patrons. The respondent occasionally works part-time picking blueberries.

The respondent hopes that his children will complete high school and possibly attend college. His children work part-time as farm laborers.

The respondent further testified that he does not intend again to collect welfare benefits. He is glad to earn sufficient income in order to pay taxes, which he considers to be his method of repaying the welfare benefits previously received.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the respondent's conviction in 1981, the circumstances underlying his failure to disclose his conviction on his 1983 renewal application, the respondent's credibility, and his good character, honesty and integrity.

Mr. Martinez described the circumstances underlying his conviction. During the 1970s, his family frequently received welfare benefits. The respondent believed that he was able to support his family and was upset by his wife's insistence that the family receive welfare in order to have a stable means of income. Because of this and other disputes, as well as pursuing migratory farm work, the respondent was separated from his wife on and off for periods of several months at a time and on more than one occasion, particularly during the period between 1977 and 1979. When the respondent obtained the bus driver's job at BRC, he reunited with his wife and the family ceased receiving welfare benefits.

Prior to his indictment, the respondent's wife became ill and suffered fainting spells and seizures. She was hospitalized on several occasions before her death. This condition existed at the time of the indictment. Although Carmen Martinez was the recipient of the benefits, she was not indicted. The respondent testified that the indictment upset his wife. In order to relieve her of the burden of the indictment, he told his wife that he would take the entire responsibility for the matter. Although the respondent testified that he did not believe that he was the primary guilty party, he acknowledged some responsibility for the overpayments and would not blame his wife. Accordingly, he pled guilty to the entire indictment.

Josephine Martinez, the respondent's 18-year-old daughter, testified on his behalf. She corroborated the separations between her parents and, in part, attributed the difficulties in the marriage to her mother's continued receipt of welfare benefits. Ms. Martinez also corroborated her mother's medical condition. Further, the witness recounted how the respondent assumed full responsibility for his family during the period of his wife's illness and thereafter.

The respondent also described the circumstances underlying his failure to disclose his 1981 indictment and conviction on his 1983 renewal application. The

respondent acknowledged that following his conviction, he anticipated the possibility that he would lose his casino employee license. He discussed this matter with Heather Delmar, his probation officer. However, no action was ever initiated. The respondent completed his 1983 renewal application by himself (J-4). The form was completed under hurried conditions at the Commission's offices. The respondent does not write well in English and assumed erroneously that the Commission knew of his prior misconduct. Therefore, he did not disclose the offense. He admitted that the omission was careless. The respondent expressed remorse for the omission. In addition, the respondent acknowledged that his disclosure of the offense on his 1986 renewal application was made with the assistance of Ms. Echevarria, who enjoys better versatility with the English language, and was made with knowledge of the pending complaint.

Ms. Echevarria testified that she assisted the respondent in the completion his 1986 renewal application and that she was then aware of the within action.

Although the Division did not attempt to refute the respondent's testimony, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and as the holder of a casino employee license and a casino hotel employee registration, 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 respondent's demeanor, the plausibility of his testimony, and my examination of the documentary evidence and the testimony of other corroborating witnesses, it appeared that the respondent testified truthfully in every regard. He candidly admitted his misconduct and described in detail the underlying circumstances. Significantly, the respondent's testimony was consistent with the documentary evidence obtained from the Board subsequent to the first hearing date and was corroborated by Ms. Martinez and Ms. Echevarria, although both witnesses had acknowledged close relationships with the respondent. Nevertheless, the respondent's presentation appeared to be sincere and was most believable. Accordingly, I am persuaded to accept his testimony in all respects.

The respondent also offered a verification of employment at the time when he was a shuttle bus driver for BRC, which reflects that he was a good and happy employee (J-5); a verification of employment as a farm laborer in 1980, which reflects that he was a good worker (J-6); a letter from Donald Crocket, Casino Manager of the Golden Nugget, which states that the respondent is "a very dependable and efficient worker," and is well

regarded by his coworkers and supervisors (R-1); a performance evaluation from the Golden Nugget in 1985, which reflects a positive evaluation (R-2); and a letter from George A. Mortellite, for whom the respondent worked as a farm laborer, and who characterized the respondent as a "loyal and steadfast employee" (R-3). In light of these letters and evaluations, together with the respondent's tenure with the Golden Nugget, it appears that he performs well in his work and is well regarded by supervisors.

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

1. The respondent's testimony, which was consistent with the documentary evidence produced subsequent thereto, was corroborated by the testimonies of other witnesses, and appeared to be sincere and believable, was persuasive in all respects.
2. Although the respondent admittedly was partially responsible for the misconduct underlying his 1981 conviction, he was not solely responsible therefore, and was not culpable to the degree to which he pled guilty.
3. The medical condition of the respondent's wife contributed substantially to his entry of a guilty plea to the indictment.
4. The respondent's failure to disclose the 1981 indictment and conviction on his 1983 renewal application was the result of carelessness, which was partially attributable to his difficulty writing the English language.
5. The respondent is well regarded as an employee, including as a dealer in the casino industry.
6. The respondent's testimony that he did not intend again to collect welfare and that there was no likelihood of a repetition of any misconduct, was sincere and persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the

individual licensee." Section 129(1) 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."

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division alleged that the respondent's conviction for a violation of N.J.S.A. 2C:20-4 is a disqualifying offense under section 86c(1).

In order for the conviction to be a disqualifying offense under section 86c(1), the offense must be a crime of the second or third degree. Here the respondent's conviction is for a crime of the fourth degree, pursuant to N.J.S.A. 2C:20-2b(3), and is not an automatic disqualifying offense. I so **CONCLUDE**.

Although the total amount of the overpayments received by the respondent's household would indicate a third-degree offense, under N.J.S.A. 2C:20-2b(2)(a), such was not alleged by the Division, pursuant to section 86g. In addition, given the role of the respondent's wife in the procurement of the benefits, it is not now possible to determine the precise extent of his misconduct.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 2C:20-4 is a disqualifying criminal offense under section 86c(1).

(B) N.J.S.A. 5:12-86c(2)

Section 86c(2) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2A of the New Jersey statutes be disqualified from licensure. The respondent's conviction of a violation of N.J.S.A. 2A:111-2, welfare fraud, is a listed disqualifying offense under section 86c(2).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a disqualifying criminal offense under section 86c(2).

(C) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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."

The Division contends that the respondent's 1981 convictions render continued registration and licensure to be inimical to the policies of the Act.

Since the offense and the other criteria to be considered under this issue are substantially similar to those which must be considered under the rehabilitation issue, they will not be addressed separately here. By reason of the conclusion that the respondent has established his rehabilitation, under sections 90h and 91d, he has established that continued registration and licensure would not be inimical to the policies of the Act, under section 86c(4). I so **CONCLUDE**.

(D) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

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

First, Mr. Martinez holds a casino hotel employee registration and a casino employee license, and is currently employed as a blackjack dealer by the Golden Nugget. As such, he has direct patron contact and direct responsibility for casino activities.

Second, the respondent committed violations of N.J.S.A. 2C:20-4, theft by deception, and N.J.S.A. 2A:111-2, welfare fraud, which convictions involved the identical misconduct, over a period of approximately two years, and which ceased at about the time he was first employed in the casino industry. Because the welfare fraud offense is a listed disqualifier under section 86c(2), the offense is serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a registrant and prospective employee in the industry knowingly permitted a theft of public monies to which his family was not entitled. In addition, it is apparent that the respondent knew or should have known that false information was provided in the process of obtaining these monies. These factors establish the seriousness of the offense; however, the remaining underlying circumstances must also be examined. More specifically, the respondent was not the listed welfare client and had not made applications for benefits; he was absent from the household during some of the times when the overpayments were alleged to have been made, and he was having marital difficulties. Although these circumstances cannot excuse the respondent's culpability, they do mitigate significantly the seriousness of his offense.

Fourth, the respondent's misconduct occurred during a two-year period between 1977 and 1979, after which it ceased. It must be noted that the respondent's family stopped collecting welfare benefits at about the time he first became employed in the casino industry, and no subsequent application has been made.

Fifth, the respondent was in his early thirties at the time of his offense. There was no indication that his misconduct was due to immaturity.

Sixth, there is an indication that the respondent's family obtained welfare benefits to which it was not entitled during the early 1970s. However, Board records do not reflect accurately the role of the respondent, if any, in that matter. Further, on his initial application for licensure, the respondent revealed a minor criminal record. In both instances there does not appear to be a nexus with the misconduct raised in this matter. Accordingly, the respondent's misconduct, although it occurred over a two-year period, appears to be isolated in nature. He has not committed any subsequent violations of the criminal laws.

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

Eighth, the respondent has made substantial rehabilitative efforts. He accepted full responsibility for the misconduct despite his wife's role therein, pled guilty to the entire indictment, and satisfied the conditions of his sentence. The seriousness of the offense is mitigated significantly by the contributing factor of marital discord. Similarly, the unfortunate circumstances which existed at the time of the indictment, and which formed the basis for the respondent's guilty plea, serve to mitigate the impact of the conviction. It must be noted that the respondent took advantage of the opportunities created by the advent of casino gaming in this state and obtained full-time employment in the casino industry, which enabled him to support his family and eliminate any further need to receive welfare benefits. This opportunity also contributed to a stabilization of the respondent's marriage. In addition, the respondent obtained additional training in order to qualify for employment as a dealer. His performance in the industry since 1979 is commendable in all respects. Further, the respondent has performed his marital and parental responsibilities in a highly commendable manner. At a time of great tragedy and with a history of marital separation, the respondent provided unswerving care and devotion to his wife until her death and has continued without interruption to provide support and care for his children. The respondent has also taken on the responsibility of caring for two additional children by his fiancée. The respondent has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there appears to be little likelihood, if any, of a repetition. This is enhanced by the respondent's testimony, which reflects great pride in his position and in his ability to support his family and be a contributing citizen. Essentially, there is nothing more the respondent could do to establish his rehabilitation.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to sections 90h and 91d.

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

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

So that fully informed 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. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

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

The respondent knew that his conviction in 1981 might well have a negative impact upon his continued licensure and registration. He had every reason to believe that the Commission would learn of his conviction prior to the filing of his renewal application. Also, the respondent did not dispute that he was obligated to disclose his conviction on his renewal application; however, he did not. The respondent's explanation establishes that his failure to disclose was the result of his own carelessness. His difficulty with the English language and completion of the application form in a hasty manner undoubtedly contributed to the nondisclosure; however, these factors do not alter and, in fact, confirm, that the nondisclosure was the result of carelessness. The respondent's assumption that the Commission knew of his misconduct, although logical, does not serve to excuse or mitigate to any degree his nondisclosure. I am persuaded that the nondisclosure was neither intentional nor purposeful; similarly, I am persuaded that it was also not the result of ignorance or inadvertence. Nevertheless, a nondisclosure which is the result of one's own carelessness is not sufficient to excuse the nondisclosure. I so CONCLUDE.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent is disqualified from continued licensure by operation of section 86b.

(F) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Martinez was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from a licensee's affirmative burden to establish his qualifications under section 90b, which incorporates section 89b(2) by reference. William Gonzales at 8. Therefore, the conclusion that Mr. Martinez failed to disclose his 1981 conviction on his 1983 renewal application in violation of section 86b appears to automatically preclude him from meeting his burden under section 90b. It has also been held that a licensee's willingness to disclose fully his criminal record history is the most direct and reliable means by which to test his good character, honesty and integrity. Nevertheless, it is the easiest test for a licensee to meet if he does, in fact, possess good character, honesty and integrity.

This case presents unique circumstances which cannot be ignored. More specifically, between the nondisclosure in the fall of 1983 and the initiation of charges against the respondent on October 4, 1985, almost two years passed. During this time, the respondent was employed in the industry, where he performed in a commendable manner, he did not repeat his misconduct or commit any other violations of the criminal laws, and

he continued to perform his parental responsibilities in a highly commendable manner. Also, an additional one and one-half years has passed, during which these proceedings were pending. Although this amount of time is unusual, all of the delays, even those attributable to the respondent, were for legitimate reasons. Again, the respondent has conducted himself in both his business and private affairs in an admirable manner during this extended period.

It is readily apparent that aside from the section 86b issue, the respondent established that he is a person of good character, honesty and integrity. More specifically, the circumstances underlying the misconduct were mitigated substantially by the marital circumstances which existed at the time of the misconduct and by reason of the circumstances which existed at the time of the indictment and the guilty plea. In addition, the respondent has accepted full responsibility for his misconduct, has eliminated the cause for the misconduct, has performed admirably within the casino industry during the past eight years and has cared for and supported his family in a commendable manner. Accordingly, the respondent presents no risk to the public nor to the integrity of the gaming industry in this state.

Despite the presence of a section 86b violation, it is apparent that by reason of the respondent's continuing positive conduct, together with the unusual and extensive passage of time since the violation, he has established that he now possesses good character, honesty and integrity sufficient to deserve the privilege of continued licensure. Specifically, the respondent's proofs establish that with the passage of time he has overcome the negative impact of his section 86b violation. An examination of the whole person clearly and convincingly establishes that Mr. Martinez is a person of good character, honesty and integrity, and is entirely suitable for continued 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.

(G) 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 license and registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee 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 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 licensee or registrant involved with respect to the gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring. . .

Although the respondent's section 86b violation may not now disqualify him from continued registration and licensure, it cannot be ignored. On any occasion when a licensee or registrant commits a violation of the Act, there is an inherent risk to the integrity of gaming operations. Because this misconduct did not occur during the scope of licensed employment in a casino, there was no risk to the public. By reason of the passage of time, the violation is not irreparable. With the exception of this violation, the respondent's employment history within the casino industry is positive. Nevertheless, in order to ensure that the respondent recognizes the seriousness of his misconduct and that he will not repeat it in the future, and in order to enhance "the public confidence and trust in the efficacy and integrity of the regulatory process," the imposition of a penalty is warranted. N.J.S.A. 5:12-1b(6). Because it would serve no useful purpose to suspend the respondent's registration and license and thereby cause a termination of his current employment, a monetary penalty should be imposed. A penalty in the amount of \$1,000 should ensure future compliance with the regulatory scheme. This represents a severe monetary sanction which should be imposed because a section 86b violation is a very serious breach of the Act.

I **CONCLUDE** that the respondent should pay a monetary penalty in the amount of \$1,000.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against respondent's casino hotel employee registration no. 12186-40 and casino employee license no. 20260-21 be **GRANTED**, and that a monetary penalty in the amount of \$1,000 be imposed against the respondent, which penalty shall be payable within 180 days of the date of the final order.

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

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

March 12, 1987
DATE

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

Receipt Acknowledged:

March 13, 1987
DATE

William S. Rojas
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 17 1987
DATE

Ronald J. P. [Signature]
OFFICE OF ADMINISTRATIVE LAW

bc/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 State of New Jersey v. Saturnino Martinez, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, no. 57852-81, Indictment, filed June 16, 1981 (3 pages)
- J-2 State of New Jersey v. Saturnino Martinez, New Jersey Superior Court, Atlantic County, Law Division - Criminal, Judgment of Conviction, October 9, 1981 (2 pages)
- J-3 Personal History Disclosure Form - 2A, Saturnino Martinez, a/k/a Tony Ramon, filed on June 11, 1980 (28 pages)
- J-4 Casino Control Commission - Employee License Renewal Application, Saturnino Martinez, March 11, 1983 (3 pages)
- J-5 Verification of Employment of Saturnino Martinez, by Caesar's Boardwalk Regency, June 27, 1980
- J-6 Verification of Employment of Saturnino Martinez, by Paul MacRie, June 26, 1980
- P-2 Packet of Documents from the Atlantic County Board of Social Services (33 pages)
- P-3 Affidavit of Saturnino Martinez, December 2, 1986 (3 pages)
- R-1 Letter from Donald Crocket, July 20, 1986
- R-2 Golden Nugget Casino Hotel - Employee Evaluation, Saturnino Martinez, December 23, 1985
- R-3 Letter from George A. Mortellite, June 24, 1986

EXHIBIT NOT ADMITTED INTO EVIDENCE

- P-1Id. Document from Atlantic County Welfare Board (included within P-2)

WITNESS LIST

For the petitioner:

None

For the respondent:

Maria Echevarria
Josephine Martinez
Saturnino Martinez

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-121
REGISTRATION NO. 41224-40
OAL DOCKET NO. CCC 7856-86

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

Complainant, :

FINAL ORDER

v. :

MICHELLE MINGLE, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 29, 1987,

IT IS on this 29th day of May 1987, ORDERED that the initial decision is modified as follows:

1. The ALJ was apparently under the erroneous impression that casino hotel employee registrations are renewed on a regular basis and his statements to that effect are hereby corrected to note that pursuant to N.J.S.A. 5:12-91(b) registrations remain in effect unless revoked, suspended, limited or otherwise restricted by the Commission.

2. The respondent's conduct in receiving aid to families with dependent children, medicare and food stamps to which she was not entitled constitutes third degree theft by deception in violation of N.J.S.A. 2C:20-4.
3. A reference to N.J.S.A. 5:12-86(g) is included in addition to a reference to N.J.S.A. 5:12-86(c)(1) in connection with the respondent's disqualifying offense since the respondent was never convicted of the offense.
4. Considering the respondents five-year record as a dependable and conscientious employee in the casino industry, the fact that she successfully completed the Pretrial Intervention Program and her representation to the Commission that will continue to abide by her restitution agreement with the Camden County Board of Social Services, the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

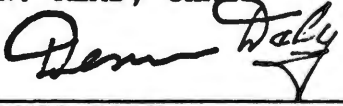
IT IS FURTHER ORDERED that the respondent is disqualified for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other registration, license, 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7856-86

AGENCY DKT. NO. 87-121

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

Petitioner,

v.

MICHELLE MINGLE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Michelle Mingle, respondent, pro se

Record Closed: March 9, 1987

Decided: March 31, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission on September 30, 1986, seeking to revoke the respondent's casino hotel employee registration because she was charged with a third-degree theft (welfare fraud) in Camden County on February 13, 1985. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in the Ventnor Municipal Court on March 9, 1987, and the record closed.

FACTS

There is no dispute as to the operative facts and I **FIND** that the respondent received welfare benefits on behalf of her son and herself totaling \$3,531.11 from June 1982 to February 1983, while she was employed at the Playboy Casino Hotel in Atlantic City, knowing that she was not entitled to receive them. I **CONCLUDE** that the respondent committed an act which would constitute an offense under N.J.S.A. 5:12-86c, to wit, a third-degree theft as described in N.J.S.A. 2C:20-2b(2)(a).

BACKGROUND OF THE OFFENSE

The respondent's husband deserted her and she and her sister shared a house and the rent in Camden, New Jersey. The respondent applied for and received Aid to Families with Dependent Children (AFDC), Medicare, and food stamps on November 19, 1981. On May 17, 1982, the respondent was hired at the Playboy Casino Hotel as a housekeeper. At about this time, the respondent's sister moved out, leaving the respondent with the responsibility for the full rent of \$300 per month. Because of her financial condition, the respondent did not report her employment and income to the Welfare Department as she was required to do, and she continued to receive benefits. This was her crime.

The respondent was discovered, indicted, and granted participation in the Pretrial Intervention Program (PTI). She signed a reimbursement agreement with the Welfare Board, performed 50 hours of community service, made approximately six payments of \$27 each under the reimbursement agreement and stopped paying in February 1986, leaving a balance of approximately \$3,369 due and owing to the Welfare Board. On June 23, 1986, the charges against her were dismissed pursuant to the PTI Rule 3:28.

In April 1986, the respondent became disabled by high blood pressure and toxic anemia as a result of pregnancy. Because she did not obtain disability benefits, she returned to work at Atlantis Casino (successor to Playboy) at the end of July 1986. She has been continuously employed at the same location since June 1982, except for the period of disability as a result of pregnancy. Her employer writes that she is diligent, dependable, conscientious, willing, loyal and attentive. She has not paid the balance due on her reimbursement agreement. If terminated from Casino employment, she will be again eligible for AFDC upon the expiration of unemployment benefits.

REHABILITATION - N.J.S.A. 5:12-91d

1. The respondent is a hotel housekeeper.
2. The offense (welfare fraud) was not one of the more serious crimes. It was accomplished without violence. It was not flagrant; the respondent does not resemble the legendary and mythical "Welfare Queen" of anecdotal history. She used her welfare grant as a safety net after she obtained employment.
3. The offense occurred while the respondent was adjusting from the status of homemaker to single parent on welfare to employed single parent.
4. The offense occurred between June 1982 and February 1983.
5. The respondent was 28 when this offense was committed.
6. The offense was repeated monthly for eight or nine months.
7. The social condition which contributed to the offense, a failure of paternal support, is quite common.
8. The respondent was granted PTI, but she failed to make good on her restitution. She still owes approximately \$3,300.

On the other hand, respondent's supervisor at the casino hotel writes as follows:

To Whom It May Concern,

Michelle Mingle, is one of the most diligent workers that we have in our department. Besides that she is also dependable and conscientious.

She has perfect attendance and is always on time for work. Whenever she is asked to complete a project or something that her job does not require she is always willing to help.

Michelle has been with the Housekeeping Department for five years and all five years have been loyal and attentive.

Yours truly,

Ms. Marsha Glover

Despite the respondent's excellent recommendation, because she has not paid restitution or made an alternative payment plan with the County Welfare Agency, I cannot conclude that the respondent has affirmatively proven her rehabilitation as required by statute.

I note, however, that N.J.S.A. 5:12-91b does not require revocation of a registration upon a finding that the registrant is disqualified on the basis of criteria contained in Section 86 of the Casino Control Act. A more equitable disposition of the respondent's registration may be a second opportunity in which to discharge her obligation to the County Welfare Agency.

I therefore **DISMISS WITHOUT PREJUDICE** the Division's complaint in this matter. In the event that respondent has not discharged or otherwise resolved her indebtedness to the County Welfare Agency by the time her registration is reviewed for renewal, the Division may not be estopped from filing a new complaint containing the same or similar allegations.

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

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

March 31, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

April 1, 1987
DATE

Michael J. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 3 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESSES

For petitioner:

Jim Lanute, CWA Investigator

For respondent:

Michelle Mingle

EXHIBITS

For petitioner:

P-1 Indictment and PTI Order

P-2 Report of County Welfare Agency

P-3 Reimbursement Agreement

For respondent:

R-1 Ms. Marsha Glover's letter, dated March 7, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-72
OAL DOCKET NO. CCC 4262-86
RENEWAL APPLICATION NO. 17186-21,
LICENSE NO. 17186-22 (INACTIVE),
REGISTRATION NO. 08695-40 (INACTIVE)

APPLICATION OF RAFAEL MONAGAS FOR :

ORDER

RENEWAL OF A CASINO EMPLOYEE LICENSE :

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 14, 1987,

IT IS on this *26th* day of May 1987, ORDERED that the initial decision is modified as follows:

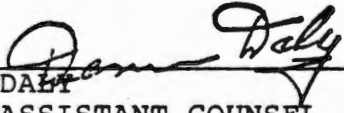
The applicant's collection in 1982 of \$1547 in unemployment benefits while he was employed at the Tropicana Hotel and Casino constituted the offense of theft by deception in the third degree, a violation of N.J.S.A. 2C:20-4 rather than of N.J.S.A. 2C:20-3a (theft by wrongful taking) as stated by the ALJ. Init. dec. at 7.

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

IT IS FURTHER ORDERED that Rafael Monagas 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4262-86

AGENCY DKT. NO. 86-EA-72

RAFAEL A. MONAGAS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC

SAFETY,

Respondent.

Rafael A. Monagas, petitioner, pro se

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 6, 1986

Decided: November 17, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Rafael A. Monagas, petitioner, applied to the Casino Control Commission (Commission) for renewal of his casino employee license no. 17186-21, pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal by reason of its contention that the petitioner had committed a criminal offense which disqualified him from continued licensure under section 86c(1) of the Casino Control Act (Act); and that the petitioner, by reason of his misconduct, lacked the requisite good character, honesty and integrity, pursuant to

section 90b which incorporates section 89b(2) by reference. The petitioner denied the allegation and, in the alternative, contended that he was rehabilitated under section 90h.

PROCEDURAL HISTORY

Mr. Monagas filed his employee license renewal application with the Commission on August 29, 1984. By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated May 6, 1986, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By request filed on June 19, 1986, the petitioner requested a hearing. On June 26, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on August 7, 1986, before Administrative Law Judge Stephen W. Thompson. The matter was heard on October 6, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Monagas is 44 years of age and resides currently in Hammonton, New Jersey.

From 1979 to 1983, the petitioner was employed by Ancora State Hospital as a housekeeping foreman.

In 1980, the petitioner obtained his casino hotel employee registration and casino employee license; both have been renewed.

The petitioner was initially employed in the casino industry by Boardwalk Regency Corporation (BRC) for a period of eight months as an assistant executive housekeeper. The petitioner left BRC for a similar position and increased compensation at the Greate Bay Hotel and Casino, Inc. (Sands), where he remained for four months. The petitioner had difficulties with his supervisor and submitted his resignation upon request.

The petitioner was next employed for a brief period by Harrah's Marina Hotel/Casino as a steward department supervisor.

Thereafter, the petitioner was employed by Claridge Hotel and Hi-Ho Casino as an executive housekeeper. He remained in this position for approximately eight months; however, he was terminated following a dispute with management.

The petitioner was next employed by the then Playboy Hotel and Casino for a few months as a steward department supervisor.

From March 29, 1982 to October 3, 1985, the petitioner was employed by Adamar of New Jersey, Inc. t/a Tropicana Hotel and Casino (Tropicana) as a supervisor of public areas. He left this position voluntarily.

From March 23 to June 14, 1982, during which period the petitioner was employed by Tropicana, he collected unemployment insurance benefits at a rate of \$133 per week (R-3, R-5 and R-7). The petitioner received benefits by check every two weeks from the unemployment office in Hammonton, at which time the petitioner signed for the checks and, indicated that he had made a job search and was not currently working. Ultimately it was discovered that the petitioner had improperly received benefits in the amount of \$1,547 (R-1).

On November 9, 1983, at a hearing before the State Department of Labor, the petitioner acknowledged that he had provided false information in order to receive benefits to which he was not entitled. At the hearing herein, Mr. Monagas testified that he knew at the time that it was wrong to collect unemployment benefits at the same time he was employed. The Department of Labor assessed a \$240 fine, plus \$14.31 interest, against the petitioner for a total debt of \$1,891.31.

The petitioner left the Tropicana for employment with Tecon, Inc., the contractor for housekeeping services at NAFAC. The petitioner was employed as director of housekeeping for approximately three months and resigned voluntarily.

Next, the petitioner started his own business - M & M Cleaning Company. This business was unsuccessful because of inadequate financing. Ultimately, the petitioner filed a petition in bankruptcy.

From January through August 1986, the petitioner again collected unemployment benefits. For the first few months, the petitioner received no monies and his benefits were used to repay the principal of his indebtedness due to his earlier improper receipt of benefits. Ultimately, the principal was repaid in full and the petitioner began to receive checks. Although the petitioner asserted no knowledge thereof, it is apparent that the fine and interest assessments were not satisfied by recoupment from new benefits, and remain outstanding to date (R-5).

From April 14 to June 8, 1986, the petitioner was employed by Bally's Park Place, Inc. (Park Place) as a shift manager of public areas with responsibility to oversee the cleaning of the casino. He resigned voluntarily from this position because his shift was changed, which created a conflict with his domestic responsibilities.

The petitioner again admitted he knew at that time that it was wrong to receive unemployment benefits while employed at Park Place.

As of September 15, 1986, the petitioner returned to Ancora State Hospital, where he is employed in the housekeeping department.

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

(B) DISPUTED FACTS

In dispute were the nature of the petitioner's testimony and his character, honesty and integrity.

During the petitioner's testimony on direct, this administrative law judge attempted to assist in his presentation. In response to numerous inquiries concerning his employment record within the casino industry and despite ample opportunity, the petitioner did not disclose his employment at Park Place, his most recent position. The petitioner acknowledged this employment only upon confrontation with the details thereof during cross-examination. Interestingly, and certainly not coincidentally, the petitioner had for a second time received unemployment benefits to which he was not entitled

during, and by reason of, his employment at Park Place. Because of the circumstances underlying the nondisclosure and the petitioner's demeanor, this nondisclosure appeared to be neither inadvertent nor the result of ignorance. I so **FIND**.

The petitioner presented letters on his behalf from Robert Leavy, vice president of City Supply Co., Inc., who has known the petitioner since 1980 (P-1); Joe Italiano, who has employed the petitioner during the past two to three years (P-20); Dennis Munoz, a friend of the petitioner for the past 15 years and, occasionally, a co-employee (P-3); and Bert Echevarria, a captain with the Cumberland County Sheriff's Department who has known the petitioner for the past three years (P-4). Each of the authors was of the opinion that the petitioner is forthright, responsible, honest, dependable, courteous, professional and of high moral character. I so **FIND**.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-3, 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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's receipt of unemployment benefits in excess of \$500 between March 23 and June 14, 1982, while he was employed by the Tropicana, constitutes a violation of N.J.S.A. 2C:20-3, which under the circumstances disqualifies the petitioner from continued licensure.

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.

This statute preserves the elements of larceny as defined at common law. State v. Combariati, 186 N.J. Super. 375 (Law Div. 1982), *aff'd* 192 N.J. Super. 131 (App. Div. 1983).

The first element of theft is the "wrongful or fraudulent taking and carrying away." State v. Leicht, 124 N.J. Super. 127, 131 (App. Div. 1973). It is well settled that if one takes the goods of another out of the place where they were put, although he is detected before they are carried away, the larceny was complete. State v. Wilson, 1 N.J.L. 502 (Sup. Ct. 1793).

The second element is that there be a taking of property of another. State v. D'Angostino, 176 N.J. Super. 49 (App. Div. 1980). Initially, it is not an element of larceny that the defendant knows that he is taking another's property. The only time that knowledge is relevant is where the defendant raises the affirmative defense of a claim of right and offers evidence that he was unaware that the property belonged to another. At this point the State must prove that the defendant knew that the property belonged to another, and did not belong to him. Combariati, at 379.

The third element is that the property be taken "without the consent of the owner." Leicht, at 133. As a result, larceny is not committed where property is taken "with the full knowledge and consent of the owner or his authorized servant or agent, however guilty may be the taker's intent." State v. Green, 170 N.J. Super. 292, 295 (App. Div. 1979).

The fourth element is that the defendant take "with a fraudulent intent to deprive the owner of his property." Leicht, at 131. Larceny has not been committed where the taker intends to return the property to the owner. Further, if the taker has valid title to the property while the holder merely has possession, the taker does not have the "intent to deprive" but merely the lawful intent to obtain that which is rightfully his. Id. at 133.

The Division established, and the petitioner admitted during his testimony, that he knowingly received unemployment benefits to which he was not entitled from the State 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:20-3a. 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 section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Monagas holds a casino employee license and was previously employed in a supervisory capacity in the housekeeping departments of various casinos.

As such, he did not have direct responsibilities for actual gaming activities, but had supervisory responsibility for maintenance employees in the casino and had potential contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-3a, theft - third degree, over a four-month period during which he 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. Here, a licensee employed in the industry knowingly committed a theft of public monies to which he was not entitled. In addition, the petitioner provided false and misleading information in the process of obtaining these monies. Accordingly, the circumstances under which the offense occurred enhance the seriousness thereof.

Fourth, the petitioner's misconduct occurred during a four-month period between March 23 and June 14, 1982, when it ceased.

Fifth, the petitioner was approximately 40 years of age at the time of the offense. There was no indication that his misconduct was due to immaturity.

Sixth, the petitioner's misconduct was not isolated in nature. His testimony revealed that he committed recently another identical offense, which, it must be emphasized, occurred during another period of employment within the casino industry.

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

Eighth, the petitioner has not made any rehabilitative efforts. Although the petitioner earned a somewhat positive employment record within the casino industry prior to and subsequent to his initial offense, this record is impaired by reason of his misconduct during that time and by reason of his subsequent misconduct, also during a period of employment within the industry. Further, the petitioner made restitution only by means of recoupment from new benefits; i.e., he made no independent payments. Last, and most significant, is the fact that the petitioner repeated recently his misconduct. In addition, it was apparent during the hearing that the petitioner attempted to avoid revelation of his most recent misconduct by nondisclosure of his most recent employment in the industry.

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

By reason of the petitioner's inability to establish his rehabilitation, the circumstances underlying his misconduct in 1982, the circumstances underlying his repetition of his misconduct in 1986, as well as his lack of candor during the hearing indicate clearly that the petitioner does not possess the requisite good character, honesty and integrity for continued licensure, pursuant to section 90b. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the application of Rafael A. Monagas for renewal of his casino employee license be **DENIED**. It is further **ORDERED** that casino employee license no. 17186-21 be **REVOKED**.

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

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

November 17, 1986
DATE

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

Receipt Acknowledged:

November 18, 1986
DATE

Bernadette J. Freja
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 20 1986
DATE

Ronald L. Parker * S
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Letter from Robert Leavy, September 2, 1986
- P-2 Letter from Joe Italiano, September 12, 1986
- P-3 Letter from Dennis Munoz, September 13, 1986
- P-4 Letter from Bert Echevarria, September 15, 1986
-
- R-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance - Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, Rafael A. Monagas, March 23, 1984
- R-2 State of New Jersey, Department of Labor and Industry, Division of Unemployment and Disability Insurance, Bureau of Benefit Payment Control - Notice of Hearing, Rafael A. Monagas, November 2, 1983; Record of Hearing, November 9, 1983 (2 pages)
- R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance - Wage Information Inquiry, Rafael A. Monagas, May 9, 1983 (2 pages)
- R-4 State of New Jersey v. Rafael A. Monagas, Superior Court of New Jersey, Certificate of Debt, Docket No. DJ26,992-84, April 23, 1984 (2 pages)
- R-5 Letter to Joanne C. Ciancimono from Wilbur L. Pritchett, October 3, 1986
- R-6 Copies of Unemployment Insurance Benefit Checks from the State of New Jersey, Department of Labor and Industry, Employment Security Agency to Rafael A. Monagas (6 pages)
- R-7 Office of the Attorney General, Division of Gaming Enforcement - Supplementary Summary Report, prepared by Agent K. Smolenski, January 9, 1986 (4 pages)

WITNESS LIST

For the petitioner:

Rafael A. Monagas

For the respondent:

David Pacera

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-128
OAL DOCKET NO. CCC 3519-86
REGISTRATION NO. 60205-40

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

Complainant, : FINAL ORDER

v. :

JOSE M. MOREL, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of February 4, 1987,

IT IS on this 3rd of March 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The ALJ concluded that the respondent had demonstrated by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-91(d) from his conviction on March 1, 1985, for distribution of a controlled dangerous substance (cocaine) contrary to N.J.S.A. 24:21-19(a)(1), a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(3). However, the ALJ found that the respondent's testimony concerning his drug sales was "incredible" (initial decision at 2), a

finding that is supported by ample credible evidence in the record and with which the Commission agrees.

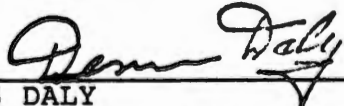
2. Analyzing the factors enumerated in N.J.S.A. 5:12-91(d), the Commission concludes that the respondent has failed to demonstrate rehabilitation by clear and convincing evidence. In addition to his disqualifying conviction, the respondent admitted selling two grams of cocaine to an undercover officer on another occasion. He also testified that he negotiated for the sale of one-half pound to an undercover officer. The respondent displayed a willingness to repeat his illegal activity which ceased only upon his arrest. Moreover, the respondent was convicted on March 1, 1985, for an offense he committed on August 8, 1984, both relatively recent events. These factors, combined with the respondent's unbelievable testimony, lead to the conclusion that he has failed to establish his rehabilitation by clear and convincing evidence.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Jose Morel is revoked; and

IT IS FURTHER ORDERED that the respondent 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(a).

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 3519-86

AGENCY DKT. NO. 86-128

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

Petitioner,

v.

JOSE MOREL,

Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Perry T. Helfant, Esq., for respondent

Record Closed: October 28, 1986

Decided: December 10, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

Jose M. Morel was convicted of distribution of a controlled dangerous substance and incarcerated. Upon his release from jail he obtained a casino employee registration and has been employed in a casino hotel as a kitchen steward ever since. He acknowledged his conviction upon his registration application. After an investigation, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission on April 21, 1986, seeking to revoke the respondent's registration as a result of his prior conviction.

The respondent requested a hearing and this matter was referred to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on July 31, 1986 and the hearing was convened in Atlantic County Civil Courthouse in Atlantic City on October 2, 1986. The record was held open until October 14, 1986 in order to give the respondent an opportunity to obtain additional letters of recommendation. That period was extended for an additional two weeks in order to give the respondent additional time to procure documents from the probation office in Atlantic County.

ADMISSION AND STIPULATIONS

The respondent admits and the documents in evidence prove that the respondent was convicted of the crime of distribution of a controlled dangerous substance, a crime listed in section 86c of the Casino Control Act as a disqualification criterion. Pursuant to section 91b of the act, for such a conviction the Casino Control Commission "may revoke, suspend, limit or otherwise restrict (the) registration. . . ." In addition, pursuant to 91d of the act, such a person may save his registration by affirmatively demonstrating his rehabilitation.

In addition to the sale of cocaine for which the respondent was convicted, he admits to another sale of a small quantity of cocaine to an undercover agent and the use of cocaine for approximately two years.

The unindicted sale was for approximately two grams (\$200); the indicted sale was for approximately one-quarter pound (\$6,500). The respondent says that these were the only sales in which he was ever involved. I find that testimony incredible when viewed in the context of his early release from the Army for drug use, his admitted \$150 per week drug habit, his significant period of unemployment and his claim that his brother-in-law, a drug dealer, gave him his cocaine and a few dollars now and then. In addition, on at least one occasion that we know of, the respondent discussed a one-half pound sale with an undercover agent.

Based on these facts, I **CONCLUDE** that the registration of the respondent should be revoked (subject to rehabilitation) based on the disqualification criteria set forth in N.J.S.A. 5:12-86c(3). This was no casual sale, but organized criminal activity.

REHABILITATION

The respondent minimized his involvement in drug sales. On the other hand, the respondent has served his sentence in jail. He obtained his casino registration and his job within 30 days of his release. He loves his job. He is a kitchen steward. His job is a scullery man. His supervisor likes him and thinks he is an excellent employee. After working hours the respondent avoids his former companions and cousins who involved him in cocaine sales. He listens to reggae music, plays dominos and helps his mother and brother. He claims to be drug free since he went to jail. This was either on August 6, 1984 when he was arrested and spent 13 days in jail in default of bail, or March 1, 1985 when he was sentenced. He has saved his vacation time for over a year in order to visit friends in Puerto Rico and family in the Dominican Republic.

The Division argues that the respondent's obvious misrepresentation of the extent of his drug involvement precludes a finding of rehabilitation. This point also occurred to me. However, it is not reasonable to expect applicants for a scullery job to appreciate the nice spiritual, legal and psychological benefits that are supposed to flow from confession. He admitted doing what he was charged with.

The statute contains criteria which is of assistance in determining whether or not a person is rehabilitated for the purpose of casino registration:

- 91d(1) The nature and duties of the registrant's position. He is a scullery man.
- 91d(2) The nature and seriousness of the offense. The sale of a large quantity of cocaine.
- 91d(3) - The circumstances under which the offense occurred. This ongoing criminal conspiracy arranged to sell one-quarter pound of cocaine to an undercover agent.
- 91d(4) - The date of the offense. August 6, 1984.
- 91d(5) The age of the respondent when committed. 24 years old.
- 91d(6) Whether the offense was an isolated or repeated incident. Very probably ongoing activity for six months.
- 91d(7) Any social condition which may have contributed to the offense. No unusual social conditions present.

9ld(8) Any evidence of rehabilitation, etc. The registrant has an excellent recommendation from his supervisor and good conduct in the community subsequent to his arrest and conviction.

Based upon the factors involved in this case but for the registrant's excellent casino work experience I would not find him rehabilitated. This was a serious crime. However, his supervisor admitted that he too has served time in a Florida prison on a cocaine conviction. He is himself a rehabilitated offender. He sees the respondent as an ally. If the respondent were selling drugs in or out of the casino, or even using them, his supervisor would be the first to know. I, therefore, **CONCLUDE** that the respondent is rehabilitated.

I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

December 10, 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

December 11, 1986
DATE

Receipt Acknowledged:

Nancy D. Smith
CASINO CONTROL COMMISSION

DEC 15 1986
DATE

Mailed to Parties:

Ronald J. Park x.5
OFFICE OF ADMINISTRATIVE LAW

sc

797

WITNESSES

For Petitioner:

None.

For Respondent:

Ralph L. Brown
Jose Morel

EXHIBITS

- P-1 Certified copy of the indictment and judgment of conviction
- P-2 Police reports

- R-1 Certified copy of the docket indicating disposition
- R-2 Letter from John P. Conte, Executive Steward at Trump Plaza

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-EA-21
OAL DOCKET NO. CCC 1892-86
APPLICATION NO. 62524-22
REGISTRATION NO. 61745-40

APPLICATION OF WALTER C. MULLINS :
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER
_____ :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 3, 1986,

IT IS on this ^{18th} day of February 1987, ORDERED that the initial decision of the Office of Administrative Law in this matter is modified as follows:

The ALJ found the applicant's testimony "was credible and persuasive in all respects." Init. dec. at 5. The Commission finds the applicant's proffered excuses for his failures to disclose his complete criminal record on his PHDF2A (e.g., failures of memory, misunderstanding of question, fear of jeopardizing chances for job) are inconsistent one with another, thus the testimony is neither credible nor persuasive.

IT IS FURTHER ORDERED that the application of Walter C. Mullins for a casino employee license is denied based upon the reasons set forth in the initial decision, as modified,

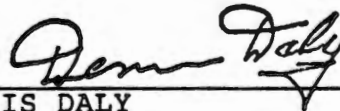
which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that this action shall not prevent Walter C. Mullins from retaining his casino hotel employee registration.

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 1892-86

AGENCY DKT. NO. 86-EA-21

WALTER C. MULLINS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

Walter C. Mullins, petitioner, pro se

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: September 5, 1986

Decided: October 17, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Walter C. Mullins, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the petitioner had failed to disclose information material to licensure, in violation of section 86b of the Casino Control Act (Act), and that the petitioner lacked the requisite good character, honesty and integrity, by reason of his failure to disclose and because of his criminal record history, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

Mr. Mullins filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on July 17, 1985 (R-4). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated January 29, 1986, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on March 12, 1986, the petitioner requested a hearing. On March 19, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on June 16, 1986. The matter was heard on September 5, 1986, at which time the record closed.

(A) UNDISPUTED FACTS

Mr. Mullins is 25 years of age (R-4). He currently resides in Bridgeton, New Jersey. The petitioner attended Bridgeton High School until 1977. He is able to read fairly well and to write the English language.

The petitioner's parents separated when he was young and he lived with his grandparents. At age 12, he relocated to Bridgeton and resided with his mother.

Following his relocation to Bridgeton, the petitioner associated with the wrong people, which led to his involvement in various juvenile offenses. The petitioner expressed remorse for this behavior.

On October 6, 1980, the petitioner was arrested and was charged with a violation of N.J.S.A. 2C:18-2, burglary, at a trailer park (R-2 and R-3). On March 17, 1981, the petitioner was indicted by a state grand jury. On August 7, 1981, the indictment was dismissed and the petitioner was found guilty of criminal mischief, a disorderly persons offense, and was ordered to make restitution in the amount of \$50 (R-3). The petitioner was 19 years of age at the time of the incident. He acknowledged his involvement in the incident and testified that he and a friend attempted to steal merchandise from a trailer, which they intended to sell.

In 1984, the petitioner obtained a casino hotel employee registration from the Commission. The registration is not in issue in this matter.

In 1984, the petitioner was employed by the Boardwalk Regency Corporation (BRC) for a period of two and one-half months. He was involved in an automobile accident and was hospitalized, which precluded his return to work. His employment was terminated because he had not been employed for the minimum 90-day period; however, he is eligible for rehire.

The petitioner was next employed by CTI Construction Co. as a maintenance worker for one week.

Next, the petitioner was employed by the Greate Bay Hotel and Casino, Inc. (Sands) for an eight-month period during 1985 until January 1986. The petitioner's employment was terminated because he failed to report for work and did not call in an absence. The petitioner explained that his absence was the result of his error in misreading a new work schedule.

On July 17, 1985, the petitioner filed his PHDF-2A with the Commission (R-4). The petitioner completed the application form with the assistance of a commercial enterprise which performs such services. During this process, each question was read to the petitioner. He stated his response, which was then written on the form. In response to question number 16, the petitioner did not disclose his arrest, indictment and conviction.

The petitioner explained the reasons for his failure to disclose his criminal record history on his PHDF-2A. In part, the nondisclosure was the result of his fear that his criminal record history would have a negative impact upon potential employment. The remainder of the reasons for nondisclosure were in dispute and will be discussed, infra. The petitioner also testified that at the time he completed the PHDF-2A he did not know that the application process for a license was to be distinguished from an application for employment with a casino. Therefore, the nondisclosure did not create a concern because his nondisclosures of his criminal record history on applications for employment with casinos has not raised questions.

On the morning of December 5, 1985, Alan R. Weinstein, an agent with the Division, conducted a telephonic interview of the petitioner. During the interview, the agent read question number 16 in its entirety, which the petitioner acknowledged he understood. Nevertheless, the petitioner denied that he had ever been arrested or charged with criminal misconduct. However, upon confrontation about the details of the incident, he admitted his record. Further, the petitioner stated that he had not disclosed his criminal record history because he did not want to be turned down for a license, and he believed the charge in the indictment was improper because it was eventually downgraded to a disorderly persons offense.

The petitioner is currently employed by the Trump Plaza Casino in the environmental services department. He had been employed for a period of three weeks as of the date of hearing. The petitioner's supervisor declined to provide a statement on his behalf because the petitioner had been working for only a brief period.

The petitioner further testified that he desired a career in the casino industry. In the future he anticipates a transition into the gaming and/or security aspects of the industry. Also, a casino employee license would offer the petitioner greater employment opportunities.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's involvement in the incident and additional reasons for his failure to disclose on his PHDF-2A.

The petitioner explained that he became involved in misconduct by reason of immaturity and a lack of proper guidance by parents and others. Although the petitioner presented little information to support this explanation, the fact that he acknowledged a prior juvenile record and has not committed any subsequent violations of the criminal laws tends to support his explanation.

The petitioner also offered further explanations for his nondisclosure on the PHDF-2A. First, he claimed that he forgot the incident. Second, he focussed on the word "convicted," and did not believe that he had been convicted, because he did not go to jail. Accepting, arguendo, the petitioner's testimony, it does not alter the fact that the nondisclosure was due, in part, to his concerns that disclosure would adversely impact upon licensure.

Prior to making findings of fact, it is necessary to assess Mr. Mullins' credibility. Initially, his position in this matter must be recognized. As an applicant for a casino employee license he has a direct interest in the outcome and a bias in these proceedings. Given the nature of the disputed testimony, together with the absence of any further criminal misconduct, and in consideration of the totality of the petitioner's testimony and his apparent sincere attitude, I am willing to accept his testimony in all respects.

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

1. The petitioner's testimony was credible and persuasive in all respects.
2. The petitioner's involvement in criminal misconduct in 1980 was due, in part, to immaturity and the absence of parental or adult guidance.
3. The petitioner's nondisclosure of his criminal record history on his PHDF-2A was due, in part, to a vague recollection of the incident as well as a partial misunderstanding of the question.

DISCUSSION OF LAW AND CONCLUSION

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79

(Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed 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. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter

evaluated by the Commission under section 89. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

There was no doubt that the petitioner fully understood his obligation to disclose his criminal record history on both his PHDF-2A and in response to questions posed by the agent during the telephonic interview; however, he did not. Further, his failure to disclose was knowing and intentional. In addition, the petitioner acknowledged that his nondisclosure was the direct result of his apprehensions that disclosure would negatively affect his opportunities for licensure. Therefore, the failures to disclose must serve to disqualify him from licensure.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner is disqualified from licensure by operation of section 86b.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Mullins 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 for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the

regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under sections 89b(2) and 90b. William Gonzales at 8. Therefore, the conclusion that Mr. Mullins failed to disclose his criminal record history in violation of section 86b automatically precludes him from meeting his burden under section 89b(2). An applicant's willingness to disclose fully his criminal record history is the most direct and reliable means of testing his good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he does, in fact, possess good character, honesty and integrity.

Aside from the respondent's nondisclosures, he appears to possess the requisite good character, honesty and integrity. However, by reason of the nondisclosures, he has failed to establish that he possesses the degree of good character, honesty and integrity required to obtain licensure.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

It is **ORDERED** that the application of Walter C. Mullins for licensure as a casino employee (maintenance and cleaning) be denied.

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

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

October 17, 1986
DATE

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

Receipt Acknowledged:

October 20, 1986
DATE

Bernadette J. Friger
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 21 1986
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- R-1 New Jersey State Police - Investigation Report, prepared by Trooper W. Johnson, October 12, 1980; Supplementary Investigation Report, prepared by Trooper W. Johnson, March 19, 1981; Supplementary Investigation Report, prepared by Detective Sergeant Edward J. Gay, August 20, 1981; Arrest Report, prepared by Trooper W. Johnson, October 13, 1980 (5 pages)
- R-2 New Jersey State Police - Arrest Report, prepared by Trooper W. Johnson, October 13, 1980
- R-3 State of New Jersey v. Walter C. Mullins, New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment, filed on March 17, 1981; Judgment of Conviction, filed on August 13, 1981 (5 pages)
- R-4 Casino Control Commission - Personal History Disclosure Form - 2A, Walter Clayton Mullins, filed on July 17, 1985 (21 pages)

WITNESS LIST

For the petitioner: Walter C. Mullins
For the respondent: Alan R. Weinstein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-118
OAL DOCKET NO. CCC 06146-85
LICENSE NO. 19689-21

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

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 7, 1987,

IT IS on this 13th day of January 1987, ORDERED that the initial decision is affirmed;

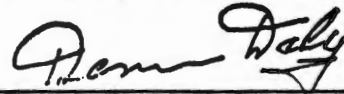
IT IS FURTHER ORDERED that the casino employee license held by James Nerney is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

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
WALTER N. READ, CHAIRMAN

BY: _____



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6146-85

AGENCY DKT. NO. 84-118

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

Petitioner,

v.

JAMES J. NERNEY,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Norma Plenty, Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference)

Ronald R. Kogas, Esq., for the respondent (Leonard A. Cinaglia, Esq., at the prehearing conference)

Record Closed: October 4, 1986

Decided: November 13, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that James J. Nerney, respondent and the holder of casino employee license no. 19689-21, had committed criminal misconduct which rendered continued licensure to be contrary to the policies of the Casino Control Act (Act), pursuant to section 86c(1), and which conduct revealed that the respondent no longer possesses the requisite good character, honesty and integrity required by section 90b which incorporates section 89b(2) by reference, for which the Division seeks revocation of

the respondent's license, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 19, 1984. By letter filed with the Commission on May 2, 1984, the respondent requested a hearing. The matter was held in abeyance pending the outcome of criminal proceedings, pursuant to section 86d. On September 26, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on January 3, 1986. The matter was heard on October 4, 1986, at which time the record closed.

FINDINGS OF FACT

Mr. Nerney is 30 years of age. He resides currently in Ventnor.

The respondent is a 1979 graduate of Glassboro State College, where he earned a bachelor of arts degree with a major in communications and public relations (R-1 and R-2). During his college career, the respondent was elected to many positions, including president of the student government association, and earned many leadership awards (R-2). Also, the respondent served an internship in the Congressional District Office of Congressman James J. Florio (R-2 and R-4).

While in his junior year at college, the respondent was involved in an automobile accident in which he received substantial injuries, particularly to his face. The respondent has undergone, and will in the future undergo, reconstructive plastic surgery and reconstructive dental surgery.

In 1980, the respondent received his casino employee license (no. 19689-21) from the Commission.

From July 1982 to March 1984, the respondent was employed at Harrah's Marina Hotel/Casino (Harrah's) (R-1). The respondent dealt craps, blackjack and roulette

from 1980 to 1981; was promoted to boxperson and supervised craps from 1981 to 1982; and was promoted to floorperson, where he supervised blackjack, roulette and craps (80 to 90 percent of the time) from 1982 to 1984. At the time he was a floorperson, the respondent was 27 years of age and had an annual salary of approximately \$40,000. The respondent was under consideration for promotion to pit boss, which requires a casino key employee license and involves a direct working relationship with the casino shift manager.

On March 5, 1984, the respondent and others were indicted by a State grand jury, and the respondent was charged with violations of N.J.S.A. 2C:37-2a(1) and (2), conspiracy to promote gambling - third degree (count one), and N.J.S.A. 2C:37-2a, promote gambling - third degree (count two) (P-2). The respondent pled not guilty. However, on March 25, 1985, the respondent retracted his plea and pled guilty to count two, i.e., N.J.S.A. 2C:37-2a, promote gambling - third degree. Count one was dismissed. On June 28, 1985, the respondent was sentenced to five years' probation, a \$5,000 fine payable at a rate of \$100 per month, and \$25 payable to the Violent Crimes Compensation Board. In its statement of reasons for sentence, the court noted that the respondent was a first offender. The respondent has paid approximately \$1,000 of his fine and reports currently to his probation officer once every three months. The respondent has been advised that he will be eligible for release from probation when the fine is paid in full.

Upon his indictment, the respondent was initially suspended from employment and ultimately terminated. His casino employee license was suspended by the Commission on May 2, 1984.

The criminal charges were the result of a State Police investigation which commenced on August 22, 1983. Initially, the investigation concerned a purported scam at craps tables in Harrah's, which consisted of the improper booking of bets. Further investigation, which included a grant of immunity from prosecution to certain licensed casino employees, led to the discovery of bookmaking activities by Robert Notaro. More specifically and as a result of the use of electronic surveillance, it was discovered that several casino employee license holders, including the respondent, were placing sports bets with Notaro. Apparently some of the employees eventually participated in the scam, which involved and provided monies for Notaro. There was no evidence to indicate that the respondent was involved in the scam. Further, the respondent persuasively disclaimed knowledge of the scam and most of its participants.

The respondent testified that he met Notaro at Harrah's, where Notaro was an occasional player, although not at the respondent's tables. The respondent learned that Notaro was a bookmaker, a fact which was apparently well-known among casino employees. Notaro was frequently observed near the employees' lounge at Harrah's. During a period of approximately six months to one year prior to his indictment, the respondent called Notaro by telephone, determined point spreads and placed bets on various sporting events, primarily football games. The respondent bet on an average of three games per week at a rate of \$500 per game. On occasion the respondent would place bets on up to four games during a weekend. The respondent paid off his losses at Notaro's home. The respondent did not place bets with Notaro for others; however, the respondent did pay off losses or pick up winnings for friends. He did not receive a fee or commission for such activities. Also, the respondent introduced Notaro to a co-employee who was in search of a bookmaker.

Although the respondent acknowledged that his betting activities were heavy, it never got to the point where it jeopardized his financial security. More specifically, the respondent had a good income, was single, had a roommate with whom to share expenses and had sufficient available bank credit. If necessary, the respondent would work extra hours, use his savings or use his overdraft in order to satisfy his obligations.

The respondent testified that he began to place bets on sporting events because he was a "frustrated jock" and believed that such bets would be profitable. Eventually, he developed a gambling problem, which he now recognizes as a sickness. Further, his gambling activities wrecked his life because he lost his job, his career, postponed his wedding and suffered tremendously.

In addition, the respondent testified that his misconduct never compromised his performance at work; i.e., he did not steal from his employer, he never violated the requirements of his job and he never became involved in any scam. The respondent wants the opportunity to again prove himself and resume his career in the industry. The respondent stated that there is no likelihood that he will repeat his misconduct.

Although the Division did not attempt to refute the respondent's testimony, it is important to assess his credibility. Initially, his position in this matter must be recognized, i.e., as the respondent he seeks to prevent revocation of his license, and, as such, he has a direct interest in the outcome and a bias in these proceedings. However, it

appeared, both during the hearing and during my review of the record and from my observations of the respondent's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the respondent testified truthfully in every regard. Further, the respondent candidly admitted his misconduct and acknowledged the serious cost, both professional and personal, that he has incurred. Accordingly, I am persuaded to accept his testimony in all respects.

In March 1984, the respondent became employed by Kondash Enterprises as a public relations assistant. Thereafter, he worked at various odd jobs.

In March 1986, the respondent suffered a heart attack, which his doctor attributed to stress and overwork.

For the past six months, the respondent has been employed by Dover Elevator in New York City. He commutes approximately 200 miles round-trip per day by bus. The respondent is involved in heavy construction and earns approximately \$18,000 to \$20,000 per year.

The respondent attended Gamblers Anonymous meetings subsequent to his indictment. He no longer attends these meetings.

The respondent is engaged to be married to Margaret Pickett. They anticipate a wedding date next year.

As a result of his misconduct, the respondent estimates lost earnings in excess of \$100,000. This is based upon a hoped-for promotion to pit boss, with an annual salary of \$50,000.

The respondent desires to continue his career in the casino industry. He has invested five years of his life, has a promising future, desires to continue to reside in Atlantic County, and his fiancée is employed in the industry. The respondent recognizes that initially he would have to seek employment as a dealer, at an anticipated salary of \$25,000.

The respondent has not committed any other violations of the criminal laws.

The respondent also offered various letters on his behalf. Letters were received from Margaret A. Pickett, the respondent's fiancée (R-3); Congressman James J. Florio (R-4); Diane Kuhar, of the Golden Nugget, who has known the respondent for the past four years (R-5); Judy Clifton, who has been a friend of the respondent since 1976 (R-6); Jeffrey A. Previte, who has known the respondent since 1976 (R-7); Patricia E. Depko, who has been a friend of the respondent for the past 12 years (R-8); Jim Rigot, assistant shift manager at Trump Plaza Casino, who supervised the respondent at Harrah's Marina for five years (R-9); Anthony DePaola, athletic director at St. Pius X Regional High School in Piscataway, who has known the respondent since the early 1970s (R-10); and John Allan, vice president and general manager of Harrah's Marina (R-11). Each of the authors of letters on behalf of the respondent indicated knowledge of the circumstances underlying his misconduct; nevertheless, each strongly expressed that the respondent was rehabilitated, had suffered by reason of his misconduct, and recommended him as a person of good character, honesty and integrity.

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the violation of N.J.S.A. 2C:37-2a 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)

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. N.J.S.A. 2C:37-2a is a disqualifying offense under section 86c(1).

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. 2C:37-2a, which is a disqualifying offense under section 86c(1).

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

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

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

First, Mr. Nerney holds a casino employee license and was employed as a floorperson. As such, he had direct responsibilities for actual gaming activities, had substantial contact with casino patrons and had direct supervisory responsibility over other licensed employees. In addition, the respondent was in line for promotion to pit boss, which would require a casino key employee license. The respondent's position was especially significant to the actual as well as the perceived integrity of the casino industry in this state.

Second, the respondent committed a violation of N.J.S.A. 2C:37-2a, promoting gambling - third degree, over a period of six months to one year. Because the offense is a listed disqualifier under section 86c(1) it is very serious.

Third, and most importantly, the seriousness of the misconduct must be viewed in its appropriate context. Here, the licensee observed on many occasions a known bookmaker in a licensed casino, with whom he and many of his co-employees placed substantial and illegal bets on sporting events. The respondent personally made wagers of substantial amounts. Although the respondent might have had a "sickness," this was not the circumstance at the time he commenced this misconduct. The respondent knew well that the mere presence of Notaro in the casino represented a serious and substantial risk to the casino industry in this State. In addition, the respondent gambled at a sufficiently high level so that on occasion he had to work extra hours, dissipate his savings and/or use credit in order to pay off his gambling debts. Although the respondent maintains that his financial stability was not impaired, this view is not realistic. The fact that he owed any money to a bookmaker establishes his vulnerability. Further, the respondent also facilitated, which by his deeds encouraged, other licensed employees to participate in illegal gaming activities. Under these circumstances, the misconduct was extraordinarily serious.

Fourth, the respondent's misconduct occurred during a six-month to one-year period immediately preceeding March 1984, when it ceased.

Fifth, the misconduct occurred when the respondent was approximately 27 years of age. There was no indication that his misconduct was due to immaturity.

Sixth, the respondent's misconduct was isolated in nature and in time, although it consisted of numerous individual incidents.

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

Eighth, the respondent has made substantial rehabilitative efforts. He acknowledged his misconduct and pled guilty. Currently, he is on probation and has made timely payments on his fine. Although the respondent earned a very positive employment record within the casino industry prior to his indictment, this record is impaired by reason of his misconduct during that time. The respondent has also earned a positive

employment record subsequent to his misconduct. He has sought all available employment and has made every effort to attempt to remain a viable candidate for future employment in the casino industry. Further, the respondent has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there is little likelihood, if any, of a repetition of this misconduct.

Although the respondent has, against substantial odds, established in the brief period available to him a very positive record of rehabilitative efforts, and although there is every indication that he will in the future be rehabilitated sufficiently for licensure, he has not now established sufficiently his rehabilitation for continued licensure. On balance, the extraordinary seriousness of his misconduct and the direct relationship that his misconduct bears upon the actual and perceived integrity of the casino industry still far outweighs his encouraging rehabilitation to date.

The respondent argued that the Commission's decision to grant licensure to a prospective dealer who was a former bookmaker in Marino v. Division of Gaming Enforcement, 2 N.J.A.R. 176 (1980), establishes a precedential standard by which the respondent's misconduct should be evaluated. Further, since the applicant for licensure in Marino was a bookmaker and the respondent was merely a bettor, the respondent should be permitted to retain his license. However, this argument is unpersuasive.

Although Marino's prior bookmaking activities were in issue, they were not the primary issue and are clearly distinguishable from the facts in this matter. Marino's most recent bookmaking conviction occurred more than 20 years prior to the hearing. Also, Marino successfully established his rehabilitation, which was premised in part by the passage of 20 misconduct-free years, as well as other rehabilitative evidence. Under those circumstances the evidence of rehabilitation outweighed the faded seriousness of his misconduct. However, the factors concerning Mr. Nerney's recent misconduct and the status of his rehabilitation, as stated, are dramatically different, and the assessment of the evidence mandates a contrary result.

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

The respondent's inability to establish sufficient rehabilitation to overcome the extraordinary seriousness of the offense precludes his ability to establish that he continues to possess the degree of good character, honesty and integrity required to maintain licensure. Nevertheless, the respondent should be encouraged to continue his rehabilitation, which can be established by the test of time.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against the casino-employee license of James J. Nerney be **GRANTED** and that license no. 19689-21 be **REVOKED**.

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

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

November 13, 1986
DATE

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

Receipt Acknowledged:

November 14, 1986
DATE

Bernadette J. Friger
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 18 1986
DATE

Ronald L. Parker x.s
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Packet of New Jersey State Police Investigation Reports (56 pages)
- P-2 State of New Jersey v. James Nerney, et al., Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment, Filed on March 5, 1984; Judgment of Conviction, July 12, 1985 (15 pages)
- R-1 James J. Nerney - Resume
- R-2 James J. Nerney - Resume
- R-3 Letter from Margaret A. Pickett, September 30, 1986 (2 pages)
- R-4 Letter from James J. Florio, September 24, 1986
- R-5 Letter from Diane Kuhar, September 22, 1986
- R-6 Letter from Judy Clifton, September 23, 1986
- R-7 Letter from Jeffrey A. Previte, September 17, 1986 (2 pages)
- R-8 Letter from Patricia E. Depko, March 25, 1986
- R-9 Letter from Jim Rigot, October 2, 1986
- R-10 Letter from Anthony DePaola, September 30, 1986
- R-11 Letter to Jim Nerney from John Allan, April 20, 1982

WITNESS LIST

For the petitioner:

None

For the respondent:

James J. Nerney

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-222
REGISTRATION NO. 44951-40
OAL DOCKET NO. CCC 4778-86

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

Complainant, :

FINAL ORDER

v. :

JOSEPH M. PEPE, JR. :

Respondent :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 18, 1986,

IT IS on this 24th day of March 1987, ORDERED that the initial decision is modified as follows:

1. Considering the respondent's successful work record in the casino industry, his completion of an in-patient drug rehabilitation program, his graduation from a State supported culinary arts school for rehabilitated substance abuse offenders, and his continuing efforts to control his drug and alcohol problems by attending

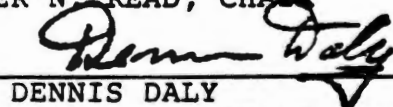
AA and NA meetings, the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other registration, license, 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4778-86

AGENCY DKT. NO. 86-222

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

Petitioner,

v.

JOSEPH M. PEPE, JR.,

Respondent.

**Joanne Ciancimino, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Timothy P. Maguire, Esq., for respondent (D. William Subin, attorney)

Record Closed: December 22, 1986

Decided: January 12, 1987

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on June 23, 1986 seeking the revocation of Joseph M. Pepe's casino hotel employee registration. Mr. Pepe requested a hearing on the proposed revocation and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 8, 1986 and a prehearing order was issued on that date. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin on December 22, 1986 at the Office of Administrative Law in Atlantic City.

The prehearing order established the issues for consideration at the hearing. Specifically, the Division contends that Mr. Pepe should be disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)1 because of his having been convicted of robbery, a violation of N.J.S.A. 2C:15-1. Robbery is an enumerated disqualifying offense under section 86(c)1 of the Act. Mr. Pepe contends that despite his admitted conviction he has rehabilitated himself from the adverse affects of the same and therefore may retain his registration, pursuant to N.J.S.A. 5:12-91(b).

The conviction is not in dispute. Mr. Pepe was arrested by the Glassboro Police Department on March 13, 1982 and charged with armed robbery. He was indicted by the Gloucester County Grand Jury in Indictment 718-81, which charged that he had

while in the course of committing a theft, threaten Lydie Custer with or purposely put Lydie Custer in fear of immediate bodily injury, contrary to the provisions of N.J.S. 2C:15-1. . . .

On September 13, 1983, Mr. Pepe retracted his original plea of not guilty and entered a plea of guilty to the robbery charge. On October 13, 1983, he was sentenced to three years probation with a special condition that he continue with and complete Post House Drug Rehabilitation Program. He was ordered to pay restitution of \$66.38 and a \$25 penalty to the Violent Crimes Compensation Board.

In addition to Mr. Pepe's 1983 conviction, he was also charged on March 7, 1985 with shoplifting in the Bradlees Department Store in Cardiff, New Jersey. Pepe admitted at the hearing that he had attempted to shoplift a portable telephone and a pair of sunglasses. The Municipal Court Complaint sets the value of those items at \$159.98. Pepe entered a plea of guilty to the charge on May 13, 1985 and was originally sentenced to a \$150 fine and \$25 costs and a suspended 15-day jail sentence on the condition that he attend a shoplifting course. When he failed to attend that course, the suspension of his incarceration was removed and he did serve the 15 days in jail. He was also required to attend narcotics anonymous meetings three times a week.

As noted, Mr. Pepe did not dispute the above facts and I therefore **FIND** them as facts in this case.

An examination of the police report of the Glassboro Police Department in connection with the robbery incident shows that Ms. Custer advised the police that a man

had tried to take her purse and ran off through the parking lot. He was spotted by two girls who advised the police that he had entered a nearby restaurant in the company of a woman. The police entered the restaurant and found Mr. Pepe and his companion and took him to the police station where Pepe passed out. He was taken to the hospital and found to be "all right." According to the report, Mrs. Custer was pushed to the ground during the robbery attempt and at the hospital it was determined that she had a broken finger on her right hand and brush burns on the left arm and hip. The police report does not indicate that the purse was actually taken during the incident, but only that Mr. Pepe attempted to grab it. At the time, Pepe was 20 years old.

Mr. Pepe testified that he was heavily involved in drug use beginning in his senior year of high school and that at the time of the robbery incident he was under the influence of barbiturates. The girl with whom he was with suggested that he take a pocketbook from a lady that they spotted. He tried to grab the purse and both he and the lady fell down. The next thing he knew he was in the restaurant which was within 400 feet of the robbery scene. The police came in and arrested him. He believed that the lady had been bruised. He never did get the pocketbook.

Pepe no longer uses drugs. After his arrest he was in Post House, having entered it on his own after his arrest. In September of 1982 he enrolled in a state program known as S.M.A.R.T. Culinary Arts Program [Sites Made Available for Restaurant Training]. This program, which is funded by the State of New Jersey, services rehabilitated substance abusers. According to a letter of September 5, 1986 from the coordinators of the program, Pepe graduated at the top of his class in 1982 and was placed on a job at the Golden Nugget Casino. He had left that job after doing commendable work and at the time of the letter was working at the Claridge.

Mr. Pepe testified that he worked at the Golden Nugget but was eventually fired because following the death of a friend he was unable to come into work because he was very upset and after four days the hotel fired him. He knew he was going to be fired but was so distraught that he did not report to work. He went to work at the Atlantis Hotel on the "graveyard" shift and then received a better offer in Ocean City. Since 1985 he has been employed at the Claridge. He presented a character reference from his supervisor who indicated that Pepe had shown himself to be a "responsible person" with a "fine working relationship with his peers and supervisors" and "no disciplinary problems."

The executive chef at the Claridge, Olimpio Horta, also wrote a letter on behalf of Mr. Pepe. Pepe was originally hired as a pantry person but promoted to cook in September 1986. He has been a "responsible employee, reporting to work on schedule and doing his job well."

In addition to his employer's recommendations, Mr. Pepe presented a letter from Mr. Richard G. Decker, probation officer for the Cape May County Probation Department, who wrote that Pepe had been under his supervision since his release from parole on July 27, 1986 and had been fully cooperative with his probation "paying off all fines and restitution in full and refraining from further known trouble with the law." His probation was expected to expire on October 13, 1987.

With respect to the probation, Mr. Pepe testified that it had been extended to 1987 as a result of the shoplifting incident which occurred in 1985. The witness testified that as a drug user he was "always a user" and that someone in his position often made "lateral moves," that is from one substance or type of abuse such as narcotics to another such as alcohol or sex. Pepe admitted having had "some problems with alcohol" and at the time of the shoplifting incident he "screwed up," he had been drinking (no drugs) and was in Bradlees with a friend. He had several hundred dollars in his pocket, but attempted to take the phone and the sunglasses "as a prank, a dare."

The witness testified that he believed that his experiences and his rehabilitation programs have taught him responsibility and that whereas he had no relationship with his parents and a very unhappy life at the time that he was involved in drugs he has now restored his relationship with his parents and considers his life happy. His job and therefore his license is everything to him and is the foundation for his continued successful battle with substance abuse.

Mr. Pepe now attends Narcotics Anonymous and Alcoholics Anonymous programs two to three times a week. He is "scared to abuse anything anymore." However, he did testify that he does drink beer "once in a while."

DISCUSSION

This case involves an individual who in 1982 in the midst of a serious drug problem, attempted to steal a pocketbook from a lady and in the course of doing so caused

her bodily injury. Although he actually appears not to have stolen anything and therefore might have been guilty at most of an attempted robbery, he does stand convicted of robbery, an enumerated disqualifying offense under the Act. As such, his employee registration must be revoked unless he can establish rehabilitation.

An examination of Pepe's history shows an individual who, following his arrest, entered into a rehabilitation program on his own and continued it in accordance with his own desires and court directions. It appears from his uncontradicted testimony that he has been successful in overcoming his narcotics involvement. He has sought training in the culinary field, and has entered into what appears to be a successful career. He testified that he believes that he will shortly become a chef and, based on the record since 1982, it would appear that this is an individual who is able to maintain himself in the kitchen atmosphere at the casino/hotels as a successful employee.

The damaging aspect of Mr. Pepe's position is the 1985 shoplifting incident. That incident resulted, in his own words, from a "screw up." Clearly, if Pepe was on the road to rehabilitation since his robbery arrest, he sidetracked himself when he stupidly attempted to take items from the Bradlees Store. The result was not only a conviction for a shoplifting charge, but also an extension of his probation as a result of a violation of probation charge.

Had Mr. Pepe avoided trouble following his arrest and ultimate conviction on the robbery incident he would today stand as someone employed in the industry since 1982, successfully moving on in his career, continuing his apparently successful battle with substance abuse, and presumably off probation. Under those circumstances, I would have no hesitation whatsoever in finding that he was rehabilitated and that he could retain his license. Unfortunately, the 1985 incident must give one considerable pause before concluding that this respondent has been successfully rehabilitated. While I am less inclined to withhold a finding of rehabilitation because a probation term has not yet expired, where there is a recent incident of a violation of probation and an illegal activity such as shoplifting, it becomes extremely difficult to say that rehabilitation has been achieved. On the whole, I am impressed by Mr. Pepe's desire to succeed, his continued battle with the demon of drugs, and his apparent insight into his problems. I am less impressed with the fact that he has not yet realized that in his case even drinking beer may be a serious mistake. On the whole, while I am extremely sympathetic with his predicament, and while I am deeply concerned that removing his registration may force

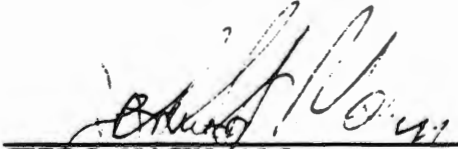
him out of a successful employment situation and into a difficult time of life which would put a great strain on his ability to withstand his former weakness, I must **CONCLUDE** that he has not demonstrated by clear and convincing evidence that he has indeed achieved rehabilitation. He may be well on his way, in fact I believe that he is. However, at least for the foreseeable future, a finding of successful rehabilitation cannot yet be made.

In view of the above, I **FIND** myself compelled to **CONCLUDE** that Mr. Pepe's casino hotel employee registration must be revoked. It is so **ORDERED**.

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

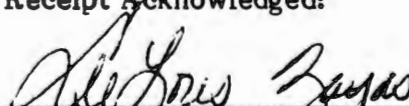
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 12, 1987
DATE


JEFF S. MASIN, ALJ

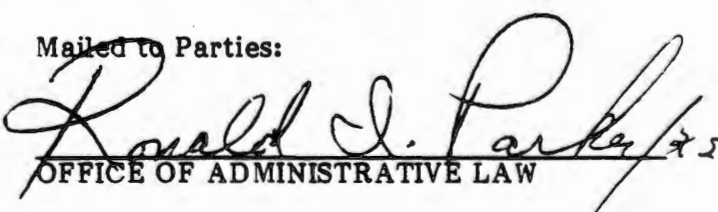
Receipt Acknowledged:

January 13, 1987
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 20 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Glassboro Police Department Report of March 13, 1982, 3 pages
- P-2 Indictment No. 718-81
- P-3 Judgment of Conviction
- P-4 Egg Harbor Township Municipal Court Complaint, SN 99777

On behalf of respondent:

- R-1 Letter of September 1, 1986 from coordinators of S.M.A.R.T.
- R-2 Letter of November 5, 1986 from Olimpio Horta
- R-3 Letter out of Claridge Casino Hotel from Executive Sous Chef
- R-4 Certification of completion of S.M.A.R.T. Culinary Arts Program, dated December 1982
- R-5 Letter of December 10, 1986 from Richard G. Decker, Probation Officer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-195
OAL DOCKET NO. CCC 8770-86
REGISTRATION NO. 65966-40

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
WALTER B. RAMOS, :
Respondent. :

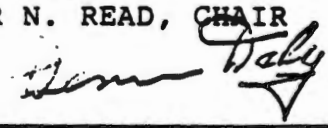
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 20, 1987,

IT IS on this 11th day of June 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Walter B. Ramos is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8770-86

AGENCY DKT. NO. 87-195

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

Petitioner,

v.

WALTER B. RAMOS,

Respondent.

Barth F. Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Walter B. Ramos, respondent, pro se

Record Closed: April 6, 1987

Decided: April 15, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of respondent's casino hotel employee registration no. 65966-40, because of an alleged violation of the Casino Control Act (Act), namely, N.J.A.C. 5:12-86c(3). The Division alleges that the respondent, Walter B. Ramos, was convicted of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), and as such is statutorily disqualified from holding a casino hotel registration. The respondent asserts rehabilitation pursuant to section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 6, 1986. The respondent requested a hearing on December 3, 1986 based upon the allegations contained in the complaint. The Commission transmitted the within matter to the Office of Administrative Law on December 15, 1986, 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 scheduled for a prehearing conference on February 10, 1987, and thereafter was scheduled for hearing. The hearing was held on April 6, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

1. Whether the respondent, Walter B. Ramos, was convicted of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). If in the affirmative, is the respondent statutorily disqualified from holding a casino hotel registration pursuant to N.J.S.A. 5:12-86c(3)?
2. With regard to the alleged statutory disqualifier, whether respondent may demonstrate his rehabilitation, pursuant to Section 91d of the Act.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

On December 4, 1985, the respondent was arrested and charged with possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1), and possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), by Detective Sergeants Santoro and Imfeld of the Atlantic City Police Department.

An Atlantic County grand jury returned Indictment No. 85-12-2196-A against Mr. Ramos on December 19, 1985, as to both charges.

Mr. Ramos entered a plea of not guilty and was tried by a jury on July 7, 8 and 9, 1986. The jury found Mr. Ramos guilty of both charges.

On August 21, 1986, Mr. Ramos was sentenced to the Atlantic County Jail for a 90-day period with credit for 47 days served, a fine of \$150, a Violent Crimes Commission Board assessment of \$60, and probation for a two-year period.

The above is uncontroverted and documented, and is thus FOUND AS FACT.

(B) DISPUTED FACTS

Mr. Ramos asserts his complete innocence as to both charges. The Atlantic City police investigation report (P-2) states that when Detective Sergeants Santoro and Imfeld yelled "police," Mr. Ramos ran up the stairs in an attempt to get away. As Mr. Ramos ran up the stairs, he was observed dropping small glassine baggies to the floor. Each baggie contained a white powdery substance that field-tested positive for cocaine. Mr. Ramos claims that he was frightened and not aware that the police were conducting a raid. He further claims that he went to the building to visit a girlfriend and not to purchase drugs.

Mr. Ramos' testimony is replete with subtle but numerous internal contradictions and inconsistencies. His explanations are also contrary to common sense. Although the judgment of conviction (P-1) fulfills the Division's burden in this matter, the testimony proffered by Mr. Ramos must be substantially discredited. The demeanor and attitude displayed by Mr. Ramos persuades me that Mr. Ramos is an incredible witness.

After consideration of the entire record in this matter, including weighing and balancing the documentary evidence and observing the demeanor and credibility of the respondent, I **FIND** that:

1. The respondent does not acknowledge his misconduct.
2. The respondent does not accept responsibility for his misconduct.
3. Last month, the respondent voluntarily quit employment with the Trump's Castle Casino, in violation of the terms of his probation.

4. The respondent has demonstrated little, if any, indicia of rehabilitation, pursuant to the Act.
5. The respondent is an incredible witness. In re Estate of Perrone, 5 N.J. 514, 522 (1950); Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934).

DISCUSSION OF LAW 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 Mr. Ramos' conviction constitutes a violation of section 86c(3) of the Act, and accordingly, establishes that he is statutorily disqualified from holding a casino hotel registration. Respondent contends that he is rehabilitated, pursuant to section 91d of the Act.

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

Section 86c(3) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to "any high misdemeanor under section 19 of P.L. 1970, c.226 (C.24:21-19)" be disqualified from licensure. The Division contends that the respondent's conviction for possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), constitutes a violation under section 86c(3) of the Act.

There is no doubt that the respondent's conviction for a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, is a statutory disqualifying offense under section 86c(3) of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction of a violation of N.J.S.A. 24:21-19a(1) disqualifies him from being a registrant, pursuant to section 86c(3) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition of continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, 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.

First, Mr. Ramos is registered as a hotel employee and was employed as a pantry person at Trump's Castle Casino until last month. As such, he has no responsibilities for actual gaming activities and has limited contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of a casino.

Second, the respondent was convicted of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). Under section 86c(3) of the Act, this is a statutory disqualifier. This offense is extremely serious.

Third, the respondent maintains his innocence and has not accepted any responsibility for his actions. Respondent's explanations were inconsistent and incredible.

Fourth, the respondent committed his crime on December 4, 1985; his probation does not terminate until August 1988.

Fifth, at the time of the offense, the respondent was almost 20 years of age. His conduct may, in part, be the result of immaturity.

Sixth, the respondent's misconduct appears to have been an isolated incident.

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

Eighth, it is evident that the respondent has made few, if any, rehabilitative efforts. His attitude, his failure to produce any testimony (other than his own) or letters of recommendation after being advised of their importance at the prehearing conference, and the lack of preparation all combine to persuade this administrative tribunal that respondent's purported rehabilitation is woefully inadequate and falls substantially short of the requisite burden of clear and convincing evidence. The court in In re Perrone stated, "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." Id. at 522. The respondent's explanations cannot be construed as probable under the circumstances of this case. I therefore **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(c) PENALTY

Section 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. The absence of any real evidence of rehabilitation disturbs me. Although the offense seems to be isolated and may be, in part, due to immaturity, respondent's apparent indifference and the fact that his probation does not terminate until August 1988, lead me to the inescapable conclusion that his registration must be revoked.

ORDER OF DISPOSITION

It is **ORDERED** that the hotel casino employee registration (number 65966-40) held by Walter B. Ramos be **REVOKED**.

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

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

April 15, 1987
DATE

Stephen W. Thompson, ALJ S.C.R.
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

April 16, 1987
DATE

Bernadette J. Frigoli
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 21 1987
DATE

Ronald L. Parker x 5
OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For petitioner:

P-1 Indictment Number 85-12-2196-A, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, 1985 Term; Judgment of Conviction and Order for Commitment, dated August 21, 1986; Sentence Worksheet and Certification, dated September 30, 1986

P-2 Atlantic City Police Department Investigation Report, dated December 4, 1985

For respondent:

None

WITNESSES

None

STATE OF NEW JERSEY, DEPARTMENT	:	
OF LAW AND PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	<u>FINAL ORDER</u>
v.	:	
	:	
RESORTS INTERNATIONAL HOTEL, INC.,	:	
	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the administrative law judge having filed an initial decision with the Casino Control Commission (Commission); and exceptions and a reply to the exceptions having been filed; and the Commission having considered the entire record at its public meeting of March 25, 1987,

IT IS on this 2nd day of April 1987, ORDERED that the initial decision is modified as follows:

The Commission finds that there is substantial risk to the public and to the public's confidence in gaming operations when false and misleading advertisements are employed by a casino licensee. Severe penalties are warranted, not only to sanction the licensee but to deter other licensees from using advertising of this nature. Accordingly, the penalty for violations in Count I of the complaint is increased to \$30,000 and the penalty for Count II violations is increased to \$15,000.

IT IS FURTHER ORDERED that Resorts International Hotel, Inc. pay a civil penalty of \$45,000 based substantially on the reasons stated in the initial decision, as modified, which is incorporated by reference; and

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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2865-86

AGENCY DKT. NO. 86-31

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

Petitioner,

v.

RESORTS INTERNATIONAL HOTEL, INC.,
Respondent.

**Katherine A. Smith, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Paul M. O'Gara, Esq., for the respondent (Sterns, Herbert and Weinroth, P.C.,
attorneys)**

Record Closed: October 28, 1986

Decided: December 12, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Resorts International Hotel, Inc. (Resorts), respondent, had violated various provisions of the Casino Control Act (Act) and the regulations adopted thereunder by reason of the respondent's conduct of an advertising campaign between June 1985 and February 1986, pursuant to N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e) (now (c)) and N.J.S.A. 56:8-2 (the New Jersey Consumer Fraud Act), as incorporated by reference in N.J.A.C. 19:51-1.2(e). More specifically, the Division alleged that a portion of the advertisement used by Resorts between June and mid-August 1985 was false, and that the remainder of the advertisement used during the entire campaign was misleading and deceptive. The respondent denied the allegations.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on January 23, 1986. The respondent filed its answer with the Commission on February 13, 1986. On April 28, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on June 9, 1986, and the matter was heard on September 22, 1986. The record closed on October 28, 1986, upon the submission of briefs by the parties.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

The parties agreed to the following stipulations of fact:

1. Respondent 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 all times referenced herein had its principal place of business located at North Carolina Avenue and the Boardwalk, Atlantic City, County of Atlantic, State of New Jersey.
2. Resorts is now a holder of a casino license issued by the Casino Control Commission authorizing it to operate a casino hotel in accordance with the Casino Control Act ("Act"), N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder. The said license was issued to Resorts effective on February 26, 1979, and renewed on an annual basis thereafter. Resorts has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.
3. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 28, 1978, at which time Resorts was the holder of a temporary casino permit. Said Certificate of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.
4. On or about June 28, 1985, Resorts commenced a multi-media advertising campaign which made the claim: "Win Today Over \$7 Million in Jackpots. The Most in Atlantic City."

5. On or about June 28, 1985 until on or about August 16, 1985, the aforementioned advertisement appeared in nine (9) newspapers. A true copy of the advertisement which appeared in the newspaper is attached hereto as Exhibit A and made a part of the record. A true copy of Resorts' "media plan" which lists the newspapers in which the aforementioned advertisement appeared is attached hereto as Exhibit B and made a part of the record.
6. From on or about June 29, 1985, until on or about August 20, 1985, the aforementioned advertisement appeared on approximately ten (10) billboards located in New Jersey and in Pennsylvania. True photographs of five (5) of the billboards upon which the aforementioned advertisement appeared are attached hereto as Exhibit C and made a part of the record.
7. In addition to utilizing newspapers and billboards for the aforementioned advertising campaign, Resorts placed the aforementioned advertisement on taxicab tops, tent cards, flyers, buses, stanchions, light boxes and on banners which were located in the casino room. A true copy of an interoffice memorandum, dated August 19, 1985 from Ellen Pritzker of Resorts Advertising Department to Johann McIlwain, Director of Advertising at Resorts, which sets forth the aforementioned types of advertisements is attached hereto as Exhibit D and made a part of the record. An original tent card, an original taxicab top advertisement and an original cloth casino floor banner are attached hereto as Exhibits E, F and G, respectively, and made part of the record.
8. In conjunction with the advertising campaign, Resorts personnel were directed to wear buttons which stated: "Win Today Over \$7 Million in Jackpots. Resorts. Bet With Your Head, Not Over It." A true copy of an interoffice memorandum, dated July 2, 1985, from Johann McIlwain, relative to the employee buttons, is attached hereto as Exhibit H and made a part of the record. An original button is attached hereto as Exhibit I and made a part of the record.
9. On or about August 13, 1985, Resorts commenced measures to have deleted from all advertising materials that portion of the aforementioned advertisement which states, "The Most In Atlantic City." True copies of Resorts' interoffice correspondence dated August 14, 1985, and correspondence from Resorts to various advertising agencies dated August 14, 1985, relative to the deletion of the aforementioned phrase, are attached hereto as Exhibit J and made a part of the record.

10. From on or about August 20, 1985 until at least the date of the filing of the Division's complaint against Resorts in this matter, i.e. January 17, 1986, Resorts' advertisement, "Win Today Over \$7 Million in Jackpots" appeared in newspapers, on taxicab tops, buses, tent cards, flyers, banners, billboards, lightboxes, stanchions and buttons worn by Resorts personnel.
11. This Stipulation of Facts 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 Commission. (J-K).

The advertising campaign in issue was a major campaign which took several months to design and implement. Development commenced prior to April 1985. The campaign was developed primarily by Johann McIlwain, Director of Advertising, together with CRC Advertising Agency, Resorts' outside advertising agency.

The development of the campaign was reviewed and approved by Resorts senior management, including I.G. Davis, President; John Donnelly, Vice-President -Legal; Christopher R. Gibase, Director of Slot Operations; William Blaziek, Senior Vice-President of Sales and Marketing, as well as Ms. McIlwain. This consisted of discussions of the prospective campaign, as well as a determination that the proposed advertisement was in compliance with the Act and the regulations.

The advertising campaign commenced in June 1985. It featured the phrase: "Win Today Over \$7 Million in Jackpots. The Most in Atlantic City." (J-A.) The campaign was designed primarily for the slot market, i.e., slot machine patrons.

The campaign consisted of a multimedia effort. More specifically, advertisements were placed in nine newspapers (J-A and J-B), approximately one dozen billboards (J-C), on hundreds of taxicabs and buses (J-F), and within the casino facility on banners (J-G), tent cards (J-E), buttons worn by Resorts employees (the buttons contained only the phrase "Win Today Over \$7 Million in Jackpots") (J-H and J-I), lightboxes and posters.

During development of the campaign, Mr. Gibase was requested to determine Resorts' jackpot liability as well as the jackpot liability of other casinos. Initially, Resorts' jackpot liability of \$7 million was derived from the total sum of the top jackpots of all static and progressive slot machines in operation in late June 1985. Next, an

employee assigned by Mr. Gibase conducted a survey of slot machines in other casinos. This study was completed quickly in one afternoon. Mr. Gibase concluded that Resorts' jackpot liability exceeded that of the other casinos. However, this conclusion was erroneous for reasons which will be discussed, infra.

On July 29, 1985, Division Agent Irwin Schwefel was directed to investigate Resorts' advertising campaign, although no specific nor potential violation was noted. On August 1, 1985, Agent Schwefel spoke with Ms. McIlwain by telephone. The agent advised Ms. McIlwain that he was conducting an investigation of the advertising campaign and requested certain information. The agent did not imply that there was any problem with the campaign. An appointment was scheduled for the agent to meet with Ms. McIlwain on August 12, 1985.

Following the payout of a substantial jackpot and in conjunction with the revalidation of its jackpot liability, on August 10, 1985, Resorts resurveyed the jackpot liability of other casinos. This survey revealed that the Boardwalk Regency Corporation (BRC) had 16 video slot machines in operation each with a jackpot of \$1 million, for a total of \$16 million. Together with its remaining jackpot liability, BRC's total jackpot liability exceeded that of Resorts by approximately \$14 million. Thereafter, Mr. Gibase personally investigated the slot machine jackpot liability at BRC and verified the new information. He determined that the person who had conducted the initial survey erroneously concluded that the 16 slot machines were linked together with a total jackpot of \$1 million, rather than individual jackpots of \$1 million. Mr. Gibase attributed this error to the appearance of the jackpot display, which resembled a link progressive meter.

On August 12, 1985, Mr. Gibase notified Ms. McIlwain and other senior management personnel at Resorts verbally and by memorandum of the error in the advertisement; i.e., the portion of the advertisement which read, "The Most in Atlantic City" was factually inaccurate (P-1). Ms. McIlwain commenced immediately to delete that portion of the advertisement. Resorts promptly removed all of the advertisements from within the facility, ordered replacement advertisements, and directed that the advertisement be modified in newspapers, on billboards and on taxicabs and buses (J-D and J-H). All advertising was corrected within one week. Modifications were carried out on an emergency basis, which caused Resorts to incur overtime costs for creative changes.

Also on August 12, 1985, Ms. McIlwain's office requested that her meeting with Agent Schwefel be postponed to August 13. During that meeting, Ms. McIlwain advised Agent Schwefel of the efforts being undertaken by Resorts to modify its advertising campaign. However, materials concerning the campaign were not provided to the agent until approximately August 23, 1985.

Agent Schwefel acknowledged that neither he nor any other representative of the Division ever advised Resorts of the error in the advertisement prior to August 13, 1985, when the Division first learned of the error.

From August 20, 1985 through February 28, 1986, Resorts continued its advertising campaign, which used the phrase: "Win Today Over \$7 Million in Jackpots." The continuing campaign was also multimedia in nature. The campaign was ultimately terminated in the ordinary course of Resorts' marketing strategy.

At all times during the campaign, Resorts had a total daily jackpot liability, both static and progressive slots, in excess of \$7 million; i.e., this amount was at risk by Resorts and was available to be won by patrons. Although \$7 million was available to be won and could possibly be won, based on the odds, it was highly improbable. This degree of improbability was based upon the maximum jackpot being won on all machines during a given 24-hour period. Nevertheless, there have been a few occasions when jackpots, i.e., any and all amounts won by slot patrons during one day, totalled in excess of \$7 million.

Bruce R. Lampa, Chief Slot Machine Mechanic for the Division, testified that the average slot player does not know the odds of winning. In addition, Richard H. Williamson, Administrative Supervisor for the Electronic Game Section of the Division, testified that casino patrons do not know one slot machine from another, nor are they aware of the odds of winning an ultimate jackpot on any machine. In addition, Mr. Williamson testified that it is common knowledge among slot players that the minimum payout percentage is 83 percent.

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

(B) DISPUTED FACTS

The Division contended that Resorts knew prior to commencement of the advertising campaign that the portion of its advertisement which read, "The Most in Atlantic City" was false, and that Resorts modified its advertising campaign only after notification by the Division that the campaign contained a false statement.

The Division produced no evidence to establish that Resorts had prior knowledge that its advertisement contained a false statement. In addition, Mr. Gibase testified persuasively to the basis of his conclusion that Resorts' slot jackpot liability exceeded that of the other casinos. Although it was evident that the underlying survey could and should have been conducted in a more careful manner, which would have avoided the problem, the survey was made and was relied upon reasonably by Resorts management in the development and approval of the advertising campaign.

The Division produced Agent Schwefel on the issue of whether Resorts modified its advertisement on its own initiative or in response to notification from the Division. Although there was a telephonic communication between the agent and Ms. McIlwain on August 1, 1985, it was evident that no such notification was made during that conversation. In addition, the agent acknowledged that neither he nor any other representative of the Division ever notified Resorts of any concerns about the campaign prior to August 13, 1985, when the Division first learned of the error. Further, Ms. McIlwain and Mr. Gibase testified that Resorts discovered the error and undertook immediate efforts to modify the advertisement. Accordingly, it is clear that Resorts discovered the error and implemented revisions to the advertisement prior to receipt of any notice from the Division.

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

1. The Division produced no evidence to establish that Resorts had prior knowledge that any portion of its advertising campaign contained a false statement.

2. Resorts relied upon a survey conducted during late June 1985, which concluded erroneously that its jackpot liability was in excess of those of the other casinos, as the basis for the statement that Resorts' jackpot liability was "The Most in Atlantic City." Reliance upon this survey was reasonable.
3. Resorts had no prior knowledge that any portion of its advertising campaign contained a false statement.
4. The Division never notified Resorts of any potential problems with its advertising campaign prior to August 13, 1985.
5. Resorts discovered the error in the advertisement and commenced revisions to its campaign, effective August 12, 1985.

DISCUSSION OF LAW AND CONCLUSIONS

(A) VIOLATION

The Division contends that Resorts violated the provisions of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e) and N.J.S.A. 56:8-2 (the New Jersey Consumer Fraud Act), which is incorporated by reference in N.J.A.C. 19:51-1.2(e), because the respondent used the false statement, "The Most in Atlantic City" in an advertisement and, because the respondent used the misleading and deceptive statement, "Win Today Over \$7 Million in Jackpots" in its advertisement. Resorts admitted that the phrase, "The Most in Atlantic City" was false, and offered evidence in mitigation of a penalty, if any. However, Resorts denied that the remainder of its advertisement was misleading and deceptive.

Section 70o empowers the Commission to promulgate regulations concerning casino advertising in order to prohibit advertising which is false, deceptive or misleading in any manner. More specifically, this section, in pertinent part, provides:

Governing the advertising of casino licensees . . . with the view toward assuring that such advertisements are in no way deceptive. . . .

N.J.A.C. 19:51-1.2(e) sets forth the standards to be followed for casino advertisements and provides:

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

This rule incorporates the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2, which, in pertinent part, provides:

The act, use or employment by any person of any unconscionable, commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; . . .

Taken together, these provisions proscribe the permissible content of casino advertisements. Standards enunciated in the provisions require a subjective evaluation of the effect that an advertisement does or could have upon its reader. Aronberg et al. v. F.T.C., 132 F. 2d 165 (7th Cir. 1942). In Aronberg, the court recognized that the ultimate impression upon a reader arises from the sum total of not only what is said but also of all that is reasonably implied. Id. at 167. This suggests that the mere accuracy of the language employed in an advertisement does not discount the possibility that the language is misleading or deceptive to the reader. See, Katherine Gibbs School, Inc. v. F.T.C., 612 F. 2nd 658, 665 (2nd Cir. 1979). Further, a finding or conclusion of an actual deception of a consumer is not a prerequisite to a determination that a violation has occurred. Resorts Car Rental System, Inc. v. F.T.C., 518 F. 2nd 962 (9th Cir. 1975).

The term "deceptive" in statutes which regulate advertising has been interpreted in a variety of ways. In Barry v. Arrow Pontiac, Inc., 100 N.J. 57 (1985), the State Supreme Court considered whether an automobile advertisement was deceptive under New Jersey's Consumer Fraud Act. The crucial issue is whether the advertisement was itself misleading to the average consumer, not whether it could be explained later to

a more knowledgeable, inquisitive consumer. Id. at 68-69. In construing an advertisement under the Federal Trade Commission Act, the court in Chrysler Corp. v. F.T.C., 561 F.2d 357, 363 (D.C. Cir. 1977), adhered to the principle that advertisements may be deceptive if they have a tendency and capacity to convey misleading impressions to consumers even though other nondeceptive interpretations may also be possible.

The New Jersey Consumer Fraud Act is remedial in nature and has generally been liberally construed in favor of protecting consumers. Fenwick v. Kay American Jeep, Inc., 72 N.J. 372, 376 (1977). This principle is similarly applied by the F.T.C. Resorts Car Rental System at 964.

In matters prosecuted under the Federal Trade Commission Act, it has been held that the F.T.C. has the expertise to determine whether advertisements have the capacity to deceive or mislead the public. Resorts Car Rental System. Therefore, although consumer testimony could be helpful, it is not essential. Although the regulatory authority herein is reposed within the Commission and not the F.T.C., it is abundantly clear that the Commission has the ability to ascertain the effect of challenged advertisements upon consumers.

In Div. of Gaming Enforcement v. Boardwalk Regency Corporation, OAL DKT. CCC 6829-83 (November 5, 1984), modified, Casino Control Commission (April 24, 1985), the Commission established the standards by which challenged advertisements are to be evaluated under the Act and attendant regulations. The Commission held that the standard is whether the advertisement has the capacity to mislead or possesses the likelihood of deception. Id. at 13.

The essence of the Division's contention that the advertisement was misleading and deceptive was based upon the extreme improbability of \$7 million being won in a single day. In order to assess the merits of this contention, it is necessary to acknowledge first the nature of the activity advertised and the characteristics of the potential consumer in their proper context.

The product advertised is participation in gambling activity, i.e., the opportunity to purchase a chance to win more money than that which has been wagered. Inherent in this activity is that the risk of loss exceeds that of winning. It must be fairly

assumed that every patron of the gaming industry in this state recognizes that the casinos win more than they lose. Also, a slot patron does not purchase an identifiable product with predictable or promised results other than an opportunity, the terms and conditions of which are proscribed by the Commission, to win. Therefore, the average and/or potential slot patron, to whom the advertisement was addressed, has no realistic expectations of winning, but only a hope.

In light of the nature of the product and the risks assumed by the average or potential slot patron, it is clear that the probability or improbability of winning is irrelevant to the effect the subject advertisement had upon consumers. In addition, the Division has not offered any evidence of the effect the subject advertisement would have upon the perceptions or impressions of a potential patron. Therefore, the Division's contention is without merit and must be rejected. I so **CONCLUDE**.

Nevertheless, an analysis of the advertisement reveals the possibility that various interpretations can be made by its readers. More specifically, a reader could reasonably perceive that: (1) \$7 million was the jackpot available to be won from one play on a single machine; (2) one person could win \$7 million from multiple plays on either a single machine or multiple machines; or, and accurately, (3) \$7 million was available to be won by casino patrons on all machines. These are variable and inconsistent interpretations. Because the advertisement could have led to more than one interpretation, some of which are inaccurate, the advertisement has the capacity to mislead and possesses the likelihood of deception. Therefore, I **CONCLUDE** that the advertisement constituted a violation of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e) and N.J.S.A. 56:8-2, which is incorporated by reference in N.J.A.C. 19:51-1.2(e).

PENALTY

Sections 129 and 130 provide for various penalties and/or sanctions which can be imposed against a licensee who has committed a violation of the Act. Pursuant to section 129(5), the Division has proposed the assessment of a monetary penalty for each violation and that corrective advertising be published.

Section 130 sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . . .

1. False advertising

Resorts' use of the false statement, "The Most in Atlantic City" had no impact upon the integrity of gaming operations. Similarly, there was little, if any, risk caused to the public by the advertisement, although patrons may have chosen Resorts over other casinos as a result of having read the advertisement. However, given the risks inherent in gaming activity and given the fact that the odds of winning a maximum jackpot increase dramatically in relationship to the amount of the jackpot, there was little, if any, harm caused to the public.

Although a lack of intent does not constitute a defense to the allegation, the absence of knowledge of the falseness of the statement can serve to mitigate against the penalty to be imposed. Since the initial survey could and should have been prepared more carefully, Resorts' reliance thereon was reasonable and, therefore, the absence of intent or prior knowledge mitigates significantly the seriousness of the offense.

This was the first complaint filed against Resorts by reason of alleged improper advertising activities.

Resorts, on its own initiative, discovered the error and, in good faith, undertook immediate corrective actions. As far as Resorts' future advertising activities, it is fair to assume that the negative publicity generated by this action has created an undesirable stigma which outweighs any benefits derived from the conduct, the effort and

cost incurred to remedy the error was significant, and there is the reality of learning from one's prior mistakes. These facts suggest strongly that there will not be a repetition of such a violation.

Accordingly, the Division's proposal that the maximum civil penalty of \$50,000 be imposed is excessive. Rather, a civil penalty in the amount of \$5,000 should be imposed in order to ensure future compliance with the regulatory scheme. I so **CONCLUDE**.

2. Misleading and deceptive advertising

The cited dissemination of misleading and deceptive advertising had no impact upon the integrity of gaming operations. In addition, the advertisement created no risk to the public.

The advertisement was of minimal seriousness because it may have resulted in some patrons having chosen Resorts over other casinos. However, given the risks inherent in gaming activities and the fact that the odds of winning the maximum jackpot are extremely remote, there was little, if any, harm caused. It is fair to assume that a patron lured to Resorts by the prospect of a \$7 million jackpot would be inclined initially to search unsuccessfully for that machine. Most significantly, the advertisement was true and accurate. Its defect was that it was subject to more than one interpretation. However, the evidence suggested that the defect was neither knowing nor intentional. Accordingly, it is not a serious offense.

For the reasons previously discussed, there is every reason to believe that Resorts will not repeat such an advertising campaign.

The Division has proposed a civil penalty of \$1,000 per day for a total of \$52,000. For the reasons previously discussed, this proposal is excessive. Nevertheless, a civil penalty should be assessed in order to ensure continued compliance. Accordingly, a civil penalty in the amount of \$5,000 should be imposed. I so **CONCLUDE**.

The Division requested that remedial advertising be ordered. However, in the absence of any measurable harm and the ten months which have elapsed since the campaign ended, such a penalty would serve no useful purpose. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against Resorts International Hotel, Inc., be **GRANTED**, and that civil administrative penalties in the amount of \$10,000 be **IMPOSED**.

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

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

December 12, 1986
DATE

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

Receipt Acknowledged:

Dec. 15, 1986
DATE

James Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 17 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- J-A* Advertisement
- J-B Resorts International Hotel, Inc. - Media Plan (7 pages)
- J-C Five Photographs of Billboards with Advertisements
- J-D Memorandum to Johann McIlwain from Ellen Pritzker, August 19, 1985 (2 pages)
- J-E Tent Card Advertisement
- J-F Advertisement for Top of Taxicab
- J-G Advertising Banner used on the Casino Floor
- J-H Memorandum to B. Blaziek, I. Rodgers, F. Schneck, C. Steinfals and W. Kohlross from Johann McIlwain, July 2, 1985
- J-J Memorandum to Mark O'Connell from Mary-Ellen Cretel, August 14, 1985; letter to Joe McIntire from Mary-Ellen Cretel, August 14, 1985; letter to Sid Cooper from Mary-Ellen Cretel, August 14, 1985; letter to Dick Yacenda from Mary-Ellen Cretel, August 14, 1985; and Stait Outdoor Advertising Company - Completion Photo Report to Carol Cohen, August 14, 1985 (5 pages)
- J-K Division of Gaming Enforcement v. Resorts International Hotel, Inc., Casino Control Commission, docket number 86-31, Stipulation of Facts (5 pages)
- P-1 Memorandum to Walter I. Rogers from Christopher R. Gibase, August 12, 1985
- P-3 Letter from Harry N. Okin, September 6, 1985
- P-4 Formula for Calculating the Number of Days for a Jackpot to Occur (14 pages)

(B) EXHIBIT NOT ADMITTED INTO EVIDENCE

- P-2Id. Report prepared by Irwin Schwefel, August 20, 1985; Report prepared by Irwin Schwefel, August 26, 1985; and Report prepared by Richard Handzo, September 11, 1985 (5 pages)

*"J-" denotes joint exhibits
"P-" denotes petitioner's exhibits

WITNESS LIST

For the petitioner:

Christopher R. Gibase
Bruce R. Lampa
Johmann McIlwain
Irwin Schwefel
Richard H. Williamson

For the respondent:

Christopher R. Gibase

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-82
LICENSE NO. 21428-21
OAL DOCKET NO. CCC 8918-86

RENEWAL APPLICATION OF BOBBY L.

RHEA FOR A CASINO EMPLOYEE LICENSE

ORDER

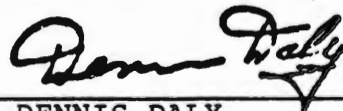
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 3, 1987,

IT IS on this 9th day of June 1987, 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 and made a part hereof.

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 8918-86

AGENCY DKT. NO. 87-EA-82

BOBBY LEE RHEA,

Petitioner,

v.

DEPARTMENT OF LAW AND

PUBLIC SAFETY, DIVISION

OF GAMING ENFORCEMENT,

Respondent.

Bobby Lee Rhea, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: April 9, 1987

Decided: April 27, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Bobby Lee Rhea, applied to the Casino Control Commission (Commission) for the renewal of his casino employee license (gaming and slot attendant supervisor, license no. 21428-21), 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

Mr. Rhea filed his renewal application for 1984 with the Commission. By letter to the Commission dated October 15, 1986, the Division objected to the renewal application of the petitioner for licensure as a gaming and slot attendant supervisor asserting that the petitioner had committed acts which are tantamount to theft under the provisions of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1) and section 86g. In addition, the Division objected stating that the petitioner's actions in not immediately reporting the finding of a wallet would be inimical to the provisions of section 86c(4). Finally, the Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated December 1, 1986, the petitioner requested a hearing. On December 17, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on December 23, 1986, 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 on February 6, 1987, before Administrative Law Judge Edgar R. Holmes. 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 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 petitioner's continued licensure is inimical to the policy of the Casino Control Act 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.
- C. Whether 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.

A hearing was held on April 9, 1987, in the Municipal Courtroom, Ventnor City Hall, Ventnor, New Jersey, and the record closed on that day.

STIPULATIONS

The Division and the petitioner stipulated to the following facts at the prehearing conference:

1. During the course of the petitioner's employment in the Playboy Hotel Casino¹ on June 20, 1984, the petitioners found a wallet containing a sum of money.
2. The petitioner did not know the amount of money contained in the wallet.
3. When asked by the security sergeant if he had found a wallet the petitioner said "No."
4. When asked a second time by the security sergeant whether the petitioner had found a wallet, the petitioner again said "No."
5. When asked by a security captain whether the petitioner had found a wallet, the petitioner produced the wallet and gave it to the security captain.

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

¹Now the Atlantis Hotel Casino.

THE FACTS

On June 20, 1984, the petitioner was employed as a security officer at the Playboy Hotel and Casino. He was assigned to work at the lobby escalator post. His primary job that day was to look for minors who were attempting to enter the casino. At approximately 1:00 p.m., Mr. Mac McCollun, a guest staying at Playboy, having just cashed in his chips, was enroute from the cashier's cage to the front desk. In the area of the escalator, Mr. McCollun dropped his wallet. The petitioner then found the wallet. Upon realizing his wallet was missing, Mr. McCollun began retracing his steps. At the escalator area, Mr. McCollun asked the petitioner if he had found a wallet, and the petitioner indicated that he had not. Mr. McCollun then went to the main security desk to report the wallet lost (P-1b).²

On this date, Ann Marie Maguire was working at the coatroom in the lobby of the Playboy Casino Hotel. At approximately 1:05 p.m. she saw a man drop a wallet on the floor near the lobby escalator. She then saw a security officer pick up a wallet and then return to the escalator post. She also saw the man who dropped the wallet return to the area 3-4 minutes later. He appeared to be looking for something. The man approached the security officer, and the security officer shook his head "no." Ms. Maguire then telephoned SOC Sergeant Rich Washart and informed him that she saw the security officer pick up the wallet and she described the security officer (P-1d & g).

Sergeant Washart telephoned Sergeant Javier Mercado and informed him that Ms. Maguire had reported that she saw a security officer in the lobby pick up a wallet and that a patron was then at the security podium reporting a lost wallet. Sergeant Mercado proceeded to the elevator post and asked the petitioner if he had found the missing wallet. The petitioner told Sergeant Mercado that he had not found the wallet. Several minutes later Sergeant Mercado again asked the petitioner if he had found the wallet, and the petitioner again said no. Sergeant Mercado then reported to Captain Budniak (P-1a).

Captain Budniak knew that Ms. Maguire had seen petitioner pick up the wallet so he then approached the petitioner. He asked the petitioner if he had just found a lost wallet, and the petitioner again responded "no." Captain Budniak then said, "Bobby, I

²All respondent's exhibits were erroneously labeled "P" exhibits and all petitioner's exhibits were erroneously labeled "R" exhibits.

know you found one, when do you intend to turn it in? When you get off this post"? The petitioner then said "yea." With that Captain Budniak said, "Bobby, you better give me the wallet now." The petitioner then reached into his pocket and handed Captain Budniak the wallet (P-1a & f). It was later determined that the wallet contained \$918.00 in cash (P-1h).

The petitioner testified that he saw the wallet on the floor, knew the wallet was not his, picked it up, saw that it contained money (but he did not open the wallet), and placed the wallet in his hand under some papers. The thought then went through his mind to keep the wallet. The day before petitioner had purchased a mobile home, and he thought he was "broke." Approximately a minute or so later, Sergeant Mercado approached him, and he denied finding the wallet. The petitioner then decided not to keep the wallet but to turn it in. Several minutes later, Sergeant Mercado again asked the petitioner if he had found the wallet, he again denied finding the wallet but petitioner stated that at that point he had already decided to turn in the wallet. He was just trapped by his previous response. He was scared that he might be fired. The petitioner wanted to turn the wallet in on his own, but he could not leave his post. Five minutes later he was approached by Captain Budniak, and he gave the captain the wallet.

The petitioner was employed at the Playboy Hotel Casino as a security officer in December 1980. He was fired on the day of this incident. On July 5, 1984, the petitioner went to work for the Sands Hotel and Casino. He worked as a change person and a slot attendant. In May 1985, the petitioner left the Sands to go to work at the new Trump Castle. The petitioner left the Sands for Trump Castle in order to work on day shift. He thought that since he had experience and since it was a new casino, there was greater promotional opportunity. The petitioner is still employed at the Trump Castle.

The petitioner submitted letters from his supervisors at the Sands and Trump Castle attesting to his rehabilitation, good character, honesty and integrity (R-1 and R-2). The Sands indicates that the petitioner was a satisfactory to very good employee, and that he is eligible for reemployment at the Sands. The letter from Trump Castle indicates that the petitioner:

has been a valued employee of ours since May 20, 1985. He has proven to be an honest and upstanding individual. He has trained many of his fellow employees, at the request of his Shift Managers, due to his knowledge in this field and their confidence in his ability.

I am hoping that this letter will help him in this most unfortunate incident that he is involved in.

The petitioner produced three character witnesses. The first, Nelson L. Wynder, is an investigator for the Defense Investigative Service. He has known the petitioner all of the petitioner's life. He believes the petitioner to be a very honest, straightforward individual. The petitioner's reputation in his community is that he is a "good boy" and very energetic. Investigator Wynder has never known the petitioner to do anything wrong (other than the instant offense) and knows of nothing in the petitioner's background which is adverse.

The second character witness for petitioner, Jessie Philip Thompson, is a retired Army Lieutenant Colonel who is currently a professional referee for the National Basketball Association. Lt. Col. Thompson was in Army intelligence assigned to counter intelligence. He was the commander of a detachment responsible for performing security background checks. Lt. Col. Thompson has known the petitioner for seven years. He stated the petitioner is a very honest and upstanding man. The petitioner's family are devout Jehovah's Witnesses. He stated if a security check were performed on the petitioner that he is the type of individual who "would come out smelling like a rose." Lt. Col. Thompson concluded that the petitioner has the utmost honesty and integrity.

The petitioner's mother, Martina Rhea, testified that her son is a very honest person. When told about the incident, she could not believe the petitioner did it. He made a mistake, and he paid for it. He does not drink, smoke or use drugs. He knows right from wrong and is usually very honest. Mrs. Rhea is proud of her son and believes that he was a good boy and is a good man.

Finally, the petitioner testified in his own behalf. He stated that prior and subsequent to June 20, 1984, he has always been honest and displayed integrity. The event on June 20, 1984 was one isolated incident which will not occur again. He knows that he was wrong, is remorseful and states it will not happen again. He was punished by being dismissed from his job and losing three weeks vacation pay. He reiterated that he knew

he was wrong to deny finding the wallet the first time but he then decided to turn it in and only denied finding the wallet the second time to Sergeant Mercado because he was scared that he would be fired as he had already denied finding the wallet to Sergeant Mercado.

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 petitioner's 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 testimony of the other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail and with great humiliation the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects. In addition, all three of the petitioner's character witnesses were extremely credible and believable. All three were intelligent, articulate, and straight-forward, and two of them hold very responsible positions which require the highest degree of honesty and integrity. As such, I believed their testimony in all respects.

FINDINGS OF FACT

1. The petitioner found a wallet while employed as a security officer on June 20, 1984, at the Playboy Hotel and Casino.
2. When he found the wallet, the petitioner intended to keep it.
3. The wallet belonged to Mr. Mac McCollun of Cinnaminson, New Jersey and contained \$918.00.
4. The petitioner never opened the wallet but knew it contained money.
5. The petitioner initially denied finding the wallet.

6. The petitioner then decided to turn in the wallet.

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 under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

...

- (4) any other offense 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 and provided, further however, that, any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant or person

demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for a disqualification pursuant to paragraph (1) of this section;

...

- 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; and

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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 therefore, 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 or the offenses enumerated in this act as disqualification criteria; 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;
- (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's failure to turn in the wallet he found which contained in excess of \$500, 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 might also be an offense under either N.J.S.A. 2C:20-3 or 2C:20-6.

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: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 petitioner admitted during his testimony, that when he found the wallet he initially intended to keep the wallet and told his supervisors that he did not find the wallet. The Division further established that the petitioner exercised unlawful control over the wallet or converted the wallet to his own

use and had the purpose to deprive the true owner of its use. 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, 4 and 6. 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 section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Rhea holds a casino employee license and is currently employed as a slot attendant at the Trump Castle. As such, he has direct patron contact and direct supervisory responsibility for casino activities.

Second, the petitioner committed a theft offense in violation of N.J.S.A. 2C:20-3, 2C:20-4, or 2C:20-6, while employed in the industry. Because the offense is a listed disqualifier under section 86c(1), and because it occurred in the casino, the offense is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. Here, a licensee employed in the industry as a security officer, which is a position of trust in part representing the law enforcement community, found a wallet containing a large sum of money. Instead of reporting that he found the wallet, he decided to keep it for himself and then lied to the owner of the wallet and his supervisor regarding his not having found the wallet.

Fourth, the offense occurred nearly three years ago on June 20, 1984.

Fifth, the petitioner was 29 years of age when the offense was committed.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

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

Eighth, the petitioner has a reputation for honesty and integrity in his community. The petitioner appeared intelligent, articulate, conscientious, respectful, and neat. Absent the instant charge, the petitioner appeared to be exactly the type person one would want as an employee in the casino industry. The petitioner has a good prior record and has been an excellent employee in the industry the last three years. The instant offense appears to be an aberration. A thought which crossed his mind for merely a few minutes, but that was sufficient for him to get caught in a tangled web. The petitioner immediately recognized the wrongfulness of his conduct, and intended to turn in the wallet as soon as he got off his post. The petitioner readily admitted his mistake and appeared extremely remorseful.

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

It is readily apparent that the petitioner's misconduct was aberrational and that he is otherwise a person of good character, honesty and integrity. The misconduct did occur during the course of licensed employment, but was an isolated incident. 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 three years, 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 a second chance and the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Rhea is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp. I do, however, recommend that if the Commission does renew the petitioner's license, that it include a warning that if the petitioner again becomes involved in any disqualifying conduct that his license may be immediately revoked.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

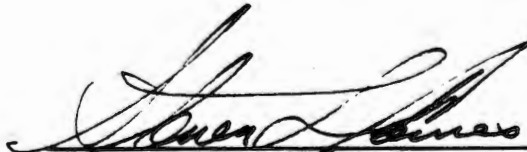
DISPOSITION

It is **ORDERED** that the application of Bobby Lee Rhea for issuance of a casino employee license be **GRANTED**.

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

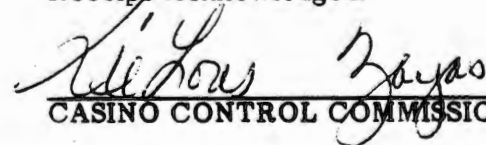
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

27 April 1987
DATE


STEVEN L. CARNES, ALJ

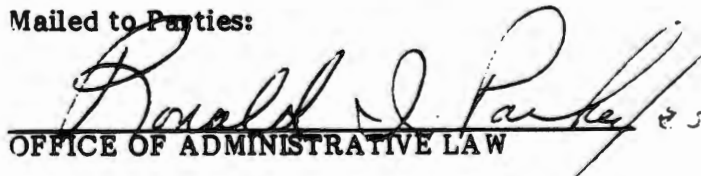
April 28, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

APR 30 1987
DATE

Mailed to Parties:


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 Letter from the Sands Hotel, Casino & Country Club, dated March 3, 1987
- P-2 Letter from Joseph Starr of Trump Castle, dated March 18, 1987

For Respondent:

- R-1a Incident Report of Javier Mercado, dated June 20, 1984
- R-1b Statement of Mac McCollum, dated June 20, 1984
- R-1c Statement of Sharlene Bowser, dated June 20, 1984
- R-1d Statement of Ann Marie Maguire, dated June 20, 1984
- R-1e Statement of Robert Rhea, dated June 20, 1984
- R-1f Statement of Henry Budniak, dated June 20, 1987
- R-1g Incident Report of Richard Washort, dated June 20, 1984
- R-1h Property Report
- R-1i Guest property Loss Report
- R-1j Cover letter for documents in P-1

WITNESSES

For Petitioner:

Investigator Nelson Lance Wynder, Defense Investigative Service
Jessie Philip Thompson, Lt. Col. USA ret.
Robert Rhea, petitioner
Martina E. Rhea

For Respondent:

Robert Rhea, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-172
OAL DOCKET NO. CCC 4405-85
LICENSE NO. 33403-21
REGISTRATION NO. 30570-40

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

Complainant,

v.

JANET S. ROY, a/k/a JANET S. DeWITT,
Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meetings of April 16, and April 30, 1986,

IT IS on this 1st day of April 1987, ORDERED that the initial decision is modified as follows:

- (1) The record establishes that the respondent first applied for welfare on June 2, 1972, rather than June 1982, as stated in the initial decision at p. 2;

- (2) The record establishes that the respondent agreed to repay \$3,604.25 not \$4,014.25 as stated in the initial decision at p. 3;
- (3) Contrary to the ALJ's finding at p. 3 of the initial decision that in 1985 the respondent had made no payment on the obligation imposed by the reimbursement agreement, the record establishes that the respondent made at least one such payment in August 1985; and
- (4) The respondent is disqualified substantially for the reasons stated by the ALJ; however, considering the nature and date of the offense, the respondent's efforts to satisfy her obligations to the welfare authorities, albeit not completely successful to date, her current circumstances and her conduct subsequent to the disqualification offense, that disqualification is waived pursuant to N.J.S.A. 5:12-91 (e); and

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

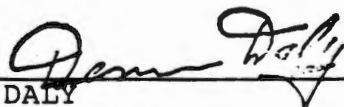
IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is prohibited from applying for any other registration, license,

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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4405-85

AGENCY DKT. NO. 85-172

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

Petitioner,

v.

JANET S. DEWITT ROY,

Respondent.

Norma Plenty, Law Clerk, appearing pursuant to N.J.A.C. 1:1-3.12(a)2, for petitioner

Janet S. Dewitt Roy, respondent, pro se

Record Closed: December 27, 1985

Decided: February 5, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement with the Casino Control Commission on April 30, 1985, seeking the revocation of the respondent's license as a casino employee and her registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Janet S. Dewitt Roy requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference was held on September 20, 1985, at which time the parties agreed that the issues in this matter are:

- (a) Whether the respondent is disqualified from licensure and/or registration based on certain alleged criminal activity, pursuant to N.J.S.A. 5:12-86c(1) or 5:12-86g.
- (b) Whether the respondent's alleged criminal activity would render her continued licensure and/or registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- (c) Whether the respondent can establish her reputation for good character, honesty and integrity as required for licensure as a casino employee, pursuant to N.J.S.A. 5:12-90b.
- (d) Whether the respondent can establish that she has been rehabilitated, pursuant to the provisions of N.J.S.A. 5:12-90h and/or 5:12-91d.

The hearing took place on December 17, 1985, and, at the request of Ms. Roy, I kept the record open for a ten-day period in order to give her an opportunity to submit additional documents. I did not receive any other documents from Ms. Roy and the record closed on December 27, 1985.

FACTUAL FINDINGS

I FIND that the facts in this matter are not in dispute.

In August 1984, Ms. Roy was indicted for theft by deception (welfare fraud), a violation of N.J.S.A. 2C:20-4 (P-4). This indictment resulted from a welfare investigation conducted by the Camden County Board of Social Services (Board). According to the records of the Board, Ms. Roy applied for Aid to Families with Dependent Children (AFDC) benefits in June 1982 and received AFDC benefits for herself and her two minor children from that time until July 1983 (P-1). While receiving said benefits, Ms. Roy failed to report to the Board her salary income from Caesars Hotel and Casino (Caesars) for the periods July 1981 through September 1981 and July 1982 through September 1982, and her unearned income from unemployment insurance benefits for the period October 1982 through December 1982 (P-1). As a result of her failure to report said income, it was determined that Ms. Roy received an overpayment of benefits in the amount of \$4,014.25 (P-1). Ms. Roy admitted that she had not reported these sources of income and

signed an agreement to repay the \$4,014.25 in payments of \$40 a month starting on February 13, 1984 (P-2, P-3). The respondent is no longer receiving any welfare benefits.

As to the criminal indictment, Ms. Roy was allowed to participate in the pretrial intervention program, starting on October 15, 1984. After she completed the program, the indictment was dismissed on August 28, 1985. As part of the pretrial intervention program, Ms. Roy completed approximately 60 hours of community service work and was required to agree to repay the amount of the welfare overpayment to the Board.

At the hearing, Ms. Roy stated that she was 35 years old and has supported her two children since her separation from her husband, which occurred prior to her application for welfare benefits. Ms. Roy was aware that she had to report her income to the Board but took a chance since she needed the money. During the periods of the overpayments and at the time of the hearing in the matter, the respondent was taking law and psychology courses at Glassboro State College. In addition, for the last 2 1/2 years she has been a full-time security officer at Caesars.

As to the repayment of the \$4,014.25 to the Board, Ms. Roy admitted that she was currently in arrears and that she had not made any monthly payments in 1985. Ms. Roy indicated that the Board had allowed her to defer the payments for a while since she had extra expenses due to a move to a new apartment, but she was not specific as to how far behind she was nor could she recall the balance still owed by her to the Board.

On behalf of the respondent, Frank R. Miraglia, security director of Caesars, stated in a letter dated September 24, 1985, that Ms. Roy has worked for him as a security officer for 2 1/2 years and that she has been a good employee (R-1).

CONCLUSIONS OF LAW

Based on the facts, I **CONCLUDE** that the Division has shown that Ms. Roy was guilty of an act of theft of \$4,014.25 from the Board, which is a third degree offense pursuant to N.J.S.A. 2C:20-2b(2), and which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86g.

Since the Division has established this statutory disqualifier, it is not necessary to determine whether or not the respondent's criminal activity is inimical pursuant to N.J.S.A. 5:12-86c(4).

Also, I **CONCLUDE** that the respondent has not shown that she is rehabilitated pursuant to either N.J.S.A. 5:12-90b or 5:12-91d. Ms. Roy's criminal activity was an intentional deception of her financial resources over an extended period of time and involved a considerable amount of welfare payments, and she has only recently been discharged from the pretrial intervention program. In addition, it appears that the respondent has not made a conscientious effort to repay the amount of the overpayment to the Board. Lastly, I **CONCLUDE**, for the same reasons, that the respondent has not shown by clear and convincing evidence that she is a person of good character, honesty and integrity as required for licensure pursuant to N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the licensure of Janet S. Dewitt Roy as a casino employee and her registration as a casino hotel employee be **REVOKED**.

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

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

February 5, 1986
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

February 6, 1986
DATE

Bernadette P. Frigh
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 10 1986
DATE

Ronald J. Parker / x 5
OFFICE OF ADMINISTRATIVE LAW

bc/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Report of Criminal Investigation addressed to the Camden County Prosecutor and the summary report regarding Janet Roy's participation in the Camden County welfare program
- P-2 Waiver of rights and affidavit signed by Janet Roy
- P-3 Reimbursement agreement signed by Janet Roy, dated January 20, 1984
- P-4 Indictment No. I-1978-08-84 entered against Janet Roy

FOR THE RESPONDENT:

- R-1 Letter from Frank R. Miraglia, dated September 24, 1985

WITNESSES

FOR THE PETITIONER:

Robert Jackson

FOR THE RESPONDENT:

Janet S. Dewitt Roy

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-EA-108; 87-113
OAL DOCKET NO. CCC 4413-86 &
CCC 6771-86 (CONSOLIDATED)
REGISTRATION NO. 15008-40
APPLICATION NO. 29522-21

APPLICATION OF ALFRED L. ROYAL :
FOR A CASINO EMPLOYEE LICENSE :
AND :
STATE OF NEW JERSEY, DEPARTMENT : ORDER
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Complainant, :
V. :
ALFRED L. ROYAL, :
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 April 29, 1987,

IT IS on this 9th day of June 1987, ORDERED that the initial decision is modified as follows:

- (1) at page 5 of the initial decision, the statement that Alfred Royal was convicted of all offenses with which he was charged arising out of his arrests on June 9, 1981, and December 1981 is in error. Although on each occasion Mr.

Royal was charged with and later indicted for multiple offenses, he was convicted in February and March 1982, respectively, of aggravated assault, contrary to N.J.S.A. 2C:12-1b, and robbery, contrary to N.J.S.A. 2C:15-1, and all other charges were dismissed. P2; P4;

(2) at pages seven and eight of the initial decision, the statement that the Division of Gaming Enforcement had established that Mr. Royal had been convicted of burglary and conspiracy to commit robbery, in addition to aggravated assault and armed robbery, is in error as previously indicated. Mr. Royal is disqualified by his 1982 convictions for aggravated assault (second degree) and armed robbery, both of which are offenses listed in N.J.S.A. 5:12-86(c)(1);

(3) to correct the typographical error in sentence two of item (8) on page nine of the initial decision to read "November 1986" rather than "November 1983"; and

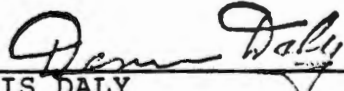
(4) to eliminate the statement on page 10 of the initial decision that a casino hotel employee registrant is required to show that he possesses good character, honesty and integrity.

IT IS FURTHER ORDERED that the casino employee license application of Alfred L. Royal is denied substantially for the reasons stated in the initial decision as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Alfred L. Royal is revoked substantially for the reasons stated in the initial decision, as modified; and

IT IS FURTHER ORDERED that Alfred L. Royal 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
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 4413-86 &
CCC 6771-86 (CONSOLIDATED)
AGENCY DKT. NOS. 83-EA-108 &
87-113

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

Petitioner,

v.

ALFRED L. ROYAL,

Respondent.

and

**IN THE MATTER OF THE APPLICATION
OF ALFRED L. ROYAL FOR A CASINO
EMPLOYEE LICENSE**

Ralph L. Fusco, Deputy Attorney General, for petitioner-respondent (W. Carv
Edwards, Attorney General of New Jersey, attorney)

Alfred L. Royal, respondent-petitioner, pro se

Record Closed: March 17, 1987

Decided: March 27, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a letter of recommendation with the Casino Control Commission (Commission) dated July 5, 1983, objecting to the issuance of a casino employee license to Alfred L. Royal for his failure to disclose

derogatory information, in violation of N.J.S.A. 5:12-86b. Subsequently, on September 25, 1986, the Division filed a complaint before the Commission seeking the revocation of Alfred L. Royal's casino hotel employee registration #15008-40 alleging, among other things, that his convictions for Aggravated Assault (N.J.S.A. 2C:12-1(b)(1)) and Armed Robbery (N.J.S.A. 2C:15-1) are per se disqualifying crimes to hold and possess casino hotel employee registration, pursuant to N.J.S.A. 5:1286c(1).

PROCEDURAL HISTORY

Subsequent to the Division filing its letter objection with the Commission, Mr. Royal requested a hearing by way of letter dated June 23, 1986. On July 3, 1986, 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 August 15, 1986. Thereafter, the Division filed its complaint with the Commission which, in its transmittal to the OAL, requested that it be consolidated with the above license application matter. Considering the commonality of the factual and legal issues in the two matters and, no objections having been advanced by Mr. Royal, the matters were consolidated, pursuant to N.J.A.C. 1:1-14.1(a) and (b). The hearing was conducted on December 16, 1986 and March 17, 1987 at the Atlantic City OAL. The record was considered closed on March 17, 1987.

ISSUES FOR DETERMINATION

Pursuant to the Prehearing Order, dated August 15, 1986, the issues for determination with regards to the consolidated matters are summarized as follows:

1. Whether the respondent-petitioner, with specific reference to his record of arrests, failed to reveal any facts material to his qualifications to hold a casino hotel employee registration and/or casino employee license?
2. Whether respondent-petitioner's conduct constitutes a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(1)?

3. Whether respondent-petitioner possesses the requisite good character, honesty and integrity for casino registration and/or licensure, pursuant to N.J.S.A. 5:12-89b(2)?
4. With regard to the alleged statutory disqualifier, whether respondent-petitioner may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act?

FINDINGS OF FACT

Based upon the testimony and documents marked into evidence, together with the parties stipulation as to Mr. Royal's prior criminal record, I make the following **FINDINGS OF FACT** in this matter:

Mr. Royal, who is now thirty five years of age, was born in Atlantic City and moved to Detroit, Michigan with his family when he was one year old. He was enrolled in the Detroit public schools and dropped out of school when he was approximately sixteen years of age. His first recorded arrest occurred on April 26, 1970, in Fremont, Ohio, when he was approximately nineteen years old. There, he was charged with larceny of an automobile, which is the equivalent to the New Jersey offense under N.J.S.A. 2A:119-1. Royal asserted he was only a passenger in the stolen vehicle and, therefore, that charge against him was dismissed. On July 17, 1970, Royal was arrested in Highland Park, Michigan during the course of a race riot where he was engaged in looting a B.F. Goodrich Store. He was charged and convicted of conspiracy, equivalent to N.J.S.A. 2A:98-1, and served 90 days incarceration in the Detroit House of Corrections, Plymouth, Michigan.

In 1970, Royal was employed by the Chrysler Motor Company, Detroit, Michigan and during that year he returned to Atlantic City, New Jersey. Upon his return to Atlantic City, he gained employment with the Buffalo Modine Plastic industry in Somers Point, New Jersey, and it was there he was introduced to marijuana. On March 18, 1973, Royal was arrested in Linwood, New Jersey, and charged with possession and use of marijuana under 25 grams, N.J.S.A. 24:21-20a3, with a judicial finding of guilt and fine on each count. On October 25, 1973, he was arrested in Atlantic City and charged with possession of Controlled Dangerous Substance (CDS) with intent to distribute in contravention of N.J.S.A. 24:21-20a1, which charge was subsequently dismissed. Royal

asserts that he stopped using drugs thereafter and was engaged with the Manpower program in 1974 where he learned the trade of auto body repair.

On April 4, 1975, Royal was arrested in Atlantic City and charged with possession of a weapon, with a subsequent finding of guilt and a sentence of nine months which was served in the Atlantic County Jail. Royal contends, without proof, that he received either a 60 day sentence or probation on the guilty plea to the N.J.S.A. 2A:151-41 offense of possession of a weapon. On April 30, 1980, he was arrested in Atlantic City and charged with possession of heroin and marijuana over 25 grams (N.J.S.A. 24:21-20a and N.J.S.A. 24:21-20a4) with a subsequent finding of guilt on both charges. Royal was fined \$1,000 and placed on probation for one year on the two counts. Royal admitted he was a heavy user of heroin and other CDS at that time. Subsequently, on August 22, 1980, he was arrested and charged with possession of heroin, possession of amphetamines and possession of amphetamines with the intent to distribute, in contravention of N.J.S.A. 24:21-20a1 and N.J.S.A. 24:21-19a. Those charges were ultimately dismissed.

On June 9, 1981, Royal was arrested in Atlantic City and charged with burglary (N.J.S.A. 2C:18-2), aggravated assault (N.J.S.A. 2C:12-1b) and possession of a weapon (N.J.S.A. 2C:39-4). At this point in time, Royal's use of heroin was so extensive that he was spending between \$50 to \$75 per day to support his habit. He was employed by the AL-Ru Lounge in Atlantic City, earning between \$170 and \$275 per week. He asserted that he did not sell illicit drugs but, rather, acted as a tout for a seller by directing potential purchasers to the drug dealer at the Al-Ru Lounge. In exchange for his touting customers to the drug dealer, the dealer would give Royal heroin to support his habit. The June 9, 1981 arrest also involved an incident where Royal shot a white man which, Royal asserted, was a consequence of a racial incident with his younger brother.

On October 14, 1981, Royal was arrested by the Atlantic City Police and charged with simple assault (N.J.S.A. 2C:12-1a), theft of more than \$200 (N.J.S.A. 2C:20-3) and possession of a prohibited weapon (N.J.S.A. 2C:39-3c). All of these charges were dismissed.

In December 1981, Royal was arrested with other individuals in Pleasantville, New Jersey, and subsequently indicted by the Atlantic County Grand Jury for the crimes of conspiracy to commit robbery (N.J.S.A. 2C:5-2), threat to commit bodily harm

(N.J.S.A. 2C:15-1) and kidnapping (N.J.S.A. 2C:13-1b(1)) among other things. The offenses, Royal asserts, arose out of a drug deal which went sour. In any event, Royal was convicted of these and the June 9, 1981, offenses and was incarcerated at the Leesburg State Prison for a term of 51 months, from February 15, 1982 until his release on May 6, 1986.

While in prison, Royal successfully completed his high school equivalency (R-1) and satisfactorily completed a drug abuse awareness treatment program (R-2). He was actively engaged in the prison's educational programs having completed its course in the construction trades (R-3) and its program of Behavior Modification Training in Self-Control Techniques (R-4, R-5, R-5A, R-6, R-6A, R-7). He subsequently qualified as a group leader aide with the behavior modification program (R-8, R-8A).

Prior to his conviction and incarceration at Leesburg, Royal attended the Casino School, Inc. and on May 15, 1981, was granted a certificate as a craps dealer (R-14A, B, C). Subsequent to serving his prison term, he was employed by the Golden Nugget Hotel/Casino in its Housekeeping Department under his casino hotel employee registration (R-11).

This concludes the recital of the stipulated facts and my findings of fact as a consequence of the first day of hearing.

At the hearing on December 16, 1986, this tribunal examined Royal with respect to the rehabilitation elements found at sections 90h and 9ld of the Casino Control Act. The court's inquiry embodied questions concerning Royal's use of drugs and whether he had any arrests subsequent to his release from prison. Royal asserted he had not used drugs, however, he had been cited for a parole violation which, he contended, was merely a disagreement between himself and his parole officer over Royal's failure to attend and participate in the outpatient drug counselling with the Institute of Human Development (IHD). Royal asserted that he was required to report to IHD during the daytime when he was employed, therefore, it created a conflict with his employer. Royal admitted, moreover, that he had been detained at the Atlantic County Jail, Mays Landing, New Jersey, for a period of two weeks in November 1986, until his probable cause hearing before his parole officer was heard and decided.

Based upon Royal's testimony, the Division expressed surprise that it had not been advised of the alleged parole violation and, therefore, requested leave for a continuance of the hearing until such time as it had the opportunity to inquire of the Probation Department concerning the alleged parole offense. The Division's application for a continuance was granted, consequently, the hearing was recessed and continued on March 17, 1986.

As a consequence of the Division's investigation subsequent to the December 16, 1986 hearing, it discovered that Royal had been arrested on December 13, 1986, by the Atlantic City Police and charged with unlawful possession of a weapon; i.e. a loaded five shot thirty-two caliber revolver. N.J.S.A. 2C:39-5(b) (P-5). This offense was committed three days prior to the December 16, 1986, administrative hearing in these proceedings and yet was not revealed by Royal upon examination by this tribunal concerning arrests subsequent to his release from prison.

The Division's investigation revealed that Royal's parole violation was more than a mere disagreement between Royal and his parole officer (P-6). The Notice of Probable Cause Decision (P-6) demonstrated that within six months of Royal's parole, he had returned to the use of illicit drugs as evidenced by positive results of urinalysis tests administered to him on August 15, September 5, and November 11, 1986. The report states, in part, that, "These tests were positive for Cocaine usage and the last test showed a progression to Heroin usage as well (i.e. Speedballing)." (P-6, Special Report 11-18-86).

Royal excuses his behavior with regards to his arrest on the weapons charge by asserting that he was aware that the gun was in the motor vehicle in which he was a passenger and that it was he who informed the police of its presence. He contended that he was advised by the Atlantic City Police not to reveal that he was the informant which lead to the arrest of his two companions. Royal asserts that based upon this advice, he did not reveal his December 13, 1986 arrest to this tribunal at the hearing held on December 16, 1986.

With regard to his use of drugs subsequent to his release from prison, Royal contends that it was upon his father's death where he was unable to cope with the event that he returned to drugs. He contended it was only a momentary relapse and that he is rehabilitated.

FINDINGS OF FACT

In addition to those findings of fact set forth hereinbefore, I **FIND** the following **FACTS** as supplemented on the record by way of testimony and documents in evidence produced at the hearing on March 17, 1986:

1. Mr. Royal was arrested on December 13, 1986, by the Atlantic City Police and charged with the possession of a weapon. This offense occurred three days prior to the December 16, 1986, hearing before this administrative tribunal and was not disclosed to it despite the fact that the court inquired of Royal as to arrests subsequent to his release from prison.
2. Mr. Royal was the subject of an arrest and a two week incarceration by the Probation Department in November 1986 upon the violation of his probation term, conditions and limitations. Royal was found to have used drugs, in contravention of his probation and parole terms and conditions. Further, he was found to have failed to participate in an out-patient drug program in violation of his parole.

DISCUSSION

The Division proffered extensive evidence, and as stipulated to by Royal, concerning Royal's extensive arrest record of criminal offenses and subsequent convictions. The Division alleges, pursuant to Issue #1, that Royal failed to disclose certain of his arrests and/or convictions. The Division, however, failed to proffer any proofs of Royal's nondisclosure by way of his applications for a casino hotel employee registration and/or license. Lacking any evidence in support of its allegation that Royal failed to disclose, pursuant to N.J.S.A. 5:12-86b and as incorporated under N.J.S.A. 5:12-91b, I **CONCLUDE** that the Division has failed to carry its burden to sustain the charge. Accordingly, the allegation as set forth in Issue #1 is hereby **DISMISSED**.

There is no doubt nor dispute the Division has met its burden of proof, by a preponderance of the credible evidence, that Royal's prosecuted criminal conduct constitutes a per se disqualification to hold a license and/or registration in the casino industry under N.J.S.A. 5:12-86c(1). Royal was convicted of crimes specifically

enumerated under the above statute, among other crimes, which included: Burglary, N.J.S.A. 2C:18-2; Aggravated Assault, N.J.S.A. 2C:12-16; Conspiracy to Commit Robbery, N.J.S.A. 2C:5-2 and, Robbery, N.J.S.A. 2C:15-1. As a consequence of these and other crimes, Royal was incarcerated for a term of 51 months at the Leesburg State Prison from February 15, 1982 until his release on May 6, 1986. His conviction and time served was well within the 10-year period of the granting of his casino hotel employee registration and his application for licensure as craps dealer. N.J.S.A. 5:12-86c(4).

Notwithstanding Royal's automatic disqualification for registration and licensure pursuant to section 86c(1), he is provided the opportunity to demonstrate his rehabilitation by clear and convincing evidence, pursuant to sections 90h and 91d of the Casino Control Act. Each of the criterion enumerated therein is set forth seriatim below as follows:

(1) Royal presently holds a registration as a casino hotel employee and performed with the Golden Nugget Hotel/Casino in its Housekeeping Department. His employment there was seasonal and is not presently employed in the industry under his registration.

Royal has successfully completed the required schooling for certification as a craps dealer; the position for which he now seeks licensure.

(2) The offenses for which Royal was prosecuted and convicted were of a serious nature in that they involved bodily harm and injury as well as the unlawful taking of property. His criminal conduct cannot be classified as incidental nor trifling but, rather, overt acts untaken with his full knowledge and understanding of the serious consequences upon his victims.

(3) One offense, aggravated assault, occurred at a time when Royal was a heavy user of heroin which resulted in his shooting another person, among other offenses. A subsequent offense was as a consequence of an illicit drug transaction which had gone awry where Royal was convicted of conspiracy to commit robbery and threats to commit bodily harm, among other alleged criminal activity.

(4) (5) (6) & (7) Royal has an extended history of arrests which date from 1970 and continue to the present when he was between the ages of 19 and 35 years. His arrest record demonstrates a variety of alleged crimes not the least of which include the infliction of bodily harm upon another and the unlawful taking of property. There was no showing that any of the offenses were committed as the result of social or other conditions.

(8) At the December 16, 1986 hearing, Royal proffered extensive documentation in support of his rehabilitation including, among other things, successful participation in the prison educational program offerings together with successful community service activities subsequent to his release from prison. His testimonial and documentary presentation was convincing, however, his lack of forthrightness and candor with respect to his November 1983 parole violation and his failure to disclose his December 13, 1986 arrest diminished his credibility. Where Royal contended that the November 1986 parole violation was not a violation in fact but, rather, a minor disagreement with his parole officer and where it was subsequently determined that he had, in fact, violated the terms of his probation; I can only CONCLUDE that his testimony was incredible. As Chief Justice Vanderbilt said In re Perrone's Estate, 5 N.J. 514 (1950) at 522:

... Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. . . .

Similarly, the court said in Gilson v. Gilson, 116 N.J. Eq. 556, 560, that:

... There is not test of the truth of testimony, except its conformity to our knowledge, observation and experience. Improbable testimony is such as imputes conduct inconsistent with those principles by which persons, similarly situated, are governed. . . .

Further, Royal's failure to disclose his December 13, 1986, arrest when he was asked specifically by this tribunal as to whether he had had any arrests subsequent to his release from prison is not testimony which proceeds "from the mouth of a credible witness." Perrone's Estate.

Having determined Royal's lack of rehabilitation, I also **CONCLUDE** that he does not possess the requisite good character, honesty and integrity to hold a casino hotel employee registration nor is he eligible for licensure. This is so because of his lack of credibility and candor with the court in regards to his November 1986 parole violations and arrest on December 13, 1986. While he may have acquired a reputation for good character during his incarceration at Leesburg Prison, he has failed to demonstrate such characteristics while on parole; given the seriousness of his violations. Accordingly, Royal has failed to demonstrate, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity. N.J.S.A. 5:12-89b(2).

ORDER

Based upon the foregoing it is hereby **ORDERED** that the casino hotel employee registration #15008-40 of Alfred L. Royal be and is hereby **REVOKED**. It is further **ORDERED** that Alfred Royal's application for a casino employee license be and is hereby **DENIED**.

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

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

27 March 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

March 30, 1987
DATE

Receipt Acknowledged:

Al Horis Zayas
CASINO CONTROL COMMISSION

APR 1 1987
DATE

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

DOCUMENTS IN EVIDENCE

P-1 Indictment - 6/8/81
P-2 Disposition of 6/81 Indictment
P-3 Indictment - 12/83
P-4 Disposition of 12/83 Indictment
P-5 Atlantic City Police Department Investigation Report 12/13/86
P-6 Notice of Probable Cause Decision 12/2/86

R-1 Letter dated 5/4/83
R-2 Certificate - 12/12/84
R-3 Certificate of Achievement - 8/8/85
R-4 Certificate of Achievement - 9/8/83
R-5 Certificate of Achievement - 8/21/84
R-5A Certificate of Attendance - 8/21/84
R-6 Certificate of Achievement - 11/13/84
R-6A Certificate of Attendance - 11/13/84
R-7 Certificate of Achievement - 4/9/85
R-8 Letter - 8/6/84
R-8A Certificate of Achievement - 12/6/84
R-9 Certificate - 3/20/84
R-10 Certificate of Merit - 5/31/83
R-11 Letter - 11/3/86
R-12 Letter - 8/22/86
R-13 Letter - 11/25/86
R-14A Certificate - 5/15/81
R-14B Certificate No. CRP 0185
R-14C Letter - 5/15/81

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-39
OAL DOCKET NO. CCC 8545-83
LICENSE NO. 04465-21

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

Complainant, : FINAL ORDER

v. :

STEPHEN J. SOLTOWSKI, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and an 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 January 16, 1985,

IT IS on this 20 day of March 1985, ORDERED that the initial decision is rejected for the following reasons:

1. The findings of fact and conclusions of law contained in the initial decision are adopted by the Commission except as hereinafter expressly rejected or modified.

2. The statutory basis for the respondent's disqualification which arises out of his distribution on March 9, 1982, of controlled dangerous substances in violation of N.J.S.A.

24:21-19a(1) is N.J.S.A. 5:12-86(c)(3) and (g), not -86(c)(1) and (g) or -86(c)(4) as indicated at pp. 6 and 7 of the initial decision.

3. Considering the respondent's completion of Pretrial Intervention Program on August 24, 1983, the fact that his criminal activity on March 9, 1982, is an isolated incident for which the respondent is now truly remorseful, his good employment record within the casino industry subsequent to the offense and his community work with the Salvation Army, the Commission finds that Mr. Soltowski has demonstrated his rehabilitation from this disqualifying offense pursuant to N.J.S.A. 5:12-90(h) and rejects the ALJ's finding to the contrary.

4. For essentially the reasons expressed in paragraph 1 above, the Commission finds that the respondent currently possesses the good character, honesty and integrity required by N.J.S.A. 5:12-90(b) and -89(b)(2) and rejects the ALJ's finding to the contrary.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee license of Stephen J. Soltowski is dismissed based upon the reasons stated herein.

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 8545-83

AGENCY DKT. NO. 82-39

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

Petitioner,

v.

STEPHEN J. SOLTOWSKI,

Respondent.

William Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Donald G. Targan, Esq., for the respondent (Targan & Higbee, attorneys)

Record Closed: September 10, 1984

Decided: October 23, 1984

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as the "Division") with the Casino Control Commission on June 10, 1982, seeking the revocation of the casino employee license issued to the respondent pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Soltowski requested a hearing.

On application filed by the Division, the Casino Control Commission suspended the respondent's casino employee license on June 16, 1982. Thereafter, by order dated October 20, 1983, the Commission vacated its prior order and reinstated the casino employee license of the respondent and ordered that the matter be transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held by Administrative Law Judge Norman D. Smith on January 12, 1984, and, at that time, the parties agreed that the issues in this matter are:

- (1) Whether Mr. Soltowski committed an offense requiring disqualification even though there has been no conviction as to said offense.
- (2) Whether the continued licensure of Mr. Soltowski is inimical to the casino industry.
- (3) Whether Mr. Soltowski has the good character, honesty and integrity required for licensure.
- (4) If Mr. Soltowski has committed a disqualifying offense, whether he can affirmatively demonstrate his rehabilitation.

The hearing took place before the undersigned on August 27, 1984, and the record was kept open until September 10, 1984, in order to give the parties the opportunity to submit written memoranda regarding the question of entrapment. I received a letter on this question from Mr. Targan, respondent's counsel, on September 5, 1984; nothing was received from the Division.

Based on the testimony and exhibits, I FIND that the following facts are not in dispute.

Stephen Soltowski, the respondent, was 27 years old at the time of the hearing. The respondent graduated from high school in 1976 and, thereafter, he attended a technical institute and worked as an automobile mechanic for a while. In April 1978, Mr. Soltowski moved to Atlantic City and was first employed as a security officer at Caesar's Casino and Hotel. While he was so employed, the respondent went to school to study to be a dealer. From about May 1979 through April 1982, the respondent was employed as a dealer by Caesar's Casino and Hotel. During this period he went back to school and is now qualified as a dealer for roulette, blackjack and craps.

In 1979, the respondent took an apartment with a friend, Jeffrey Shaw, who worked as a security officer at Bally's Park Place Casino and Hotel. Both he and Mr. Shaw spent a great deal of time together participating in various sports activities. The respondent stated that he does not smoke, nor does he use any drugs and that he infrequently has any alcoholic beverages.

After finishing work at approximately 4:00 a.m. on March 9, 1982, Mr. Soltowski went to the Easy Street Pub for a drink before going home. He went to this specific pub because it offered a free buffet for casino employees. While there, Mr. Soltowski sold quaaludes (P-2) to an undercover state policeman (P-1).

The respondent was told that the police would hold back the filing of charges against him if he would cooperate and give them information regarding drug operations in the Atlantic City area. Thereafter, on April 27, 1982, Mr. Soltowski was arrested while at work (P-1) and he was later indicted for the distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19a(1) and 24:21-19b(3) and the attempted distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19a(1), 24:21-19b(3) and 24:21-24 (P-3).

On February 22, 1982, Mr. Soltowski was approved for participation in the Pre-Trial Intervention Program (R-1). He has successfully completed this program (R-2) and the indictment against him has been dismissed (R-3). As part of his participation in the Pre-Trial Intervention Program, the respondent was required to perform community service work and he fulfilled this obligation by doing volunteer work for the Salvation Army.

After he lost his job with Caesar's Casino and Hotel, the respondent worked for Ocean Heights Salvage and later took a job with Limo-1, Incorporated. After Mr. Soltowski's casino employee license had been reinstated by the Casino Control Commission, he became employed as a dealer at Tropicana Casino and Hotel. Mr. Soltowski has discussed with Tropicana's representatives the possibility of upgrading his position to a floorperson and he has received the necessary endorsement for such a promotion (R-9).

Except for the March 9, 1982 incident, Mr. Soltowski has no criminal record. Mr. Soltowski considers the March 9, 1982 incident as a stupid mistake on his part and expressed a sincere remorse about what occurred. The incident has had a substantial financial impact on the respondent as well as a long term impact on the respondent's career in the casino industry. The respondent plans to get married this spring.

Harold Shaw testified and wrote a letter on behalf of the respondent (R-4). Mr. Shaw stated that he has known the respondent for about nine years and that they have been roommates for five years, and that he considers the respondent to be an honest, trustworthy and stable individual who is a hard worker and likes to participate in sport activities.

Mr. Shaw stated that the respondent was depressed and full of remorse after the incident and that the respondent told him that he got into trouble by doing a favor for someone. Mr. Shaw is currently employed as a floorperson by the Atlantis Hotel and Casino.

Mildred D. Soltowski, the mother of the respondent, testified that except for the one incident, her son has been consistently law-abiding. Mrs. Soltowski described her son as a conscientious worker, who is close to his family and who was depressed, very sorry and remorseful after the incident. She feels that her son is completely rehabilitated and that there will be no future incidents of this sort.

Mary E. Leap, the respondent's girl friend, testified and wrote a letter on behalf of Mr. Soltowski (R-7). Ms. Leap considers the respondent to be an honest, forthright and giving person and is confident that what occurred was a mistake which will never be repeated. She confirmed respondent's testimony that they planned to wed this spring.

In addition, the respondent submitted letters attesting to his good character, honesty and integrity from Joan Tarr, branch manager of the Yardville National Bank in Trenton, New Jersey (R-5), Martin H. Lazarz (R-6) and Sandy Richey (R-8).

The only factual dispute in this matter relates to what exactly happened in the Easy Street Pub on March 9, 1982.

According to the respondent, he was approached by two men on his way to the buffet table at the Easy Street Pub, one of whom he recognized as a casino employee. The other man was introduced to him and asked the respondent if he had any quaaludes to sell. Mr. Soltowski said that he did not and was then asked if he knew of anyone who had quaaludes for sale. Mr. Soltowski said he would let the man know. While the respondent was eating, a person he knew as Howard entered the pub and they started to talk. Howard asked the respondent if he wanted to buy any quaaludes. The respondent said no but that there were two men near the buffet table who were looking for quaaludes. The respondent then asked Howard to watch his seat while he went back to get more food and Howard asked him to do him a favor and give the two men a package and, if they wanted it, to collect \$80. Mr. Soltowski stated that he initially said no but when Howard persisted, he agreed. The respondent took the package to where the two men were seated and he told them that a man he knew wanted \$80 for the package. Mr. Soltowski denied that he saw what was in the package or that he knew for sure that it contained quaaludes. After he received the \$80, the respondent got some more food, went back to his table and gave the \$80 to Howard. Mr. Soltowski stated that he did not receive any money from Howard and he also refused to accept Howard's offer of a drink. Mr. Soltowski stated that there would have been no incident had he not been approached by the undercover police officer and that he had no intention of breaking the law.

Robert Kirvay, who had been employed by the New Jersey State Police for fourteen years, was the undercover police officer involved in the March 9, 1982 incident. Mr. Kirvay testified that he was in the Easy Street Pub with an informer and was introduced to the respondent. Mr. Kirvay asked the respondent if he had any quaaludes for sale and later the respondent returned with two cylindrical foils. Mr. Kirvay opened the foil packages and saw 16 tablets marked "Lemmon 714," which he concluded were quaaludes. Mr. Kirvay gave the respondent \$80 and asked for his telephone number for future transactions. The respondent gave Mr. Kirvay a telephone number, which was later determined to be listed under the name of Mr. Soltowski.

In closing, Mr. Targan argued that what happened on March 9, 1982, was an isolated incident, that the respondent had no predisposition towards any criminal activities and that he had been entrapped by the actions of the undercover police officer. In support of his position, Mr. Targan cited the decisions in State v. Talbot, 71 N.J. 160 (1976); State v. Stein, 70 N.J. 369 (1976); State v. Molnar, 81 N.J. 475 (1980); State v. Dolce, 41 N.J. 422 (1964); and N.J.S.A. 2C:2-12. Mr. Targan noted that the respondent

has successfully completed his participation in the Pre-Trial Intervention Program. In addition, Mr. Targan argued that the respondent has shown that he is a person of good character, honesty and integrity, that he has been rehabilitated and that there is no reason to believe that he will have any further involvement in criminal activities.

Mr. Mountford argued that the respondent holds a responsible job in the casino industry and has applied for an even more responsible position, namely floorperson. According to Mr. Mountford, the respondent's testimony as to what occurred in the Easy Street Pub is not credible and it would be an unbelievable coincidence for a person not involved in drugs to be both asked if he has quaaludes by one person and then immediately thereafter be asked if he wants to buy quaaludes by another person. Mr. Mountford also argued that in light of the responsible position involved in this matter, that the respondent has not met the burden of showing that he has been rehabilitated. Lastly, Mr. Mountford questioned the respondent's statement of his noninvolvement with drugs in view of the fact that he gave his telephone number for future transactions.

Although I accept the respondent's testimony that he personally does not use drugs, I **FIND** that Mr. Soltowski did know on March 9, 1982, where he could get quaaludes and did obtain drugs for purposes of selling them to a third person. In addition, I do not accept the respondent's testimony that he was not sure what was in the package he sold to the undercover agent. Lastly, I do not accept Mr. Soltowski's testimony that he handled the drug sale just as a "favor" and that he did not know that he was engaging in an illegal activity. I also **FIND** that Mr. Kirvay was a credible witness and accept his testimony as to what occurred in the Easy Street Pub on March 9, 1982.

Based on the facts in this matter, I **CONCLUDE** that the Division has established a statutory disqualification in this matter, pursuant to N.J.S.A. 5:12-86g, based on the showing that Mr. Soltowski committed an offense which if there had been a conviction would have been a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(1).

As to the defense of entrapment, I **CONCLUDE** that there was no entrapment in this matter. There was no evidence presented that the undercover officer tried to persuade Mr. Soltowski to sell him some quaaludes or that any type of pressure was placed on Mr. Soltowski to produce the drugs. In this matter the undercover agent simply asked Mr. Soltowski if he could sell him some drugs or put him in touch with a person who would sell him drugs. Mr. Soltowski, on his own, went back to the undercover agent and offered

to sell him drugs. The fact that the sale would not have been completed unless the undercover agent had asked Mr. Soltowski if he could sell him drugs is not in itself sufficient to constitute entrapment.

Since a statutory disqualifier has been established, the burden shifts to the respondent to show that he has been rehabilitated. The Casino Control Act sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitations:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.
[N.J.S.A. 5:12-90h]

The facts show that the March 9, 1982 act of the respondent was an isolated incident which has had a major impact on the respondent, and I accept the respondent's representation that he now understands the significance of his action and that he is truly remorseful for his involvement. I also recognize that the license involved in the matter carries with it substantial responsibilities. Based on the facts, especially the fact that the respondent completed the Pre-Trial Intervention Program just a short time ago and my negative findings relating to the credibility of the respondent, I **CONCLUDE** that Mr. Soltowski has not shown that he has been rehabilitated as set forth in N.J.S.A. 5:12-90h, that he possesses the necessary good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2), or that his continued licensure would not be inimical to the policy of the Casino Control Act, N.J.S.A. 5:12-86c(4).

Therefore, I **ORDER** that the Casino employee license of Stephen J. Soltowski be **REVOKED**.

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

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

October 23, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Received Acknowledged:

DATE

CASINO CONTROL COMMISSION
JAN 11 1985
TREASURY DEPT.

Mailed to Parties:

OCT 26 1984
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

For the respondent:

Stephen Soltowski
Harold J. Shaw
Mildred Soltowski
Mary E. Leap

Rebuttal witness for the petitioner:

Robert Kirvay

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE

For The Petitioner:

- P-1 New Jersey State Police Reports prepared by Robert Kirvay, dated March 19, 1982 and April 29, 1982
- P-2 Request for Examination of Evidence by the Special and Technical Services Section of the Division of State Police and the Laboratory Report
- P-3 Indictment filed against Stephen J. Soltowski

For The Respondent:

- R-1 Enrollment in the Pre-Trial Intervention Program by Stephen Soltowski, dated February 22, 1983
- R-2 Notice of the completion of the Pre-Trial Intervention Program by Stephen Soltowski, by letter dated August 28, 1983

- R-3 Order of the Dismissal of the Indictment filed against Stephen Soltowski, dated August 24, 1983
- R-4 Letter from Howard J. Shaw
- R-5 Letter from Joan Tarr, Branch Manager of the Yardville National Bank, dated August 16, 1984
- R-6 Letter from Martin H. Lazarz, dated August 16, 1984
- R-7 Letter from Mary E. Leap, dated August 15, 1984
- R-8 Letter from Sandy Richey, dated August 16, 1984
- R-9 Request for Transfer filed by Stephen Soltowski, on July 31, 1984, with Harrah's Marina Casino and Hotel

CASINO CONTROL COMMISSION
DOCKET NO. 85-87
OAL DOCKET NOS. CCC
6676-85;1710-85
LICENSE NO. 3896-21

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & :
PUBLIC SAFETY, DIVISION, :
OF GAMING ENFORCEMENT, : ORDER OF
Complainant, : REMAND
v.
JOHN A. SPADAVECCHIA, :
Respondent. :

A hearing in this matter having been held before the Office Of Administrative Law (OAL); and an initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement (DGE) having represented to the Commissions that the DGE has custody of a videotape, previously thought missing, of the alleged incident which forms the basis of the complaint, and the Commission having considered the entire record in this matter at its public meeting of March 12, 1986,

IT IS on this 15th day of January 1987, ORDERED that this matter is remanded to the OAL for further expansion of the record to include, if at all possible:

1. The videotape of the incident alleged to have taken place on November 7, 1984.
2. The testimony of John Rushinock, the respondent's supervisor at Trump Casino Hotel.
3. Any rebuttal evidence offered by the respondent.

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 6676-85

(ON REMAND CCC 1710-85)

AGENCY DKT. NO. 85-87

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

Petitioner,

v.

JOHN A. SPADAVECCHIA,
Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

John A. Spadavecchia, respondent, pro se

Record Closed: January 24, 1986

Decided: February 4, 1986

BEFORE EDGAR R. HOLMES, ALJ:

The Division of Gaming Enforcement filed a complaint on March 6, 1985, seeking sanctions against respondent's license for an alleged violation of N.J.S.A. 5:12-100(o)(1). The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on June 18, 1985. An initial decision was issued on July 1, 1985. On October 17, 1985, the matter was remanded by the Casino Control Commission for expansion of the record. In its remand Order, the Casino Control Commission requested that the actual testimony of John Rushinock, the respondent's supervisor at Trump Plaza, and of John E. McLaughlin, the State Police investigator, be produced along with the videotape of the incident in question.

On the evening prior to the hearing, Mr. Rushinock was admitted to Atlantic City Medical Center with chest pains. Agent McLaughlin confirmed that on the day of the hearing, Mr. Rushinock was in the pre-cardiac unit at the Center.

Prior to the commencement of the hearing, the deputy attorney general revealed that the videotape of the alleged incident was missing and presumed lost.

Agent McLaughlin testified that on November 7, 1984, on a television monitor in the Division's office at Trump Plaza, he observed a person later identified as Mr. Sal Cash beckon to an employee later identified as John Spadavecchia. He then observed Mr. Cash put his hand in his pocket, remove it, and shake hands with Mr. Spadavecchia. Both Mr. Cash's and Mr. Spadavecchia's hands appeared "cupped." He then observed Mr. Spadavecchia put his hand in his right front pants pocket. He then alerted Mr. Rushinock, assistant casino shift manager. The tape was reviewed and Mr. Spadavecchia was escorted to the Division's office and instructed to empty his pockets. Prior to doing so, Mr. Spadavecchia was asked how much money he had and stuttered, "about \$180." From his right front pants pocket Mr. Spadavecchia produced \$133 in various denominations folded in half in one bundle. He also produced a \$100 bill folded twice and a separate \$50 bill folded twice. When Agent McLaughlin asked Mr. Spadavecchia if he accepted any money from any person, Mr. Spadavecchia denied that he had. Mr. Spadavecchia, in answer to a question from Agent McLaughlin, explained that he carried his money in that fashion in case he was mugged.

Agent McLaughlin next interviewed Mr. Sal Cash, who, in response to all Agent McLaughlin's questions concerning the passing of money, responded that he "could not remember anything."

In cross-examination, Agent McLaughlin revealed that he had returned all of the money to Mr. Spadavecchia since no violation of the criminal code was involved. When asked by Mr. Spadavecchia how much money he had on his person at that moment Agent McLaughlin stuttered, "about \$35."

Mr. Spadavecchia was called by the Division as a witness pursuant to N.J.S.A. 5:12-107a(5). He acknowledged that he was a floor person in Pit 6 on the evening of November 7, 1984. He identified Sal Cash as a "high roller" but said he did not know him

personally. He acknowledged that he shook hands with him and described that as one of his functions as a floor man. He recalls giving Sal Cash show tickets that night but believes they were returned to the pit boss. He did not dispute Agent McLaughlin's testimony concerning the amount of money he had that night. He reiterated his prior statement concerning why he kept his money in discreet bundles. He said that when he traveled to and from the casino he put the money in separate pockets in case he was mugged but kept it in one pocket when at work or at home. He vigorously denied that he accepted anything at all from Mr. Sal Cash. He said that Rushinock and he were not friendly, although he was friendly with Rushinock's girlfriend at the time. He said that Rushinock stood to gain from his dismissal. He said that Rushinock's statement was not given until 13 days after the event.

Agent McLaughlin was recalled and could not explain the delay in Rushinock's statement because after that night the investigation was continued by his superior, Detective Gatto, not by Agent McLaughlin.

This concludes the testimony.

The Division moved the admission of P-2, which was Detective Gatto's report of what Mr. Rushinock told him. The Division also requested an adjournment in order to produce Mr. Rushinock at a later date. The Division represented that Mr. Rushinock would testify that on November 7, 1984, at a time when Agent McLaughlin was out of the office, Mr. Spadavecchia told him that he had received \$150 from Sal Cash as repayment for a loan; that Mr. Rushinock would testify that he told Spadavecchia to tell Agent McLaughlin the truth; but that when Agent McLaughlin returned to the room, Mr. Spadavecchia continued to deny receiving anything from Mr. Sal Cash.

Mr. Spadavecchia moved for dismissal of the Division's complaint on the grounds that the Division produced insufficient evidence. He further indicated that if available, he would rely upon the tape of the alleged event.

This case involves the single issue of whether Mr. Spadavecchia violated section 100(o)(1) of the Casino Control Act, which provides in pertinent part as follows:

It shall be unlawful for any casino key employee, or boxman, floorman, or any other casino employee who shall serve in a supervisory position to solicit or accept, and for any other casino employee to solicit any tip or gratuity from any player or patron at the casino where he is employed.

Assuming, arguendo, that the testimony of Mr. Rushinock conforms to the Division's proffer and is credible, and giving the Division every inference that can be favorably drawn from the witnesses' testimony, has the Division established a violation of N.J.S.A. 5:12-100(o)(1)?

What Agent McLaughlin observed on a television monitor was taped, preserved and then lost by the Division. His description of what he observed is best characterized as "furtive activity"; he saw no tip or gratuity pass from Sal Cash to John Spadavecchia.

Sal Cash's lapse of memory was evasive and suspicious. From that evasion alone one cannot draw an inference that a tip or gratuity was passed.

The testimony of Rushinock, if in conformity to the proffer and credible, was offered on the issue of Spadavecchia's credibility and does not contain an admission that a tip or gratuity passed between Sal Cash and John Spadavecchia. Absent the tape, there is insufficient evidence to sustain a finding that a tip or gratuity was passed. The tape is crucial. All inferences that a tip or gratuity was exchanged flow from the characterization of the activity involving Sal Cash and John Spadavecchia on the casino floor on the night in question.

Spadavecchia insists that he would rely upon the tape if it was available. That may be a good trial tactic on his part but his representation cannot be discounted out of hand. It may very well be that an independent observer would not see furtive activity in a handshake, and that is all that is admitted to here.

In addition, I had an opportunity to view Mr. Spadavecchia during his testimony and at the trial. There was no indication that he was being deceitful under oath or otherwise. His explanation of how and why he kept money in discreet packages was plausible.

As a result of all these factors, I **DENY** the Division's offer of P-2 in evidence. I further **DENY** the Division's request for an adjournment in order to produce Mr. Rushinock.

I **GRANT** the respondent's motion to dismiss the complaint filed herein.

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

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

February 4 1986
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2/5/86
DATE

Ruth Stout
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 7 1986
DATE

Ronald L. Parker / s. 5
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESS LIST

For petitioner:

Agent John McLaughlin

For respondent:

John A. Spadavecchia

EXHIBIT LIST

P-2 For identification only - Gatto report, dated November 20, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-387
OAL DOCKET NO. CCC 4024-85
LICENSE NO. 45907-21
REGISTRATION NO. 31275-40

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

Complainant,

FINAL ORDER

v.

RONALD F. STAINES,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission) and the Commission having considered the entire record of these proceedings, at its public meeting of October 30, 1985,

IT IS on this 4th day of March 1987, ORDERED that the initial decision is modified as follows:

1. The respondent was convicted on April 30, 1985 (not October 19, 1984, as is indicated in the initial decision), of possession of narcotics paraphernalia contrary to N.J.S.A. 24:21-47 and defiant trespass contrary to N.J.S.A. 2C:18-3, for which he was required to pay \$50 to the Violent Crimes Compensation Board;
2. The respondent was convicted on October 19,

1984 (not July 18, 1984, as is indicated in the initial decision), on two separate charges of possession of narcotics paraphernalia; one emanating from his arrest on May 18, 1984, and the other (which was not mentioned in the initial decision) from his arrest on October 18, 1984, for which he was sentenced to 30 days in jail (suspended), fined \$100 and placed on probation for one year;

3. The ALJ concluded that the respondent was disqualified from licensure as a casino employee and from registration as a casino hotel employee pursuant to N.J.S.A. 5:12-86(c)(4) without identifying the particular inimical offense(s). Based upon its review of the record the Commission finds that the respondent's conviction on April 30, 1985, for possession of narcotics paraphernalia, an offense which occurred on April 4, 1984, while the respondent was on the premises of Tropicana Hotel and Casino, is an inimical offense which warrants his disqualification pursuant to N.J.S.A. 5:12-86(c)(4);
4. Considering the nature and date of the disqualifying offense, the fact that the respondent was not then employed in the casino industry and the respondent's efforts to resolve his drug dependency as witnessed by the urinalysis reports admitted into evidence (R-1, 2 and 3), the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e).

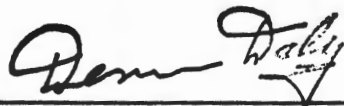
IT IS FURTHER ORDERED that Ronald F. Staines is disqualified and his casino employee license is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A.
5:12-91(e), the respondent is permitted to retain his casino
hotel employee registration; and

IT IS FURTHER ORDERED that Ronald F. Staines is
prohibited from reapplying for any other registration,
license, 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
WALTER N. READ, CHAIR

BY: _____



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4024-85

AGENCY DKT. NO. 84-387

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

Petitioner,

v.

RONALD F. STAINES,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Ronald F. Staines, respondent, pro se

Record Closed: September 13, 1985

Decided: September 17, 1985

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of Mr. Staines's casino employee license No. 45097-21 and casino hotel employee registration No. 31275-40, pursuant to Section 129 of the Casino Control Act (Act). The Division alleges that Mr. Staines's continued licensure would be inimical to the policy of the Act. Further, the Division contends that Mr. Staines does not possess the requisite good character, honesty and integrity for casino employee licensure, pursuant to Section 89b(2).

Respondent asserts that his continued licensure would not be inimical to the policy of the Casino Control Act and that he does possess good character, honesty and integrity for licensure.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 28, 1984. By certified letter dated November 30, 1984, the Commission advised respondent of his right to a hearing. The certified mailing was returned to the Commission, with a notation "moved left no forwarding address." The respondent requested a hearing on June 19, 1985. On June 25, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was scheduled for August 6, 1985 and the matter was scheduled for hearing. The hearing was conducted on September 13, 1985, at the Brigantine Municipal Building, Brigantine, New Jersey.

FINDINGS OF FACT

Mr. Staines is 24 years of age and has resided in the Atlantic County area for his entire life. He currently resides alone in Atlantic City, New Jersey.

On April 4, 1984, respondent was arrested and charged with criminal trespassing, in violation of N.J.S.A. 2C:18-3 and possession of narcotics paraphernalia, in violation of N.J.S.A. 24:21-47. On that day, respondent had entered the premises of the Tropicana Hotel Casino after being previously evicted from the casino on March 11, 1984. Respondent had two hypodermic syringes in his possession. Respondent failed to appear for a hearing on August 17, 1984, and a bench warrant was issued. On October 19, 1984, respondent pled guilty to both charges and was sentenced to a suspended 30-day jail sentence and a \$100 fine, \$25 court costs and \$25 for the Violent Crimes Commission Board. In addition, respondent was sentenced to one year of supervised probation.

On May 18, 1984, the respondent was arrested and charged with possession of narcotic paraphernalia in violation of N.J.S.A. 24:21-47. Respondent had in his possession three hypodermic syringes, one syringe plunger and one cooking spoon. On July 18, 1984,

respondent was found guilty and fined \$100 and ordered to pay \$25 to the Violent Crimes Compensation Board.

On October 14, 1984, the respondent was arrested and charged with possession of narcotic paraphernalia in violation of N.J.S.A. 24:21-47. Respondent entered a guilty plea to the charge and was fined an aggregate of \$450.

The respondent testified to the circumstances underlying these incidences. Respondent was a former security guard for the Tropicana Hotel Casino. On April 4, 1984, respondent was penniless and knew of the employee cafeteria at the casino. Although respondent was aware he was not privileged to be on the premises, respondent's desperate situation compelled him to enter the premises. As to the arrests on May 18, 1984 and October 14, 1984, respondent explained that his addiction was in large part due to lack of employment. Mr. Staines contends that he last used methamphetamine in April 1985 and has remained drug-free since that time. He has not participated in any formal drug rehabilitation programs. However, respondent offered three urinalysis reports in evidence to support his contention (R-1, R-2 and R-3).

Mr. Staines is presently employed as bread packer by Addison-Ginsburg Bakery. During the course of his licensure, Mr. Staines has been employed by Resorts International Casino Hotel, Tropicana Hotel Casino, Caesar's Casino Hotel, Bally's Park Place and Harrah's Marina Casino Hotel. He has been fired from Caesar's and Resorts for missing work and has been fired by the Tropicana. He has been laid off from Harrah's and has resigned from Bally's Park Place Casino.

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

DISCUSSION AND CONCLUSIONS OF LAW

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth

the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated "that the regulatory provisions . . . are designed to extend to strict State regulation to all persons . . . practices and associations related to" casinos and that the "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

From the testimony presented, I am not persuaded that respondent has a commitment to the total abstinence of drugs. Respondent's candor and efforts at rehabilitation for approximately five months are commendable and are in respondent's

favor. On the other hand, the short period of respondent's rehabilitation and his less than impressive work history lead me to **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that respondent's continued licensure, both as to his casino employee and hotel registration, would be inimical to the policies of the Act, pursuant to Section 86c(4).

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

Under Section 89b(2) of the Act, Mr. Staines was required to demonstrate, by clear and convincing evidence good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an application, is not the determinative 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 reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corp., supra at 2.

The inability of the respondent to establish a lengthy period of rehabilitation from his recent criminal conduct impares his ability to show that he possesses the degree of good character, honesty and integrity required to maintain licensure. In addition, respondent's misconduct was knowing and premeditated. The respondent's explanation of the circumstances underlying his misconduct did not serve to mitigate the seriousness of his actions. Accordingly, it is clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity for continued casino employee licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration and casino license. Given the fact that an insufficient period of time has passed to reasonably evaluate respondent's purported rehabilitation and there being no mitigating factors, the respondent's registration and casino license must be revoked. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the hotel employee registration (registration No. 31275-40) and the casino employee license (license No. 45097-21) held by Ronald F. Staines be **REVOKED**.

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

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

9-17-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

9/18/85
DATE

Bournette T. Frisner
CASINO CONTROL COMMISSION

Mailed to Parties:

September 20, 1985
DATE

Ronald L. Parker / s.s.
OFFICE OF ADMINISTRATIVE LAW

ml/E

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Atlantic City Municipal Court complaint, dated May 18, 1984
- P-2 Atlantic City Municipal Court complaint, dated April 4, 1984

For the respondent:

- R-1 Urinalysis Report, dated May 29, 1985
- R-2 Urinalysis Report, dated June 27, 1985
- R-3 Urinalysis Report, dated September 4, 1985

WITNESS LIST

For the petitioner:

James Davis
Dennis McKelven
Ronald F. Staines

For the respondent:

Ronald F. Staines

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-113
OAL DOCKET NO. CCC 4935-86
LICENSE NO. 01400-21

APPLICATION OF SUSAN C. TERRELL

FOR RENEWAL OF HER CASINO

FINAL ORDER

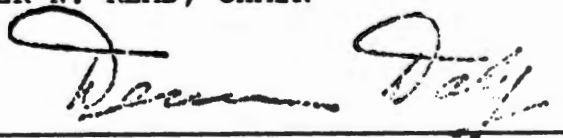
EMPLOYEE LICENSE

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 18, 1987,

IT IS on this 13th day of March 1987, ORDERED the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 4935-86

AGENCY DKT. NO. 86-EA-113

SUSAN C. TERRELL,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC

SAFETY,

Respondent.

Alfred R. Scerni, Jr., Esq., for the petitioner (Wilson, Fusco, Scerni and Light, attorneys)

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 24, 1986

Decided: January 8, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Susan C. Terrell, petitioner, applied to the Casino Control Commission (Commission) for renewal of her casino employee license (blackjack and baccarat floorperson, license no. 1400-21), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal 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

Ms. Terrell filed her renewal application for 1984 with the Commission. By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated June 10, 1986, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By application filed on July 17, 1986, the petitioner requested a hearing. On July 25, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 23, 1986, before Administrative Law Judge Lillard E. Law. The matter was heard on November 24, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Terrell is 31 years of age and is a lifelong resident of Atlantic City. The petitioner is a 1973 graduate of Holy Spirit High School. She attended Atlantic County College for one and one-half years, but has not earned a degree. The petitioner and her two children reside currently with the petitioner's mother and brother.

From 1974 to 1978, the petitioner was employed by Atlantic County Manpower.

From September 1978 until 1980, the petitioner was employed by Resorts International Hotel, Inc. (Resorts), first as a cashier for three months and then as a dealer. In 1979 and 1980, the petitioner successfully completed dealer training courses in blackjack and baccarat.

On June 14, 1980, the petitioner married Michael Terrell. Mr. Terrell was a construction worker whose employment was erratic. The petitioner did not then know that her husband had a drug problem. The petitioner provided tuition payments for her

husband to attend casino training schools. Thereafter, he was employed sporadically for brief periods at several casinos. Ultimately, the petitioner provided sole support for the family.

From 1980 until February 1981, the petitioner was employed by the Brighton Hotel and Casino as a baccarat dealer.

In February 1981, the petitioner was employed by the Atlantis Casino Hotel (Atlantis) as a floorperson. From March through July 1981, the petitioner was on maternity leave. In June 1981, she gave birth to her second child. The petitioner returned to work on or about July 15, 1981, but was laid off for economic reasons in September 1981.

Following her layoff, the petitioner began, properly, to collect unemployment benefits.

During the ensuing period of unemployment, the petitioner encountered increasing difficulties in her relationship with her husband and observed that he had a severe drug problem. This will be discussed in greater detail, infra.

From late October 1981 until February 1982, the petitioner was employed by the Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (Sands) as a blackjack dealer. Nevertheless and with knowledge that it was improper, the petitioner continued to collect unemployment benefits. The benefits were used to pay accumulated debt. Eventually, the Sands learned of the petitioner's action. The Sands confronted the petitioner and, because of her positive employment record, offered her the opportunity to resign, which she accepted.

The petitioner never again collected unemployment benefits.

Also at this time, the petitioner left her husband and began to reside with her mother.

From April 1982 until the present, the petitioner has been employed by the Atlantis as a blackjack, baccarat and craps dealer. In 1986, the Atlantis paid the petitioner's tuition at CSI for a course in craps dealing. This was based upon the petitioner's perfect record of attendance, her performance and high evaluations.

On July 24, 1984, the petitioner was charged in the Atlantic City Municipal Court with a violation of N.J.S.A. 2C:20-4, theft by deception, in the amount of \$1,862 (P-2). On August 3, 1984, the complaint was amended and the charge reduced to a fourth-degree offense, to which the petitioner pled guilty. She was given a 30-day suspended sentence, was fined \$250 and \$25 costs, placed on probation for a period of one year, and ordered to make restitution in the amount of \$2,142, which included benefits improperly received and a fine of \$280 (P-1). The petitioner, with some assistance from her mother, paid her fines and made restitution in full by May 17, 1985 (P-3). On November 1, 1985, the petitioner's probationary period was terminated (P-4).

Although the conviction was of a fourth-degree offense, the petitioner stipulated that the full amount of benefits improperly received, in the amount of \$1,862, could have been prosecuted successfully, which would have constituted a third-degree offense under N.J.S.A. 2C:20-4.

Although the petitioner is separated from her husband, the marriage has not been dissolved. Mr. Terrell sought out and successfully completed drug rehabilitation treatment. He is currently in the United States Army and is stationed in Korea. The petitioner receives an allotment from the Army for child support.

While the petitioner is at work, her mother and aunt provide child care. The petitioner is an active member of the PTA.

The petitioner has not been involved in any other criminal misconduct.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's misconduct, her rehabilitation, and current character, honesty and integrity.

Ms. Terrell testified that at the time of her marriage she was unaware of her husband's drug problem. Eventually, his attitude changed and his behavior became erratic. During her period of unemployment beginning in September 1981, the petitioner had a

first-hand opportunity to observe her husband and verify that he did have a drug problem. Her efforts to pursue a cure were unsuccessful. Further, the petitioner testified that her husband's drug problem left sole responsibility for support and management of the family to her, which was extremely difficult. By the time she returned to work in late October 1981 substantial debt had accumulated. The petitioner knew that she should not continue to collect unemployment benefits, but did so in order to pay off the debt. The petitioner testified that she did not think, but just acted.

The petitioner's description of the circumstances surrounding her husband's drug dependency and her continued collection of unemployment benefits was corroborated by Alice Burleigh, the petitioner's mother, and Klarke Gill, the petitioner's aunt, as well as several other witnesses. Apparently, the drug dependency was severe, but was not recognized initially by anyone.

For reasons which will be discussed in greater detail, I am persuaded to believe and accept the petitioner's testimony regarding the circumstances underlying her misconduct.

The petitioner also testified that her misconduct was due, in part, to immaturity, and that she has learned from her mistake. The petitioner viewed her situation at the time as a question of survival for herself and her children. She expressed great sorrow and remorse for her misconduct, and pledged not to repeat it.

Again, the petitioner's testimony was corroborated by numerous witnesses who are relatives and close friends of long-standing. Essentially, the witnesses testified that the petitioner is a devoted and positive mother, has successfully endured a tremendous upheaval, and has deep regret for her misconduct.

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 holder of 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

testimony of other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail and with great humiliation the underlying circumstances. Most significantly, the petitioner's testimony was corroborated in every regard by the live testimony of persons who had first-hand knowledge of the events which transpired. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

Although the petitioner claimed that her misconduct was, in part, due to immaturity, I am more inclined to believe that it was the result of inexperience and the overriding difficulty in dealing with a problem of enormous proportions. At the time the petitioner discovered her husband's drug dependency, she was in an extremely vulnerable situation. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

The petitioner offered seven witnesses and four letters on her behalf. Raymond Massie was the petitioner's first witness. The witness is an attorney-at-law of the state of New Jersey and the Commonwealth of Pennsylvania, was previously employed by the Commission, has been a teacher, was a legal consultant to the Atlantis and, commencing in January 1987, will be an assistant secretary for the United States Department of Energy. Mr. Massie is also a lifelong friend of the petitioner. Mr. Massie testified that the petitioner enjoys an excellent reputation for honesty, good character and integrity within the community.

Petitioner's mother, Alice Burleigh, the second witness, testified that the petitioner has learned from her mistakes, is a devoted and positive mother, and is well regarded by all members of the community.

The petitioner also called Klarke Gill, her aunt. The witness testified that the petitioner is a loving and terrific mother and is well regarded within the community.

The petitioner next called Evelyn Mainor, a neighbor who has known the petitioner for her entire life. Mrs. Mainor was of the opinion that the petitioner is an honest and dependable person.

Allan Gill, the petitioner's uncle, testified that the petitioner's reputation is above reproach. Also, the witness observed that the petitioner had successfully overcome a tremendous obstacle.

The petitioner's next witness was Natalie Washington, a lifelong friend. The witness testified that the petitioner enjoys an excellent reputation in the community for honesty and good character. Ms. Washington also testified that she would trust her family's welfare to the petitioner.

The petitioner last called Margaret Givens, also a lifelong friend. The witness testified that the petitioner enjoys a positive reputation in the community, and is known as a good and independent person and a good mother.

The petitioner also offered letters from Mari T. Saddler, who has known the petitioner for her entire life (R-1); Mr. and Mrs. Mainor, who have known the petitioner for approximately 30 years (R-2); Dorothy Quince, who has known the petitioner for the past 11 years (R-3); and Mary Moor, who has known the petitioner for a substantial period of time (R-4). Each of the authors of the letters stated strongly that the petitioner is an outstanding parent, a person of high standards and well regarded within the community.

In addition to the presentation of numerous character witnesses and letters of support, each of which offered glowing recommendations for the petitioner by persons who have known her for many years, was the fact that the witnesses had either first-hand knowledge of the misconduct or had been informed of the misconduct by the petitioner. It was abundantly evident that each of the witnesses regarded the misconduct as serious in nature, but had considered the underlying circumstances as well as the petitioner's subsequent conduct prior to testifying to their personal and the community's opinions of the petitioner. This testimony was extremely persuasive and reinforced doubly the positive impressions made by the petitioner.

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

1. At the time of her misconduct, the petitioner was confronted by an extremely difficult situation which consisted of being the sole support for her family, being the mother of two children, including an infant, being unemployed and having discovered that her husband had a serious drug dependency.
2. At the time of her misconduct, the petitioner's judgment was affected by the problems with which she was beset.
3. Although the petitioner's misconduct was serious, it is mitigated substantially by the underlying circumstances.
4. The petitioner's expressions of remorse for her misconduct were sincere and persuasive. There is little, if any, likelihood that she would repeat her misconduct.
5. The petitioner is well regarded as a mother and as a person of good character, honesty and integrity by the community in which she lives.

DISCUSSION OF LAW AND CONCLUSIONS

(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 act 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 which "would be under New Jersey law at the time of application a violation of any of the provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division alleged that the petitioner's receipt of unemployment benefits while employed by the Sands constituted a violation of N.J.S.A. 2C:20-4 which, under the circumstances, disqualifies the petitioner from continued licensure. By reason of the stipulation entered into between the parties, the petitioner's misconduct constitutes a violation of N.J.S.A. 2C:20-4, a third-degree offense.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed a disqualifying offense under section 86c(1), by means of section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Ms. Terrell holds a casino employee license and is currently employed as a floorperson in the casino at the Atlantis. As such, she has direct patron contact and direct supervisory responsibility for casino activities.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, over a period of several months, during which she was employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), and by reason of her concurrent employment within the industry, the offense is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a licensee employed in the industry knowingly committed a theft of public monies to which she was not entitled. In addition, it is apparent that the petitioner provided false information in the process of obtaining these monies. Although these factors tend to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an extremely vulnerable position by reason of her period of unemployment prior to reemployment in the industry; she was the sole support for her family; she was the mother of two children, including an infant; and she had just learned that her husband had a serious drug dependency. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate substantially the seriousness of her offense.

Fourth, the petitioner's misconduct occurred during a period of several months in late 1981 and early 1982, when it ceased. Although the petitioner stopped collecting unemployment benefits following confrontation by her employer at that time, she did not continue to collect benefits despite her ensuing unemployment.

Fifth, the petitioner was approximately 26 years of age at the time of the offense. Although I do not believe that immaturity was a factor, it is clear that the overwhelming nature of the underlying circumstances affected the petitioner's ability to deal reasonably with the problem.

Sixth, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

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

Eighth, the petitioner has made substantial rehabilitative efforts. She resigned her employment and immediately ceased collecting unemployment benefits. In addition, she accepted responsibility for her misconduct, pled guilty to the criminal charges, satisfied the conditions of her sentence and made restitution promptly, albeit with the assistance of her mother. Also, the petitioner excised the cause of her problem and took the necessary steps to ensure that there would be no repetition. The petitioner also resumed her career in the casino industry and has continued to perform in a most credible manner. Further, the petitioner has accepted and performed her parental

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

It is readily apparent that the petitioner's misconduct was aberrational and that she is otherwise a person of good character, honesty and integrity. Although the fact that the misconduct occurred during the course of licensed employment would ordinarily present a substantial obstacle to relicensure, the remaining underlying circumstances mitigated substantially 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 five years and, as a single parent, has cared for her family in a commendable manner. 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 continued licensure. An examination of the whole person clearly and convincingly establishes that Ms. Terrell 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 Susan C. Terrell for renewal of her casino employee license be **GRANTED**.

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

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

January 8, 1987
DATE

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

Receipt Acknowledged:

January 8, 1987
DATE

Bernadette T. Frier
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 13 1987
DATE

Ronald L. Parks, Jr.
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 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 Disqualification Because of Willful Misrepresentation, re: Susan C. Terrell, January 6, 1983
- P-2 State of New Jersey v. Susan C. Terrell, Municipal Court of the City of Atlantic City, Complaint and Judgment, August 3, 1984
- P-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance v. Susan C. Terrell, Superior Court of New Jersey, Law Division, Docket No. DJ-14, 362-83, Warrant for Satisfaction, May 17, 1985
- P-4 Letter to Susan Terrell from Betty Lou Sochocky and Marion Torian, November 4, 1985; Order of Termination of Probation, November 1, 1985 (2 pages)
-
- R-1 Letter from Mari T. Saddler, September 20, 1986
- R-2 Letter from Mr. & Mrs. Samuel Mainor
- R-3 Letter from Dorothy Quince, November 24, 1986
- R-4 Letter from Mary Moor

WITNESS LIST

For the petitioner:

Alice Burleigh
Margaret Givens
Allan Gill
Klarke Gill
Evelyn Mainor
Raymond Massie
Susan C. Terrell
Natalie Washington

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-73
OAL DOCKET NO. CCC 7176-86
LICENSE NO. 21681-21

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

Complainant, : FINAL ORDER

v. :

GUY WALKER, :

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law which incorporates a stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against the respondent for a violation of N.J.S.A. 5:12-100(n); and the Commission having considered the entire record of these proceedings at its public meeting of March 4, 1987,

IT IS on this 10th day of March 1987, ORDERED that the initial decision of the Office of Administrative Law, which incorporates the stipulation of settlement, is adopted; and

IT IS FURTHER ORDERED that Guy Walker pay a civil penalty in the amount of \$300, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 7176-86

AGENCY DKT. NO. 87-73

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

Petitioner,

v.

GUY WALKER,

Respondent.

William E. Mountford, Jr., Deputy Attorney General for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Guy Walker, respondent, pro se

Record Closed: January 22, 1987

Decided: January 29, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Guy Walker, respondent and the holder of casino employee license no. 21681-21, with a violation of N.J.S.A. 5:12-100n, for which the Division seeks the imposition of a penalty pursuant to section 129 of the Casino Control Act (Act).

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission(Commission) on August 29, 1986. The Commission notified the respondent of the complaint and advised him of his right to a hearing. By letter filed with the Commission, the respondent requested a hearing. On October 21, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on December 11, 1986. The hearing was scheduled for January 22, 1987, at the Office of Administrative Law, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT AND CONCLUSIONS

At the hearing, the parties agreed to a settlement and have prepared a settlement agreement indicating the terms thereof, which is attached and fully incorporated within the body of this Initial Decision.

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

1. The parties have voluntarily agreed to the settlement on the record.
2. The settlement fully disposes of all issues in controversy.

After being placed under oath, the respondent testified that he fully understood and consented to all the terms and conditions of the settlement. Deputy Attorney General Mountford entered consent on behalf of the Division.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**.

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

1-30-87
DATE

Stephen W. Thompson, ALJ
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1-30-87
DATE

DeLores Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 3 1987
DATE

Donald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ij

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-14
APPLICATION NO. 55027-21
OAL DOCKET NO. CCC 1695-86

APPLICATION OF MARTHA WALKER :
FOR A CASINO EMPLOYEE LICENSE :

ORDER

A hearing having been held before the Office of Administrative Law; and an 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 January 14, 1987,

IT IS on this *26th* day of May 1987, ORDERED that the initial decision is modified as follows:

The ALJ's conclusion that the applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)(2) based upon her 1977 and 1981 convictions for welfare fraud in violation of N.J.S.A. 2A:111-2 is in error. Pursuant to section 86(c), convictions are to be evaluated under the criminal law in effect at the time of application. The applicant filed for a casino employee license on June 26, 1984, when Title 2C was in effect. Under Title 2C, welfare fraud is a violation of N.J.S.A. 2C:20-4, theft by deception. Pursuant to section 86(c)(1), theft is a disqualifier if it is a crime of at least the third degree. Theft is a third degree crime if the amount exceeds \$500 but is less than \$75,000. N.J.S.A. 2C:20-2b(2)(a). Since the applicant's convictions

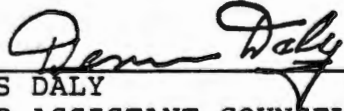
involved \$2749 and \$7253, respectively,
she is disqualified under section
86(c)(1).

IT IS FURTHER ORDERED that the application of Martha Walker for casino employee license is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the applicant 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1695-86

AGENCY DKT. NO. 86-EA-14

MARTHA WALKER,
Petitioner,

v.

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

Martha Walker, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: October 4, 1986

Decided: November 17, 1986

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

The Division filed a letter with the Casino Control Commission on January 27, 1986 advising the Commission that the petitioner had a criminal record but made no recommendation with regard to her licensure as a casino employee. Nevertheless, the Commission transmitted the matter to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a pretrial conference held by telephone on June 6, 1986, at which time the petitioner stipulated that she had been

convicted on two separate occasions in Atlantic County. The matter was heard in Atlantic County on September 4, 1986 and the record was held open for two weeks in order to give the petitioner an opportunity to supply the administrative law judge with letters of recommendation. She supplied one letter and requested an extension in order to supply additional letters. The record was held open until October 4, 1986 in order to give petitioner an opportunity to supply additional letters which she failed to do.

FACTS

It appears from the exhibits in evidence that the petitioner was convicted of welfare fraud on her plea of guilty in February 1977 for which crime she was incarcerated for 15 days in the Atlantic County Jail. It also appears that she was again convicted of welfare fraud on her plea of guilty in February 1981 and placed in the Atlantic County Jail for 120 days on this occasion. Both the 1977 and the 1981 convictions were for violations of 2A:111-2 which is one of those crimes enumerated in N.J.S.A. 5:12-86c(2); which crimes are considered to be automatic disqualifiers for casino licensure.

I **CONCLUDE** that the petitioner has committed offenses which disqualify her from casino employee licensure unless she can affirmatively show that she has been rehabilitated.

REHABILITATION

The petitioner appeared without an attorney and was not prepared to prove either her rehabilitation or her good character, honesty and integrity. She was not articulate and she denied facts asserted in the indictments to which she pled guilty. She testified that she was an AFDC parent for many years; she could not recall how many. She had raised eight children and still has two minor children at home. She has never been a member of the work force until recently when she began working as a nurses' aide. She was a sympathetic witness but she was not convincing either because of her lack of preparedness, her inability to recall much of her past or because she was attempting to minimize her involvement in these crimes. She was given an opportunity to provide letters of recommendation and supplied one which is marked P-1 in evidence. She requested additional time but was unable to supply any additional letters of

recommendation either within or without the time permitted her to do so. I cannot conclude that the petitioner has affirmatively established her rehabilitation nor can I conclude that she has proved her good character, honesty and integrity by clear and convincing evidence. The evidence in this case was minimal despite a lengthy opportunity for the witness to provide letters of recommendation and rehabilitation.

I **ORDER** that the application of petitioner, Martha Walker, for a casino employee license be **DENIED**.

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

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

17 Nov 86
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ *EH*

Receipt Acknowledged:

November 18, 1986
DATE

Bernadette J. Friger
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 20 1986
DATE

Ronald L. Parker / *RS*
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

For petitioner:

Martha Walker

EXHIBIT LIST

P-1 Letter from King David Care Center of Atlantic City

R-1 Memo - Welfare Board

R-2 Indictment

R-3 Disposition

R-4 Indictment

R-5 Disposition

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-114 & 87-EA-151
OAL DOCKET NO. CCC 7470-86
REGISTRATION NO. 63366-40
APPLICATION NO. 66461-22

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

Complainant, :

v. : ORDER

BENJAMIN H. WATERS :

Respondent. :

AND :

APPLICATION OF BENJAMIN H. WATERS :
FOR A CASINO EMPLOYEE LICENSE :

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 June 3, 1987,

IT IS on this 12th day of June 1987, ORDERED that the initial decision is modified:

1. to find Mr. Waters rehabilitated within the meaning of section 91(d) of the Casino Control Act because: (1) he is employed in a maintenance and cleaning job, a position which poses a minimal threat to the integrity of casino operations; (2) he committed the

disqualifying offense over four years ago, an isolated event in an otherwise law-abiding life, and (3) he has agreed to make restitution of the unemployment benefits unlawfully received; and

2. to correct the reference on page two, paragraph three to "casino hotel registration" to read "casino employee license".

IT IS FURTHER ORDERED that the application of Benjamin H. Waters for a casino employee license is denied and the complaint for revocation of his casino hotel employee registration is dismissed, without prejudice, substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Benjamin H. Waters is prohibited from applying 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. NO. CCC 7470-86

AGENCY DKT. NO. 87-114

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

Petitioner,

v.

BENJAMIN WATERS,

Respondent.

**Nancy Scharff, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Benjamin Waters, respondent, pro se

Record Closed: March 17, 1987

Decided: April 30, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement by way of complaint filed with the Casino Control Commission on September 26, 1986, and a letter filed with the Casino Control Commission on January 26, 1987, alleges that the respondent's casino hotel registration #63366-40 should be revoked and his application for casino employee licensure (non-gaming) should be denied because he was convicted of a crime enumerated in N.J.S.A. 5:12-86 C(1) to wit: "N.J.S.A. 2C:20-1 et seq.....third degree." The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The matter was pretried on December 23, 1986, and the parties convened in the Absecon Municipal Court for a final hearing on March 17, 1987.

DISQUALIFICATION AND REMAINING ISSUES

The respondent does not contest his conviction for theft by deception in the third degree contrary to N.J.S.A. 2C:20-4 (unemployment benefits theft in an amount greater than \$500). This is a crime listed in N.J.S.A. 5:12-86 C(1) and results in automatic disqualification from casino employee licensure and may result in disqualification from casino hotel registration.

I **FIND** that the respondent has been convicted of an N.J.S.A. 5:12-86 C(1) offense. Based on this finding, the following issues remain:

1. Should the respondent's casino hotel registration be revoked pursuant to N.J.S.A. 5:12-91b?
2. Is the respondent rehabilitated from his conviction for the purpose of obtaining a casino employee licensure notwithstanding this conviction, pursuant to N.J.S.A. 5:12-90h?
3. If the respondent's casino hotel registration is revoked, is he rehabilitated from this conviction for the purpose of saving his casino hotel registration pursuant to N.J.S.A. 5:12-91d?
4. Can the respondent show by clear and convincing evidence that he possesses the good character, honesty, and integrity required for casino employee licensure by N.J.S.A. 5:12-89b(2) and 90b?

RESPONDENTS EVIDENCE

The respondent is a 58 year old man who appeared without counsel, friend or letter of recommendation. He has a 10th grade education and a spotty work record as a result. He formerly had a drinking problem but has stopped drinking at his doctors urging. He did not identify any physical ailment, however. He is a sometime maintenance man in the hotel and motel industry who exists on unemployment in the winter months and

performs heavy cleaning chores in the summer, meaning stripping and buffing floors. He has no police record at all except for this single conviction. This conviction resulted from his conscious failure to alert the unemployment benefits office that he had secured employment. He did so because he needed the money (needed it badly, he claimed) in order to furnish an apartment for a lady friend with whom he was having an affair of the heart. He has not repaid more than \$345.00 of the restitution order of \$3,536.00 made by Judge Guerrera primarily because he has been unemployed most of the winter months since then and requires all of his summer earnings to live.

He brought no letters of recommendation from supervisors with him because many of the hotels where he was formerly employed have been blown up, torn down, rebuilt, or converted to casinos. In addition, he said that he did not wish to intrude on his fellow workers and friends by subpoenaing them to the hearing. He claimed that people no longer wish to get involved, especially in court proceedings. Besides, he said, he could tell me about himself better than anyone else.

The rehabilitation statutes N.J.S.A. 5:12-90d and 91h require the following findings of fact:

1. The respondent's registration is for heavy cleaning in the casino hotel. He applied for licensure so that he could also perform heavy cleaning in the casino.
2. The offense was not one of the more serious crimes, it was consummated without violence. He kept unemployment benefits to which he was not entitled.
3. The respondent needed additional money in order to provide for a woman friend.
4. The offense occurred during the period from July 8, 1982, through January 3, 1983.
5. The respondent was 54 years old at the time of the offense.

6. This is an isolated notation in the respondent's otherwise clean record.
7. This pro se respondent did not discuss the social conditions which may have contributed to the incident. However, he did not appear to have been advantaged.
8. The only evidence of rehabilitation offered by the respondent was his otherwise clean record since the offense. Judge Guerrero, his sentencing judge, who had the benefit of a presentence investigation report not available here, found the following:
 1. The defendant's conduct neither caused nor threatened serious harm.
 2. The defendant did not contemplate that his conduct would cause or threaten serious harm.
 3. The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service.
 4. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense.
 5. The defendant's conduct was the result of circumstances unlikely to recur.
 6. The character and attitudes of the defendant indicate that he is unlikely to commit another crime or offense.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail excessive hardship to himself or his dependents.

12. The willingness of the defendant to cooperate with law enforcement authorities.

The only aggravating factor he found was the need for deterrence.

I **CONCLUDE** that the respondent has failed to prove by clear and convincing evidence that he possesses the good character, honesty, and integrity for casino licensure as required by N.J.S.A. 5:12-89b2 and 90b.

I also **CONCLUDE** that the respondent has failed to affirmatively show that he is rehabilitated pursuant to N.J.S.A. 5:12-90h and 91d.

I **ORDER** that the respondent's petition for casino employee licensure (non-gaming) be dismissed.

I do not **CONCLUDE** that the respondent's casino hotel registration should be revoked, however. I am persuaded that the respondent should have another opportunity to satisfy his restitution order.

I, therefore, **DISMISS WITHOUT PREJUDICE** the Division's complaint seeking revocation of the respondent's casino hotel registration. Should the respondent not satisfy the restitution order, the Division may file another complaint seeking revocation or an objection to the respondent's renewal of his registration at any time. It is so **ORDERED**.

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

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

4/30/87
DATE

Edgar L. Holmes
EDGAR L. HOLMES, ALJ

May 1, 1987
DATE

Receipt Acknowledged:

Edgar L. Holmes
CASINO CONTROL COMMISSION

MAY 5 1987
DATE
bc

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW *5

WITNESSES

Benjamin Waters, Respondent

EXHIBITS

For Petitioner:

- P-1 Indictment 85-04-0600A and Disposition
- P-2 Arrest Report June 21, 1985
- P-3 Complaint XX04345
- P-4 UIB Demand
- P-5 Wage Information Inquiry
- P-6 UIB Payment Record
- P-7 Referral for Criminal Prosecution
- P-8 Record of Hearing
- P-9 Notice of Hearing
- P-10 UIB Printout (3 pages)
- P-11 Probation Report

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

v.

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 (Commission); and the respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of March 18, 1987,

IT IS on this 15th day of June 1987, ORDERED that the initial decision is modified as follows:

The Commission agrees that the respondent has committed an inimical offense requiring disqualification under N.J.S.A. 5:12-86(c) (4) and (g). Nevertheless, the Commission rejects that portion of the initial decision wherein the ALJ indicated that, to avoid a finding of disqualification pursuant to section 86(c) (4) of the Act, the respondent must show his rehabilitation "by clear and convincing evidence." Init. dec. at 8. It is

neither necessary nor appropriate to ascribe a burden of proof standard in these circumstances. 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).

Here the Division established that the respondent committed theft of services

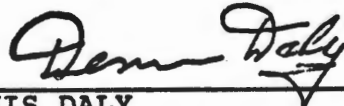
(fourth degree), which is not an enumerated disqualifier pursuant to sections 86(c)(1) or (3), and that the theft was from the casino where he was employed. At this point, the Division had established a case for the respondent's disqualification. It was then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted. Considering the offense was both recent and serious, the respondent was easily led astray, he willingly repeated the illegal conduct and he ceased it only upon arrest, we find no persuasive evidence of rehabilitation. The respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

IT IS FURTHER ORDERED that the casino hotel employee registration held by Michael P. Waters is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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(a).

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 3933-86

AGENCY DKT. NO. 84-419

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

Petitioner,

v.

MICHAEL P. WATERS,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Laurence C. Connell, Esq., for respondent (D. William Subin, Esq., of counsel)

Record Closed: November 21, 1986

Decided: January 7, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement, Department of Law and Public Safety (Division) filed a complaint with the Casino Control Commission (Commission) on or about December 7, 1984, seeking an Order revoking the casino employee registration previously issued to respondent Michael P. Waters No. 18851-40. The complaint alleges that respondent Waters had committed offenses for which he had been placed under arrest and which had not been resolved by a court of competent jurisdiction at the time of the filing of the complaint before the Commission. The Division's complaint specifically alleges

that respondent Waters is in violation of N.J.S.A. 2C:20-8b (theft of services) and N.J.S.A. 2C:5-1 (conspiracy) in that respondent used the name of another person to obtain complimentary privileges for a patron and that respondent had authorized the use of a credit card that had been obtained in an unauthorized manner for expenses accrued by the patron. The Division contends, among other things, that the statutory violations are per se disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1) and, further, that respondent's continued registration would be inimical to the policies of the Casino Control Act (Act). N.J.S.A. 5:12-86(c)(4).

On December 20, 1984, through counsel, respondent requested a hearing on the proposed revocation of his registration. Thereafter, on June 16, 1986, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Subsequent to a prehearing held on July 24, 1986, a hearing was held on September 15, 1986, in the absence of respondent, however, with the consent of his attorney. The hearing was conducted at the Atlantic City Office of Administrative Law, Atlantic City, New Jersey. The parties requested and were granted leave to submit post hearing memoranda with the last submission received by the undersigned on November 21, 1986, which constituted the closing of the herein record.

ISSUES

As agreed upon and set forth in the prehearing order, the issues for consideration by this tribunal are:

- A. Whether respondent is disqualified from holding a casino employee license by virtue of his commission of an offense (or-offenses) enumerated in N.J.S.A. 5:12-86c?
- B. If relevant, whether respondent is rehabilitated, pursuant to N.J.S.A. 5:12-90h?
- C. Whether respondent's continued licensure is inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86(c)(4)?
- D. Whether the Division can prove that the respondent committed an offense pursuant to N.J.S.A. 5:12-86g?

- E. Whether, under the facts of this matter, respondent is eligible for a waiver of a disqualification criteria, pursuant to N.J.S.A. 5:12-91e?

UNCONTESTED FACTS

The following facts are neither disputed nor contested and, therefore, are hereby adopted as FINDINGS OF FACT in this matter.

By way of an Order, dated January 28, 1985, the Commission suspended respondent's casino hotel employee registration pending the final disposition of this matter.

The evidence proffered by the parties demonstrated that a complaint and summons issued by the Atlantic City Municipal Court in the matter of The State of New Jersey v. Michael Patrick Waters, dated October 1, 1984, charge and alleged respondent that:

within the jurisdiction of this court commit an act of theft by knowingly diverting the disposition of services of another to which he was not entitled, to his own benefit and to the benefit of another also not entitled thereto in violation of N.J.S.A. 2C:20-8b.

and;

within the jurisdiction of this court and with the purpose of advancing the commission of a Theft, agree to aid such other person in the planning or commission of a theft and in pursuance of this agreement, committed along with Mario Nardone an overt act, namely a theft of services, in violation of N.J.S.A. 2C:5-2 (J-1).

The basis for the complaint is found in an Investigation Report filed with the New Jersey State Police by Detective Michael S. Riggs dated October 2, 1984. The Investigation Report demonstrates that on September 26, 1984, Detective Riggs interviewed respondent. Subsequent to the Detective having advised respondent of his Miranda¹ rights, which respondent waived in writing, respondent made certain admissions concerning his conduct as a hotel desk clerk while employed at the Trump Plaza

¹ Miranda v. Arizona, 284 U.S. 436(1966)

Hotel/Casino during the period of June through the latter portion of September 1984 (P-1). Respondent asserted he had first met an individual identified as Mario Nardone at the Brass Rail Tavern located on Mt. Vernon Street in Atlantic City in late June or early July 1984. Respondent had no further contact with Nardone until August 15, 1984, at which time Nardone was a hotel guest at Trump under the name of Brian Cheli. Nardone used a green American Express credit card issued to a Brian Cheli to pay his hotel and other chargeable bills. While Nardone was a guest at the Trump, Nardone asked respondent to remove the blue copies from the credit card vouchers he had used at the hotel, offering to pay respondent \$5 for each blue copy removed. Nardone asserted he could make credit cards from these receipts. Respondent refused to remove the blue copies as requested by Nardone. However, respondent accepted payment from Nardone for his hotel accounts with the use of a credit card made out to Brian Cheli upon Nardone's representation to respondent that Nardone was Brian's friend.

Respondent next had contact with Nardone approximately two weeks after Nardone had checked-out of the hotel using the credit card issued to Cheli. On these subsequent occasions, Nardone would loiter around the front desk of the hotel and inquire of respondent for the names of hotel guests registered under its complimentary policy. Respondent acquiesced to Nardone's request and provided Nardone with names of complimentary guests as well as issuing hotel room keys to Nardone. Nardone then used the guests names and hotel room keys provided by respondent, for identification to fraudulently purchase services at the Trump Hotel/Casino. Respondent joined Nardone for drinks at the hotel's bars or restaurants approximately four (4) times while Nardone used the false identification.

On September 25, 1984, respondent provided Nardone with the name of William Beatty, a hotel guest who was to check out and leave Trump on Thursday, September 27, 1984. On the evening of September 26, 1984, Nardone appeared at the hotel with two men and proceeded to the Trump's Ivana's Restaurant. Subsequently, a telephone call was placed by the bartender from the restaurant to the hotel's front desk, inquiring as to whether William Beatty could make charges on his room. Respondent did not receive the telephone call but, rather, it was taken by another front desk clerk, Nan Thompson, who advised the caller that Beatty had checked out of the hotel and no charges could be placed on Beatty's account. Nardone then purportedly asked the bartender to

speak to "Mike", respondent herein, about the matter. Respondent advised the bartender that no charges against Beatty's account would be accepted. Subsequently, Nardone who was claiming to be Beatty, telephoned respondent from the restaurant and asked respondent, "What do I have to do, check back in?" Respondent answered "yes" and invited the caller to come to the hotel's front desk. Thereafter, Nardone appeared at the front desk and was present when two hotel guests arrived to check in. One guest, identified only as Duffy, shouted out his room number as #1501, which was overheard by Nardone. Shortly thereafter, a telephone call was received by front desk clerk Thompson from Ivana's Restaurant inquiring as to whether Duffy could charge his account. Thompson repeated the name Duffy in a loud voice. Duffy, who was nearby, overheard Thompson and declared that no one was authorized to charge to his account. Respondent subsequently left his work station to go home and had no further contact with Nardone thereafter.

Subsequent to the Atlantic City complaint against respondent, it was recommended and approved for respondent's participation in the Atlantic County Pretrial Intervention Program (PTI) pursuant to R. 3:28 and in accordance with N.J.S.A. 2C:43-12 and 13. As a consequence of respondent's acceptance and entry into PTI, one count of the complaint was dismissed by the Honorable Manuel H. Greenberg, J.S.C.; i.e., conspiracy to commit theft of services. N.J.S.A. 2C:5-1 (J-1) Respondent has successfully completed the terms and conditions of the PTI program and is currently employed as a host and maitre d'hotel at the Pier House, Key West, Florida (Respondent's Affidavit).

Respondent did not appear at the hearing and, therefore, offered no testimony on his own behalf. Upon application by his attorney, with no objection advanced by the Deputy Attorney General on petitioners behalf, respondent was granted leave to submit an affidavit concerning his employment subsequent to the suspension of his employment registration and the resolution of the criminal proceedings. There is currently pending an expungement application, pursuant to the provisions at N.J.S.A. 2A:168A-3.

This concludes a recital of the uncontested facts in this matter.

DISCUSSION AND CONCLUSIONS

A review of the evidence clearly demonstrates that respondent, by his own admissions, engaged in activities which resulted in the theft of services from his employer, Trump Plaza Hotel/Casino N.J.S.A. 2C:20-8b. Theft of services, provides that:

A person commits theft if, having control over the disposition of services of another, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

The Division contends that respondent's alleged violation of N.J.S.A. 2C:20-8b constitutes a violation of N.J.S.A. 5:12-86c(4), pursuant to N.J.S.A. 5:12-86g, and therefore requires that respondent's employment registration be revoked. N.J.S.A. 5:12-86g provides that an applicant be disqualified from licensure by virtue of the commission of any acts which would constitute any offense under N.J.S.A. 5:12-86c, even if such conduct has not or may not be prosecuted under our criminal laws. N.J.S.A. 5:12-86c(4) is commonly referred to as the "inimical clause" of the Casino Control Act. The standards by which section 86c(4) are to be applied in individual cases where a determination is to be made as to whether an offense is inimical to the purposes and policies of the Act is set forth by the Commission 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), where it 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.

Further, our Appellate Division of Superior Court held that inimical means "adverse to the policy of the act and gaming operation." In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div. July 11, 1985, A-993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17.).

The Division argues the actual nature of the offense whereby respondent knowingly and intentionally provided Nardone with hotel room keys and the names of hotel guests for Nardone's unauthorized use, together with the additional potential harm that could have been visited upon respondent's employer by such conduct, renders respondent's continued registration to be inimical to the Act.

Respondent argues, among other things, that the Division has failed to provide sufficient evidence to bring the alleged offense within the scope of N.J.S.A. 5:12-86. He observes that the grading of crimes involving theft is regulated by N.J.S.A. 2C:20b, where, under subsection (2)(a), theft is a crime of the third degree if the amount involved is more than \$500 but less than \$75,000. Under subsection b(3), theft is a crime of the fourth degree where the amounts are between \$200 and \$500 and; if the amount is under \$200, the offense constitutes a disorderly persons offense. The respondent concedes that the Division alleges a theft in the amount of \$3,291 against Nardone, however, there is no specific allegation as to the amounts involved with respondent. Respondent further concedes that while there is some evidence of respondent's wrongdoing, there is insufficient evidence to bring the alleged criminal activity beyond the realm of a disorderly persons offense. Therefore, respondent argues, under N.J.S.A. 5:12-86, theft which constitutes a fourth degree crime or a disorderly persons offense is not a disqualifying criteria. Consequently, respondent should not be disqualified under the statute nor should he be suspended or have his employee registration revoked.

Respondent asserts that he was fully cooperative at all times during the investigation of the alleged wrongdoing. He asserts that the nature of his employment did not place him in a key position while admitting that he did occupy a position of responsibility with control over areas which were subject to abuse by theft. Respondent contends, moreover, that the alleged activity occurred on only three or four occasions and did not involve large amounts of money. He also argues that he has demonstrated his rehabilitation by successfully completing the PTI program and by subsequently maintaining employment in the restaurant business without any other charges having been filed against him.

With respect to the issue as to whether or not respondent has established his rehabilitation, the only evidence before this tribunal is respondent's assertion he has successfully completed PTI and that he is presently employed in the restaurant industry

and nothing more. Respondent offered no witnesses on his own behalf regarding his honesty, character or other indicia to assess his demeanor. While it is commendable that he successfully completed the PTI program and has located other employment outside of the casino industry, this, in itself, is not sufficient to establish rehabilitation. I **CONCLUDE**, therefore that respondent has failed to establish, by clear and convincing evidence, that he is, in fact, rehabilitated.

With respect to the issues to be addressed and determined by this tribunal, I **FIND** and **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that respondent's conduct constitutes a violation of N.J.S.A. 2C:20-8b, theft of services. While there is inconclusive evidence that respondent's offenses rise to the level of crimes of the second or third degree under N.J.S.A. 2C:20-1 et seq. (N.J.S.A. 5:12-86 c(1)), I **FIND** and **CONCLUDE** that respondent's conduct was inimical to the Act. This is so because respondent's offenses were committed in a casino during the course of his employment. Here, respondent owed his employer a fiduciary duty; i.e., a high standard of care, trust and obligation for the benefit of his employer and not for his or another's benefit. Respondent violated this trust and ignored his obligations by repeatedly providing another person unauthorized hotel room keys and names of guests which resulted in the theft of services from his employer. Respondent's offenses directly related to the operations of the casino and unquestionably undermines the public confidence in the gaming industry. It is further without question that respondent's conduct, if condoned, would have a direct negative impact upon the public perception of the integrity of the casino industry.

I further **FIND** and **CONCLUDE** that there is no basis in fact to establish respondent's eligibility for a waiver under N.J.S.A. 5:12-91e.

PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino hotel employee registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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 registrant and in a casino within the scope of his official duties, creates a substantial risk to the public confidence in the casino industry and the perceived integrity of gaming operations. The seriousness of the respondent's conduct is established by his knowledge that he acted illegally and has otherwise not been mitigated. Under such circumstances, the respondent's registration must be revoked. I so **CONCLUDE**.

DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration no. 18851-40 held by Michael P. Waters be and is hereby **REVOKED**.

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

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

January 7, 1987
DATE

Lillard E. Law *RLV*
LILLARD E. LAW, ALJ

Receipt Acknowledged:

January 9, 1987
DATE

Bernadette T. Frisner
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 12 1987
DATE

Ronald J. Parker *RS*
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

J-1 Complaint, State of New Jersey v. Michael Patrick Waters, October 1, 1984

P-1 New Jersey State Police Investigation Report, October 2, 1984



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3716-85

AGENCY DKT. NO. 84-47

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

Petitioner,

v.

WILLIAM E. WHITE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

William E. White, respondent, pro se

Record Closed: March 30, 1987

Decided: April 7, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against William E. White, respondent, the holder of casino hotel employee registration no. 45246-40. The Division alleged that the respondent committed violations of the Casino Control Act (Act) by reason of criminal conduct, for which the Division seeks the revocation of respondent's registration, pursuant to Section 91(b) of the Act. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on February 14, 1984. The matter was stayed by the Commission pending the release of respondent from incarceration. On June 6, 1985, Mr. White notified the Commission of his release from prison and requested a hearing on the complaint. On June 13, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 6, 1985, and the matter was scheduled for hearing on October 4, 1985. On November 19, 1985, with the consent of the parties the matter was placed on the inactive list for a period of six months. On May 22, 1986, the matter was again placed on the inactive list for an additional six months. Another prehearing conference was held on January 20, 1987, and the matter was scheduled for a hearing. The hearing was held on March 30, 1987, at the Office of Administrative Law, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

On February 28, 1983, Mr. White was arrested and charged by the Atlantic City Police Department with possession of a weapon in violation of N.J.S.A. 2C:39-5(d), possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4, aggravated assault in violation of N.J.S.A. 2C:12-1b(1), aggravated assault in violation of N.J.S.A. 2C:12-1b(2) and possession of a weapon by a convicted person in violation of N.J.S.A. 2C:39-7. According to the investigation report (P-1), the respondent and Ronald Grant were in the Kenyon Inn Bar in Atlantic City when the respondent ordered Mr. Grant to play a favorite record of his on the jukebox. When Mr. Grant didn't play the record as requested, the respondent picked up a beer bottle, broke it and started cutting and stabbing Mr. Grant with the beer bottle.

On June 27, 1983, an Atlantic County Grand Jury indicted Mr. White on all five counts.

On June 27, 1983, Mr. White retracted his plea of not guilty and entered a plea of guilty to aggravated assault in violation of N.J.S.A. 2C:12-1b(1) and possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4. On July 8, 1983, the

respondent was sentenced by the Honorable Robert Neustadter, J.S.C. to a jail sentence of 7 years for the aggravated assault and a term of 4 years to run concurrent with the sentence for aggravated assault for the weapon charge. Mr. White was given credit for 129 days served in the county jail and was ordered to pay a penalty of \$25 on both counts to the Violent Crimes Compensation Board.

Richard Allen Jenni, Senior Parole Officer, Department of Corrections, stated that given Mr. White's prior criminal record the likelihood of rehabilitation appeared almost nil. However, since Mr. White's parole in June 1985 his conduct has been "exemplary." It is Mr. Jenni's considered opinion that Mr. White has not only been rehabilitated from his drinking problem but has been rehabilitated as a person. Although Mr. Jenni had been respondent's parole officer prior to 1983 and from 1985, he is amazed at respondent's transformation. Mr. White is punctual for his monthly probation appointments; he attends church weekly; attends at least one Alcoholics Anonymous (AA) meeting a week, and most important of all has maintained steady employment since being paroled.

Mr. Jesse Jordan is Mr. White's AA sponsor. Mr. Jordan has been a member of AA for 12 years. It is his opinion that Mr. White has learned how to face life on a daily basis and believes that Mr. White's life turned around while incarcerated at Leesburg State Prison. Mr. White is well thought of in AA and "is a damn good man." Although a recovering alcoholic is never "cured" of his drinking problem, Mr. Jordan believes that respondent has resolved his battle with alcohol and has been rehabilitated both as an alcoholic and as a person.

Mr. Isaac Bethea, sous-chef at the Tropicana Casino and Hotel is Mr. White's immediate supervisor. Mr. Bethea joined the Tropicana staff in August 1986 and stated that without Mr. White's help his job would have been very difficult if not impossible. He testified that Mr. White currently works a six day week, that he arrives early to make sure that everything is just right, is always volunteering for overtime, is constantly striving for perfection and is an inspiration to all the staff in the kitchen. Mr. Bethea is aware of Mr. White's past criminal behavior. According to Mr. Bethea, Mr. White will be promoted to line cook as soon as the new Tropicana Restaurant opens.

While in Leesburg State Prison, Mr. White testified that he obtained his graduate equivalency degree (GED), was cochairman of the prison AA chapter and worked

in the prison kitchen as a cook. While at Leesburg he realized that his alcoholism was partially inherited from his father who is also an alcoholic. Although Mr. White was 50 years of age when he entered Leesburg in 1983, he testified that he was determined to change himself into a productive citizen. Since his release from prison he has been employed quite successfully as a cook at the Tropicana Casino and Hotel. Mr. White has been able to amass a savings of over \$20,000 since his release from prison. As a hobby, Mr. White likes to carve large scale wooden model ships.

The above is uncontroverted, believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's guilty plea on June 27, 1983, to a violation of N.J.S.A. 2C:12-1b(1), aggravated assault statutorily disqualifies respondent from holding a casino hotel registration under section 86c(1) of the Act. This contention is accurate.

I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 2C:12-1b(1), aggravated assault disqualifies him from being a registrant, pursuant to Section 86c(1) of the Act.

(B) N.J.S.A. 5:12-9ld

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-9ld. This section sets 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;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of persons who have or have had registrant under their supervision.

First, Mr. White is registered as a casino hotel employee and is employed as a cook at the Tropicana Hotel and Casino. As such, he has no responsibilities for actual gaming activities and has very limited contact with patrons of the casino.

Second, the respondent was convicted of the following:

- (1) On June 27, 1983, a violation of N.J.S.A. 2C:12-1b(1), aggravated assault;

Under Section 86c(1) of the Act, aggravated assault is a statutory disqualifier. The incident involved the use of alcohol by the respondent. In addition, the assault was extremely serious.

Third, the respondent readily admits to a long history of alcohol abuse. However, in light of respondent's extensive rehabilitative treatment efforts, I am persuaded that respondent's misconduct has been mitigated to a significant degree.

Fourth, the respondent committed his last offense on February 28, 1983. The last offense occurred over four years ago. Respondent's probation terminates in November 1987.

Fifth, the respondent committed the statutory disqualifying offense at age 50.

Sixth, the respondent's misconduct involved the commission of an aggravated assault on February 28, 1983. Respondent attributes his misconduct to his extensive use of alcohol.

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

Eighth, the respondent has demonstrated extensive rehabilitation. He admitted his misconduct and pled guilty to the charges. Further he is satisfactorily completing the requirements of his probation (R-1). Further, the respondent has attended weekly AA meetings since his parole. Mr. White obtained his high school diploma while in prison. His involvement with AA leads me to believe that the respondent is truly alcohol-free. The respondent has established an exemplary work record in the casino industry. He appears to have a support group of friends and sponsors who have all testified as to the inspiration gained from respondent. The manner in which respondent conducted the hearing is another indication of respondent's rehabilitation.

I am persuaded that the respondent has met his statutory burden to establish his rehabilitation beyond clear and convincing evidence. It is apparent that respondent has a complete commitment to a total abstinence from misconduct and from the use of alcohol. More importantly, Mr. White has been rehabilitated as a person. The sincerity of his beliefs persuade me that Mr. White has established by clear and convincing evidence his rehabilitation.

I therefore **CONCLUDE**, that the respondent has established, by clear and convincing evidence, his rehabilitation pursuant to Section 91d of the Act.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of William E. White be **DENIED** and is hereby **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

4 - 7 - 87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

April 8, 1987
DATE

Receipt Acknowledged:

Nicholas Zapp
CASINO CONTROL COMMISSION

APR 10 1987
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

For the petitioner:

None

For the respondent:

Richard Allen Jenni, Senior Parole Officer

Jesse Jordan

Isaac Bethea

William E. White

DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Atlantic City New Jersey Police Department Investigation Report

P-2 Indictment 4-467-83-A, dated April 26, 1983, and certified Judgment of Conviction, dated June 27, 1983

For the respondent:

R-1 Letter from Robert G. Pantalena, Senior Parole Officer, dated September 11, 1985

R-2 Note of appreciation, dated January 29, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-293
OAL DOCKET NO. CCC 4437-85
LICENSE NO. 52924-21
REGISTRATION NO. 31768-40

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
: FINAL ORDER
v.
FLORENCE WIESSNER,
Respondent. :

This matter having been referred to the Office of Administrative Law (OAL) for a hearing; and the Administrative Law Judge (ALJ) having filed an initial decision-settlement with the New Jersey Casino Control Commission (Commission) indicating approval of the parties' stipulation to the respondent's record for arrests and convictions and agreement that the respondent's casino employee license would be suspended for a period of six months and that the respondent's casino hotel employee registration shall not be affected; and the Division of Gaming Enforcement (DGE) having advised that, if the Commission did not accept the proposed settlement, it would not wish to pursue the matter; and the Commission having considered the entire record at its public meeting of March 12, 1986,

IT IS on this 26th day of March 1987, ORDERED that the initial decision of the OAL is rejected for the following reasons:

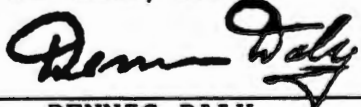
1. The respondent's criminal record consists of the

following:

- (a) On March 14, 1985, the respondent was convicted of shoplifting in violation of N.J.S.A. 2C:20-11, the offense involved switching price tags on certain merchandise, reducing the value thereof by \$44.60.
 - (b) On January 3, 1985, the respondent was convicted of shoplifting \$230.98 worth of merchandise in violation of N.J.S.A. 2C:20-11.
 - (c) On May 11, 1978, the respondent was arrested and charged with possession of CDS in violation of N.J.S.A. 24:21-20(a)(4). The charge was subsequently "no billed" by a Grand Jury.
2. The Commission finds that the proposed disposition of the complaint is inappropriate on the circumstances of this case. Neither of the respondent's convictions nor her arrest in 1978 constitutes a basis for disqualification under N.J.S.A. 5:12-86 nor, on this record, does it necessarily impugn her good character, honesty and integrity which she is required to maintain pursuant to N.J.S.A. 5:12-90(b). Moreover, none of the respondent's conduct alleged in the complaint constitutes a violation of any provision of the Casino Control Act, N.J.S.A. 5:12-1 et seq., nor any pertinent regulation, N.J.A.C. 19:40-1 et seq. Therefore, the imposition of a period of suspension of a license credential is unwarranted.

IT IS FURTHER ORDERED that, in view of the DGE's position eschewing further proceeding, the complaint is dismissed.

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

SETTLEMENT

OAL DKT. NO. CCC 4437-85

AGENCY DKT. NO. 85-293

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

Petitioner,

v.

FLORENCE WIESSNER,

Respondent.

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards, Jr.,
Attorney General of New Jersey) for the petitioner**

Stephen A. White, Esq. (Stephen A. White & Associates), for respondent

Record Closed: January 22, 1986

Decided: January 24, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Florence Wiessner, respondent, the holder of casino employee license no. 52924-21 and casino hotel employee registration no. 31768-40. The Division alleged that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal conduct, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Act. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 25, 1985. The Commission notified the respondent of the complaint and advised him of his right to a hearing. On July 12, 1985, respondent's attorney requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1985, and the matter was scheduled for a hearing. The hearing was scheduled for October 28, 1985, at the Ventnor Municipal Building, Ventnor, New Jersey. Prior to the scheduled hearing the parties met and discussed the matter. The record remained open until the settlement agreement was reduced to writing. The record was closed on January 22, 1986, after receipt of the settlement agreement.

FINDINGS OF FACT AND CONCLUSIONS

The parties have agreed to a settlement and have prepared a settlement agreement indicating the terms thereof, which is attached and fully incorporated within the body of this initial decision. The fact that respondent, Florence Wiessner, is a single parent trying to avoid the "welfare rut" weighed heavily in allowing the settlement agreement. Respondent further realizes that any further infractions will result in the immediate revocation of her licenses.

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

Therefore, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

ORDER OF DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be and are hereby **CONCLUDED**.

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

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

1-24-86
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1/27/86
DATE

Helen M. DiPietro
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 28 1986
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

DOCUMENTS IN EVIDENCE

None

RECEIVED
STATE OF N.J.
OFFICE OF ADM. LAW
JAN 22 9 20 AM '86

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: WILLIAM E. MOUNTFORD, JR.
Deputy Attorney General
(609) 292-8883

SUPERIOR COURT OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.

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

Plaintiff,

v.

Florence Wiessner

Respondent.

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Civil Action

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by William E. Mountford, Jr., Deputy Attorney General, and Stephen A. White, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Respondent presently holds casino employee license no. 52924-21 issued by the Casino Control Commission on August 8, 1984.

(2) WHEREAS, Respondent, presently holds casino hotel employee registration no. 31768-40 issued by the Casino Control Commission on August 31, 1982.

(3) WHEREAS, on or about March 3, 1985, Respondent, Florence Wiessner, was arrested and charged with shoplifting, in violation of N.J.S. 2C:20-11, in that on or about March 3, 1985, Respondent switched tags on certain merchandise reducing the total value by \$44.60. On or about March 14, 1985, Respondent was found guilty and sentenced to a thirty day jail term, on year probation, fined \$300.00, \$25.00 costs and a penalty of \$25.00 to the Violent Crimes Compensation Board.

(4) WHEREAS, on or about October 20, 1984, Respondent, Florence Wiessner, was arrested and charged with shoplifting, in violation of N.J.S. 2C:20-11, in that on or about October 10, 1984, Respondent was arrested with stolen clothing in her possession totalling \$230.98. On or about January 3, 1985, Respondent pled guilty and was fined \$125.00, \$25.00 costs and a penalty of \$25.00 to the Violent Crimes Compensation Board.

(5) WHEREAS, on or about May 11, 1978, Respondent, Florence Wiessner, was arrested and charged with possession of controlled dangerous substance, in violation of N.J.S. 24:21-20(a)(4). On or about June 15, 1978, the charge was "no billed" before a Camden County Grand Jury.

(6) WHEREAS Respondent, Florence Wiessner, is presently employed by Harrah's Marina Hotel/Casino as a blackjack dealer.

(7) Attached hereto and made a part hereof are the Complaints/Dispositions and State of New Jersey Criminal History Summary Record relating to the arrests of March 3, 1985, October 30, 1985 and May 11, 1978.

(8) WHEREAS it is admitted that the aforementioned conduct as described in paragraphs 1 through 7 supra, did, in fact, occur.

(9) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the aforementioned statutory and regulatory provision in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between parties hereto that:

1. The facts stated herein, supra, are true and did, in fact, occur.

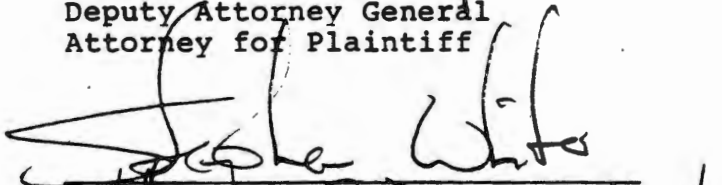
2. The casino employee license of Respondent shall be suspended for a period of six (6) months.

3. The casino employee hotel registration of Respondent shall not be affected.

4. This settlement shall be a full and final settlement for the aforementioned violations subject to the approval and acceptance of the Casino Control Commission.

The undersigned consent to the form and entry of the
above Stipulation of Settlement.


WILLIAM E. MOUNTFORD
Deputy Attorney General
Attorney for Plaintiff


Attorney for Respondent

B1386/13.1

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-369
OAL DOCKET NO. CCC 04510-86
CCC 7532-85
(ON REMAND)
REGISTRATION NO. 53552-40

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW & PUBLIC SAFETY	:	
DIVISION OF GAMING ENFORCEMENT	:	
Complainant,	:	
v.	:	<u>FINAL ORDER</u>
DOUGLAS C. WIGGINS,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 4, 1987,

IT IS on this *1st* day of April 1987, ORDERED that the initial decision is modified as follows:

Although the Commission concurs with the ALJ's conclusion that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(3) by virtue of his conviction in July 1983, of possession of controlled dangerous substance (CDS) with intent to distribute and distribution of CDS, that disqualification is waived pursuant to N.J.S.A. 5:12-91(e), in consideration of the following facts: the disqualifying offense is the sole entry on Mr.

Wiggins' criminal record, his two year probationary term was terminated early after ten months, and his employment record in the casino industry subsequent to the offense has been excellent.

IT IS FURTHER ORDERED that the respondent is disqualified for the reasons stated by the ALJ in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration and,

IT IS FURTHER ORDERED that Douglas C. Wiggins is prohibited from reapplying for or obtaining any other registration, license, qualification or approval required under the Casino Act except pursuant to the provisions of 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. NO. CCC 4510-86
(ON REMAND OAL DKT. NO.
CCC 7532-85)
AGENCY DKT. NO. 85-369

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

Petitioner,

v.

DOUGLAS C. WIGGINS,
Respondent.

Joanne Ciancimino, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Douglas C. Wiggins, respondent, pro se

Record Closed: January 5, 1986

Decided: January 20, 1987

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 or about August 13, 1985, seeking an Order to revoke the casino employee registration of respondent Douglas C. Wiggins, No. DGE 53552-40. The Complaint alleges that

respondent Wiggins had committed offenses which resulted in an indictment handed up by the Atlantic County Grand Jury, his arrest and subsequent entry of a retraxit plea of guilty to one count each of Possession of Controlled Dangerous Substance with Intent to Distribute (N.J.S.A. 24:21-19a1) and Distribution or Sale of Controlled Dangerous Substance (N.J.S.A. 24:21-19a1). The Division alleges that respondent's conduct constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3) and, therefore, the revocation of his casino employee registration is required.

PROCEDURAL HISTORY

The Division filed its complaint before the Commission on or about August 13, 1985. On November 26, 1985, 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. The Clerk of OAL ascribed the docket number CCC 7532-85 to the matter and it was assigned to Administrative Law Judge (ALJ) Solomon A. Metzger. Judge Metzger scheduled a prehearing conference on January 13, 1986, to which respondent failed to appear. Respondent's failure to appear at the second rescheduled prehearing conference on March 27, 1986, resulted in the issuance of an Initial Decision-Abandonment, dated May 28, 1986, whereby Judge Metzger ordered that the matter be dismissed grounded upon the conclusion respondent had abandoned his right to a hearing.

Respondent appeared at the Commission's public meeting held on July 2, 1986, to explain the reasons for his nonappearance at the OAL proceedings. Consequently, the Commission ordered that the Division's complaint be transmitted to the OAL for a hearing on all issues. The matter was remanded and received at the OAL on July 10, 1986, and assigned to the undersigned.

A third prehearing was conducted on September 2, 1986, followed by a plenary hearing which was held on January 5, 1987, at the Atlantic City OAL, Atlantic County Civil Court House, Atlantic City, New Jersey. Subsequent to the taking of testimony and receipt of documents in evidence, the record closed on January 5, 1987.

ISSUES

As agreed upon and set forth in the prehearing order, the issues for consideration by this tribunal are as follows:

- A. Whether respondent's conduct, by reason of his entry of a retraxit plea of guilty to one count of Possession of Controlled Dangerous Substance with Intent to Distribute (Heroin), N.J.S.A. 24:21-19a1, and one count of Distribution or Sale of Controlled Dangerous Substance (Heroin), N.J.S.A. 24:21 19a1, constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3)?
- B. With regard to the alleged statutory disqualifier, whether respondent may demonstrate rehabilitation pursuant to Sections 90h and/or 91d of the Casino Control Act?

FINDINGS OF FACT

Based upon the testimony adduced at the hearing together with the documents entered into evidence, the following facts are neither contested nor disputed and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

Respondent is currently employed at the Trump Plaza Hotel and Casino as a service employee under his casino hotel employee registration number DGE 53552-40. Respondent has been so employed by Trump since May 7, 1984. Respondent has never married, however, he is subject to \$40 per week in child support payments for three minor children.

On February 22, 1983, the Atlantic City Police Department (ACPD) had placed under surveillance the Timbuktu Bar, located in the 1600 block of Artic Avenue, Atlantic City, New Jersey. At approximately 1:30 p.m. on that date, respondent was outside and in front of the known premises in the company of Leon Murray, Jr., a suspect known to have dealings in Controlled Dangerous Substance (CDS). At approximately 1:45 p.m. respondent and Murray entered the bar followed by Victor Charman, an undercover police agent. Charman had in his possession, currency provided to him by a detective of the ACPD in the denominations of two (2) 20 dollar bills, one (1) 10 dollar bill and one (1) five

dollar bill, the serial numbers of which had been noted by Charman. Subsequent to Charman's entry into the bar, Murray approached Charman to ask Charman "Are you looking?"; a phrase which means, "Are you looking to buy drugs?" Charman replied "Yes." Thereupon, Murray made a motion to respondent and the three individuals; respondent, Murray and Charman, entered the men's room of the licensed premises. Once inside the men's room, Charman inquired of Murray "What are you asking?" To which Murray replied, "Forty-five dollars." Charman then handed Murray two (2) twenty-dollar bills and one (1) five-dollar bill which had previously been identified. Murray turned to respondent and told respondent to "Give him one." Charman observed respondent reach into a pocket of his clothing to remove a Newport cigarette package from which he removed a glassine bag and handed the bag to Charman. Charman immediately left the bar to meet with members of the ACPD at a prearranged location. A field test was conducted on the contents of the glassine bag which indicated the existence of heroin.

Respondent admitted, on the record of the herein proceedings, as to his involvement in the transaction as described above.

Subsequently, on April 21, 1983, respondent and Murray were indicted by the Atlantic County Grand Jury on five (5) counts for; Conspiracy to Distribute Heroin, Possession of Heroin with Intent to Distribute and, Distribution of Heroin. Thereafter on or about April 21, 1983, respondent and Murray were arrested and placed under custody. On June 6, 1983, respondent entered a plea of not guilty to the indictment. Subsequently, respondent retracted his plea of not guilty and entered a plea of guilty to counts Two and Three of the Indictment; i.e., possession of CDS with intent to distribute and the distribution or sale of CDS. As a consequence of respondent's retraxit plea, respondent was placed on probation for a period of two (2) years, fined the sum of \$200, required to perform 100 hours of community service while he remained employed full time and, pay the penalty of \$25 on each count to the VCCB.

On direct examination by the Division, respondent testified that he had a "slight" drug habit at the time of the incident of the indictment and his arrest. He asserted, moreover, that he was self-cured of the drug habit several weeks following the incident, without the benefit of or the need for a drug rehabilitation program. Respondent further testified that he does not now use drugs nor has he used them since the incident.

On examination by the court, however, respondent contradicted his former testimony by admitting that he used marijuana within the last four or five months prior to the hearing.

This concludes a recital of the uncontested facts in this matter.

DISCUSSION AND CONCLUSIONS

Section 86c(3) of the Casino Control Act (ACT) (N.J.S.A. 5:12-1 et seq.) mandates that a person who has been convicted of any offense in any jurisdiction which would be under New Jersey law a violation of "any high misdemeanor" pursuant to N.J.S.A. 24:21-19, shall be disqualified to hold a casino license (or employee registration). There is no dispute that respondent herein has, in fact, been convicted of two counts in violation of N.J.S.A. 24:21-19a1. Consequently, I **CONCLUDE** that the Division has demonstrated, by a preponderance of the credible evidence, that its allegations are true, in fact, and that respondent's casino hotel registration should be revoked. Accordingly, I **CONCLUDE** that respondent is statutorily disqualified from holding a casino hotel registration, pursuant to Section 86c(3) of the Act.

REHABILITATION

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his/her rehabilitation. N.J.S.A. 5:12-91d. This section of the statute sets forth eight specific criteria to be evaluated where a determination of rehabilitation is to be made as follows:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional workrelease programs, or the recommendation of persons who have or have had the registrant under supervision.

Respondent Wiggins is currently employed as a service employee at the Trump Plaza Hotel Casino under his casino hotel employee registration number DGE 53552-40. Respondent became so employed approximately ten (10) months subsequent to his entry of the retraxit plea and conviction on two (2) counts of violating N.J.S.A. 24:21-19a(1) before Superior Court, Law Division, Criminal. His duties include, among other things, the setting-up of tables and chairs for conventions, meeting rooms and banquets held at Trump Plaza. Respondent has been so gainfully employed at all times since May 7, 1984.

Respondent admits to the offenses committed on February 22, 1983, and his prior involvement in illicit drug trafficking. Respondent asserted he was twenty-five years of age and unemployed at the time. He financed his drug dealings through gambling and has had no arrests subsequent to the events charged here.

Respondent successfully completed the terms and conditions of the two year probation imposed upon him by the Court. His Probation Officer represents that respondent had made a good adjustment, performed his community service on a regular basis and was a good worker. As a consequence of respondent's employment at the Trump Plaza and his cooperation with the Atlantic County Probation Department' he was given early release from his probation obligations. (R-1, R-2). Respondent's present employer represents, among other things, that he is dependable and his employment at Trump has contributed to respondent's rehabilitation. (R-3).

Respondent has shown some degree of rehabilitation from his illicit drug dealing and his drug use habit. However, upon inquiry by the court about his use of drugs subsequent to his conviction, respondent candidly admitted to the use of marijuana within

the last four or five months. Such conduct does not demonstrate the degree of rehabilitation required by the Act for continued registration as a casino hotel employee.

Accordingly, I **CONCLUDE** that respondent has failed to affirmatively establish his rehabilitation pursuant to Section 91d of the Act.

PENALTY

Sections 129 and 130 of the Act provides for the sanctions and/or penalties which may be imposed against the registration of a person who has committed a violation of the Act. In the instant matter, the Division seeks the revocation of respondent's registration. The facts clearly demonstrate that respondent committed a statutory disqualifying offense. The facts further demonstrate that respondent has not achieved that degree of rehabilitation necessary to maintain his registration. Therefore, I **CONCLUDE** that respondent's registration must be revoked.

ORDER

Accordingly, it is **ORDERED** that the casino employee registration number DGE 53552-40 issued to Douglas C. Wiggins be and is hereby **REVOKED**.

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

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

20 January 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

January 22, 1987
DATE

Lillard E. Law
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 27 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

STATE'S EXHIBITS

- P-1 Indictment
- P-2 Judgment of Conviction
- P-3 Investigation Report (5 pages)
- P-4 Arrest Report
- P-5 Request for examination of evidence

RESPONDENT'S EXHIBITS

- R-1 Letter Atlantic County Probation Department, September 12, 1986
- R-2 Letter January 2, 1987, Atlantic County
- R-3 Letter Trump Casino Hotel January 2, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-288
REGISTRATION NO. 45061-40
OAL DOCKET NO. CCC 4266-86

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

Complainant, :

FINAL ORDER

v. :

THEODORE WILLIAMS, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 18, 1987,

IT IS on this 1st day of May 1987, ORDERED that the initial decision is modified as follows:

1. To find under the circumstances of this case that the respondent's conviction on June 8, 1984, for possession of CDS in violation of N.J.S.A. 24:21-20a(1) does not constitute an inimical offense under N.J.S.A. 5:12-86(c)(4). The offense did not occur on casino premises, nor did it involve a large quantity of CDS. From this record, the offense appears to be an isolated instance of drug

involvement. It has significance only insofar as it tends to undermine the respondent's claim of rehabilitation which is relevant to the issue of the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(4) by reason of the theft offense next discussed.

2. To find, based upon the evidence adduced at the hearing and found credible by the ALJ, that on August 23, 1983, the respondent committed the disorderly persons offense of theft of movable property contrary to N.J.S.A. 2C:20-3 and N.J.S.A. 2C:2-6 (complicity). The ALJ's finding that the respondent was guilty of attempted theft and conspiracy is rejected. The criminal law of this State does not recognize an attempt or conspiracy to commit disorderly persons offenses as distinguished from "crimes." See N.J.S.A. 2C:1-4, 2C:5-1 and -2.

3. To find that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4). This conclusion is based upon the following considerations: The offense involved the theft of money from a patron on the casino floor on August 23, 1983; In June 1984 the respondent was convicted of possession of CDS (cocaine) contrary to N.J.S.A. 24:21-20(1); Moreover, for the reasons stated by the ALJ, the respondent's evidence of rehabilitation, including his successful employment at Golden Nugget subsequent to the offense and his letters of reference (R6 to R9) were "not persuasive." Init. dec. at 8.

4. To reject that portion of the initial decision wherein the ALJ indicated that, to avoid a finding of disqualification pursuant to section 86(c)(4) of the Act, the respondent must show his rehabilitation "by clear and convincing evidence." Init. dec. at 7. It is neither necessary nor appropriate to ascribe a burden of proof standard in these circumstances.

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) 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. In the Matter of the Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order May 23, 1985); In the Matter of Chester R. Braithwaite for Licensure as a Casino Employee, Docket No. A-4252-82T3 (unpublished opinion reversing Commission decision decided 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).

Here the Division established that the respondent committed a disorderly persons theft offense, which is not an enumerated disqualifier pursuant to sections 86(c)(1) or (3), and that the

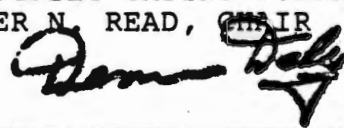
theft was from a patron on the casino floor. At this point, the Division had established a case for the respondent's disqualification. It was then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted. For the reasons noted in modification (3) above, we find no persuasive evidence of rehabilitation and that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4).

5. To waive the respondent's disqualification pursuant to N.J.S.A. 5:12-91(e) in consideration of the date of the disqualifying offense, the respondent's good work record and the positive letters of reference submitted by him.

IT IS FURTHER ORDERED that, having found the respondent disqualified pursuant to N.J.S.A. 5:12-86(c)(4), but having further found cause to waive that disqualification pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other registration, license, 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4266-86

(REMAND OF CCC 7817-85,

CCC 4334-85 and CCC 7456-84)

AGENCY DKT. NO. 84-288

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

Petitioner,

v.

THEODORE WILLIAMS,

Respondent.

William E. Mountford, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Lorraine Gormley, Esq., for the respondent (Cape-Atlantic Legal Services)

Record Closed: October 20, 1986

Decided: December 3, 1986

BEOFRE BEATRICE S. TYLUTKI, ALJ:

This matter arises from a complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on September 12, 1984, seeking the revocation of the respondent's registration as a casino hotel employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on October 3, 1984, for a determination as a contested case (CCC 7456-84), pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for February 5, 1985, and on that date, the respondent failed to appear and failed to respond to a letter requiring an explanation for his nonappearance. Administrative Law Judge Richard L. Voliva, Jr., issued an initial decision in which he concluded that Mr. Williams had abandoned his request for a hearing. Upon review, the Commission determined that Mr. Williams had presented a credible explanation for his failure to appear at the prehearing conference (R-1), and ordered that the matter be remanded to the Office of Administrative Law. Thereafter, on two other occasions, the respondent failed to appear on the date scheduled for a prehearing conference or to offer an explanation of his nonappearance, and initial decisions were issued concluding that Mr. Williams had abandoned his request for a hearing (CCC 4334-85 and CCC 7817-85). On both occasions, the Commission again accepted Mr. Williams' explanations and ordered that the matter be remanded to the Office of Administrative Law.

After the third remand to the Office of Administrative Law (CCC 4266-86), the prehearing conference was scheduled for September 4, 1986, and on that occasion, the conference took place by way of a telephone conference call. The parties agreed that the issues in this matter are:

- A. Whether the respondent's alleged criminal activities would render his continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- B. Whether the respondent is disqualified from registration based on certain criminal activities pursuant to N.J.S.A. 5:12-86g.
- C. Whether the respondent can show that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.
- D. Whether the respondent can establish that he is entitled to a waiver pursuant to the provisions of N.J.S.A. 5:12-91e.
- E. Based on the facts in this matter, what is the appropriate penalty, if any, to be imposed pursuant to N.J.S.A. 5:12-129 and 130?

The hearing was held on October 20, 1986, at the Atlantic County Civil Courthouse, Atlantic City, and the record in the matter closed on that date.

At the hearing, it was established that Mr. Williams is 35 years old and that he lives with his fiancée and their three children in Atlantic City. The respondent quit school after completing the tenth grade and, except for a few weeks, he has been continually employed since leaving school. Before he obtained his first casino position, Mr. Williams worked for a clothing store for approximately 13 years, and he was in the National Guard between 1971 and 1979 (R-2).

Initially, Mr. Williams held a casino employee license and he worked as a security guard at the Playboy Hotel and Casino (Playboy), beginning with the opening of the casino in January 1981. According to the respondent, he was laid off after nine months because Playboy had initially hired too many security guards. The Division questioned the respondent's statement as to the reason for his termination, and in its complaint alleged that he had been laid off because of excessive absenteeism.

After the termination of his job with Playboy, Mr. Williams worked part-time as a presser for a clothing store while he took culinary courses at the Atlantic County Vocational School (R-3). After completing the courses, the respondent obtained a casino hotel employee registration (he did not renew his casino employee license), and he was hired by Golden Nugget Hotel and Casino (Golden Nugget) to work in the food department. As of the date of the hearing, Mr. Williams had been employed by Golden Nugget for four years and seven months. The respondent has an acceptable employment record with Golden Nugget and he has been disciplined on occasions for being late or absent. In his latest job evaluation, dated November 7, 1985, Mr. Williams was given satisfactory ratings by his Golden Nugget supervisor (R-4). In addition to his casino job, Mr. Williams currently has a part-time job with a printing company. Mr. Williams stated that he needs the income from both jobs to pay the expenses involved with raising three teenagers.

In August 1981, Mr. Williams went for a ride with two male friends and a girlfriend of one of the men. While he was in the car, the respondent discovered that the other two men planned a robbery. Mr. Williams asked to be let out of the car and he was left in Egg Harbor while the others drove away. Thereafter, they returned and picked up Mr. Williams. When he got back into the car, the respondent saw that there were

additional items in the car which he assumed to be stolen. Mr. Williams stated that he had to get back into the car since he did not have any money with him and he had no way to return to Atlantic City. Shortly thereafter, the car was stopped by the police and Mr. Williams and the other persons in the car were charged with burglary and theft. Mr. Williams was allowed to participate in the pretrial intervention program and after completing the one-year program, which included 40 hours of community service, the charges against him were dismissed. The Division did not offer any testimony or exhibits regarding this 1981 incident.

On March 23, 1983, Mr. Williams and Glenn James were accused of trying to steal approximately \$80 in coins from a customer in the casino at Harrah's Marina Hotel and Casino (Harrah's Marina) and the complaint against him was dismissed by an Atlantic City Municipal Court judge (P-1, P-2, P-8). No explanation was given as to why the charge was dismissed.

On February 1, 1984, Mr. Williams and a friend, Eugene McNeal, bought approximately \$10 worth of cocaine and thereafter, while walking on the street, they were stopped by policemen who were looking for two men with a weapon. Since neither Mr. Williams nor Mr. McNeal had a weapon, the policemen allowed them to go; however, as they left, a police officer saw the respondent take the cocaine out of his mouth, where he had hidden it. The respondent and Mr. McNeal were arrested and indicted for the possession of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-20a (1) (P-3, P-5, P-6, P-7). Mr. Williams pled guilty to the cocaine charge and was placed on probation for one year and required to pay a fine of \$25 (P-7). The respondent has satisfactorily completed his period of probation (R-5).

According to Mr. Williams, for approximately one year prior to his cocaine arrest, he had been using cocaine periodically; however, he has not used any illegal drugs since his arrest. Mr. Williams stated that his arrest had a dramatic impact on his relationship with his girlfriend and their children (R-1), and that he will never again use illegal drugs. The respondent is willing to abide by any required periodic drug testing program.

The Division also had admitted into evidence a complaint filed against a Theodore I. Williams which charged that person with disorderly conduct, a violation of N.J.S.A. 2C:33-2, namely, the creation of a hazardous condition by putting a blanket on fire in a jail cell on February 3, 1984 (P-4). The respondent denied that he was incarcerated after his February 1, 1984 arrest, and denied that he was the person involved in the fire incident. I accept the respondent's representation that the fire incident involved another person with the same name, except for the middle initial.

By letter dated October 6, 1986, Isaac S. Cole, Pastor of the Second Baptist Church, stated that he has known Mr. Williams for several years and has found him to be a reliable and responsible person (R-6). By letter dated October 10, 1986, O.C. Edwards stated that he has known Mr. Williams for a number of years and considers him to be a person of good character (R-7). Shirley Seuft and Ruth M. Hughes, both coworkers of the respondent, wrote that the respondent is a reliable and dependable person (R-8, R-9).

I **FIND** that the facts as stated above are not in dispute, except that there is a factual dispute as to the circumstances surrounding the theft incident on March 23, 1983.

On that date, Mr. Williams stated that he was to meet a friend who worked at Harrah's Marina and they were to go out with two girls. At the hearing, Rynsie Thorpe confirmed that he is an employee of Harrah's Marina and that he was to meet the respondent on March 23, 1983, outside of the casino.

While respondent was standing outside of Harrah's Marina eating a hot dog, another friend, Glenn James, approached him. While they were talking, security officers from Harrah's Marina and Detective Daniel Ballance of the New Jersey State Police approached them and requested that they go into the casino. Mr. Williams stated that while he and Mr. James were being taken to the security office, Detective Ballance said to the other officers that they had "two more apes." While in the security office, Mr. Williams stated that he was identified by a customer as one of the persons involved in the attempted theft of coins in the casino. The respondent denied that he had been in the casino and denied being involved in the attempt to steal the coins. Mr. Williams stated that Detective Ballance was aggressive and that he was asked by Detective Ballance to be an informant regarding narcotic activities at the Golden Nugget.

Detective Ballance testified that he had been contacted about an attempted theft of coins from a customer at Harrah's Marina and that when he arrived, Mr. Williams and Mr. James were already in the security office. After the customer identified Mr. Williams, Detective Ballance interviewed the respondent privately in the Division's office. During this interview, Detective Ballance stated that Mr. Williams admitted that he had been involved in the attempted theft of the coins, and that he had distracted the customer by dropping a coin while Mr. James took two cups of coins belonging to the customer. The customer then chased Mr. James, who dispossessed the coins prior to leaving the casino. Detective Ballance denied calling the respondent and Mr. James "apes" and denied that anyone else in his presence made such a statement. Although he had no specific recollection, Detective Ballance stated that he may have asked Mr. Williams to act as an informant. The customer involved in the incident did not testify at the hearing.

Having heard the testimony as to the March 23, 1983 incident, I **FIND** Detective Ballance to be a credible witness. I **FIND** that Mr. Williams admitted that he was involved in the incident regarding the attempted theft of coins and that Detective Ballance did not make a disparaging remark about the respondent or Mr. James.

CONCLUSIONS OF LAW

In closing, Deputy Attorney General William E. Mountford argued that the Division had shown that Mr. Williams was convicted of the possession of marijuana in 1984, and had shown that Mr. Williams was guilty of conspiracy and the attempted theft of coins in a casino in 1983, and that these offenses, although not statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1) or (3), did render the respondent's continued registration inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g. Mr. Mountford recognized that in reaching a determination as to whether or not a registration would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4), it is necessary to consider the alleged criminal offense as well as the factors normally considered when deciding the issue of rehabilitation pursuant to N.J.S.A. 5:12-91d, Davis v. Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (Aug. 12, 1985), mod., Casino Control Commission (Dec. 27, 1985). In this matter, Mr. Mountford argued that the respondent had not shown rehabilitation since he lied at the hearing regarding the 1983 theft incident, and had alleged that Detective Ballance had made a disparaging remark about him and the other person arrested after the incident.

In closing, Lorraine Gormley stated that the 1983 incident involved a small amount of cocaine, that Mr. Williams was not a regular drug user, and that he had ceased using illegal drugs after his arrest because of the substantive impact that the incident had on his family. Ms. Gormley noted that the 1983 theft charge had been dismissed by the municipal court and she argued that the Division had not presented convincing evidence that Mr. Williams was involved in the incident. Further, Ms. Gormley argued that Mr. Williams had shown his rehabilitation, that he has maintained steady employment and is helping to support his family, and that he has successfully completed the period of probation for the cocaine conviction. She also stated that he is willing to submit to any drug testing program.

Based on the facts in this matter, I **CONCLUDE** that the Division has not shown that the respondent was guilty of any crime which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) or (3); however, it has shown that Mr. Williams was guilty of the possession of a controlled dangerous substance, a violation of N.J.S.A. 24:21-20a(1), and was guilty of conspiracy and the attempted theft of coins from a customer at a casino, violations of N.J.S.A. 2C:5-1 and 2C:5-2. Further, I **CONCLUDE** that the Division has not shown that the respondent was guilty of the 1984 offense involving the fire in a jail cell.

Since the Division has established criminal violations which can render the respondent's continued registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4), it is necessary to consider whether the respondent has shown his rehabilitation by clear and convincing evidence. N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of retaining a casino employee registration:

1. The nature and duties of the registrant's position.
2. The nature and seriousness of the offense.
3. The circumstances under which the offense occurred.
4. The date of the offense.
5. The age of the registrant when the offense was committed.

6. Whether the offense was an isolated or repeated incident.
7. Any social conditions which may have contributed to the offense.
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

After reviewing the facts in this matter, I **CONCLUDE** that the evidence of rehabilitation is not persuasive and that respondent's involvement in the attempted theft of coins from a customer in a casino and his attempt to conceal his involvement at the hearing renders his continued registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4). Based on this determination, I **CONCLUDE** that the only appropriate penalty in this matter is the revocation of the respondent's registration. Further, I **CONCLUDE** that Mr. Williams has not shown any persuasive evidence for the granting of a waiver pursuant to N.J.S.A. 5:12-91e.

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

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

December 3, 1986
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

December 4, 1986
DATE

Beatrice S. Tylutki
CASINO CONTROL COMMISSION

Mailed to Parties:

December 8, 1986
DATE

Charles H. [Signature]
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:

- P-1 Complaint filed against Theodore Williams, dated August 23, 1983
- P-2 Report of status of complaint against Theodore Williams, dated September 23, 1983
- P-3 Complaint filed against Theodore Williams, dated February 1, 1984
- P-4 Complaint filed against Theodore I. Williams, dated February 3, 1984
- P-5 Investigation report prepared by D. Mason, J. McCusker and S. Mangam, police officers employed by the Atlantic City Police Department
- P-6 Atlantic City Police Department arrest report regarding Theodore Williams, dated February 1, 1984
- P-7 Indictment filed against Theodore Williams and Eugene McNeal, and the disposition of the indictment
- P-8 New Jersey State Police Investigation Report prepared by Detective Daniel Ballance, dated August 26, 1983, and the arrest report as to Theodore Williams and Glenn James

FOR THE RESPONDENT:

- R-1 Letter from Theodore Williams to Walter N. Read, dated June 6, 1985
- R-2 Certificate of Extension of Enlistment in the National Guard, Sergeant Theodore Williams, dated September 2, 1977
- R-3 Certification of completion of vocational class in culinary assistance, awarded to Theodore Williams

- R-4 Employee Evaluation of Theodore Williams, dated November 7, 1985, prepared by the Golden Nugget Casino and Hotel
- R-5 Application for order granting termination of probation
- R-6 Letter from Isaac S. Cole, Pastor of the Second Baptist Church, dated October 6, 1986
- R-7 Letter from O.C. Edwards, dated October 10, 1986
- R-8 Letter from Shirley Seuft, dated October 11, 1986
- R-9 Letter from Ruth M. Hughes

WITNESSES

FOR THE PETITIONER:

Detective David Ballance

FOR THE RESPONDENT:

Theodore Williams

Rynsie Thorpe

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-370
OAL DOCKET NO. CCC 6017-86
REGISTRATION NO. 52432-40

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

Complainant, :

v. :

LENDELL C. WILSON,

Respondent. :

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 New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 1, 1987,

IT IS on this 3rd day of *JUNE* 1987, ORDERED that the initial decision is modified as follows:

(1) the Commission finds that, pursuant to a guilty plea, the respondent was convicted of a disorderly person's theft offense for which he was fined \$1,000, of which \$500 remained unpaid at the time of the OAL hearing; and

(2) the Commission rejects the ALJ's finding that the evidence "clearly demonstrates that the respondent was in receipt of stolen property pursuant to N.J.S.A. 2C:20-7...." There is no evidence in the record to establish that the respondent knew that the property was stolen at the time it came into his possession, an essential element for a

violation of N.J.S.A. 2C:20-7. However, the record does establish that he committed theft by unlawful taking of property valued in excess of \$500, a violation of N.J.S.A. 2C:20-3 and a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g). Nevertheless, for the reasons cited by the ALJ at pages 5-6 of the initial decision, the respondent is rehabilitated pursuant to N.J.S.A. 5:12-91(d); and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 6017-86

AGENCY DKT. NO. 85-370

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

Petitioner,

v.

**LENDELL C. WILSON,
Respondent.**

**Barth F. Aaron, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Lendell C. Wilson, respondent, pro se

Record Closed: December 31, 1986

Decided: February 11, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint before the Casino Control Commission (Commission) dated August 29, 1985, seeking an order to revoke the casino hotel employee registration of respondent Lendell C. Wilson. The Division's complaint alleges, among other things, that by virtue of respondent's indictment by the Camden County Grand Jury whereby he was charged with Receiving Stolen Property (in excess of \$500) in violation of N.J.S.A.

2C:20-7, he is automatically disqualified to continue to hold his registration under the provisions of N.J.S.A. 5:12-86c(1) by means of N.J.S.A. 5:12-86g.

PROCEDURAL ASPECTS

Subsequent to receipt of the Division's complaint, the Commission transmitted the matter, on September 10, 1986, 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 14, 1986, with a hearing scheduled for December 22, 1986, which was adjourned. The hearing was conducted on December 31, 1986, at the Atlantic City Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record in the matter was considered closed on December 31, 1986.

UNDISPUTED FACTS

Based upon the testimony and other evidence offered at the hearing, the following facts are neither disputed nor contested and, therefore, are hereby adopted, by reference, as **FINDINGS OF FACT**.

On November 3 and 4, 1983, Swank Audio Visuals, Inc. (Swank) of Washington, District of Columbia was commissioned to give a presentation and demonstration at the Hyatt Hotel (Hyatt), Cherry Hill, New Jersey. On the morning of November 4, 1983, a representative of Swank noticed that two portable Motorola "walkie-talkie" radios with antennae and belt holders were missing from the hotel's Marlton Room, the location for the presentation and demonstration. The missing radios were new and valued at \$1,125 each (P-3). On November 11, 1983, Paul Powers of Swank completed two Missing Equipment Reports setting forth a description and the serial numbers of the missing radios together with a conclusion that the walkie-talkies were "... removed during the night. Most likely while (Marlton) room was being set." (P-7)

Respondent was an employee of the Hyatt in its Convention Services Department on November 3, 1983, assigned the "grave yard shift" which commenced at 12:00 a.m. on November 4, and ended at 8:00 a.m. the same day. Respondent's duties included, among other things, the setting up and taking down of tables and chairs for small and large group meetings in the Hyatt's various convention and meeting rooms.

On or about February 15, 1984, respondent approached Gary Gessford, Director of Audio Visual Services at Hyatt, to inquire as to whether Gessford could recharge portable radios. Gessford asserted that respondent would have to bring the unit in to determine the type of charger it would require. Respondent complied and brought one of the radios to Gessford for his inspection. When Gessford observed the equipment he recognized it as a professional walkie-talkie, one which the average citizen would not ordinarily possess. Also, that the charger is generally sold with this type of radio. Gessford was aware of the two missing radios from the November 4, 1983 incident and immediately contacted the security office at the Hyatt Regency in Washington, D.C. to inquire as to whether it had any information about the radio respondent had delivered to Gessford. The Washington, D.C. Hyatt had no information. Gessford thereafter contacted the Motorola Corp. of Cherry Hill, New Jersey, which reported the unit in Gessford's custody had been stolen. Gessford contacted respondent and inquired as to whether respondent was interested in selling the two units. Respondent replied that he would sell the radios to Gessford for \$35 each because they were no longer of any use to respondent.

Gessford reported his conversation to David Carr, Director of Convention Services at Hyatt. Carr contacted the Cherry Hill Township Police Department (CHPD) and an investigation was conducted by Kenneth Johnson, Investigator, CHPD (P-3 and P-4). Carr also met with respondent and Steven A. Fishman, Supervisor, on February 16, 1984. Fishman's corrective communication indicated respondent stated to Fishman and Carr that respondent took the radios from outside the Hyatt building proper, but on its grounds, which were located by a garage door next to the Marlton Room. Respondent asserted he took them on the morning of Friday, November 4, 1983, after respondent had completed his work shift (P-8). Respondent was suspended from his Hyatt position on February 16, 1984, pending the outcome of the police investigation.

As a consequence of Investigator Johnson's investigation the matter was turned over to the Camden County Prosecutor who presented it to the Camden County Grand Jury. On March 1983, the Grand Jury handed up Indictment No. I-1064-04084, on one (1) count, charging respondent with Receiving Stolen Property, N.J.S.A. 2C:20-7.

Respondent was subsequently released into the custody of the Camden County Pretrial Intervention Program (PTI) upon the application and recommendation of the Coordinator of the Camden County PTI and with the consent of the Camden County

Prosecutor (P-5). The terms and conditions of respondents PTI included; 100 hours of community service plus \$1,000 fine. Respondent had not completed the terms and conditions of his PTI program at the time of the hearing. He had completed only 30 hours of the 100 hours of community service. In addition, respondent had paid \$500 of the \$1,000 fine to date, whereby the Court has allowed him to pay \$100 per month until the full amount due and owing is satisfied.

Respondent contends that the criminal offense, N.J.S.A. 2C:20-7 was downgraded to a disorderly persons offense, however, no evidence was produced to support this contention. Notwithstanding respondent's failure to fully comply with the terms of the PTI Program, the record indicates that the Indictment number 1064-84 against respondent had been dismissed (R-1). Respondent remains on probation until the total amount of the fine is satisfied.

Subsequent to respondent's suspension and termination by Hyatt, respondent applied for and was granted a casino hotel employee registration, number DGE 52432-40, by the Commission. On or about May 3, 1984, respondent commenced employment with the Tropicana Hotel/Casino as a Convention Services Houseman. On or about March 10, 1986, respondent was promoted in position to that of Convention Supervisor for which he earns approximately \$1,500 per month.

Respondent is married with two stepchildren aged 12 and 14 years and a three year old child of his own and his wife. The family receives no welfare or food stamp benefits and respondent is not subject to any alimony or child support payments.

Respondent testified, credibly, that he found the two portable walkie-talkie radios outside of the Hyatt Hotel proper, however, on its property. At approximately 8:00 a.m. on November 4, 1983, at the conclusion of his work shift, respondent was preparing to ride his bicycle home when he passed the garage connected with the Marlton Room of the Hotel and observed the two radios. He picked the equipment up and took it home. Respondent neither informed nor reported his "find" to officials of the Hyatt but, rather, retained them as his own.

This concludes the recital of the undisputed facts in this matter.

DISCUSSION AND CONCLUSIONS

The evidence in this matter clearly demonstrates that respondent was in receipt of stolen property pursuant to N.J.S.A. 2C:20-7, the value of which exceeded \$500. It is also evident that respondent was admitted for participation in the Camden County PTI Program pursuant to N.J.S.A. 2C:43-12 et seq. and R. 3:28 N.J. Court Rules (See: State v. Leonardis, 71 N.J. 85 (1976); State v. Pickett, 186 N.J. Super. 599 (App. Div. 1982)). Respondent contends, without any supporting evidence, his N.J.S.A. 2C:20-7 offense was downgraded to a Disorderly Persons offense. The evidence supports respondent's assertion that the criminal offense was dismissed, however, he remains under supervision of the Court until such time as he successfully satisfies the court imposed fine of \$1,000.

Having considered all of the evidence, and having given fair weight thereto, I **CONCLUDE** the Division has affirmatively met its burden of proof by a preponderance of the credible evidence that respondent violated a provision of law under N.J.S.A. 5:12-86c(1), by means of N.J.S.A. 5:12-86q.

I further **CONCLUDE** that respondent's violation of the law is a per se disqualifying offense and, thus, renders him unsuitable for continued registration and employment in the casino industry.

REHABILITATION

Notwithstanding these conclusions that respondent is disqualified, he is provided the opportunity to affirmatively demonstrate his rehabilitation for continued registration, by clear and convincing evidence, pursuant to N.J.S.A. 5:12-91d, which include the following factors to be considered by this tribunal and the Commission.

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

It is this tribunal's obligation to carefully weigh all of the objective data available concerning respondent so as to make the necessary subjective judgment about his character and potential for rehabilitation. As was said by the Court in Picket, *supra* at 602, "... amenability to rehabilitation can only be measured meaningfully on the basis of all of the true facts underlying his involvement with the criminal justice system."; coupled with respondent's behavior prior and subsequent thereto.

This court, pursuant to section 91d of the Act, examined respondent extensively, on the record, with respect to the eight factors enumerated therein and, therefore, makes the following **FINDINGS OF FACT**.

Respondent is now 28 years of age and was 25 years old when he committed the N.J.S.A. 2C:20-7 offense on November 4, 1983. Respondent has one prior reported arrest and conviction for assault and battery upon a police officer in 1976 which arose out of an incident with his then girlfriend who was intoxicated and resulted in a fine of \$125. He admits to the N.J.S.A. 2C:20-7 offense and demonstrated remorse for doing so.

Subsequent to his termination by Hyatt as a consequence of his involvement with the theft of the two portable radios, respondent was granted a casino hotel employee registration and commenced employment with the Tropicana on or about May 3, 1984 as a Convention Services Houseman. On or about March 10, 1986, respondent was promoted in position to Convention Supervisor responsible for six housemen on each of the two work shifts. His responsibilities include, among other things, the supervision of the housemen in setting up and taking down of chairs, tables, food services equipment and audio visual equipment for banquets and meeting functions. An appraisal of his work performance at the Tropicana demonstrates that respondent is fully satisfactory in all categories and superior with respect to his cooperation with management and others (R-3 and R-2).

Respondent has had an unblemished employment record at the Tropicana for over two and one half years and seeks to improve his employment status in the casino industry by way of an application for a casino employee license in the future.

Applying the eight factors to be considered under section 91d of the Act, the record demonstrates that respondent is now employed in a supervisory capacity with the Tropicana Hotel Casino as a Convention Supervisor in its Convention Services. He has been promoted from the position of Convention Services Houseman to his present position grounded upon a favorable work record and appraisal. The offense of violating N.J.S.A. 2C:20-7 was serious as to disqualify him from continued registration in the casino industry and occurred on November 4, 1983, more than three years ago when respondent was 25 years of age. The offense had no connection or nexus with the casino industry and was an isolated event with no similar violation, either prior or subsequent to the herein charge. Respondent has, since the criminal offense, entered into a stable marriage with its attendant family responsibilities to a wife and three minor children.

Having carefully considered all of the evidence and having given fair weight thereto, I **CONCLUDE** that respondent has demonstrated, by clear and convincing evidence, his rehabilitation.

Accordingly, I **CONCLUDE** that no penalty or sanction shall be assessed against respondent.

Therefore, I **ORDER** that the Division's complaint against Lendell C. Wilson be and is hereby **DISMISSED**.

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

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

11 February 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

February 3, 1987
DATE

W. J. Rapp
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 18 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

LIST OF EXHIBITS

For the petitioner:

- P-1 Investigative Summary Report (2 pgs)
- P-2 Camden Co. Prosecutor's Report of Criminal Investigation (2 pgs)
- P-3 Cherry Hill Police Dept. Offense Report (4 pgs)
- P-4 Statement of Gary Gessford (2 pgs)
- P-5 Certified Copy of Indictment #I-1064-04-84 and PTI Order (4 pgs)
- P-6 Letter from Charles J. Hill dated August 15, 1985 (1 pg)
- P-7 Letter from Paul Powers dated October 20, 1986 with Attached Reports (5 pgs)
- P-8 Corrective Communication

For the respondent:

- R-1 Letter, December 10, 1985 to Lyndell Wilson from Mary Beth Neilson, Ass't Deputy Public Defender
- R-2 Letter, November 17, 1986 to Lindell Wilson from Scheryl Gant, Training Manager and Louis P. McFadden, Director of Human Resources, Tropicana Hotel/Casino
- R-3 Tropicana, Non-management Performance Appraisal Summary

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-99
OAL DOCKET NO. CCC 2635-86
REGISTRATION NO. 46242-40

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : FINAL ORDER
Complainant, :
V. :
THERESA ANN WINTHER,
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 3, 1986,

IT IS on this 25th day of February 1987, ORDERED that the initial decision is modified to correct the statutory reference for the respondent's disqualification to N.J.S.A.

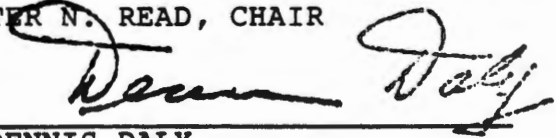
5:12-86(c)(3), rather than -86(c)(1);

IT IS FURTHER ORDERED that the casino hotel employee registration held by Theresa Ann Winther is revoked substantially for the reasons stated in the initial

decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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(a).

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 2635-86

AGENCY DKT. NO. 86-99

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

Petitioner,

v.

THERESA ANN WINTHER,
Respondent.

Ellen N. Hersh, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Mark Pfeffer, Esq., for the respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: September 26, 1986

Decided: October 20, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of Ms. Winther's casino hotel employee registration (No. 46242-40), pursuant to Section 129 of the Casino Control Act (Act). The Division's action is predicated upon criminal charges filed against Ms. Winther on August 23, 1985, alleging violation of N.J.S.A. 24:21-19(a)(1), possession of a controlled dangerous substance with intent to distribute, possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1), and conspiracy to distribute a controlled dangerous substance in violation of N.J.S.A. 24:21-24. The respondent asserts rehabilitation pursuant to Section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 19, 1986. Respondent requested a hearing on April 3, 1986. On April 15, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 26, 1986, and the matter was scheduled for hearing on September 26, 1986, at the request of respondent's counsel. The matter was heard on September 26, 1986, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

On August 22, 1985, Detective Dennis Munoz and three other Atlantic City undercover detectives were driving in a vehicle heading East on Pacific Avenue in Atlantic City. While his vehicle was stopped for a traffic signal at the intersection of Indiana and Pacific, Detective Munoz observed a vehicle to his immediate left. He saw Ann Grannis, a passenger in the other vehicle, take a vial, remove some substance from the vial, hold the substance to her nose and snort it. Ms. Grannis then passed the substance to the driver of the vehicle, Theresa Ann Winther, who also proceeded to snort the substance. After the light turned green, Ms. Winther made a left turn toward the Atlantis Casino Hotel and pulled into a parking lot on Indiana Avenue. The detectives followed the vehicle into the parking lot and arrested both Ms. Winther and Ms. Grannis.

The vial from which both woman snorted a substance field-tested positive for cocaine. In addition, Ms. Winther's purse contained 15 plastic baggies containing a white powder. All the baggies were field-tested positive for cocaine. Theresa Ann Winther and Ann Grannis were then charged with possession of a controlled dangerous substance, possession of a controlled dangerous substance with intent to distribute and possession of narcotic paraphernalia. A drug analysis conducted by the New Jersey State Police Laboratory in Hammonton, New Jersey revealed that the evidence submitted was, in fact, cocaine (P-1).

On September 3, 1985, Theresa Ann Winther and Ann Grannis were indicted by an Atlantic County Grand Jury. On October 25, 1985, Theresa Ann Winther entered a plea of guilty to possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1). The charge of possession of controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19a(1) and a conspiracy charge were dismissed as part of a negotiated plea bargain.

On November 22, 1985, Theresa Ann Winther was sentenced to a one-year probation, imprisonment for two days and credit for time served; further, she was fined \$1,000.00 and was required to pay \$25.00 to the Violent Crime Compensation Board within 90 days. Ms. Winther complied with the terms of her sentence.

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-86c(1) as
Incorporated Within Section 86g

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. It has been stipulated between the parties that on October 25, 1985, respondent pled guilty to possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1). It has been further stipulated that respondent possessed a controlled dangerous substance with intent to distribute on August 22, 1985, in violation of N.J.S.A. 24:21-19(a)(1). The Division contends that the admitted unprosecuted conduct (N.J.S.A. 24:21-19(a)(1)) renders respondent statutorily disqualified from being a registrant.

Based upon the aforesaid stipulation, I **CONCLUDE** that respondent is statutorily disqualified from being a casino hotel registrant, pursuant to Section 86c(1) of the Act as incorporated within Section 86g.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her

rehabilitation. N.J.S.A. 5:12-91d. This section sets the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

Ms. Winther is employed as a food service worker (waitress) at the New Yorker Restaurant within the Trump Plaza Casino Hotel. She is 24 years old and has been successfully employed in the industry for approximately three years.

Respondent concedes that on August 22, 1985, she possessed a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19(a)(1). Ms. Winther argues that this was an isolated incident not likely to be repeated. However, it is impossible for me to assess the likelihood of recidivism after listening to the testimony of respondent. Respondent at times appeared bored and distracted; she was evasive when responding to questions on cross-examination. On direct examination, her testimony failed to enlighten.

Respondent's successful completion of a one-year probation in six months is commendable and reflects positively with regard to rehabilitation (R-2). The fact that her union shop steward holds her in high esteem also contributes to her rehabilitation (R-1).

Although respondent has made some rehabilitative effort, the statutory burden is upon respondent to come forward with clear and convincing evidence that she has been rehabilitated. While I hope and trust that respondent has learned from her experience, I am greatly disturbed by her apparent lack of candor. Her failure to provide an explanation or motivation for her actions on August 22, 1985, leave me with serious doubt as to her fitness to hold a casino hotel registration.

Even after considering the nature of her duties, her otherwise unblemished record, her successful employment in the industry and her early termination of probation, her evasiveness, whether intentional or not, and the limited rehabilitative efforts demonstrated, lead me to **CONCLUDE** that Ms. Winther has failed to meet her statutory burden. While I am sympathetic to the hardship that this decision may entail, Ms. Winther made a conscious decision to distribute drugs. She must live with the consequences of that decision.

Therefore, I **CONCLUDE** that respondent has failed to establish by clear and convincing evidence her rehabilitation pursuant to Section 91d of the Act.

(C) PENALTY

Sections 129 and 130 of the Act provides for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. Given the fact that respondent has failed to establish her rehabilitation by clear and convincing evidence, the respondent's registration must be **REVOKED**.

ORDER OF DISPOSITION

It is **ORDERED** that the casino hotel employee registration (registration no. 46242-40) held by Theresa Ann Winther be **REVOKED**.

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

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

10 - 20 - 86
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

October 21, 1986
DATE

Bernadette J. Friger
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 23 1986
DATE

Ronald J. Parker x.s.
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

For the Petitioner:

Detective Dennis Munoz, Atlantic City Police Department

For the Respondent:

Theresa Ann Winther

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Investigation and Arrest Report from the Atlantic City, New Jersey Police Department, Complaint filed against Theresa Ann Winther, Request for Examination of Evidence and Judgment of Conviction, dated November 22, 1985

For the Respondent:

R-1 Letter from Joseph Hoover, Union Shop Steward

R-2 Application for Order Granting Termination of Probation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-67
OAL DOCKET NO. CCC 2189-85
APPLICATION NO. 52609-21

APPLICATION OF ALLEN O. WOODY, III :
FOR A CASINO EMPLOYEE LICENSE :

ORDER

A hearing having been held before the Office of Administrative Law; and an initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions and a reply having been filed by the parties; and the parties having filed briefs on the issue of whether the applicant's investment and participation with others in a illegal gambling operation in Roanoke, Virginia, from February to April 1978, constitutes the offenses of conspiracy to maintain a gambling resort, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:37-4, and maintenance of a gambling resort, in violation of N.J.S.A. 2C:73-4; and the Commission having considered the entire record in this matter at its public meeting of November 20, 1985,

IT IS on this ^{30th} day of June 1987 ORDERED that the initial decision is modified as follows:

The applicant's \$2,000 investment and partnership with Mr. John Joplin in the operation of an illegal gambling operation in Roanoke, Virginia, between February and April 1987, constituted criminal conduct in the Commonwealth of

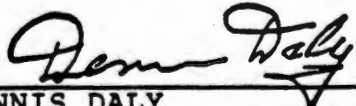
Virginia as evidenced by the applicant's arrest for conducting an illegal gambling enterprise in violation of Va. Code § 18.2-328. This conduct also constitutes the offense of conspiracy to maintain a gambling resort, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:37-4. The applicant's actions thus disqualify him pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

Based on the ALJ's findings on the applicant's good character and disqualification, the applicant has not demonstrated by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90(h).

IT IS FURTHER ORDERED that the casino employee license application of Allen O. Woody is denied based substantially on the reasons set forth in the initial decision, as modified, which is incorporated by reference and made a part hereof; and

IT IS FURTHER ORDERED that Allen O. Woody is prohibited from applying 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
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2189-85

AGENCY DKT. NO. 85-EA-67

ALLEN O. WOODY, III,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

Luther G. Anderson, Esq., for petitioner (Horn, Caplan, Goldberg, Gorny & Daniels, attorneys)

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

Record Closed: September 13, 1985

Decided: September 23, 1985

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

Petitioner, Allen O. Woody, III, seeks licensure as a casino employee permitting him to act as a junket representative. The Division of Gaming Enforcement (Division) Department of Law and Public Safety opposes petitioner's application for casino licensure based upon allegations that petitioner's licensure would be inimical to the policy of the Casino Control Act (Act) within the meaning of Section 86c(4) of the Act as incorporated in Section 90e. In addition, the Division contends that the petitioner does not possess the requisite good character, honesty and integrity for licensure within the meaning of Sections 89b(2) and 90b of the Act, as incorporated in Section 102.

PROCEDURAL HISTORY

Petitioner filed a Personal History Disclosure Form-2A on March 5, 1984, requesting temporary licensure as a junket representative pursuant to N.J.S.A. 5:12-102. On April 26, 1984, petitioner was issued a temporary license as a junket representative pursuant to N.J.S.A. 5:12-102(e). On February 22, 1985, the Division objected to Mr. Woody's licensure. Petitioner requested a hearing on April 5, 1985, and on April 16, 1985, the Casino Control Commission (Commission) transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on July 15, 1985, before Administrative Law Judge Joseph F. Fidler, and the matter was scheduled for hearing on August 30, 1985, before Administrative Law Judge Stephen W. Thompson. The hearing was conducted on August 30, 1985, at the Ventnor Municipal Building, Ventnor, New Jersey.

FINDINGS OF FACT

Mr. Woody is 37 years of age and is the sole owner of Town Clown Ice Cream located in Roanoke, Virginia. This enterprise consists of a fleet of trucks retailing ice cream products in various Roanoke neighborhoods.

On May 19, 1978, the petitioner was arrested and charged with six counts of feloniously operating an illegal gambling enterprise at 2211 Williamson Road, Roanoke, Virginia, in violation of Section 18.2-328, Code of Virginia. On June 1, 1978, petitioner entered guilty pleas to four counts of conducting an illegal gambling operation and was fined an aggregate sum of \$2,060. The Division contends that the Virginia conviction is comparable to a violation of N.J.S.A. 2C:37-2, promoting gambling.

Petitioner testified to the circumstances underlying this incident. Between February 11, 1978 and April 13, 1978, Mr. Woody admits to monetarily banking the game at 2211 Williamson Road, participating in gambling activities and on occasion dealing blackjack. During this period, Mr. Woody was a co-owner of a struggling convenience store attempting to increase business. Mr. Woody knew of the game and supplied the participants with food. As a result, Mr. Woody was invited to participate both monetarily and actively in the gaming operation. Petitioner's involvement terminated on or about April 13, 1978, after suffering losses in the venture of approximately \$500 on a \$2,000 investment.

Detective Sergeant Steven Lugar, Roanoke City Police Department, testified that the raid conducted at 2211 Williamson Road, Roanoke, Virginia, on May 19, 1978 was the largest gambling raid ever conducted in the city of Roanoke. Each room had different tables set for different games. A number of individuals arrested had prior criminal records and two of the individuals arrested were armed, including Mr. John Joplin, petitioner's partner in the game.

On June 12, 1985, another raid was conducted on the premises at 2211 Williamson Road. Ten of the individuals involved in the raid had previously been arrested or convicted of various gambling offenses, including John Joplin. During the raid, Detective Sergeant Lugar noticed petitioner across the street observing the raid. Petitioner explained that one of his ice cream trucks had suffered a breakdown on Williamson Road in the vicinity of 2211 and that he was dispatched to resolve the problem. Detective Sergeant Lugar explained that Williamson Road is a four-lane highway and that parking is not permitted on either side. Furthermore, Detective Sergeant Lugar testified that if a breakdown had occurred in the immediate vicinity, he would have been aware of it. Assuming petitioner's explanation for the purpose of this decision, Mr. Woody admitted frequenting the premises at 2211 Williamson on two or possibly three occasions from May 12 to June 12, 1985. Petitioner testified that his purpose in going to the premises was to advertise his junkets to Nevada among the participants of the game. He neither promoted the game nor participated in it. Petitioner contends that his presence at 2211 Williamson Road did not break any Virginia laws to the best of his knowledge.

Petitioner offered two character witnesses, Messrs. Richard Flora and Dennis Rey. Mr. Rey indicated that petitioner's reputation in the community for good character, honesty and integrity is "very high, there is a great deal of respect for Allen." Mr. Flora, City Manager, Covington, Virginia detailed petitioner's involvement with the Roanoke College Alumni Association and in particular, petitioner's personal generosity to a fraternity brother in distress. In addition, petitioner offered numerous and impressive character references attesting to his reputation for good character, honesty and integrity (P-4 to P-14, P-16). Mr. Woody's civic and charitable activities include participation in his neighborhood crime watch program, participation in the Parent Teacher Association, participation in collecting funds for the heart fund, contribution of space on his ice cream trucks for posting photographs of missing children, and involvement in the Roanoke Valley Safety Council safety campaign in connection with his ice cream company. Mr. Woody is

also active in operation P.U.S.H. through his college fraternity. Exhibit J-1 indicates a very candid and cooperative attitude during the investigation of his junket representative license. The report indicates that Mr. Woody freely discussed the details of his 1978 gambling conviction.

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

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(4)

The criteria for evaluating inimicality are similar to the factors to be considered with regard to rehabilitation. In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

Petitioner contends that his 1978 Virginia conviction for operating an illegal gambling enterprise does not render licensure inimical to the policies of the Act. I agree. The remoteness of time, petitioner's numerous civil and charitable activities and the relatively short duration of Mr. Woody's involvement are all factors in Mr. Woody's "rehabilitation." I am persuaded that the 1978 conviction per se is not inimical to the policies of the Act. However, Mr. Woody's admission that he visited the premises at 2211 Williamson Road on two or three occasions in the spring of 1985 to advertise junkets to Nevada is very disturbing. It appears that Mr. Woody has maintained contacts and relationships with people of questionable and shady backgrounds.

Petitioner argues that his efforts to induce participants to take their business to Nevada should be applauded. It is also asserted that the participants in the illegal game would not be guilty of any crime in New Jersey. This analysis misses the point with regard to inimicality.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(h)(6). Related directly to this purpose, the Legislature stated "that the regulatory provisions... are designed to extend to strict State regulation to all persons. . . practices and associations related to" casinos and that the "comprehensive law-enforcement supervision. . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

I applaud Mr. Woody's candor and honesty. But Mr. Woody's continued relationship, however innocent, with those of known criminal background strike at the very heart of public confidence in the regulatory scheme as espoused in the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that licensure of Mr. Woody as a junket representative would be inimical to the policies of the Act, pursuant to Section 86c(4).

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

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

Mr. Woody has amply demonstrated his unswerving friendship and loyalty to those in need of his assistance. If ever I am in need of a friend, I would like Mr. Woody to be that friend. His concern and devotion for others, his exemplary family life, his reputation for good character, honesty and integrity as attested to by numerous leaders in a community would normally persuade me that Mr. Woody possesses the requisite good character, honesty and integrity for licensure. However, his continued association with those frequenting the premises at 2211 Williamson Road, when he knew or should have known of the illegalities involved indicate that Mr. Woody does not possess the requisite good character for licensure.

I regretfully **CONCLUDE** that petitioner has not established, by clear and convincing evidence, that he possesses the requisite degree of good character, pursuant to N.J.S.A. 5:12-89 b(2).

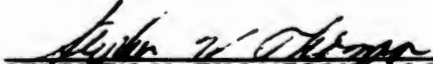
ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Allen O. Woody, III for a casino employee license, permitting him to act as a junket representative, be **DENIED**.

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

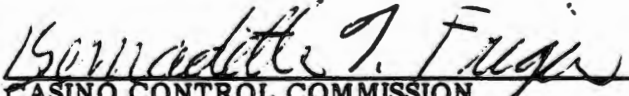
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9-23-85
DATE


STEPHEN W. THOMPSON, ALJ

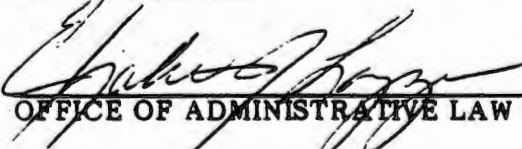
Receipt Acknowledged:

9/24/85
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 24 1985
DATE


OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

- J-1 Stipulation of Facts, dated August 30, 1985
- J-2 Request For Admissions, dated August 30, 1985

- P-1 Personal History Disclosure Form 2A, dated February 29, 1984
- P-2 Letter from Richard Durette, dated August 21, 1985
- P-3 Receipt from Fat Boy's Wrecker Service, dated June 12, 1985
- P-4 Letter from Raphael E. Ferris, dated September 7, 1985
- P-5 Letter from David A. Melesco, Esq., dated September 4, 1985
- P-6 Letter from Senator Virgil Goode, Jr., dated September 5, 1985
- P-7 Letter from L. Thad James, Principal, Cave Spring Elementary School, dated June 14, 1985
- P-8 Letter from Martha I. Edwards, Executive Director, Roanoke Valley Safety Council, dated September 9, 1985
- P-9 Letter from Robert H. Kulp, dated September 11, 1985
- P-10 Letter from Robert K. Fitts, President and C.E.O., MOD-U-Kraf Building Systems, dated September 11, 1985
- P-11 Letter from Donald Anderson, Ph.D., dated September 11, 1985
- P-12 Letter from L. Thad James, dated September 12, 1985
- P-13 Letter from Charles C. Costigan, dated September 11, 1985
- P-14 Letter from Kenneth R. Garren, Ph.D., Associate Dean for Academic Affairs, Roanoke College, Salem, Virginia, dated September 6, 1985
- P-15 Receipt from Brambleton Auto Service, Inc., dated June 14, 1985
- P-16 Letter from Congressman Dan Daniel, dated September 9, 1985
- P-17 Letter from Postmaster Richard J. Klare, Jr., dated September 11, 1985

- R-1 Diagram of the neighborhood surrounding 2211 Williamson Road, dated August 30, 1985
- R-2 Not moved into evidence
- R-3 Code of Virginia Section 18.2-325

WITNESS LIST

For the petitioner:

Dennis Rea

Richard Flora

Allen O. Woody, III

For the respondent:

Detective Sergeant Steven Lugar

CASINO CONTROL COMMISSION DECISIONS

July - December 1987

A - J

PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-227
OAL DOCKET NO. CCC 4806-86
REGISTRATION NO. 58309-40
ORDER NO. 87-32-4

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
JUAN A. ALICEA, :
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 August 19, 1987,

IT IS on this 10th day of September 1987, ORDERED that the initial decision is modified as follows:

The respondent's 1983 conviction for theft from the person in violation of N.J.S.A. 2C:20-3 constitutes a third degree theft offense and thus disqualifies the respondent pursuant to N.J.S.A. 5:12-86(c)(1);

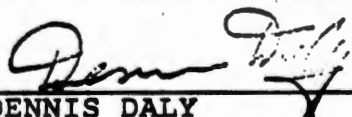
In light of the respondent's failure to disclose his conviction on his personal history disclosure form and his resulting disqualification under N.J.S.A. 5:12-86(b), the respondent has not demonstrated by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-91(d).

ORDER NO. 87-32-4

IT IS FURTHER ORDERED that the casino hotel employee registration held by Juan A. Alicea is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4806-86

AGENCY DKT. NO. 86-227

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

Petitioner,

v.

JUAN ANTONIO ALICEA,

Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Joanne C. Ciancimino, Deputy Attorney General, at the prehearing conference only)

Juan Antonio Alicea, respondent, pro se (Henry Zerella, Esq., at the prehearing conference only (Pancari, Zerella, Tedesco & Pancari, attorneys))

Record Closed: May 19, 1987

Decided: July 2, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Juan Antonio Alicea, respondent and the holder of casino hotel employee registration no. 58309-40, had committed a criminal offense which disqualified him from continued registration under N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-91, and had committed a violation of section 86b of the Casino Control Act (Act), which also disqualifies him from continued registration, for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The respondent opposed the action and contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 23, 1986. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter dated July 8, 1986, the respondent requested a hearing. On July 21, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on September 29, 1986. Thereafter, counsel for the respondent withdrew. The matter was heard on May 19, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Alicea is 23 years of age (P-1). He has resided in Vineland for his entire life. The respondent left high school after completion of his junior year. He currently resides with his mother and stepfather.

The respondent was employed as a baker for the majority of the period from February 1979 to November 1984, by Dunkin' Donuts in Vineland. Initially, he was employed on a part-time basis, and later became a full-time employee. He left this position for better employment opportunities.

On July 14, 1983, the respondent was involved in an incident which led to his arrest. On August 9, 1983, the respondent was indicted by a Cumberland County grand jury and was charged with violations of N.J.S.A. 2C:15-1a(1), robbery, and N.J.S.A. 2C:20-3, theft from the person (P-2). On September 22, 1983, as the result of a plea bargain agreement, the respondent pled guilty to a violation of N.J.S.A. 2C:20-3, theft from the person, and the first count was dismissed by the prosecutor. On December 16, 1983, the respondent was sentenced to one-year probation, payment of \$25 to the Violent Crimes Compensation Board, and directed to write a letter of apology to the victim. The respondent satisfied his sentence and his probation was terminated early.

On February 5, 1985, the respondent submitted his Personal History Disclosure Form-4A (PHDF-4A) to the Commission (P-1). Thereafter, he was issued casino hotel employee registration no. 58309-40. The respondent responded in the negative to question no. 9 which, in part, states:

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? [Emphasis in original]

The respondent testified that he was aware of his conviction at the time he completed his PHDF-4A. He believed that his chances to obtain employment in the casino industry would be improved if he did not have a criminal record. The remainder of the respondent's explanation for the circumstances underlying his nondisclosure was in dispute and will be discussed, infra. During a June 1986 telephone interview conducted by a Division agent, the respondent stated that his nondisclosure was the result of his belief that his criminal record would hinder his chances for licensure.

On February 7, 1985, the respondent was employed by Bally's Park Place Casino Hotel (Park Place) as a busperson in the employee cafeteria (R-1 and R-2). Approximately six months later, the respondent was promoted to the position of busperson in the Prime Place Restaurant. On December 8, 1986, the respondent was promoted to the position of food server. His employment at Park Place has been positive in all respects and he is considered to be a hard worker. The respondent's goals are to seek a position at a management level.

The respondent has not committed any other violations of the criminal laws.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the respondent's involvement in the theft, the reasons for his nondisclosure on his PHDF-4A, and his rehabilitative efforts.

The respondent testified that at the time of the theft he was not employed and resided with his mother, who was on welfare, and his stepfather, who was also unemployed. There was no food in the household and the utilities had been shut off. The respondent acted out of desperation and on the spur of the moment. He observed a customer of the Security Savings and Loan Association at a drive-in window. The respondent took the bank tube and fled. There was \$100 in the tube. He was arrested shortly thereafter.

The respondent also described the circumstances underlying his plea. He was represented by a public defender. At the time the plea was entered, the public defender mentioned the possibility of an expungement in the future upon no further misconduct and the successful completion of probation; however, the respondent never pursued an expungement.

Concerning the nondisclosure of his criminal record history on his application, the respondent testified that in addition to his belief that the absence of a criminal record would enhance his opportunities in the casino industry, he thought the incident would never come up and he thought of expungement.

The respondent also testified that he would not repeat his criminal misconduct because his incarceration for 36 hours was a bad experience and taught him that crime does not pay.

Prior to making findings of fact, it is necessary to assess Mr. Alicea's credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a registration, he has a direct interest in the outcome and a bias in these proceedings. Given the nature of the disputed testimony, together with the absence of any further criminal misconduct, the absence of any evidence to the contrary and in consideration of the totality of the respondent's testimony and his apparent sincere attitude, I am willing to accept his testimony in all respects.

Nevertheless, it appears that respondent's nondisclosure was based on his overriding the fear that full disclosure of his criminal record would have a negative impact upon his employment opportunities, i.e., licensure, in the casino industry.

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

1. The respondent's testimony was credible and persuasive in all respects.
2. The respondent's involvement in criminal misconduct in 1983 was due primarily to his feelings of desperation.
3. The respondent's nondisclosure of his criminal record history on his PHDF-4A was due primarily to his belief that full disclosure would have a detrimental impact upon his employment opportunities in the casino industry, including licensure.
4. There is little likelihood, if any, that the respondent will repeat his criminal misconduct.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's conviction constitutes a violation of section 86c(1) and that the respondent's nondisclosure on his PHDF-4A constitutes a violation of section 86b, which require that his registration be revoked.

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

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

So that fully informed 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. 5:12-76(b)(8); 80(a) and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

There was no doubt that the respondent fully understood his obligation to disclose his criminal record history on his PHDF-4A; however, he did not. Further, his failure to disclose was knowing and intentional. The respondent acknowledged that his nondisclosure was the direct result of his apprehensions that disclosure would negatively affect his opportunities for licensure and employment. Therefore, the failure to disclose constitutes a violation of section 86b.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of section 86b, which disqualifies him from continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application of violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division alleged that the respondent's conviction for a violation of N.J.S.A. 2C:20-3 is a disqualifying offense under section 86c(1).

However, it is apparent that the respondent's conviction was a disorderly persons offense and, as such, is not an automatic disqualifying offense. I so CONCLUDE.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 2C:20-3 is a disqualifying criminal offense under section 86c(1).

Accordingly, there was no need for the respondent to establish his rehabilitation, pursuant to section 91d. I so **CONCLUDE**.

(C) 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 registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee 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 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 licensee or registrant involved with respect to the gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; . .

The respondent committed an unambiguous violation of section 86b, which cannot be ignored. The violation was intentional and without justification. On any occasion when a licensee or registrant commits a violation of the Act, there is an inherent risk to the integrity of gaming operations. Although the respondent has earned a positive employment history within the casino industry, such cannot now be considered. More specifically, the respondent's ability to earn a positive employment record was the direct result of his knowing violation of section 86b. To now consider the positive nature of his employment would be to condone his misconduct and encourage others to act in a similar manner. Aside from the respondent's nondisclosure, he appears to have otherwise

overcome his prior misconduct, and there is little likelihood, if any, of a repetition thereof. Nevertheless, the respondent's violation of section 86b is a very serious breach of the Act and must be dealt with in a very serious manner. Accordingly, the respondent's registration must be **REVOKED**. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against the respondent's casino hotel employee registration be **GRANTED**, and that registration no. 58309-40 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.

July 2, 1987
DATE

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

Receipt Acknowledged:

July 2, 1987
DATE

M. Gorcey
CASINO CONTROL COMMISSION

Mailed to Parties:

July 8, 1987
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ks/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 New Jersey Casino Control Commission - Personal History Disclosure Form-4A, Juan Antonio Alicea, filed on February 5, 1985 (12 pages)
- P-2 State of New Jersey v. Juan Alicea, New Jersey Superior Court - Cumberland County, Law Division (Criminal), Indictment No. I-0465-8-83, Indictment, filed August 9, 1983; Judgment of Conviction, December 16, 1983 (5 pages)
- R-1 Letter from Steven A. Furman, September 10, 1986
- R-2 Letter from John McEachern, September 10, 1986

WITNESS LIST

For the petitioner:

Juan Antonio Alicea

For the respondent:

Juan Antonio Alicea

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-152
APPLICATION NO. 65232-21
REGISTRATION NO. 72049-40
OAL DOCKET NO. CCC 3142-87
ORDER NO. 87-48-5

APPLICATION OF DIANE M. ARRASMITH

a/k/a DIANE M. KARR

FOR A CASINO EMPLOYEE LICENSE

ORDER

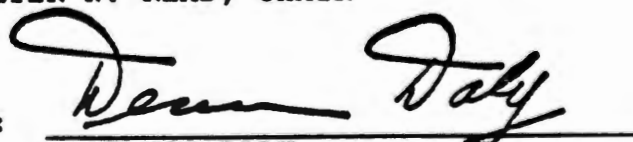
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 18th day of December 1987, 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 made a part hereof.

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 3142-87

AGENCY DKT. NO. 87-EA-152

**DIANE M. ARRASMITH,
a/k/a DIANE M. DUGGAN,
a/k/a DIANE M. KARR,**

Petitioner,

v.

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

Respondent.

Lorraine Gormley, Esq., for the petitioner (Cape-Atlantic Legal Services, attorney)

**Nancy P. Scharff, Deputy Attorney General (W. Cary Edwards, Attorney General of
New Jersey, attorney)**

Record Closed: October 22, 1987

Decided: November 6, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Diane M. Arrasmith, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), did not object to the issuance of a casino employee license to the petitioner. The Commission, however, voted to afford the petitioner the opportunity to proceed to a hearing before taking further action on the petitioner's application as the Commission had questions

based upon the Division's report concerning the petitioner's good character, honesty and integrity, which the petitioner must establish pursuant to section 90b, which incorporates section 89b(2) by reference, prior to her receiving a casino employee license.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so she could be employed as a craps dealer in the casino industry. By letter to the Commission, dated February 20, 1987, the Division did not object to the issuance of a casino employee license to the petitioner. By letter dated March 2, 1987, the Casino Control Commission notified the petitioner that it had concerns regarding portions of the petitioner's criminal record and voted to afford the petitioner the opportunity to proceed to a hearing before taking any further action on the petitioner's license application. By application dated May 1, 1987, which was received by the Commission on May 4, 1987, the petitioner requested a hearing. On May 7, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 8, 1987, 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 July 16, 1987. The issue set forth at the prehearing conference to be resolved at the hearing was 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).

A hearing was held on October 22, 1987, at the Longport Municipal courtroom, Longport Municipal Building, Longport, New Jersey, after which the record closed.

THE FACTS

The petitioner is a reformed drug abuser. The petitioner's father committed suicide when she was 11 years old, and her mother, who was an alcoholic, died of cirrhosis of the liver when the petitioner was 18 years old. The petitioner began using drugs when she was 13 years old. Her brother's girlfriend supplied her with heroin, and the petitioner used heroin on and off for several months as she was "curious." At 14 years of age, the petitioner began drinking at her future husband's house. The petitioner became pregnant at 16 years of age, dropped out of school in the tenth grade, and married her boyfriend.

Two children were born to this marriage, which lasted three years and ended because the petitioner's husband physically abused her.

After separating from her husband, the petitioner, at the age of 19, moved in with her sister. The petitioner began using drugs again and began bartending in her sister's bar. This continued for approximately three years.

In 1977, the petitioner met Michael Karr, her present husband. She continued using drugs, mostly "speed," and in 1978, the petitioner and Michael Karr moved to Swedesboro, Pennsylvania. In 1979, the petitioner and Michael Karr were seriously injured in a motorcycle accident. Both of them spent three to four months in the hospital, during which time their brother kept the children. Upon leaving the hospital, the petitioner and Michael Karr moved to Michael's stepfather's farm so the family could take care of them. As their only income was the petitioner's welfare check, the couple began to sell drugs. After Michael received a settlement from a job-related injury, he rebuilt the farm and began selling livestock and boarding horses. The couple stayed there "a couple years" but did not realize an income from the business.

In 1981, Michael's stepfather sold the farm to pay debts, and the couple moved to Lafayette Hills, Pennsylvania, and rented a house. The petitioner received welfare and Michael obtained a job in construction. Michael's godfather knew they needed money so he gave them a briefcase of drugs to sell. The sale of drugs became their main source of income. They would sell drugs daily to whomever would buy them. During this time the petitioner used "speed" and abused alcohol. She would "get high" ten or more times a day, and this continued for a two-year period. Their house was an open house to the local drug culture, and two or three other people resided with them at any given time. The petitioner's addiction became so bad that all of her profits from the sale of drugs went to buying drugs to support her own habit.

On April 30, 1978, the petitioner attended a banquet in Pennsylvania. At the banquet, a friend gave her a small bottle of "THC or speed." The petitioner was too intoxicated to use the drug so she put it in her pocketbook. Later that night, she and some friends decided to go to the shore. In the early morning of May 1, 1978, the petitioner was arrested in Winslow Township, New Jersey for driving under the influence of alcohol. A search of her car revealed a hypodermic needle and a substance which was believed to be a controlled dangerous substance was found in her purse (R-3). The

petitioner was charged with Possession, Use or Being Under the Influence of a Controlled Dangerous Substance (comparable to N.J.S.A. 24:21-20) and Possession of Drug Paraphernalia, in violation of N.J.S.A. 2A:170-77.5. The first charge was administratively dismissed on February 5, 1979, and the drug paraphernalia charge was remanded to municipal court, where it was dismissed on February 14, 1979.

In either 1983 or 1984, the petitioner entered the Norristown State Hospital Detoxification Center. She was placed on experimental drugs to which she had a violent reaction. Due to this reaction, she left the hospital after only five days, against medical advice. She then placed her children in foster care, and she entered the Eagleville Rehabilitation Center. She was placed on valium and adamin. She became "strung out" on the drugs so she left the Center. She went to a girlfriend's house, got high and then returned to Eagleville. She remained in Eagleville for four or five weeks. She nearly completed the program; however, Eagleville was too close to home and the urge to leave was too great. She returned home and got high again. During this time, Michael Karr was in the Cradenzia House Rehabilitation Center.

On June 12, 1984, the petitioner "got high" at a friend's house. Her friend's father indicated he was going to visit, so the petitioner's friend asked the petitioner to take some hypodermic needles from the house so her father would not find them. The petitioner left with Roney Jones and the petitioner was asked to drive the car. The petitioner was stopped by the Lower Providence Police Department for operating a vehicle with a severely damaged windshield (R-4). The petitioner had no valid Pennsylvania driver's license and the license plate on the car had been reported stolen. A burnt marijuana cigarette was also seen in the ashtray of the car by the arresting officer. The petitioner and Harold Jerome Jones, a/k/a Roney Jones, were both arrested. The petitioner's purse was searched and another marijuana cigarette, three hypodermic needles, and two personal checks drawn on the account of Joseph Milice were found. One check was in the amount of \$55.00 payable to the petitioner and appeared to be signed by Mr. Milice. Another check on the same account was payable to "Joseph." The police contacted Mr. Milice, who knew the petitioner and stated that he was missing three checks from two of his checkbooks which were left on a desk. He identified the checks the petitioner had in her possession and stated that he did not give the petitioner permission to take them or process them. The petitioner gave a statement to the police admitting that she took the checks and filled them out. She also admitted that the marijuana was hers but stated that the hypodermic needles belonged to a friend (R-4).

The petitioner testified that the marijuana in the ashtray was not hers, and that she never used marijuana, but she put the marijuana in her pocketbook when she was stopped by the police officer. She also testified that she was living with Joe Milice at the time. She indicated that Joe Milice had asked her to clean his house but then refused to pay her. She took one check, but wrote "Joseph" on the payee line. She then took another check and completed it correctly. The petitioner did not cash or attempt to cash the checks but just held them for personal satisfaction.

The petitioner was charged with Receiving Stolen Property (comparable to N.J.S.A. 2C:29-7); Possession of a Controlled Dangerous Substance (comparable to N.J.S.A. 24:21-20); Forgery (comparable to N.J.S.A. 2C:21-1a); Theft by Unlawful Taking (comparable to N.J.S.A. 2C:20-3), and Possession of Drug Paraphernalia (comparable to N.J.S.A. 2A:170-77.5) (R-4). On November 14, 1984, the petitioner entered a plea of guilty in Montgomery County Court to the paraphernalia, forgery, and theft charges. She was sentenced to three years probation on the forgery charge, one year probation on the theft charge, and incarceration not to exceed twelve months (with six months credit for time served) on the possession of drug paraphernalia charge (R-5). Additionally, she was fined \$374.00 and was ordered to pay court costs. The petitioner has paid all fines and court costs and will complete her probationary period on November 1, 1987.

The petitioner believes that her incarceration was beneficial. She did not use drugs and it was a horrible experience which she does not want to relive. When she was released from jail, Michael Karr had been at the Institute for Human Development for 10 months, and the petitioner arranged to enter the White Deer Run Rehabilitation Center in the Poconos. The petitioner completed the 45-day residential program at White Deer Run. She then entered Sobriety House for Women in the Poconos. Sobriety House is a structured program for rehabilitated women. While in Sobriety House, the petitioner attended Narcotics Anonymous meetings twice a day.

When the petitioner left Sobriety House, she moved to Atlantic City to be with Michael, who was nearing the completion of his rehabilitation program at the Institute for Human Development. The petitioner's rehabilitation counselors taught her that she needed to change her location, break with her past, and get away from the pressures at home, her old friends, and the drug culture. When she arrived in Atlantic City, she was allowed to stay in an old empty motel on Atlantic Avenue for two or three weeks. She

began going to Narcotics Anonymous meetings at the Institute for Human Development, and she got a job as a waitress at the Poseidon Restaurant.

When Michael left the Institute, his mother helped him and the petitioner get an apartment in Ventnor. The couple lived in that apartment for one year. The petitioner had an objective to reunite her family. In October 1985, the petitioner got her 13-year-old daughter back, and in December, she got her 14-year-old son. At Christmas, the Pennsylvania Division on Children and Youth permitted the petitioner's three younger children to visit the petitioner. The petitioner realized that their apartment was too small for their family, so after the children were returned to foster care, the petitioner began to look to move. In February 1987, Michael and the petitioner moved to a three-bedroom apartment. In March 1986, the petitioner went back to court to attempt to regain custody of her three youngest children. At the hearing the judge indicated that he was impressed with the remarkable changes the petitioner has made in her life, and he granted the petitioner's request for custody of her children.

In May 1987, Michael and the petitioner were married after living together for nearly 10 years. The couple has two children by the petitioner's first marriage: Eddie, 14 years of age, and Dana, 13 years of age; and three children of their own: Jared, 7 years of age, Chance, 6 years of age, and Jill, 4 years of age. Jill was born with apnea (Sudden Infant Death Syndrome), and the petitioner has shown great responsibility in dealing with the problem.

The petitioner has been gainfully employed since arriving in Atlantic City. She worked at the Poseidon Restaurant as a waitress from one-and-a-half years. She left the Poseidon and took a job as a valet at Resorts because there were no raises at the Poseidon and she thought she would be making more money at Resorts. She then joined Local 54. After working as a valet for six months, the petitioner became employed as a waitress at the Brasserie Restaurant at the Tropicana Hotel and Casino. The petitioner was granted a casino hotel employee registration by the Commission, and she has been working at the Tropicana since February 1987. The petitioner now has a second job. She works as a waitress at the Cafe 2825 three nights a week.

The petitioner graduated from Casino Schools, Inc., on March 31, 1986, after successfully completing a 240-hour craps dealer course. She was issued certificate number CRP 2489 (P-2 and P-3). (The Division contends that this training qualifies the

petitioner to perform as a craps dealer, and is partially the basis of their not objecting to her licensure in such position.)

The petitioner fully cooperated with the Division during the course of its investigation. The petitioner still attends Narcotics Anonymous meetings. In 1978, the petitioner successfully completed her G.E.D., and she now intends to attend Stockton State College and major in English or Journalism. She has not used illegal drugs since June 1984.

Lita "Diane" Powell testified that she is a friend of the petitioner, whom she met at Narcotics Anonymous meetings. Diane also worked with the petitioner at the Poseidon Restaurant and works with her now at the Brasserie Restaurant. Ms. Powell characterized the petitioner as a good, kind, hardworking person. She indicated the petitioner attends PTA meetings, school open houses, and is a den mother for Cub Scouts. The petitioner has a good reputation in the community as being dependable and honest and has a good reputation at work as being hardworking.

The petitioner's husband, Michael Karr, testified that the life they had before and their life now are two different lives. Before, they were trapped. They both had habits: if they used drugs, they needed more drugs. Michael indicated that since the petitioner had gone to jail and completed her rehabilitation, he has seen a complete turnaround in her. It is as if the drug addict had died and went away. Michael is now a transportation supervisor at the Atlantis Hotel and Casino. He was recently granted a casino employee license as a craps dealer by the Commission, (OAL DKT. NOS. CCC 4063-86 & 6033-86 (July 16, 1987), decided by the Commission (September 2, 1987), and he also holds a casino hotel employee registration.

Michael testified that the petitioner is a den mother for Cub Scouts, and held a Halloween party for children in the neighborhood. He indicated she works with the PTA at school and that she takes the children to church every Sunday. According to Michael, rehabilitation counselors told him that the odds for addicted couples to both become successfully rehabilitated are 400 to 1. They are both very proud of their lives now. They do "normal things." They work, are not on welfare, bought a car, bought a house, have credit, have two savings accounts, a checking account, and four major credit cards.

The petitioner submitted five letters of recommendation. The first, written by Ellen Hagarty, room manager of the Brasserie Restaurant, indicates that the petitioner has been an employee of the restaurant for seven months and that her continued employment is expected (P-4).

The second, written by Lynnae Smith, Probation Officer, Atlantic County Probation Department, indicates that the petitioner's probationary term is about to terminate. She states that the petitioner "has been consistent with her reporting, and complied with all conditions of her probation." (P-5)

The third, written by Diane Powell, indicates that she and the petitioner are close friends, and states:

To my knowledge Diane has remained drug free, and has worked hard to become a good member of our society. She is truly a good example of what a rehabilitated person can achieve, if their will is strong enough.

The fourth, written by John Delemitas, owner of the Poseidon Restaurant, states:

Diane Arrasmith was employed here at the Poseidon Restaurant from March, 1985 to September, 1986. During that time, Diane was a dependable, hard worker, who got along with customers, and fellow employee's [sic] as well.

Finally, Josephine Caporizzo, caseworker, Montgomery County Office of Children and Youth, writes:

Montgomery County Office of Children and Youth has been involved with Diane Karr since January 1983. At that time we were asked to provide assistance for Jill Karr (D.O.B. 12/14/82) who had respiratory distress and apnea.

Approximately a year and a half later the children were voluntarily placed in foster care.

I have worked with Ms. Karr for approximately three years and have seen her grow as an individual. She was able to identify her dependency and overcome it. She has remained drug free for over 2 1/2 years. Ms. Karr has worked hard to regain her children, housing having been one of the problems. The children and their mother are bonded to each other. She is a capable parent and a caring individual and is providing a safe and stable environment for her children.

At the last court hearing held on April 30, 1986, the Master and the Guardian Ad Litem congratulated the parents on their successful efforts to change their lives in order to be responsible adults.

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 immaturity. I am also inclined to believe that it was the result of inexperience and the overriding difficulty in dealing with problems of enormous proportions. Both her parents died at an early age, the petitioner became pregnant, married, was physically abused, divorced, and was thrown into the drug culture at an extremely early age. The attendant social conditions and pressures were great. Although her actions were clearly and admittedly wrong, the underlying circumstances and her rehabilitation do mitigate substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct since her rehabilitation supports this finding.

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

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:

....

- (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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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.

N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Arrasmith was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner is now 30 years old. Her convictions resulted from criminal activity occurring in April 1978 and June 1984. However, the criminal conduct was directly related to a serious drug problem which the petitioner experienced beginning at the age of 13. Her last drug use occurred in 1984, and she has since participated in several drug rehabilitation programs. The petitioner has faithfully adhered to the

requirements of her probationary program and has paid all fines and costs. She has obtained gainful employment and, in fact, has two jobs. The petitioner and her husband are now providing support for her family in a lawful manner. Her involvement with drugs ended three years ago and she has had no further problems with the criminal justice system. Her status as a responsible wage earner has resulted in a stable economic environment for her family. In addition to the reuniting of her family and her successful employment, the respondent has taken further steps towards rehabilitation and establishing her reputation in the community for good character, honesty and integrity. She is active in the PTA, is a Cub Scout den mother, sponsors parties for neighborhood children, and regularly takes her children to church. The petitioner and her husband now have productive lives. They own a home, a car, have credit, two savings accounts, and a checking account. They are no longer involved in the drug culture, and their lives have been completely changed. The petitioner has fully accepted responsibility for her misconduct and expressed remorse over her prior conduct. She has now 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 the petitioner currently is a person of good character, honest and integrity, and is 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 Diane M. Arrasmith 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 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 November 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

November 9 1987
DATE

Receipt Acknowledged:

Milores Zayas
CASINO CONTROL COMMISSION

NOV 12 1987
DATE

Mailed to Parties:

Ronald L. Parker / x 5.
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

For the Petitioner

- P-1 Back to work release form indicating completion of treatment, White Deer Run Treatment and Rehabilitation Center, dated January 2, 1985.
- P-2 Letter of Peter G. Demos, Jr., President, Casino Schools, Inc., dated March 31, 1986, indicating course completion.
- P-3 Graduation Certificate from Casino Schools, Inc., dated March 31, 1986.
- P-4 Letter of Ellen Hagarty, Room Manager, Brasserie Restaurant, Tropicana Hotel and Casino, dated September 24, 1987.
- P-5 Letter of Lynnaye Smith, Probation Officer, Atlantic County Probation Department, dated September 23, 1987.
- P-6 Letter of Diane Powell, dated October 16, 1987.
- P-7 Letter of John Delemitas, owner of the Poseidon Restaurant, dated October 16, 1987.
- P-8 Letter of Josephine Caporizzo, Caseworker, Montgomery County Office of Children and Youth, undated.

For the Respondent

- R-1 Personal History Disclosure Form - 2A, received by the Commission January 28, 1986.
- R-2 United States Department of Justice, Federal Bureau of Investigation, Identification Record re: Diane Marie Arrasmith, dated March 18, 1986.
- R-3 Winslow Township Police Department Arrest Report re: Diane Marie Arrasmith, dated May 1, 1978.

R-4 Lower Providence Police Department Incident Report, Supplementary Report, Supplemental Report, and Arrest Record re: charges of June 12, 1984.

R-5 Lower Providence Township Police Department Case Disposition Report, dated November 14, 1984.

WITNESSES

For the Petitioner

Diane M. Karr, nee Arrasmith petitioner
Lita Diane Powell
Michael Howard Karr, petitioner's husband

For the Respondent

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-104
OAL DOCKET NO. CCC 270-87
LICENSE NO. 34064-21
ORDER NO. 87-25-4

APPLICATION OF LAWRENCE D. BALL

FOR RENEWAL OF 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 (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 1, 1987,

IT IS on this 13th day of July 1987, ORDERED that the initial decision is modified as follows:

The applicant's possession of 17 pounds of marijuana with intent to distribute, constitutes a violation of N.J.S.A. 24:21-19a(1), which requires disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g) rather than N.J.S.A. 5:12-86(c)(1) as stated by the ALJ.

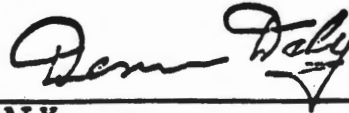
IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Lawrence D. Ball is prohibited from reapplying for or obtaining any other

registration, license, 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
WALTER N. READ

BY: _____

A handwritten signature in cursive script, appearing to read "Dennis Daly", written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 270-87

AGENCY DKT. NO. 87-EA-104

LAWRENCE D. BALL,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

& PUBLIC SAFETY,

DIVISION OF

GAMING ENFORCEMENT,

Respondent.

Lawrence D. Ball, petitioner, pro se

**Joanne Ciancimino, Deputy Attorney General for the respondent, (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: April 23, 1987

Decided: May 19, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns the application by the petitioner, Lawrence D. Ball, for renewal of his casino employee license (DGE 34064-21). The Division of Gaming Enforcement (Division) objects to renewal based upon petitioner's alleged arrest and guilty plea in Florida for possession of marijuana with intent to sell (comparable to N.J.S.A. 24:21-19(a)(1)). The Division further objects pursuant to Section 89(b)(2) alleging that the petitioner lacks the requisite good character, honesty and integrity for licensure. The petitioner asserts rehabilitation pursuant to Section 90h of the Casino Control Act (Act).

PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) on December 4, 1986 objecting to the renewal of petitioner's casino employee licensure. The petitioner requested a hearing on or about January 2, 1987. On January 12, 1987, the Commission transmitted the within matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before the Honorable Edgar R. Holmes on March 5, 1987, and the matter was assigned to the Honorable Joseph Fidler for hearing on April 23, 1987. On April 22, 1987 the within matter was transferred to the undersigned for disposition. The hearing was held on April 23, 1987, at the Somers Point Municipal Building, Somers Point, New Jersey. The record closed on the hearing date.

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. 24:21-19(a)(1).
- 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 within Section 90b.
- C. Whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Act.

THE FACTS

The petitioner, Lawrence Ball, is 29 years of age and has been a life-long resident of the state of New Jersey.

At the age of 16, Mr. Ball earned a private pilot's license. In June 1984 Mr. Ball rented a single-engine Cessna 172 aircraft from Suncoast Aviation in Clearwater, Florida, and flew the plane while he was carrying \$2500 in cash to Kingston, Jamaica. In Jamaica, Mr. Ball purchased seventeen (17) pounds of high-grade marijuana for \$800. He stowed the marijuana in the rear baggage compartment of the airplane. On June 5, 1984, Mr. Ball departed Kingston, Jamaica, with the marijuana and flew the plane to the Bahamas. After spending the night and having the plane refueled, Mr. Ball departed the Bahamas for the United States. Mr. Ball hoped to avoid surveillance radar by assuming a very low altitude after he crossed Bimini Island. Mr. Ball's aircraft entered the United States north of Ft. Lauderdale and proceeded to the Boca Raton area. He then turned south toward Ft. Lauderdale, then again turned north, finally landing at the Palm Beach International Airport.

During Mr. Ball's flight from the Bahamas, air patrol staff at the United States Customs Service had noticed the aircraft's unusually low altitude and dispatched two surveillance aircraft in order to observe the airplane. The Customs officers assigned to the surveillance aircraft landed at Palm Beach International Airport shortly after Mr. Ball. Mr. Ball's airplane was then searched and two oblong packages containing marijuana were found. The United States Customs agents turned the matter over to the Palm Beach County Sheriff's Office for prosecution.

On August 8, 1984, Mr. Ball appeared in the Circuit Court of Palm Beach County, West Palm Beach, Florida, and entered a plea of guilty to the offense of possession of marijuana in excess of 20 grams with intent to sell (R-2) in violation of Florida statute 893.13(1)(a), which appears to be substantially similar to N.J.S.A. 24:21-19(a)(1). Adjudication of guilt was withheld pending Mr. Ball's successful completion of three years' probation. The sentence imposed seems to be analogous to New Jersey's conditional discharge statute.

On June 11, 1986, the Palm Beach County Probation Department recommended that Mr. Ball be discharged from probation because he had complied with the rules and regulations of probation. An order discharging Mr. Ball from probation was entered that day.

The above is uncontroverted, believable and is thus FOUND AS FACT.

By way of mitigation, Mr. Ball explained that in 1984 he was employed at the Claridge Casino Hotel as a dealer. Although his take-home pay was approximately \$320 per week, he was deeply in debt. At the time, Mr. Ball was involved with Kathy, who was a fellow dealer. According to Mr. Ball, he was supporting both Kathy and to a lesser degree, Kathy's destitute uncle in Florida. Mr. Ball was under the impression that Kathy's uncle had a "life-threatening problem" that required corrective surgery. According to Mr. Ball, the "life-threatening" problem was a hernia.

Since Kathy's uncle was destitute, a hospital in Florida had agreed to perform the hernia operation at no charge. Shortly before the operation however, Kathy's uncle allegedly checked himself out of the hospital. Mr. Ball claims to have concocted the drug smuggling plan to pay for the operation for Kathy's uncle. In addition, Mr. Ball asserts that he was desperate and his motives were well-intentioned; however, there are many serious flaws in the testimony of Mr. Ball.

Mr. Ball failed to make any inquiry whatsoever into how much the hernia operation would cost. Furthermore, petitioner testified that for the quality of marijuana that he purchased, he estimated the street value of 17 pounds of marijuana to be approximately \$50,000. Although Mr. Ball claimed to be in dire financial straits, he hired an airplane in early May to make a "test" run to the Bahamas. He paid \$484 for the rental of that airplane. In addition, he and Kathy made several trips on commercial flights from New Jersey to Florida. The fact that Mr. Ball flew to Jamaica with \$2500 in savings substantially weakens his claim that he was in dire financial straits.

It appears that Mr. Ball spent over \$3000 to finance his drug smuggling scheme. Much of Mr. Ball's testimony concerning motivation was just not credible. In addition, key portions of Mr. Ball's testimony do not seem to coincide with the facts. In consideration of the foregoing, I must substantially discount Mr. Ball's professed reasons for planning and executing the smuggling of 17 pounds of marijuana into the United States.

DISCUSSIONS AND CONCLUSIONS

A. N.J.S.A. 5:12-86c(1) as incorporated within Section 86g

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Section 86g allows for the prosecution of "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."

Mr. Ball stipulated that on June 6, 1984, he was arrested and was charged with possession of marijuana in excess of 20 grams with intent to sell, in violation of Florida statute 893.13(1)(a). The Florida statute appears to be substantially similar to N.J.S.A. 24:21-19(a)(1), a disqualifying offense.

On August 8, 1984, Mr. Ball entered a guilty plea to the offense of possession of marijuana in excess of 20 grams with intent to sell. Mr. Ball was sentenced to three years' probation. The sentence imposed is substantially similar to New Jersey's conditional discharge statute.

After reviewing the documentary evidence, the stipulations and the testimony, I **CONCLUDE** that on June 6, 1984, Mr. Ball landed a private plane, which contained 17 pounds of Jamaican marijuana that he intended to sell in the United States, at West Palm Beach Airport, Florida. I further **CONCLUDE** that Mr. Ball is statutorily disqualified from holding a casino license pursuant to N.J.S.A. 5:12-86c (1) as incorporated within Section 86g.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;

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

First, Mr. Ball is licensed as a blackjack floorman and roulette dealer. As such he has substantial contacts with patrons of the casino.

Second, Mr. Ball stipulated that on June 6, 1984, he piloted a private plane containing 17 pounds of marijuana that was purchased in Jamaica and landed the plane at West Palm Beach Airport. Mr. Ball further stipulated that he intended to resell the marijuana to his friends in New Jersey. In New Jersey, possession of over 25 grams of marijuana with intent to distribute in violation of N.J.S.A. 24:21-19(a)(1) is a disqualifying offense. Since the Division has established by a preponderance of the credible evidence that respondent intended to sell 17 pounds of marijuana, Mr. Ball is statutorily disqualified from casino licensure.

Third, Mr. Ball did not satisfactorily explain why the \$3000 he used to plan and execute his drug smuggling scheme was not applied to the uncle's operation. Furthermore, Mr. Ball's professed motivation leaves numerous questions that were not satisfactorily explained by the petitioner.

Fourth, although the offense occurred on June 6, 1984, the planning and execution encompassed several months, including a "dry" run to the Bahamas. The severity of the offense is compounded by the fact that during this period of time, Mr. Ball was employed as a dealer at the Claridge Casino Hotel. He was aware of the standards imposed by the Act; yet, he willfully chose to ignore those standards and concocted a scheme to smuggle 17 pounds of marijuana into the United States.

Fifth, the petitioner was almost 26 years of age when he committed the offense. It is unlikely that his conduct was due to immaturity.

Sixth, I am satisfied that the offense was an isolated incident. However, Mr. Ball appears to be easily manipulated and given the temptations of the gaming industry, it is conceivable that this conduct could be repeated.

Seventh, there are no apparent social conditions which contributed to the incident.

Eighth, Mr. Ball is successfully employed in the industry (P-3, P-4, P-5). He appears to be a loving husband and a good father. According to Tony Glazier, Cape May County Probation Officer, Mr. Ball's probation was terminated a year early.

Given my doubts concerning Mr. Ball's purported motivation for the drug smuggling scheme and in consideration of the severity of the offense, I am not persuaded that the petitioner has met his statutory burden to establish his rehabilitation by clear and convincing evidence.

Therefore, I **CONCLUDE** that the petitioner, Lawrence Ball, has not established, by clear and convincing evidence, his rehabilitation pursuant to section 90h of the Act.

C. N.J.S.A. 5:12-89b(2) as incorporated within section 90b

Under section 89b(2) as incorporated within section 90b, Mr. Ball is required to demonstrate 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 the Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that the individual's actual character and attributes of good character, honesty and integrity are the key.

Witnesses Julia Quinn, Genevieve Hobbs-Sernie and Randy Ball testified, that in their opinion, Mr. Ball possesses the requisite good character, honesty and integrity for casino licensure. I am convinced that Lawrence Ball is a good father, good provider and a hard worker; however, his conduct was both knowing and premeditated. Mr. Ball's

explanation of the circumstances underlying his misconduct does not serve to mitigate the seriousness of his actions. After hearing Mr. Ball's testimony, numerous questions remain unanswered. I am persuaded that this failure to enlighten casts serious doubt as to petitioner's good character, honesty and integrity.

Therefore, I **CONCLUDE** that the petitioner has not established 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) as incorporated within section 90b.

D. PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division opposes the renewal of petitioner's casino employee license. Petitioner willfully and knowingly breached the standards imposed by the Act while employed by the Claridge Casino Hotel on June 6, 1984 by concocting a scheme to smuggle 17 pounds of marijuana into the United States. Given the severity of the offense and my doubts concerning petitioner's purported motivation, it is my belief that the continued licensure of Lawrence Ball would undermine public confidence in the integrity of the regulatory process and of gaming operations. I, therefore, **CONCLUDE** that the casino employee license held by Lawrence D. Ball should not be renewed.

ORDER OF DISPOSITION

It is **ORDERED** that the application of petitioner, Lawrence D. Ball to renew his casino employee license (DGE 34064-21) be **DENIED**.

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

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

5 12 87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

May 21, 1987
DATE

Receipt Acknowledged:

Deborah Zayas
CASINO CONTROL COMMISSION

May 22, 1987
DATE

Mailed to Parties:

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter, dated April 10, 1987, from Tony Glazier, Probation Officer, Cape May County Probation Department
- P-2 Letter, dated April 20, 1987, from Maryanne Bishoff
- P-3 Undated letter from Linda Reardon, Pit Boss, Trump Plaza Hotel
- P-4 Letter, dated April 14, 1987, from Donald B. Bayne, Floor Person/Pit Boss, Trump Plaza Casino Hotel
- P-5 Letter, dated April 14, 1987, from June McCook, Pit Boss, Trump Plaza Casino Hotel

For the Respondent:

- R-1 Post-Sentence Investigation Report - Florida Department of Correction
- R-2 Order withholding Adjudication of Guilt and Placing Defendant on Probation, dated August 8, 1984
- R-3 Petition for and Termination of Probation dated June 11, 1986
- R-4 Letter dated April 21, 1987 from Tony Glazier, Probation Officer, Cape May County Probation Department

WITNESS LIST

For the Petitioner:

Julia Quinn
Genevieve Hobbs-Sernie
Randy Ball
Lawrence D. Ball

For the Respondent:

William Rockafellow
Lawrence D. Ball

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-186
OAL DOCKET NO. CCC 4448-86
ORDER NO. 87-31-16

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

Complainant, :

ORDER

v. :

BALLY'S PARK PLACE, INC. :

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision-settlement by the Office of Administrative Law resolving the complaint of the Division of Gaming Enforcement against the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of August 12, 1987,

IT IS on this *21st* day of September 1987, ORDERED that the initial decision-settlement is modified as follows:

1. The citation to "N.J.A.C. 13:23.23(a)(2)" on page 5 of the initial decision-settlement is corrected to read "N.J.A.C. 13:2-23.23(a)(2)";
2. Pursuant to N.J.S.A. 5:12-107(b) and N.J.A.C. 19:42-2.1(a)(5), official notice of the respondent's

ORDER NO. 87-31-16

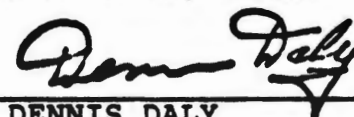
six prior dissimilar casino hotel
alcoholic beverage violations (Docket
No. 82-18, counts I-IV; Docket No.
82-64; Docket No. 83-64) is taken.

IT IS FURTHER ORDERED that the initial
decision-settlement, as modified, is adopted; and

IT IS FURTHER ORDERED that Bally's Park Place, Inc.,
pay a civil penalty in the amount of \$1,000, as stipulated
in the settlement, due and payable upon receipt of an
invoice from the Commission's Division of Financial
Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 4448-86

AGENCY DKT. NO. 86-186

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

Petitioner,

v.

BALLY'S PARK PLACE, INC.,

Respondent

**Wendy Alice Way, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Trent Dickey, Esq., for respondent (Sills, Beck, Cummis, Zuckerman, Radin,
Tischman and Epstein, attorneys)**

Record Closed: May 10, 1987

Decided: July 8, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The New Jersey Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed a complaint and amended complaint before the Casino Control Commission (Commission) alleging that respondent Bally's Park Place, Inc. (Bally's) violated certain New Jersey Alcoholic Beverage Control (ABC) statutes and regulations, as incorporated by reference into the New Jersey Casino Control Act (Act), as well as regulations promulgated by the Commission, by illegally decanting wine and illegally bottling wine in improperly labeled containers. Respondent Bally's responds to

the Division's Complaint by way of Notice of Defense and Request for Hearing, denying the allegations with a request that the complaint be dismissed with prejudice.

PROCEDURAL ASPECTS

The Division filed its Complaint before the Commission on May 15, 1986. Respondent Bally's filed its Answer on June 16, 1986. On July 7, 1986, 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. Thereafter, on or about July 3, 1986, the Division filed its Amended Complaint with the Commission which was subsequently transmitted to the OAL.

On August 8, 1986, the OAL was in receipt of respondent Bally's Motion for Stay and Consolidation, which was grounded, in part, upon a Complaint filed against GNOC, Corp. (t/a the Golden Nugget Hotel Casino) by the Division, whereby GNOC had requested a Declaratory Ruling interpreting certain statutes and regulations governing alcoholic beverages in this State. Respondent Bally's moved to be consolidated with GNOC in its application for a Declaratory Ruling asserting, among other things, that the legal issues in GNOC's Petition were applicable to Bally's. The Division opposed Bally's application. On August 20, 1986, however, the undersigned issued an Order granting respondent Bally's motion for a stay and; further, ordered that the Division's Complaints be consolidated for the purpose of hearing in the instant matter with that of State v. GNOC, (OAL DKT. NO. CCC 3858-86, Agency Dkt. No. 86-136) and State v. Claridge (OAL DKT. NO. CCC 4452-86, Agency Dkt. No. 86-137). On September 8, 1986, the Commission ordered the dismissal of GNOC's petition for declaratory ruling.

A prehearing conference was conducted on October 16, 1986, at which, among other things, the issues to be determined were agreed to and set forth on the record. It was further agreed by all parties that a second prehearing conference was to be held on February 13, 1987, with the plenary hearing scheduled for February 23 through March 5, 1987. At the February 13, 1987, second prehearing conference, respondent Bally's, joined by respondent's GNOC and Claridge, propounded and served upon the Division, a Motion to Compel Discovery. The Division propounded and served upon all respondents a Motion for Summary Judgment in its favor.

SETTLEMENT DISCUSSIONS

During the pendency of the herein consolidated matters, all parties to these actions were aware that a similar matter was before the OAL and the Commission in the matter of State v. Greate Bay Hotel and Casino, t/a Sands Hotel and Casino, (OAL DKT. NO. CCC 3857-86, Agency Dkt. No. 86-134, initial decision December 18, 1986; Commission's Final Order, March 16, 1987). As a consequence of the Commission's decision and final order in Greate Bay, the parties to the instant actions engaged in intensive settlement discussions and negotiations. The hearing dates were, therefore, adjourned and the parties were able to enter into duly executed Consent Order of settlement of the issues in controversy.

SEVERANCE OF THE CONSOLIDATED MATTERS

Having carefully reviewed and considered the entire record before me, I hereby move, sua sponte, to sever the consolidation of the three cases previously ordered consolidated for hearing. This purpose of this action is to deal fairly and independently with the parties so as not to confuse the resultant settlements and penalties as agreed upon by the individual respondents. Accordingly, this initial decision is concerned only with the resolution of the matter between the Division and respondent Bally's.

THE SETTLEMENT AGREEMENT

As a consequence of the settlement discussions and negotiations, the parties entered into a duly executed Consent Order which is set forth in toto as follows:

THIS MATTER, having come before the Honorable Lillard Law, A.L.J., the Judge designated to preside over this contested matter which has been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Alice Way, Deputy Attorney General, and Trent Dickey, Esquire, Attorney for Respondent, Bally's Park Place, Inc., and pursuant To said discussions, the following facts have been agreed upon and stipulated to:

1. Plaintiff, by and through its Division of Gaming Enforcement, 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 called "the

Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter called "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent Bally's Park Place, Inc. ("Bally") 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 is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Bally effective December 29, 1980, and has been renewed annually on that date. Bally has been conducting its casino hotel operations pursuant to said license continually to date since that time including at all times referenced herein.
4. Bally is the holder of, and operates pursuant to, a Certificate of Operation effective December 29, 1979, at which time Bally was the holder of a temporary casino permit. Said Certificate of Operation entitles Bally to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq. and the regulations promulgated thereunder.
5. By resolution dated January 29, 1986, the Commission renewed respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the period December 29, 1985 through December 29, 1986.
6. Pursuant to its C.H.A.B. license, Bally is authorized to serve patrons alcoholic beverages as well as to store alcoholic beverage inventories on-site in certain specific areas authorized for same.
7. On or about October 22, 1985, the Division conducted an on-site inspection of the C.H.A.B. licensed areas at Bally.
8. Said inspection resulted in the Division's discovery that bottles labeled Chantefleur Rose and Chantefleur Blanc de Blanc were being used to fill metal containers which dispense the wine to the Greenery Bar. The metal containers bore labels which stated "Rose" and "Chablis".
9. Subsequently, the Division conducted another on-site inspection of the C.H.A.B. licensed areas at Bally.
10. Said inspection resulted in the Division's discovery that bottles labeled Chantefleur Rose and Chantefleur Blanc de Blanc were being used to fill metal containers which dispense

the wine to the Lobby Lounge Bar. The metal containers bore labels which stated "Rose" and Chablis". Upon further investigation, the Division discovered that similar procedures for decanting bottles of wine into metal containers were implemented by Bally in the Prime Place By-the-Sea Service Bar.

11. In the course of its duties, the Division has inspected Bally's Greenery Bar, Lobby Lounge Service Bar and Prime Place-By-the-Sea Service Bar at least twice each year since December 1979 and has not cited Bally for any violations of regulatory provisions with respect to such dispensing of alcoholic beverages prior to the instant cause of action.
12. After Bally was notified by the Division that the Division considered Bally's dispensing of Chantefleur Rose from metal containers labeled "Rose" and Chantefleur Blanc de Blanc from metal containers bearing the label "Chablis" to be a violation of certain statutes and regulations, Bally ceased and corrected said practice within 24 hours to the satisfaction of the Division.
13. At all times, Bally has fully cooperated with the Division's inspections and investigation of this matter.

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charged Bally for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as for various violations of Title 33 and the regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends that Bally admits that Bally's practice of decanting wine from original, tax paid bottles into metal containers which bore labels which stated "Rose" and "Chablis" in the C.H.A.B. authorized locations of the Greenery Bar, the Lobby Lounge Bar and the Prime Place-By-the-Sea Service Bar constitutes violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:23.23(a)(2) and N.J.A.C. 13:2-28.1 as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the parties are desirous of amicably settling this litigation without the necessity of a full hearing; and

WHEREAS, the problems raised by the Division's Complaint were addressed by Bally's cessation of the aforementioned illegal activities within 24 hours after Bally was notified by the Division that it considered the aforementioned practices to be illegal; and
WHEREAS, the parties have agreed that the aforementioned practices constitute first violations of the Alcoholic Beverage Laws or Regulations or C.H.A.B. Laws or Regulations by Bally; and

WHEREAS, the Division agrees to withdraw its Motion for Summary Judgment and Bally agrees to withdraw its Motion to Compel Discovery;

IT IS, on this _____ day of April, 1987, **ORDERED** that Bally pay the sum of One Thousand Dollars (\$1,000); and it is further **ORDERED** that upon approval of the Commission and upon payment of said sum this matter shall be deemed fully adjudicated and resolved.

FINDINGS

Having reviewed and considered the record before me, I **FIND** that:

1. The parties have voluntarily entered into the settlement of this matter as evidenced by their signatures on the Consent Order; and
2. The settlement is a fair one and disposes of all issues in controversy; and
3. The settlement is consistent with the law.

CONCLUSIONS

I **CONCLUDE**, therefore, that the proposed penalty of \$1,000 be imposed upon respondent Bally's as agreed upon in the Consent Order.

I further **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

ORDER

It is hereby **ORDERED** that the parties comport with the terms and conditions of the duly executed Consent Order and that this matter is hereby **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.

7/8/87
DATE

Lillard E. Law *(Signature)*
LILLARD E. LAW, ALJ

July 9, 1987
DATE

Receipt Acknowledged:

Richard Zayas
CASINO CONTROL COMMISSION

JUL 13 1987
DATE

Mailed to Parties:

Ronald L. Parker *(Signature)*
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS

NONE

WITNESSES

None

SILLS BECK CUMMIS ZUCKERMAN RADIN
TISCHMAN & EPSTEIN, P.A.
33 Washington Street
Newark, New Jersey 07102
(201) 643-3232
Attorneys for Bally's Park Place, Inc.

State of New Jersey
Casino Control Commission
OAL Dkt. No. CCC-4448-86
Agency Ref. No. 86-186

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

Plaintiff,

-vs-

BALLY'S PARK PLACE, INC.,

Respondent.

CONSENT ORDER

THIS MATTER, having come before the Honorable Lillard Law,
A.L.J., the Judge designated to preside over this contested
matter which has been discussed by and between the parties
involved, W. Cary Edwards, Attorney General of New Jersey,
Attorney for the State of New Jersey, Department of Law and
Public Safety, Division of Gaming Enforcement, by Wendy Alice
Way, Deputy Attorney General, and Trent Dickey, Esquire,

Attorney for Respondent, Bally's Park Place, Inc., and pursuant to said discussions, the following facts have been agreed upon and stipulated to:

1. Plaintiff, by and through its Division of Gaming Enforcement, 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 called "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter called "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent Bally's Park Place, Inc. ("Bally") 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 is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Bally effective December 29, 1980, and has been renewed annually on that date. Bally has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

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

5. By resolution dated January 29, 1986, the Commission renewed Respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the period December 29, 1985 through December 29, 1986.

6. Pursuant to its C.H.A.B. license, Bally is authorized to serve patrons alcoholic beverages as well as to store alcoholic beverage inventories on-site in certain specific areas authorized for same.

7. On or about October 22, 1985, the Division conducted an on-site inspection of the C.H.A.B. licensed areas at Bally.

8. Said inspection resulted in the Division's discovery that bottles labeled Chantefleur Rose and Chantefleur Blanc de Blanc were being used to fill metal containers which dispense the wine to the Greenery Bar. The metal containers bore labels which stated "Rose" and "Chablis".

9. Subsequently, the Division conducted another on-site inspection of the C.H.A.B. licensed areas at Bally.

10. Said inspection resulted in the Division's discovery that bottles labeled Chantefleur Rose and Chantefleur Blanc de Blanc were being used to fill metal containers which dispense

the wine to the Lobby Lounge Bar. The metal containers bore labels which stated "Rose" and "Chablis". Upon further investigation, the Division discovered that similar procedures for decanting bottles of wine into metal containers were implemented by Bally in the Prime Place/By-the-Sea Service Bar.

11. In the course of its duties, the Division has inspected Bally's Greenery Bar, Lobby Lounge Service Bar and Prime Place/By-the-Sea Service Bar at least twice each year since December 1979 and has not cited Bally for any violations of regulatory provisions with respect to such dispensing of alcoholic beverages prior to the instant cause of action.

12. After Bally was notified by the Division that the Division considered Bally's dispensing of Chantefleur Rose from metal containers labeled "Rose" and Chantefleur Blanc de Blanc from metal containers bearing the label "Chablis" to be a violation of certain statutes and regulations, Bally ceased and corrected said practice within 24 hours to the satisfaction of the Division.

13. At all times, Bally has fully cooperated with the Division's inspections and investigation of this matter.

WHEREAS, The Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charged Bally for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as for various violations of Title 33 and the

regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and Bally admits that Bally's practice of decanting wine from original, tax paid bottles into metal containers which bore labels which stated "Rose" and "Chablis" in the C.H.A.B. authorized locations of the Greenery Bar, the Lobby Lounge Bar and the Prime Place/By-the-Sea Service Bar constitutes violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23(a)(2) and N.J.A.C. 13:2-28.1 as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Parties are desirous of amicably settling this litigation without the necessity of a full hearing; and

WHEREAS, the problems raised by the Division's Complaint were addressed by Bally's cessation of the aforementioned illegal activities within 24 hours after Bally was notified by the Division that it considered the aforementioned practices to be illegal; and

WHEREAS, the parties have agreed that the aforementioned practices constitute first violations of the Alcoholic Beverage Laws or Regulations or C.H.A.B. Laws or Regulations by Bally; and

WHEREAS, the Division agrees to withdraw its Motion for Summary Judgment and Bally agrees to withdraw its Motion to Compel Discovery;

IT IS, on this ____ day of April, 1987,

ORDERED that Bally pay the sum of One Thousand Dollars (\$1,000.00); and it is further

ORDERED that upon approval of the Commission and upon payment of said sum this matter shall be deemed fully adjudicated and resolved.

Hon. Lillard Law, A.L.J.

We hereby consent to the form and entry of the within Order.

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of New Jersey

By: Wendy Alice Way
Wendy Alice Way
Deputy Attorney General

SILLS BECK CUMMIS ZUCKERMAN RADIN
TISCHMAN & EPSTEIN, P.A.
Attorneys for Respondent,
Bally's Park Place, Inc.

By: Went Dickey
Went Dickey, Esquire

A031087/34

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-197
OAL DOCKET NO. CCC 196-87
ORDER NO. 87-49-10

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

Complainant, :

v. :

BALLY'S PARK PLACE, INC., :

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 incorporating the stipulation of facts and settlement entered into by Bally's Park Place, Inc.

(Bally's) 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 meeting of December 16, 1987,

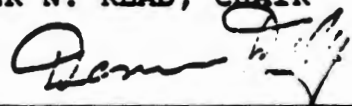
IT IS on this 23rd day of December 1987, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Bally's pay a civil penalty in the amount of \$4,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

ORDER NO. 87-49-10

IT IS FURTHER ORDERED the Bally's take corrective action in the form of training programs and the issuance of necessary instructions to its personnel, particularly security guards and cashiers, concerning the necessity of careful observation of those who appear in the casino room, including requiring acceptable proof of age from individuals of youthful appearance.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

NOV 06 1987

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 196-87

AGENCY DKT. NO. 87-197

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

Petitioner,

v.

BALLY'S PARK PLACE, INC.

Respondent.

Frances I. Sundheim, Deputy Attorney General, for the petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Shelley C. Waxman, Esq., for the respondent, Bally's Park Place, Inc.

Record Closed: October 15, 1987

Decided: October 28, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent, Bally's Park Place, Inc. More specifically, the Division of Gaming Enforcement (Division) alleges that respondent violated the provisions of N.J.S.A. 5:12-119(b) by allowing two minors to remain on the floor of its casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 10, 1986. The respondent filed an Answer to the complaint on December 15, 1986. On January 7, 1987, 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 scheduled in Atlantic City, New Jersey, on March 12, 1987 before the Honorable Lillard E. Law. The matter was scheduled for hearing on June 8, 1987. That hearing was subsequently adjourned until October 15, 1987. On October 14, 1987, this matter was transferred to the undersigned for disposition because of Judge Law's unavailability.

At the hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which was signed by the parties on October 15, 1987. The record closed on October 15, 1987.

FINDINGS OF FACT AND CONCLUSION

The Division and Bally's Park Place, Inc. have prepared a Stipulation of Facts (paragraphs 1-10) and Settlement which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

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

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

10-28-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

October 30, 1987
DATE

Bernadette P. Figue
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 2 1987
DATE

Donald J. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

By: Frances I. Sundheim
Deputy Attorney General

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-197

Stipulation of Facts and
Settlement
COMPLAINT

63

is hereby consented to and agreed by and among the parties as follows:

1. Respondent, Bally's Park Place (hereinafter called "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 had its principal place of business located at Park Place and Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Bally's is now the holder of a casino license issued 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 Bally's effective on December 29, 1980. Said license has been renewed on an annual basis. Bally's has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. 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 casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

4. By resolution dated December 29, 1985, the Commission renewed Respondent's casino hotel alcoholic beverage (C.H.A.B.) license for a period of one year.

5. Pursuant to its C.H.A.B. license, Bally's is permitted to serve alcoholic beverages to patrons of its casino who are of legal age to be present on the casino floor.

6. On October 5, 1986, at approximately 4:10 p.m., Stephen Bates, age 17, was ^{apprehended and detained by Bally security prior to being} arrested and charged with committing a theft on the casino floor at Bally's. At the time of his arrest it was ascertained that he had been gambling at Bally's, at which time, Mr. Bates was charged with being underage in a casino in violation of N.J.S.A. 5:12-119(a). A copy of the Investigation Report relative to this incident is attached hereto and incorporated herein as Exhibit "A".

7. On August 3, 1986, at approximately 12:30 p.m., New Jersey State Police assigned to the Division of Gaming Enforcement observed Thinh Vien La, a minor, age 18, playing a slot machine on the casino floor at Bally's. The subject was arrested and charged with being underage in a casino in violation of N.J.S.A. 5:12-119(a). A copy of the Investigation Report relative to this incident is attached hereto and incorporated herein as Exhibit "B".

8. N.J.S.A. 5:12-119(a) states:

No person under the age at which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino room except by way of passage to another room.

9. N.J.S.A. 5:12-119(b) states:

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...

10. By permitting underage patrons to gamble on the casino floor, as more fully described in paragraphs 6 and 7, Bally's has committed violations of N.J.S.A. 5:12-119(a) and (b), as N.J.S.A. 5:12-119(b) imposes an affirmative obligation upon the Respondent to ensure that underage persons do not remain on the casino floor.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated in paragraphs 6 and 7 are true and did, in fact, occur;

2. In recognition of the above noted violation of the Act and regulations promulgated thereunder relating to underage gamblers, Bally's will take corrective action in the form of training programs and the issuance of necessary instructions to its personnel, particularly security guards and cashiers, concerning the necessity of careful observation of those who appear in the casino room including requiring acceptable proof of age from individuals of youthful appearance;

3. In consideration of the foregoing violations, and the foregoing corrective action agreed upon by the Respondent, the parties agree that the Respondent shall pay a civil penalty of \$4,000.00 (\$2,000.00 per violation) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5);

4. The parties agree such penalty is just and equitable in accordance with the criteria set forth in N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's Complaint;

5. This stipulation shall be subject to the approval of the Casino Control Commission;

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

State of New Jersey
Department of Law and
Public Safety, Division
of Gaming Enforcement

Dated: 10/15/87

By: Frances I. Sundheim
Frances I. Sundheim
Deputy Attorney General
Attorney for Plaintiff

Bally's Park Place, Inc.

Dated: 10/15/87

By: Shelley C. Waxman
Shelley C. Waxman, Esq.
Assistant Counsel
Attorney for Respondent

A072886/60

JERSEY STATE POLICE

INVESTIGATION F

1. Station Casino Inv. Bur.		2. Code J024		3. Phone No. 609-441-3540		4. UCR		21. Prosecutor's Case No.		22. Division Case No. J02486-	
5. Crime / Incident Theft by unlawful taking-JD Underage gambling-JD				6. NJS 2C:20-3 5:12-119		23. Victim/s 1. Joseph C. Baram 2. 3.		SS No. 194-18-1783		24. Age 1. 61 2. 3.	
DATE AND TIME Between At X		8. Hour 1540		9. Day 1		10. Month 10		11. Date 5		12. Year 86	
27. Victim (1) Home Address 2609 Vlg. of Pennbrook, Levittown						215 Phone 928					
27A. Victim (1) Local Address						Phone					
13. Crime / Incident Location Park Place & Boardwalk						13A. Code 080200		28. Employer Retired			
14. Municipality Atlantic City		15. County Atlantic		16. Code 0102		29. Person Reporting Crime/Incident Bally's Security Dept.				30. Date and 10-5-86	
17. Type of Premises Casino		18. Code 72		19. Weapons - Tools none		20. Code none		31. Address 609 Ohio Ave., Atlantic City, NJ			
32. Modus Operandi Accused bumped into victim several times and reached into victims right front pants pocket removing currency.											
33. Vehicle none		34. Year		35. Make		36. Body Type		37. Color		38. Registration No. and State	
39. Serial No. or Identification		40. Currency \$432		41. Jewelry		42. Furs		43. Clothing		44. Auto	
45. Misc.		46. Total Value Stolen \$432		47. Total Value Recovered \$432		48. Teletype Alarm		49. Technical Services		50. Technician - Agency	
51. Injuries 1. Knife/Gunshot Wound 1[4] 2. Serious Injury 2[] 3. Minor Injury 3[] 4. No Injury 9. Other/Unknown		52. Reason For Visit 1. Gambling 1[1] 2. Vacation 2[] 3. Business 3[] 4. Convention 5. No. 2, No. 3, or No. 4 and Gambling 6. Atlantic City Resident 9. Other/Unknown		53. Victim/Offender Relation 1. Relative 1[5] 2. Neighbor 2[] 3. Friend 4. Acquaintance 5. Co-worker 9. Other/Unknown		54. Victim's Residence 1. Atlantic City 1[4] 2. Atlantic County 2[] 3. New Jersey 3[] 4. Out-of-state 9. Other/Unknown		55. Offense Location 1. Casino 2. Immediate 3. Within Mo. 9. Other/Unknown			
56. Was Subject(s) Victimized of Monies Won at Casino? 1. Yes 2. No 9. N/A 1[2] 2[] 3[]						57. Prior Victimization in Atlantic City 1. More Serious 3. Same Crime 1[4] 2[] 2. Less Serious 4. Not Available					
58.		59.		60.		61.		62.			
List Accused - List and Identify Additional Victims - Describe Perpetrators or Suspects - Action Taken, Include Findings and Observations of Investigation - Physical Evidence Found - Where By Whom - Disposition and Technical Services Performed - Interview of Victims - Witnesses - Persons Contacted - Accused Suspects - List - Describe Stolen Property - Value - Court Action - Attach Statements.											
63. No. of Accused 1		64. Adult		65. Juvenile		66. Status Crime Cl. Arrest		67. Status Case Court		68. UCR Status Month Year	
69. Date Cleared		70. Name Accused: Stephen Bates - 3401 Hemburger St., Philadelphia, PA		71. Age 17		72. Sex M		73. Race 2B		74. 7-2	
October 5, 1986											
This date the undersigned was detailed to the above location. Upon arrival, met with security personnel who had the above stated accused under arrest for theft by unlawful taking. Security advised that the accused, while gambling at craps table 302, pit 3A, picked the pocket of the victim. The actions of the accused were captured on tape by the surveillance department. Bates was observed reaching into the victims right front pocket with his left hand and removing a roll of currency. He quickly counted the money and placed it in his pocket, departing the craps table. At this point, the accused was stopped by security.											
75. Name Det. M. pepe Signature 68				76. Badge No. 3048		77. Page 1 of 2 Pages		78. Date Report 10-5-86		79. 81.	

EXHIBIT

NEW JERSEY STATE POLICE

CONTINUATION

1. Station / Unit	2. Code	21. Prosecutor's Number	22. Division Case Number
Casino Investigations Bureau	J024		J02486-106

detained.

The victim, Mr. Joseph Barram, advised that he was missing four (4) one hundred dollar bills, a couple of fives and about twenty ones. Confiscated from the accused were four (4) one hundred dollar bills, three (3) five dollar bills and seventeen (17) one dollar bills (\$432). Same was returned to the victim and a receipt obtained.

The accused, Bates, advised that he was a juvenile, age 17. Bates stated that he was gambling in the casino and was in possession of \$90 in five dollar chips and \$4 in one dollar chips. Accused stated he did not have a phone at his home residence. Accused eventually supplied the name of his uncle Tracy Mack, 2738 Hemburger St Philadelphia, PA, 215-225-8124. Same was contacted by the undersigned and advised of the arrest of Bates.

Accused transported to the ACPD Juvenile Unit and turned over to Det. Kelly.

Surveillance tape retained as evidence.

Pending Court.

69

73. Rank / Name (Print or Type)	74. Badge Number	75. Page	76. Date of Report
Det. M. Pepe	3048	2 of 2 Pages	10-5-86
	78.		79.

STATE POLICE

INVESTIGATION REPORT

1. Phone No. 609-441-3540	2. UCR	3. Perpetrator's Case No.	4. Division Case No. 10248680
5. NJ State 5:12-11p	6. NJ State a	7. Victim/Victim's State State of New Jersey	8. SS No. 24. Age

DATE AND TIME At XX 1220	7. Between	8. Hour	9. Day	10. Month	11. Date	12. Year	27. Victim (1) Home Address	27A. Victim (1) Local Address
13. Crime / Incident Location Park Place & Boardwalk (Ballys')							13A. Code 080200	28. Employer
14. Municipality Atlantic City		15. County Atlantic County		16. Code 0102		29. Person Reporting Crime/Incident DET. M. Higgins 3249		30. Date and Time 8-3-86
17. Type of Premises Casino		18. Code 72	19. Weapons - Tools N/A		20. Code N/A	31. Address		

32. Modus Operandi

Accused entered and played slot machines at Bally Casino/Hotel while under

33. Vehicle	34. Year	35. Make	36. Body Type	37. Color	38. Registration No. and State	39. Serial No. or Identification
Value Stolen Property	40. Currency	41. Jewelry	42. Furs	43. Clothing	44. Auto	45. Misc.
46. Total Value Stolen	47. Total Value Recovered	48. Teletype Alarm	49. Technical Services	50. Technician - Agency		

51. Injuries		52. Reason For Visit		53. Victim/Offender Relation		54. Victim's Residence		55. Offense Location	
1. Knife/Gunshot Wound	1 []	1. Gambling	1 []	1. Relative	1 []	1. Atlantic City	1 []	1. Casino	1 []
2. Serious Injury	2 []	2. Vacation	2 []	2. Neighbor	2 []	2. Atlantic County	2 []	2. Immediate of Hotel	2 []
3. Minor Injury	3 []	3. Business	3 []	3. Friend	3 []	3. New Jersey	3 []	3. Within Hotel Casino Complex	3 []
4. No Injury		4. Convention		4. Acquaintance		4. Out-of-state		9. Other/Unknown	
5. Other/Unknown		5. No. 2, No. 3, or No. 4 and Gambling		5. Co-worker		5. Stranger			
		6. Atlantic City Resident		6. Other/Unknown					

56. Was Subject(s) Victimized of Monies Won at Casino?				57. Prior Victimization in Atlantic City			
1. Yes	2. No	3. N/A	1 [] 2 [] 3 []	1. More Serious	3. Same Crime	1 [] 2 [] 3 []	
				2. Less Serious	4. Not Available		

58.	59.	60.	61.	62.
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List Accused - List and Identify Additional Victims - Describe Perpetrators or Subjects - Action Taken, Include Findings and Observations of Interview - Physical Evidence Found - Where By Whom - Disposition and Technical Services Performed - Interview of Victims - Witnesses - Persons Contacted - Accused Subjects - List - Describe Stolen Property - Value - Court Action - Attach Statements.

63. No. of Accused	64. Adult	65. Juvenile	66. Status Crime	67. Status Case	68. UCR Status	69. Date Closed
1	1		C1 Arrest	Court	Month Year	

70. Name	Address	71. Age	72. Sex	73. Race	74. DOB
THINH VIEN LA	83 East 2nd Ave., Newark, N.J.	19	Male		8-

8-3-86

On this date, the undersigned entered Bally Casino to observe patrol and gambling activities at that location. While checking the area of slot zone "C", the undersigned observed an individual playing slot machine #C-90 (25¢ slots) who appeared to be underage. This writer identified himself to the male subject and asked him his age. The subject replied that he was twenty-one years old. He was then asked for proper identification to which he replied he left his ID papers in his car. Subject was then asked his

(SEE CONT. PAGE)

75. Name DET. II Martin P. Higgins	76. Badge No. 3249	77. Page 1 of 2 Pages	78. Date Report 8-3-86	79. EXHIBIT 3
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Casino Investigation Bureau

2 Code

J024

21 Prosecutor's Number

22. Division Case Number

J02486801

and day of birth. He stated he was born on January 20, 1966. (This DOB would indicate the subject was 20 years old.) Subject advised his name was THINH LA and he lived in Newark, N.J. He was advised by this writer he was under arrest for being underage in the casino and escorted to the DGE office for processing.

At the DGE office the subject was advised of his Miranda rights (See Miranda card enclosed with report) Mr. LA then stated he was going to be 21 years old in a short while and also advised he thought the legal age was 20 years and older to enter the casino. LA then produced a N.J. driver's license (#L001 74085 08671) same found to be valid. The driver's license included the following identifiers:

THINH VIEN LA
83 East 2nd Ave.
Newark, N.J.
Date of Birth - August 20, 1967

Investigation further revealed that the subject's DOB was 8-20-1967 which would make the subject's age - 19 y.o.

The undersigned questioned Mr. LA as to point of entry and length of time spent in the casino. LA advised he had entered the casino at the main lobby entrance and had been on the casino floor for approximately fifteen (15) minutes.

The undersigned learned that the lobby entrance is security post B-2 and Security Officer Camille Lefko CCC# 12696-21 had been assigned to the post from 12 noon. Interview of Lefko by the undersigned revealed she remembered the individual in question enter the casino by her post. S/O Lefko also advised that he did not appear to be underage in her estimate and that it was hard to tell because he was Oriental. No additional information was learned from Lefko at this time.

This writer signed summons/complaint #S454002 against LA for underage in casino. Mr. LA was then released pending further court action.

PENDING COURT.

73. Rank / Name (Print or Type) DET. II Martin Higgins <i>Det. II Martin Higgins</i> Signature	74. Badge Number 3249	75. Page 2 of 2 Pages	76. Date of Report 8-3-86	77. By 71
	78.		79.	
	80.		81.	

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-242
LICENSE NO. 48629-22
REGISTRATION NO. 26114-40
OAL DOCKET NO CCC 4653-85

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

Complainant,

v.

FINAL ORDER

OFFIR BELLO,

Respondent.

The parties having entered into a stipulation of settlement in proceedings in the Office of Administrative Law; and the initial decision of the Administrative Law Judge approving the proposed settlement; having been filed with the Casino Control Commission (Commission) the parties having orally modified and supplemented the settlement at the Commission's public meeting of December 17, 1986; and the Commission having considered the entire record of these proceedings at that meeting,

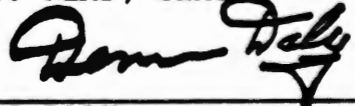
IT IS on this 6th day of February 1987, ORDERED that the initial decision in this matter is approved as modified and supplemented

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement is dismissed based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that this action shall not prevent Offir Bello from retaining her Casino hotel employee registration.

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

SETTLEMENT

OAL DKT. NO. CCC 4653-85

AGENCY DKT. NO. 85-242

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

Petitioner,

v.

OFFIR BELLO,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Record Closed: September 19, 1986

Decided: September 22, 1986

BEFORE JEFF S. MANN, ALJ:

The Division of Gaming Enforcement filed a Complaint with the Casino Control Commission on June 7, 1985, in which it sought an order revoking the respondent's casino employee license and/or casino hotel employee registration. The proposed action was based upon the allegation that Ms. Bello had made a false statement on her application for a casino employee license and further that she lacked the requisite good

character, honesty and integrity required by N.J.S.A. 5:12-90(b) and thus could not qualify for licensure as a casino employee. Further, the Division contended that Ms. Bello had committed a per se disqualifying offense under section 86c(1) of the Act and that her continued licensure or registration would be inimical to the policies of the Casino Control Act and thus inappropriate under section 86c(4).

Ms. Bello 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. A hearing was scheduled before an administrative law judge. However, the parties entered into discussions and have now prepared a Stipulation of Settlement, which document is attached to this initial decision and made a part hereof. Pursuant to the terms of the Stipulation, the parties have agreed that Ms. Bello did not intentionally fail to disclose a prior conviction as alleged in paragraph 8 of the Complaint. The parties have further agreed that conduct described within the Complaint did in fact occur and also that the respondent was not mentioned in a search warrant executed on September 11, 1984 as detailed in paragraph 6 of the Complaint. As a result of the facts and conclusions agreed upon by the parties, they have further agreed that the respondent shall consent to revocation of a casino employee license, but shall continue to be registered as a casino hotel employee.

Having considered the settlement and the circumstances, I **CONCLUDE** that the written settlement is a reasonable resolution of all issues in dispute between the parties, entered into voluntarily by the respondent. As such, the settlement is approved. The parties are directed to comply with the terms and conditions of settlement. Pursuant to the settlement, it is **ORDERED** that the respondent's casino employee license be **REVOKED**. It is further **ORDERED** that she shall continue to be registered as a casino hotel employee.

The matter having been satisfactorily resolved, it is **ORDERED** that the contested case be **DISMISSED**.

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

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

September 22, 1986
DATE

Jeff Masin
JEFF E. MASIN, ALJ

Receipt Acknowledged:

September 24, 1986
DATE

Kelvin Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 25 1986
DATE

Ronald J. Parley/z.s
OFFICE OF ADMINISTRATIVE LAW

ij

EXHIBITS

None

WITNESSES

None

RECEIVED
STATE OF N.J.
OFFICE OF THE ATTORNEY GENERAL
SEP 19 3 58 AM '86

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: WILLIAM E. MOUNTFORD, JR.
Deputy Attorney General
(609) 292-8883

SUPERIOR COURT OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.

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

Plaintiff,)

v.)

Offir Bello, AKA Orpilia Luisa,)
AKA Offir Loaiza)

Respondent.)

Civil Action

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by William E. Mountford, Jr., Deputy Attorney General, and Daniel L. Cohen, Attorney for Respondent, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Respondent presently holds casino employee license No. 48629-22 issued by the Casino Control Commission on November 9, 1983.

(2) WHEREAS Respondent presently holds casino hotel employee registration No. 26114-40 issued by the Casino Control Commission on June 24, 1981.

(3) WHEREAS Respondent is presently employed by Harrah's Hotel/Casino as a Guest Room Attendant.

(4) Attached hereto and made a part hereof is a Complaint filed by the Division of Gaming Enforcement on June 10, 1985 with the Casino Control Commission which seeks revocation of the Respondent's casino employee license and casino hotel employee registration.

(5) WHEREAS this matter was heard on March 17, 1986 in Atlantic City before Hon. Jeff S. Masin, ALJ.

(6) WHEREAS it is admitted that the conduct as described in the within Complaint did in fact occur.

(7) WHEREAS it has been determined the Respondent was not mentioned in the search warrant executed on September 11, 1984, as detailed in paragraph 6 of the within Complaint.

(8) WHEREAS it has been determined that Respondent did not intentionally fail to disclose the prior conviction as contained in paragraph 8 of the within Complaint.

(9) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the

aforementioned statutory and regulatory provision in the future, recognizing the significance of any departures therefrom.

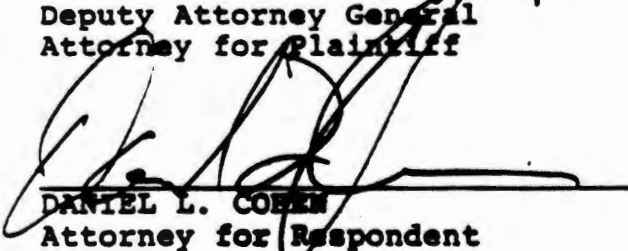
It is therefore agreed and stipulated by and between parties hereto that:

1. The facts stated herein, supra, are true and did, in fact, occur.
2. Respondent shall consent to revocation of her casino employee license for the period set by statute.
3. The Respondent shall continue to be registered as a casino hotel employee.
4. This settlement shall be a full and final settlement of the within Complaint subject to the approval and acceptance of the Casino Control Commission.

The undersigned consent to the form and entry of the above Stipulation of Settlement.


WILLIAM E. MOUNTFORD
Deputy Attorney General
Attorney for Plaintiff

Dated 9/17/86


DANIEL L. COHEN
Attorney for Respondent

Dated 9/18/86

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-46
OAL DOCKET NO. CCC 6558-86
ORDER NO. 87-44-11

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

Complainant,

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

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 (Commission); and the respondent, Boardwalk Regency Corporation, having filed exceptions to the initial decision; and the Division of Gaming Enforcement (Division) having filed a reply; and the respondent having filed a response to the Division's reply; and the Commission having considered the entire record of these proceedings at its public meeting of October 14, 1987, and having issued its decision at its public meeting of November 18, 1987,

IT IS on this 16th day of December 1987, ORDERED that the initial decision is modified as follows:

The portion of the initial decision ordering the respondent to pay the civil penalty of \$1,000 per violation "on or before the sixty-first day from the date of this initial decision" is modified to require payment upon receipt

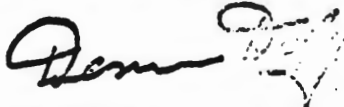
ORDER NO. 87-44-11

of an invoice from the Commission's
Division of Financial Evaluation and
Control.

IT IS FURTHER ORDERED that Boardwalk Regency
Corporation is found to have violated N.J.S.A. 5:12-119(b)
on two separate occasions for the reasons stated in the
initial decision, as modified, which is incorporated herein
and made a part hereof; and

IT IS FURTHER ORDERED that Boardwalk Regency Corporation
pay a total civil penalty of \$2,000 upon receipt of an
invoice from the Commission's Division of Financial
Evaluation and Control.

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 6558-86

AGENCY DKT. NO. 87-46

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

Petitioner,

v.

**BOARDWALK REGENCY
CORPORATION,
Respondent.**

**Katherine A. Smith, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

**Lloyd D. Levenson, Esq., for respondent (Cooper, Perskie, April,
Niedelman, Wagenheim and Weiss, attorneys)**

Record Closed: May 7, 1987

Decided: August 17, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a Complaint, dated September 17, 1986, alleging that on June 22, July 11 and July 12, 1986, respondent, which operates the Caesars Boardwalk Regency Hotel/Casino (Caesars), violated N.J.S.A. 5:12-119(a) and (b) in that it allowed three underaged persons to gamble on its casino floor. The Division

demands, among other things, that the Casino Control Commission (Commission) impose an appropriate penalty against Caesars for the violations. The respondent admits that summonses were signed against the three alleged underaged persons, but denies it was in violation of the statute. Respondent, therefore, requested a hearing on the charges enumerated in the Complaint.

PROCEDURAL HISTORY

On October 2, 1986, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference in the matter was conducted on November 17, 1986 before the Honorable Joseph F. Fidler, A.L.J. Therein the nature of the proceedings and an identification of the issues were discussed and a hearing date of January 20, 1987 was established. A Prehearing Order dated January 6, 1987 memorialized the prehearing conference.

At the request of counsel for Caesars on January 14, 1987, and with the consent of the Division, the hearing in the instant matter was adjourned from January 20, 1987 and rescheduled for March 24, 1987.

The instant matter was subsequently reassigned to the undersigned on March 24, 1987 at which time the hearing proceeded with an oral argument on the legal issue. Prior to the presentation of oral argument, Count I of the complaint was dismissed by the Court on the motion of the Division.

STATEMENT OF FACTS

Presented by way of joint stipulation, which was read into the record, the following facts formed the underlying basis of the instant complaint. On July 11, 1986 at approximately 11:45 p.m., Detective Martin Higgins observed Joseph Saltarelli playing a quarter slot machine in slot Zone B on the floor of Caesars (T4-3 to 14). Detective Higgins requested identification of the individual and ascertained from the driver's license produced that Joseph Saltarelli was 19 years of age (T4-3 to 14). The juvenile informed Detective Higgins that he had gained entrance to the casino floor by way of the escalator entrance after attending a performance by the

magician David Copperfield in the hotel showroom (T3-4 to 14; T6-20 to 25). The juvenile was thereupon arrested for underage gambling in a casino (Exh. C).

Shortly after he was processed for the violation, at approximately 1:15 a.m. on July 12, 1986, Joseph Saltarelli was standing with Detective Sergeant J. Wurch adjacent to the gift shop area outside of the casino room. At this time, Paul Brennan walked over to Saltarelli and was questioned by Detective Sergeant Wurch (T4-21 to 25). The officer ascertained that Brennan was also a juvenile 19 years old (T4-21 to 25). Brennan informed DSG Wurch that he had been playing blackjack on the casino floor prior to walking over to Saltarelli (T5-1 to 7). Brennan was also arrested for underage gambling (Exh. D).

It was stipulated that this is the first complaint ever filed against Caesars for an alleged violation of this statute. It is admitted that there were signs posted at Caesars indicating that one must be 21 years of age in order to enter the casino. Further, there are at least one, often two, security officers posted at each entrance to the casino and at least nine roving security officers or supervisors on the casino floor at all times in order to identify underage individuals and escort them out. It is stipulated that security officers of Caesars are instructed and then constantly reminded that keeping persons under 21 out of the casino is their top priority and that failure to take appropriate action to do so will cost them their jobs.

It was further stipulated that the show at Caesars on July 11, 1986, was the David Copperfield show, one likely to draw a larger than usual concentration of younger people to the hotel. It was stipulated that Caesars reacts to such circumstances by placing additional security officers and supervisors at entry areas when the show lets out in order to observe persons entering the casino and in order to prevent underage persons from entering. Additionally, the security officers work eight-hour shifts and are posted at entrances for no longer than two-hour periods, so that they may be relieved and kept fresh.

It has been stipulated that although only 28 security officers were required by the Casino Control Commission in July of 1986, Caesars had between 35 and 40 security officers on duty at the times in question. These security officers were instructed that anyone who appeared to be under 21 was to be asked for identification, and if there were any doubt, the security officer was to presume the

person was under 21 and to check for identification. Further, it is stipulated that approximately 20 to 40 persons are checked for identification on any give two-hour assignment during summer evenings, and that approximately half of this number are denied entry. If they are escorted off the casino floor due to failure to provide satisfactory identification or proof of age, their name and description is broadcasted over the internal radio system so that all security officers and supervisors are notified. Further, security officers are instructed that only proper identification can be accepted. Those whose ages are questioned must produce either a driver's license with a State seal or an ABC card with a photo and, in addition, another form of identification, preferably with a photo. "Proofs" of identification of birth such as birth certificates or baptismal certificates are specifically not accepted.

Lastly, it is stipulated that other Caesars employees including cocktail waitresses are also instructed regularly to watch for underage people and to bring suspected cases to the attention of security for further investigation (T5-9).

LEGAL ARGUMENTS OF THE PARTIES

The Division's Position

On the basis of the stipulated facts, the Division maintains that by not acting to preclude Saltarelli and Brennan from entering and gambling in the casino room, Caesars violated N.J.S.A. 5:12-119b. Evidence presented pertaining to Caesars customary efforts to identify and remove juveniles from its casino is, at most, mitigating in nature. The facts remain undisputed: one juvenile, Saltarelli, was observed playing a quarter slot machine. The other juvenile Brennan, freely admitted that prior to walking over to Saltarelli, who had been absent from the casino floor for approximately one and a half hours during the arrest processing, Brennan had been playing blackjack.

It is the Division's position that application of the law to the factual circumstances presented herein fully warrants judgment against respondent Caesars.

LEGAL ARGUMENT

Pursuant to N.J.S.A. 5:12-119b:

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. [emphasis added]

The Division submits that under the factual circumstances presented in the instant matter, respondent Caesars violated N.J.S.A. 5:12-119b in that it allowed two juveniles to remain in its casino during the late evening of July 11, 1986 into the early morning of July 12, 1986. The key issue to be resolved in this matter is the meaning of the words "allows to remain" or more particularly, "allows" as used in the above-quoted provision.

Inasmuch as the Casino Control Act does not specifically define the phrase "allows to remain", it is necessary to look toward the plain meaning of the words. See Hoeganaes Corporation v. Director of Division of Taxation, Department of Treasury, 145 N.J. Super. 352 (App. Div. 1976). An appropriate source for the plain and ordinary meaning of the phrase is Random House College Dictionary (Rev. Ed. 1984) which defines "allows" as follows: "To give permission to or for, permit."

Respondent Caesars would have this court believe that "allow to remain" imputes some knowledge on the part of Caesars through the security officers it employs that a particular individual is underage and, notwithstanding that knowledge, either tacitly or overtly invites that individual to gamble. The Division contends that respondent Caesars position is unfounded both in law and in the policies upon which such law is based.

When interpreting a statutory mandate, one must look to the intent of the legislative. Riccio v. New Jersey Mfrs. Ins. Co., 179 N.J. Super. 65, 70 (App. Div. 1981). Statutory construction will turn on the breadth of the objectives of the legislation and the common sense of the situation. Id. It is a fundamental rule of statutory construction that, in interpreting an enactment, efficacy should be given to the legislative's intent so long as the construction is sensible and consonant to reason. Mulcahy v. Bergen County Board of Elections, 156 N.J. Super. 429, 440 (Law Div. 1978). Legislation must be accorded a rational interpretation consistent with its

manifest purpose. Houman v. Mayor & Coun. Bor. Pompton Lake, 155 N.J. Super. 129, 152 (Law Div. 1977). In construing a statute, the words must be considered in the context of the entire section and given a common sense meaning which advances the legislative purpose. State v. Stern, 197 N.J. Super. 49, 53 (App. Div. 1984). Primary regard must be given to its fundamental purpose; yet, where a literal reading will lead to a result not in accord with the purpose, the spirit of the law controls the letter. Floral Park Tenants v. Project Holding, Inc., 152 N.J. Super. 582, 595 (Ch. Div. 1977). Statutes cannot be considered in a vacuum, but must be understood in their relation and interaction with other laws which relate to the same subject or thing, and they must be construed together with those related facts in order to learn and give effect to true meaning, intent and the purpose of the legislation as a whole. In Re Appeal of N.Y. State Realty & Terminal Co., 21 N.J. 90, 98 (1956).

In the context of the instant case, the Legislature has clearly set forth the prohibitions against gambling by underage individuals. Specifically, N.J.S.A. 5:12-119a states:

No person under the age which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino except by way of passage to another room.

N.J.S.A. 5:12-119b has an exegetical relation to the foregoing prohibition. Section 119b provides a practical mechanism by which a casino licensee may comply with the prohibitions against a juvenile gambling on its premises. In accordance with N.J.S.A. 5:12-119b, a casino license may avail itself of a three (3) prong defense to discourage, if not prevent, juveniles from gambling. Therefore, N.J.S.A. 5:12-119a in part materia with N.J.S.A. 5:12-119b, is clearly aimed at keeping juveniles out of a casino and thereby keeping them from gambling.

It is fundamental that a statute is to be construed in its entirety to clear up any obscurities and ambiguities in the law and to make whole of the law and every part of it harmonious and effective. In re N, 96 N.J. Super., 415, 421-422 (App. Div. 1967). It is basis in the construction of legislation that every effort should be made to harmonize the law relating to the same subject matter. State v. Green, 62 N.J.

547, 554-555 (1973). Statutes in pari materia are to be construed together when helpful in resolving doubts or uncertainties and the ascertainment of legislative intent. Id. Statutes in pari materia, that is, those which relate to the same matter or subject, although some may be special and some general, are to be construed together as a unitary and harmonious whole, in order that each may be fully effective. Clifton v. Passaic County Board of Taxation, 28 N.J. 411, 421 (1958). Further, such enactments are to be considered as a homogeneous and consistent whole, giving effect to all their provisions. Green, supra at 554-555.

Where a choice must be made between two imperfect interpretations, the view should be selected which more likely accords with the probable legislative intent. County of Monmouth v. Wissell, 68 N.J. 35, 43 (1975). When interpreting the intent of the Legislature, any unreasonable construction must be rejected when a reasonable reading is apparent. Statutes must be construed to yield a reasonable result. Division of Motor Vehicles v. Kleinert, 198, N.J. Super. 363, 368 (App. Div. 1985). The statutory interpretative technique which causes the deletion and disregard of language is justifiable to fulfill the legislative intent. Wissell, supra at 43.

Like all precedents, where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it will be regarded as of great importance in arriving at the proper construction of a statute. New Jersey Association of Correction v. Lan, 80 N.J. 199, 215 (1979). New Jersey has recognized the established principle that, in construing a doubtful statute, resort may be had to the contemporaneous construction, long usage and practical interpretation given to it by the administrative agency charged with its effectuation. Malone v. Fender, 80 N.J. 129, 137 (1979). Furthermore, an agency's construction of a statute over a period of years without legislative interference will, under appropriate circumstances be granted great weight as evidence of its conformity with the legislative intent. Id.

In State v. Resorts International Hotel, Inc., Dkt. No. CCC 83-405 (Commission Order dated February 1984), the Commission imposed a civil penalty of \$8,000 upon the respondent therein for allowing two (2) underage individuals to remain in its casino and to gamble and drink. In State v. Adamar of New Jersey, Inc., OAL Dkt. No. CCC 6034-86 (March 18, 1987), the office of Administrative Law imposed a civil

penalty of \$4,000 upon the respondent therein for permitting two (2) underage individual to remain in its casino. Therefore, the Division submits that Commission precedent has construed N.J.S.A. 5:12-119 of the Act to prohibit casino licensees from allowing underage individuals to remain in their casinos. Commission precedent also evinces that when underage individuals are discovered in a licensee's casino, that licensee is subject to accountability and penalty.

In view of the clear and strong public policy aimed at preventing juveniles from gambling, it is also important to note that Section 119b of the Act cannot be read solely as a penal statutory provision, even though a violation of this provision is categorized as a disorderly persons offense. The provision is also remedial in nature, i.e. designed to give effect to and serve the underlying public policy. In construing a provision that is both remedial and penal, the courts have long held that the evil to be prevented by the remedial portion of the provision must take precedence. Specifically, in State v. Meinken, 10 N.J. 348 (1952), the New Jersey Supreme Court stated:

The rule of strict construction applicable to the penal provisions of a statute, however, does not prevent a court from reading the statute in relation to the mischief and evil sought to be suppressed or prevent a court from giving effect to the terms of the statute in accordance with their fair and natural acceptance... (citations omitted), nor is a construction of a penal statute that will and in its evasion to be favored... (citations omitted) [10 NJ at 352-353]

It was further held in State v. K-Mart, 134 N.J. Super. 76 (Mon. County Co., 1975) that:

Although criminal or quasi-criminal statutes are to be strictly construed against the state, they should not be so construed as to place an intolerable burden upon it. The purpose of a statute should not be frustrated because of an unduly narrow interpretation ...Statutory interpretation that would lead to an absurd result should be avoided. [134 N.J. Super. at 85].

It is the Division's position that Caesars contention would lead to an absurd result if accepted by the court. According to Caesars view, the State would have to show that a security officer at the casino observed an underage person, asked for

identification which indicated the person was indeed underage, and then told the individual, "please go into the casino, or please remain in the casino and gamble." Under those circumstances, Caesars would apparently agree that a violation of the Act had occurred. Such a scenario is clearly absurd, and, plainly, the statutory provision is not intended to be so narrowly construed. Caesars attempt to avoid responsibility in this matter must not be condoned.

Based on the foregoing, the Division respectfully requests that this court find respondent Caesars allowed two juveniles to remain in its casino on July 11-12, 1986 and thereby violated N.J.S.A. 5:12-119b.

Respondent Caesars Position

LEGAL ARGUMENT

POINT I

N.J.S.A. 5:12-119b IS A PENAL STATUTE, AND PROCEEDINGS UNDER IT ARE CRIMINAL OR QUASI-CRIMINAL IN NATURE. ACCORDINGLY, THE STATUTE MUST BE STRICTLY CONSTRUED.

N.J.S.A. 5:12-119b provides in relevant part that:

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. ...

The Division takes the position in this case that this statute is one of "strict liability." That is, they argue that if a person under the age at which a person is authorized to purchase and consume alcoholic beverages "remains" in a casino, the licensee or relevant employee of the casino is guilty of the disorderly persons offense in question. This position is clearly wrong. It is respectfully submitted that to impose strict liability for violations of the statute is to ignore the clear language used by our legislature, to violate fundamental principles of statutory construction, and to ignore the basic principles of culpability set forth in N.J.S.A. 2C:2-2.

A threshold question presented in the case at bar is whether N.J.S.A. 5:12-119b is penal in nature, and whether prosecutions of alleged violations of it are criminal or quasi-criminal in nature, or merely civil. The position taken by the Division is that "the statute is not merely penal in nature, if in fact it is at all." (T-11).

Caesars, on the contrary, respectfully submits that the statute is clearly a penal one, and that prosecutions under it are of at least a quasi-criminal nature. To begin with, the statute itself provides that any licensee or employee of a casino who allows an underage person to gamble "is a disorderly person." Conviction of a disorderly person's offense can be punished by up to six months in jail and a fine of up to \$1,000. That this is a statute imposing a penalty, and therefore "penal" in nature is too clear to be controverted. Allegations of violations which constitute disorderly persons offenses have consistently been treated as penal and at least quasi-criminal in nature. For example, in State v. Foglia, 182 N.J. Super. 12 (App. Divs. 1981), where defendant was charged with a violation of N.J.S.A. 2C:34-2, making it a disorderly person's offense to sell obscene materials, the Court held that the statute must necessarily be strictly construed, and that liability cannot be found "when the words of the enactment are not clear in fixing it. (Citations omitted.)" Foglia, *supra*, at 14. In State v. Channel Home Centers, 199 N.J. Super. 43 (App. Div. 1985), the Appellate Division held that the law prohibiting Sunday sales, N.J.S.A. 2A:171-5.8, was "penal" in nature and therefore must be "strictly construed." *Id.* at 49. In New Jersey Election Law Enforcement Commission v. Hunterdon County Democratic Committee, 178 N.J. Super. 233 (App. Div. 1981), a provision contained in N.J.S.A. 19:44A-22, assessing a penalty of up to \$1,000 for the late filing of a report, was deemed to be "penal" in nature; as a consequence, the statute was to be strictly construed and could not create liability when the words of the enactment were not clear in fixing it. *Id.* at 236-237. In State v. Miner Industries, Inc., 177 N.J. Super. 153 (App. Div. 1981), a defendant was charged with improperly labeling a package of toy soldiers, pursuant to N.J.S.A. 51:1-1. There too, the Court held that because the statute in question imposed a penalty, it must be strictly construed so that the condemned act is plainly and unmistakably forbidden. Further, "any doubt as to the meaning of a penal statute is to be resolved in favor of the accused. (Citation omitted.)" *Id.* at 157.

In sum, it is absolutely clear that the statute in question, which defines the violation of it as a disorderly person's offense, for which up to six months'

imprisonment and \$1,000 in fines can be imposed, is penal in nature, and that prosecutions under are at least quasi-criminal in nature. Indeed, so serious did our legislature consider such offenses to be that convictions of same cannot even be expunged for a period of five years. N.J.S.A. 2C:52-3. The statute must therefore be strictly construed and be governed by those same rules of liability which apply to all allegations of criminal or quasi-criminal conduct, and which are contained in N.J.S.A. 2C.

POINT II

IT IS AN ESSENTIAL ELEMENT TO BE PROVED FOR A CONVICTION UNDER N.J.S.A. 5:12-119b THAT THE RESPONDENT ACTED KNOWINGLY. AS THE DIVISION HAS FAILED TO COME FORWARD WITH ANY EVIDENCE WHATSOEVER OF A KNOWING VIOLATION OF THIS STATUTE BY CAESARS, THE COMPLAINT MUST BE DISMISSED.

It is important first to note the significant distinction between the language utilized in N.J.S.A. 5:12-119a, which prohibits underage persons from entering a licensed casino, and the language in N.J.S.A. 5:12-119b, which makes it a disorderly persons offense for a licensee or its employee to allow an underage person to remain in the casino. The former section reads in full as follows:

5:12-119a. No person under the age at which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino except by way of passage to another room.

This section strictly prohibits underage persons from entering a casino, and contains no words of qualification or exception. N.J.S.A. 5:12-119b, in contrast, punishes as disorderly persons those who allow underage persons to remain in a casino. It is respectfully submitted that the use of the word "allows" by the legislature cannot be ignored. In construing any statute, courts must give effect to all of the words the legislature has used. No word can be disregarded as meaningless or regarded as mere surplusage. Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969); Williams v. Deptford Township Board of Education, 192 N.J. Super. 31, 40 (App. Div. 1943), aff'd, 98 N.J. 319 (1985). Yet it is the position of the Division in the case at bar that the word "allows" does not actually convey any meaning, or

at least not its usual and expected meaning. Rather, it is the Division's opinion that the statute in question is one of "strict liability," and, therefore, that if an underage person "remains" in the casino, the licensee is guilty of a disorderly persons offense.

If the legislature had intended this result, the statute could have been written much more clearly and simply. Had the legislature intended to make this a strict liability offense, N.J.S.A. 5:12-119b would read, "Whenever a person under the age at which a person is authorized to purchase and consume alcoholic beverages remains in a casino, the licensee or employee of the casino is a disorderly person." Yet this is not what the statute said, and evidently, not what the legislature envisioned.

Rather, the legislature specifically stated that only a licensee or employee who "allows" an underage person "to remain in a casino is a disorderly person." The words used by the legislature must be given import, and not ignored.

The Fifth Edition of Black's Law Dictionary, states that the word "allow" has no "rigid or precise meaning," but an import which varies "according to circumstances or context in connection with which it is used." One definition which it does provide of the term is "to approve of...to sanction, either directly or indirectly, as opposed to merely suffering a thing to be done. ..." The Second Edition of Webster's Unabridged New International Dictionary gives the chief meaning of "allow" as used in this context as "to concede as a privilege; to permit by way of concession. ..." Synonyms include "authorize."

Thus, the meaning of the word "allow," both as generally understood and as defined in a legal context, is inconsistent with the Division's interpretation of the statute as one of strict liability. Rather, the legislature's use of the word "allow" clearly requires that the casino know of and sanction, either directly or indirectly, the continued presence of underage persons on the gambling floor.

If there were any doubt whatsoever about the meaning of the word "allow" as understood by the Courts of New Jersey, it is placed to rest by the decision of Judges Lesemann and Cavinato in State v. Michalek, 207 N.J. Super. 340 (Law Div. 1985), and State v. American Alkyd Industries, Inc., 32 N.J. Super. 150 (Cty. Ct. 1954), respectively.

In Michalek, supra, the defendant was charged with a violation of N.J.S.A. 39:4-50(a) for having "permitted" another person under the influence of intoxicating liquor to operate a motor vehicle owned by him. The violation charged was neither a crime nor a disorderly person's offense. Nevertheless, the Court held that the matter was a quasi-criminal proceeding and that the State's connection that "strict liability" should be imposed was untenable. The Court looked to N.J.S.A. 2C:2-2 which states the general rule to be that "a person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently as the (law defining the offense may require)." Michalek, supra, at 348. Subsection (b) of N.J.S.A. 2C:2-2 defines each of the four degrees of culpability. N.J.S.A. 2C:2-2 (c)(3) then states that:

A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime with the culpability defined in Paragraph (b)(2) of this Section (i.e., knowingly). This provision applies to offenses defined both within and outside of this code. (Quoted in Michalek, supra, at 348.

The Court in Michalek also quoted from the New Jersey Penal Code, Volume II: Commentary, Final Report of the New Jersey Criminal Law Revision Commission (1971) at 40-48, where the Commission stated that:

A form of presumption against strict liability is created. A clear legislative intent to impose that type of liability is required. (Quoted in Michalek at 348.)

Although the Court found that the literal language of N.J.S.A. 2C:2-2 probably would not reach the violation charged in that case, which was not a crime, disorderly person's offense, or petty disorderly person's offense, the Court found no reason why the policy expressed in that section should not be applied. Thus, absent any indication of an intent by the legislature to impose strict liability, the Court refused to do so, and dismissed the charge. Note that the Court reached this finding despite the "generally recognized societal reaction to the tragedies and waste brought on by drunk driving," as it found no "rational basis for inflicting serious penalties on one who did not know that he was permitting an intoxicated person to drive his vehicle." The Court concluded that to punish for "unknowing conduct" would be to impose "an undue burden not relievable by care." (Quoting from

Soronen v. Olde Milford Inn, Inc., 46 N.J. 582, 594 (1966). Note that in Soronen, the Supreme Court of the State declined to impose that "unfair burden" in the civil matter; as the Court observed in Michalek, there is even less reason to impose it in a quasi-criminal case. Michalek, *supra*, at 349.

Even more significantly, however, the culpability requirements contained in N.J.S.A. 2C:2-2(b)(2) clearly apply in the case at bar, where a disorderly person's offense has been charged. It was therefore incumbent upon the Division to establish as a prerequisite for the finding of liability as against Caesars in this case that it acted "knowingly." According to N.J.S.A. 2C:2-2(b)(2):

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. "Knowing," "With knowledge," or equivalent terms have the same meaning.

There has of course been no such showing of knowledge by the Division in the case at bar. Rather, all of the stipulated evidence in this case goes to negate any possibility of "knowing" conduct on the part of Caesars in violation of N.J.S.A. 5:12-119b. It has been stipulated that Caesars has taken great efforts to post guards at entrances to the casino floor, to send roving security guards in search of underage parties, and to instruct its employees on the floor, including cocktail waitresses, to observe and report underage gamblers so that they may be swiftly removed. That one or perhaps two persons may have entered the gambling floor at Caesars and gambled does not in any respect establish Caesars' liability under the statute, as there has been no showing whatsoever that Caesars knowingly allowed such persons to remain. To the contrary, the only evidence submitted by the State is totally deficient to prove such a proposition. Mr. Saltarelli was observed playing a \$.25 slot machine; there is no evidence that he placed more than one quarter in the machine, or that he was at the machine for more than three seconds. With respect to Mr. Brennan, the only evidence is that while outside the casino area, he told a detective that he had played blackjack. The stipulated facts in the hearing transcript do not even indicate where or when he played blackjack, or how long he played.

In any event, neither set of facts constitutes any evidence whatsoever of a knowing sanction of underage gamblers' presence on the casino floor by Caesars. Quite to the contrary, if either party had gambled on the casino floor, they obviously did so only having evaded Caesars guards and roving security officers, whose numbers exceeded the amounts required by the Casino Control Commission. There is no evidence to show that Caesars would not have immediately apprehended and ejected Mr. Saltarelli had Detective Higgins not gotten to him first; nor is there any evidence which would show that Caesars' security officers may not have ejected (or at least scared from the premises) Mr. Brennan, if he in fact had ever actually gambled on the premises.

In summary, it is submitted that the Division has failed entirely to prove the requisite element that Caesars actually allowed the two underage gamblers in question to "remain" at the casino. This element requires proof that Caesars acted "knowingly" in sanctioning their presence on the casino floor; no evidence whatsoever of this has been presented.

In an earlier decision of Judge Cavinato, in State v. American Alkyd Industries, Inc., 32 N.J. Super. 150 (Cty. Ct. 1954), prior to the enactment of 2C, the Court considered the meaning of the word "allow" in a statute. There, the defendant was charged with violating R.S. 23:5-28 which provides in relevant part that "no person shall allow any (of various pollutants) to be turned into or allowed to run into any of the fresh or tidal waters within the jurisdiction of the State. ..." The State urged the Court to construe the words of the statute liberally, while the defendant urged that they be interpreted strictly. Despite the clearly enunciated public policy of the State to conserve its natural resources and protect the safety of its people, the Court reversed the defendant's conviction, as it concluded that the term "allow" used in the statute required actual knowledge or express or implied consent by the defendant.

Generally speaking the term "allow" means to permit, suffer, acquiesce. Bouvier's Law Dictionary defines "allow" as "to permit, consent to or approve." Allow is also defined in Webster's as "to approve of, to sanction." Also, in 3 Words and Phrases, allow is defined as requiring actual knowledge or consent, "to allow a thing to be done is to acquiesce in or tolerate"; knowledge express or implied

being essential." Id. 32 N.J. Super. at 153.

Thus, even in the absence of the scienter requirements contained in N.J.S.A. 2C:2-2, it has been held that the word "allow" in a statute creating penalties requires a finding of knowledge or actual or implied consent, and is not a term connoting strict liability. Note that the decision of the Court in State v. American Alkyd Industries, Inc., supra, has been followed by other jurisdictions as well. For example, the Court of Appeals of the State of Michigan cited this case in People v. Barkman, 177 NW 2D 721, 724 (Ct. of Apps. 1970) for the proposition that the word "allow" implies "knowledge or scienter" on the accused's part.

Further, to the extent that Judges Masin and Armstrong's decisions with respect to the underage gambling prosecutions of Tropicana (OAL Docket No. CCC 6034-86), and Resorts (OAL Docket No. CCC 4604-84), may superficially appear to hold to the contrary, in neither case were the above arguments as to the requisites of culpability presented to the Administrative Law Judge. Therefore, neither case is of precedential value on this point, and neither precludes a finding in favor of Caesars in the case at bar.

For all of the reasons enumerated herein, it is respectfully requested that an Order issue dismissing the remaining Count brought against Caesars by the Division for violations of N.J.S.A. 5:12-119b in its entirety and with prejudice.

DISCUSSION AND CONCLUSIONS

Respondent Caesars does not deny that the events which lead the Division to charge it with two violations of N.J.S.A. 5:12-119b did not occur. Moreover, Caesars stipulates to the facts which form the basis underlying the Division's complaint against it; i.e., that two underage persons were determined to have gambled at Caesars casino on the night of July 11-12, 1986, between the hours of 11:45 p.m. and 1:15 a.m. Respondent does, however, present several novel legal arguments with respect to the application of the statute alleged to have been violated, notwithstanding that findings of violations of N.J.S.A. 5:12-119b have been enforced, with penalties imposed, against other licensed casinos. State v. Resorts International Hotel, Inc.; State v. Adamar of New Jersey, Inc.

Respondent observes that any licensee or employee of a casino who violates N.J.S.A. 5:12-119b "is a disorderly person." It argues, therefore, that a conviction of a disorderly person offense under Section 119b of the Act is "penal" in nature and at least quasi-criminal. Thus, the statute must be strictly construed and is also governed by those rules of liability applicable to allegations of criminal or quasi-criminal conduct.

This tribunal observes that respondent is correct on both arguments; i.e., a penal statute must be strictly construed and where criminal or quasi-criminal conduct is alleged, the criminal standards of proof and liability prevail.

In Black's Law Dictionary, Revised Fourth Edition, at 1591 defines:

STRICTLY CONSTRUED. Requirement that a penal statute be strictly construed means that the court will not extend punishment to cases not plainly within the language used, but at the same time such statutes are to be fairly and reasonably construed, and will not be given such a narrow and strained construction as to exclude from their operation cases plainly within their scope and meaning. State v. Fleming, 173 Md. 192, 195 A. 392, 393.

In the matter of In re Garofone, 80 N.J. Super. 259 (Law Div. 1963), the Court briefly describes the New Jersey Legislature's intent with respect to the enactment of the then Disorderly Persons Act (N.J.S.A. 2A:169-1 et seq.) and the procedural rules under which the statutes operated. Therein, the Court observes that disorderly conduct is not an offense known to common law. By statute, however, disorderly persons offenses constitute the lowest grade of offenses under the State's criminal system, therefore, punishable in a summary manner, yet quasi-criminal in essence and subject to the procedural rules governing criminal prosecution. The Disorderly Persons Act established a police measure which afforded a speedy and effective remedy where the offense was less aggravating in circumstances. The Garofone Court observed that, "The courts of general criminal jurisdiction could not possibly function effectively in our complicated urban civilization if they alone had exclusive jurisdiction over all of the offenses enumerated in the Disorderly Persons Act." Id. at 271. It also observed that there were certain advantages for the individual; i.e., the defendant is spared the brand of being adjudged a criminal with all of its political, business and social implications

and, the punishment is less severe than that imposed on corresponding crimes. The accused is also protected, as in a criminal prosecution, by way of a sworn complaint to inform the defendant of the nature and cause of the complaint; the burden of proof beyond a reasonable doubt, and the criminal rules of evidence apply. Id. 270-272.

Respondent, therefore complains that the Division has applied the standard of strict liability for its alleged statutory offense rather than the criminal standard afforded in a quasi-criminal proceeding. Respondent's legal arguments, having been set forth in full in this record, will not be repeated here.

It is presumed, moreover, that most, if not all, of respondent's legal arguments are valid had this matter proceeded in the criminal forum. However, the instant matter is proceeding administratively; civilly, outside of the criminal forum sans any criminal sanctions. That is not to infer that the Division is precluded from bringing a disorderly persons complaint against respondent within the proper jurisdiction.

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 Legislature also allocated burdens of proof beyond the mere preponderance of the credible evidence standard to require applicant's for a casino employee license to establish, by clear and convincing evidence, the applicant's reputation for good character, honesty and integrity. N.J.S.A. 5:12-89b(2). This similar higher standard of proof is applicable to applicant's for a casino key

employee license with regards to the applicant's financial stability, integrity and responsibility (N.J.S.A. 5:12-89b(1)) together with the applicant's business ability and casino experience so as to establish a reasonable likelihood of success and efficiency in the position applied for. N.J.S.A. 5:12-89b(3). Thus, the Legislature has spoken to the extent it has prescribed the minimum standards of proof to be met under certain circumstances. Had the Legislature wished to ascribe a higher standard of proof with respect to Section 119b, it would have done so.

Here, the Legislature enacted Section 119b to preserve the integrity of the casino industry by precluding minor children of tender years from entering the casino premises and/or from participating in the controlled games. Although the Legislature constituted the violation of the statute as a disorderly persons offense, that alone does not mandate that the violation be prosecuted criminally; nor does it preclude the Division from proceeding in the administrative forum. N.J.S.A. 5:12-107. Clearly, the statutory scheme requires the Division to enforce the provisions of the Act and all regulations promulgated thereunder and to "prosecute before the commission all proceedings for violations of this Act or any regulations promulgated hereunder." N.J.S.A. 5:12-76a. and (4).

The Division, clothed with the power and duty to enforce the Act, elected to bring the herein matter before the Commission administratively rather than file a complaint for prosecution of respondent before the criminal courts. I CONCLUDE that the criminal elements of proof are not necessary and, therefore, inappropriate in these proceedings. I FIND and CONCLUDE, therefore, that the standard of proof, by the preponderance of the credible evidence, has clearly been met by the Division and that Caesars' is guilty of violating N.J.S.A. 5:12-119b.

I further FIND and CONCLUDE that respondent's arguments to the contrary are without merit. Permitting underaged persons to gamble, in violation of the Act, is a serious offense and one which cannot be condoned. State v. Resorts International Hotel, Inc., supra.

PENALTY

It is recognized that this matter constitutes the first offense of underaged persons to be found upon respondents casino floor and gambling. It is further

recognized that respondent had, at the time of this offense, provided more security personnel than were required by the Casino Control Commission. Therefore, having carefully considered the criteria for the imposition of sanctions, pursuant to N.J.S.A. 5:12-130, I **CONCLUDE** that a minimum monetary penalty is warranted.

Accordingly, it is **ORDERED** that the penalty of \$1,000 for each of the two violations, for a total of \$2,000 be imposed against respondent. Therefore, the Boardwalk Regency Corporation, t/a Caesars, shall pay the amount of \$2,000 to the Casino Control Fund on or before the sixty-first day from the date of this initial decision.

It is further **ORDERED** that respondent shall commence training programs and issue necessary instructions to security and non-security personnel concerning the necessity of careful observation and identification of underaged persons.

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

17 August 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

August 19, 1987
DATE

Receipt Acknowledged:

DeLores Zayas
CASINO CONTROL COMMISSION

AUG 20 1987
DATE

Mailed to Parties:

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-329
OAL DOCKET NO. CCC 5119-86
LICENSE NO. 24233-21

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

Complainant, :

v. :

EUGENE H. BOBECK, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 18, 1987,

IT IS on this 8th day of July 1987, ORDERED that the initial decision is modified as follows:

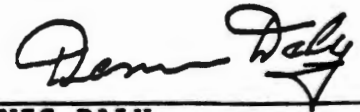
(1) to correct the administrative law judge's reference in the conclusion of the initial decision to Bobeck's "casino employee registration" to read "casino employee license;" and

(2) to correct the citation to N.J.S.A. 5:12-86(c)(2) at page 4 of the initial decision to N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 5119-86

AGENCY DKT. NO. 84-329

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

Petitioner,

v.

EUGENE H. BOBECK,

Respondent.

**Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Laurence C. Connell, Esq., for the respondent

Record Closed: December 9, 1986

Decided: January 16, 1987

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter arises from a complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on October 5, 1984, seeking the revocation of the respondent's license as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on August 5, 1986, for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held by way of a telephone conference call on September 22, 1986, the parties agreed that the issues in this matter are:

- A. Whether the respondent's alleged criminal activities would render his continued licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g.
- B. Whether the respondent is a person of good character, honesty and integrity.

The hearing was held on December 9, 1986, at the Pleasantville Police Building in Pleasantville, 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 issue.

On September 11, 1984, in the Tropicana Hotel and Casino (Tropicana), Eugene H. Bobeck, a cage cashier, was observed by a surveillance operator to be conducting what appeared to be an illegal football pool. The surveillance operator notified Detective William J. Smith, a New Jersey State Policeman assigned to the Division. Detective Smith viewed the tape recorded by the surveillance operator and concluded that Mr. Bobeck had been handling illegal gambling paraphernalia. Detective Smith went to the cashier cage, confiscated certain betting slips that Mr. Bobeck had in his possession (P-1 through P-5), and took the respondent to the Division's office.

After reading the respondent his rights, Detective Smith questioned Mr. Bobeck, who readily admitted that he operated a weekly football pool. Mr. Bobeck stated that all the money he collected was paid to the person who picked the largest number of winning teams during the week, and that he did not take any money for operating the football pool. According to Mr. Bobeck, approximately 90 percent of the betters were Tropicana employees and he had betting slips available, in clear view, while he was working at Tropicana. Mr. Bobeck stated that he had conducted similar football pools during the previous two years.

Detective Smith searched Mr. Bobeck and found an interoffice envelope containing \$91, which the respondent identified as money for the September 2, 1984 football pool that he was going to give to the winner.

Detective Smith stated that he believed Mr. Bobeck when he said that he was not aware that football pools were in violation of the law or of any rule of Tropicana.

At the same time the surveillance operator notified Detective Smith, he also notified Assistant Cage Supervisors Debra Gallagher and Michael O'Neil. Mr. Bobeck was advised that a football pool was a violation of Tropicana's policy, that he should immediately cease this activity and that he was suspended for the remainder of September 11, 1984 (4 hours of employment) and for September 12 and 13, 1984 (R-1).

After Detective Smith arrested the respondent on September 11, 1984, the respondent was accepted in the pretrial intervention program. Mr. Bobeck successfully completed this program on March 27, 1986.

During the hearing, the tape viewed by Detective Smith on September 11, 1984, was shown to the undersigned in the presence of the parties. This tape shows that Mr. Bobeck was handling certain papers while he was in the cashier's cage at Tropicana. These papers appear to be the football betting slips confiscated by Detective Smith and introduced into evidence at the hearing (P-1 through P-5).

Mr. Bobeck testified that he was familiar with office football pools and that he did not know that such a pool was illegal or in violation of the casino's policy. Mr. Bobeck stated that he had operated the football pool openly and that he did not take any commission or profit. His casino employee license is very important to him since his job depends upon retaining his license, and he needs his job in order to support his family and to provide the medical assistance needed by his wife. Joyce D. Bobeck, the respondent's wife, testified that she does not work, that she is a diabetic and that she has had a number of recent medical expenses.

On behalf of the respondent, 51 Tropicana employees signed petitions indicating that Mr. Bobeck is a truthful and honest person who is willing to help his coworkers (R-10, R-11). Also, letters stating that Mr. Bobeck is an honest and

dependable employee were sent by Stan Pienta, Director of Casino Credit at Tropicana (R-3), John McLaughlin, Director of Financial Reporting at Tropicana (R-4), Ron Alcorn, the Controller at Tropicana (R-5) and Harry J. Garbe, Director of Compliance at Tropicana (R-9). In addition, letters attesting to Mr. Bobeck's reputation as an honest and trustworthy person, as well as a person involved in community youth programs, were submitted by Arthur P. McNally (R-2), William C. Kearney (R-6), and Eugene H. Brewster (R-8). Lastly, J.T. Connell stated in his letter that Mr. Bobeck was an honest and loyal employee during the time he was employed by the W.T. Grant store in the Cape May Court House (R-7).

CONCLUSIONS OF LAW

In closing, Mr. Connell argued that Mr. Bobeck is a person of good character, honesty and integrity, and that he did not know that it was illegal or inappropriate for him to operate a football pool. Mr. Connell noted that Mr. Bobeck has been active in community activities such as Little League and Boy Scouts, and that the respondent has already paid a severe penalty for his poor judgment in that he was suspended for two and one-half days by Tropicana (R-1), he had to participate in the pretrial intervention program, and he had to pay the legal expenses associated with the criminal proceedings.

On behalf of the Division, Ms. Scharff stated that the Division had shown that Mr. Bobeck had in his possession gambling paraphernalia which constitutes a violation of N.J.S.A. 2C:37-2, the promotion of gambling, even though he did not benefit financially by operating the football pool. Although this violation is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(2), Ms. Scharff argued that since the criminal activity was conducted in the casino it was an inimical offense, pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g. However, she recognized that the decision as to whether it was an inimical offense also required a consideration of the facts relating to rehabilitation. See, Davis v. Division of Gaming Enforcement, OAL Dkt. CCC 2008-85 (August 12, 1985), modified, Casino Control Commission (December 27, 1985).

Based on the facts in this matter, I CONCLUDE that the Division has shown that the respondent was guilty of a criminal offense, N.J.S.A. 2C:37-2, by conducting an illegal football pool while working at Tropicana, and the fact that he did not financially benefit by the operation or know that the activity was a criminal offense are mitigating factors to be considered in determining the penalty.

Since the Division has established a criminal violation which can render the respondent's continued licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4), it is necessary to consider whether the respondent has shown his rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-90(h) sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of retaining a casino employee license:

- (1) The nature and duties of the respondent'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 respondent 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 respondent under their supervision.

After reviewing the facts in this matter, I **CONCLUDE** that the respondent has shown his rehabilitation, and that based on the nature of the offense as well as the evidence of rehabilitation, Mr. Bobeck's continued licensure would not be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g.

Further, I **CONCLUDE** that Mr. Bobeck has shown that he is a person of good character, honesty and integrity as required for continued licensure pursuant to N.J.S.A. 5:12-89b and 5:12-90b. The operation of a football pool while working in a casino shows poor judgment by the respondent. However, this one activity, when balanced against his good work record as reflected in the letters submitted on his behalf, his commitment to community youth activities and his dedication to his family clearly does not materially affect his reputation for good character, honesty, and integrity.

Therefore, I **ORDER** that the casino employee registration of Eugene H Bobeck **NOT BE REVOKED**.

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

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

January 16, 1987
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

January 20, 1987
DATE

Al Lou Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 23 1987
DATE

John J. [Signature]
OFFICE OF ADMINISTRATIVE LAW

ks/ee

**EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:**

- P-1 Completed football betting slip
- P-2 Completed football betting slip
- P-3 Completed football betting slip
- P-4 Blank football betting slips
- P-5 Blank betting slip listing the winning teams for the week and the number of winning teams selected by the betters

FOR THE RESPONDENT:

- R-1 Tropicana Disciplinary Action Notice, dated September 14, 1984
- R-2 Letter from Arthur P. McNally, dated October 21, 1984
- R-3 Letter from Stan Pienta, Director of Casino Credit at Tropicana, dated October 16, 1984
- R-4 Letter from John McLaughlin, Director of Financial Reporting at Tropicana, dated October 17, 1984
- R-5 Letter from Ron Alcorn, undated
- R-6 Letter from William C. Kearney, dated October 21, 1984
- R-7 Letter from J.T. Connell, dated October 20, 1984
- R-8 Letter from Eugene H. Brewster, dated October 19, 1984
- R-9 Letter from Harry J. Garbe, dated October 22, 1984
- R-10 A petition signed by 37 Tropicana employees, dated October 16, 1984
- R-11 A petition signed by 14 Tropicana employees

WITNESSES

FOR THE PETITIONER:

William J. Smith

FOR THE RESPONDENT:

Eugene H. Bobeck
Joyce D. Bobeck

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-95
OAL DOCKET NO. CCC 7857-86
LICENSE NO. 08500-21
ORDER NO. 87-45-14

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

Complainant,

ORDER

v.

MICHAEL A. BRENNAN,

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 meetings of November 4 and November 25, 1987,

IT IS on this 17th day of December 1987, ORDERED that the initial decision is modified as follows:

The administrative law judge's conclusion that the respondent's licensure is inimical pursuant to N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary in view of his conclusion that these offenses are disqualifying pursuant to N.J.S.A. 5:12-86(c)(3).

IT IS FURTHER ORDERED that the casino employee license held by Michael A. Brennan is revoked substantially for the

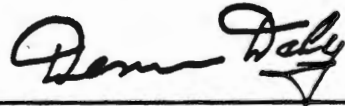
ORDER NO. 87-45-14

reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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.S.A. 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. NO. CCC 7857-86

AGENCY DKT. NO. 84-95

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

Petitioner,

v.

**MICHAEL A. BRENNAN,
Respondent.**

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Paul Tandler, Esq., for respondent (Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorneys)

Record Closed: May 28, 1987

Decided: September 11, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a Complaint before the Casino Control Commission (Commission) on April 3, 1984, alleging that respondent, Michael A. Brennan, had committed criminal misconduct which disqualifies him from continued licensure as a casino employee under Section 86c(1) of the Casino Control Act (Act). The Division further alleges that respondent's continued licensure is inimical to the policy of the Act, pursuant to N.J.S.A.

5:12-86c(4) and that respondent no longer possesses the requisite good character, honesty and integrity for continued licensure, pursuant to Section 90b of the Act. The respondent opposes the action to revoke his casino employee license contending that he is rehabilitated, pursuant to N.J.S.A. 5:12-90h.

PROCEDURAL ASPECTS

The Division filed its Complaint with the Commission on April 3, 1984, seeking, among other things, the revocation of respondent's casino employee license no. 08500-21. On or about April 14, 1986, respondent requested a hearing in regard to the Division's Complaint. On November 10, 1986, 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 and conducted by Administrative Law Judge Stephen W. Thompson on January 20, 1987. Thereafter, on May 28, 1987, the matter was heard by the undersigned with the herein record declared closed on that date. Due to the undersigned's illness and hospitalization, extensions were requested and granted for the execution of this initial decision.

ISSUES

The issues for determination by this administrative tribunal were set forth at the prehearing conference as follows:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3) and/or g?
- 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(4)?
- C. 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.
- D. With regard to the alleged statutory disqualifier, whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act?

BACKGROUND AND STIPULATED FACTS

The following background facts and stipulated facts adduced at the hearing and through the complaint are hereby adopted by reference, as **FINDINGS OF FACT**.

1. Respondent presently holds casino employee license no. 08500-21 issued by the Commission on March 25, 1981.
2. On August 31, 1983, the Atlantic City police executed a search warrant and discovered marijuana and methamphetamine in the trunk of a motor vehicle registered in respondent's name. Immediately prior to the execution of the search warrant, respondent had opened and then closed the vehicle's trunk after removing an item located therein. Respondent was arrested with \$2,700 in his possession.
3. On or about September 2, 1983, respondent was suspended, indefinitely, from his employment position as a roulette dealer with Bally's Park Place Hotel/Casino.
4. On or about December 8, 1984, respondent was indicted by the Atlantic City Grand Jury under Indictment No. 12-1547-83-INV(C) which charged respondent with two counts of possession of a controlled dangerous substance (CDS) (methamphetamines and marijuana over 25 grams), in violation of N.J.S.A. 24:21-10a(1) and (4), together with two counts of possession of a CDS with intent to distribute in violation of N.J.S.A. 24:21-19a(1).
5. Respondent entered a plea of not guilty to all four counts of the Indictment.
6. The parties stipulate that respondent subsequently on September 3, 1985, retracted his not guilty pleas and entered a plea of guilty to Counts Two and Four of the Indictment, to wit; that respondent possessed methamphetamine, a CDS, with the intent to distribute and, respondent possessed marijuana, a CDS, with the intent to distribute.

7. The parties stipulate that respondent's entry of guilty pleas to the two offenses constitute statutory disqualification for respondent to hold and possess a casino employee license under Section 86c(1) of the Act.
8. As a consequence of the entry of the guilty pleas, respondent was sentenced to the Atlantic County jail for a term of nine months on both counts to run concurrently. Respondent was placed on Probation for 18 months and required to locate and maintain employment. The court also imposed the penalty of \$25 for each of the two counts for a total of \$50 to be paid to the Violent Crimes Compensation Board (VCCB).
9. Respondent served 45 days confinement commencing on October 15, 1985, and thereafter he continued on a work-release program for 31 days after which he was released from jail on December 31, 1985.
10. During respondent's probation, he was subject to drug detection urine tests. There was no indication of drug use by respondent as a consequence of the drug urine tests. Nor was there any indication of any parole violation committed by respondent.

TESTIMONIAL EVIDENCE

Respondent testified on his own behalf asserting, among other things, that he was 26 years of age when he was arrested and indicted by the Atlantic County Grand Jury for possession of CDS and possession of CDS with the intent to distribute. Respondent is presently 30 years of age, single, and living with his mother, a widow, at 29 South California Avenue, Atlantic City, New Jersey. His family moved from Philadelphia, Pennsylvania to Atlantic City approximately 20 years ago and respondent has maintained his residence in the city since the move. Respondent is presently employed by the Joseph Fabi, Inc., Absecon, New Jersey, as a cement finisher and has been so employed since about July 1986. Respondent acquired his employment with Fabi, Inc., due, in part, to his membership with Local 33, Cement Finishers' union.

Respondent's prior work history included, among other things, his employment by a bakery; Scarf Inc.; the Golden Nugget Hotel/Casino; and, Bally's Park Place Hotel/Casino. Respondent testified that he was employed by Scarf Inc., from February

1979 to June 1979 as a cement finisher, and disclosed this information to the Division when he completed his Personal History Disclosure form-2A for his casino employee license. Respondent asserted that Christopher Scarfo was his immediate supervisor and that respondent believed that Scarf Inc. was owned by Phillip Leonetti. When asked by the Deputy Attorney General under cross-examination whether or not respondent knew Nicodemo Scarfo (a convicted felon and reputed organized crime figure), respondent replied, "No sir. He walks around the driveway; I say hello to him. . . ." (transcript pg. 51). Respondent testified that he did not socialize with either Nicodemo Scarfo or Phillip Leonetti and knew of their reputations through reading the newspapers. With regards to Leonetti, respondent stated:

- A. I read the papers. But I worked for Phillip [Leonetti] and I got nothing but good things to say about him. I know him from going to work and coming back and that was that. I got a number of good things to say about the man. He was always fair to all his workers. Other than that, I I don't know him. (transcript pg. 54)

Respondent testified he did not know Nicodemo Scarfo, however, respondent knew Nicodemo's mother who lived in the neighborhood. Respondent admitted, moreover, that he had written to Nicodemo Scarfo while Scarfo was incarcerated in federal prison in the State of Texas.

Respondent attended Bally's Casino gaming school and was employed by Bally's as a roulette dealer prior to the issuance of respondent's casino employee license for a period of five or six weeks. He was released as an unlicensed dealer and while awaiting receipt of his casino employee license, respondent was employed by the Golden Nugget Hotel Casino as a parking attendant. Upon receipt of his license, respondent was immediately rehired by Bally's as a roulette dealer. Respondent was employed by Bally's for approximately two and one-half years; until his indefinite suspension on or about September 2, 1983.

Respondent offered three witnesses at the hearing who testified as to his good character, honesty and integrity. Each witness extolled respondent's good behavior and demeanor in their presence; either in the work place and/or a social setting. In addition, respondent offered several letters on his behalf; all of which were highly complementary to him as a good worker with a pleasing personality.

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 sanction 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 and respondent concedes that respondent's criminal misconduct constitutes a disqualifying offense under Section 86c(3). Consequently, the Division further contends that respondent's commission of a per se disqualifying offense precludes his holding of a casino employee license.

N.J.S.A. 5:12-86c(3) mandates that a person convicted of any offense which "would be under New Jersey law at the time of application is a violation of any law" which would rise to "any high misdemeanor under Section 19 of P.L. 1970, c. 226 (C.24:21-19)", be disqualified from licensure. N.J.S.A. 24:21-19a(1) is a disqualifying offense under Section 86c(3).

I CONCLUDE that the herein record has established, by way of stipulated facts, that respondent committed a violation of N.J.S.A. 24:21-19a(1), which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(3).

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h 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 (licensure) under their supervision.

In consideration of respondent's claim of rehabilitation, the following has been found in this record.

First, respondent Michael A. Brennan holds casino employee license No. 08500-21 and has been employed thereunder as a roulette dealer by Bally's Park Place Hotel/Casino. During his employment with Bally's, respondent had responsibility for actual gaming activities. Therefore, he had direct and substantial contact with casino patrons.

Second, the respondent committed an entered a plea of guilty to two counts of the possession of a CDS with the intent to distribute, in contravention of N.J.S.A. 24:21-19a(1). These are serious offenses and, by the very nature of the offense, are listed as automatic disqualifiers to hold a casino employee license under Section 86c(3) of the Act.

Third, the underlying circumstances which lead to respondent's arrest, indictment, entry of pleas and finding of guilt demonstrate the seriousness of the misconduct. It has been established on this record that respondent Brennan is neither an addict nor a user of illegal drugs. It has further been established that he was convicted of two counts of possession of CDS with the intent to distribute. Further, at the time the Atlantic City police executed its search warrant of respondent's motor vehicle and the illicit material was discovered in his possession, respondent had a considerable amount of money upon his person. These facts, taken together, lead to the strong inference that respondent was an illegal drug dealer at the time of his arrest; that he was in the drug business for profit and personal monetary gain. It becomes more serious with the uncontroverted fact that

respondent was employed in the casino industry at the time of his arrest where direct and substantial contact was made with casino patrons on a daily basis.

Fourth, the arrest of respondent for the offenses occurred on August 31, 1983, while he was employed as a roulette dealer with Bally's.

Fifth, the misconduct occurred when respondent was 26 years of age. There is no indication that respondent's misconduct was due to immaturity.

Sixth, there is no evidence nor findings that respondent had more than the one conviction for violation of CDS laws of this State. Therefore, respondent's misconduct was isolated.

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

Eighth, the respondent has made efforts of rehabilitation. He acknowledged his misconduct and pled guilty to the offenses. He is currently, on probation. Respondent earned a very respectable reputation while employed within the casino industry prior to his arrests. During his indefinite suspension from Bally's, he has pursued alternate employment as a cement finisher, a trade he was familiar with prior to his licensure as a roulette dealer. There has been no finding by this tribunal or any court of competent jurisdiction, that respondent was or is a drug user or drug addict. During his probationary period subsequent to his release from jail, respondent was tested for drug use and found to be drug free. Notwithstanding, respondent's rehabilitative efforts do not outweigh the seriousness of his misconduct.

I **CONCLUDE**, therefore, that respondent has not affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

Respondent Brennan is required to establish his reputation for good character, honesty and integrity, by clear and convincing evidence under Section 90b which incorporates Section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are true key factors. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the

individual's reputation in issue and objects to licensure under Section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Respondent offered letters and live testimony at the hearing to support his contention that he does in fact possess the requisite good character, honesty and integrity for licensure. This evidence was persuasive until, however, respondent's credibility was tested upon cross-examination. Respondent testified, among other things, that he was familiar with Nicodemo Scarfo, however, he did not know or socialize with the man. Yet, respondent admitted on the record, he had written to Nicodemo Scarfo while Scarfo was in federal prison in the State of Texas. The issue here is not whether respondent was or is associated with a career offender under Section 86f of the act but, rather, whether respondent's testimony is to be believed. While it is certainly possible that a person might write notes or letters to an individual who does not know the writer; it is more likely that the writer and recipient of the notes or letters would know each other. Otherwise, what is there to communicate? It stretches credulity for respondent to suggest that he wrote letters to Nicodemo Scarfo and then testified that he did not know Scarfo. The Appellate Division of Superior Court in State v. Taylor, 38 N.J. Super. 6 (App. Div. 1955) at 24 quoted Chief Justice Vanderbilt in In re Perrone's Estate, 5 N.J. 514 (1950) where he said at 522 that:

... Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.

The common experience does not support the proposition that an individual will write a personal letter to a stranger or a mere acquaintance. Respondent's denial of knowing Nicodemo Scarfo and his admission that he wrote to him is, in itself, incredible. Such lack of credibility does not support respondent's contention that he possesses the requisite good character, honesty and integrity.

I CONCLUDE, therefore, that 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).

Having concluded that respondent's committed offenses automatically disqualify him from casino employee licensure and, having concluded that respondent has failed to demonstrate his rehabilitation or that he possesses the requisite good character, honesty and integrity; there is slight need to address the issue as to whether respondent's continued licensure, in view of his committed offenses, is inimical to the policy of the Act. It is noted here, however, that placing a known illegal drug dealer on the floor of a casino could well undermine public confidence in the regulatory process. The offenses for which the respondent stands convicted are most serious and can not be ignored nor lightly put aside. The plausible inference this tribunal adduced from the facts presented is that respondent was in the illegal drug trade for profit occasioned by greed. Even applying the rehabilitative factors pursuant to Section 90h, respondent failed to overcome the serious nature of the offenses or to satisfactorily explain the circumstances under which they were committed. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301, 313-315.

Accordingly, I do **CONCLUDE** that in view of the offenses committed, respondent's continued licensure is inimical to the Act and to legalized gaming in this State. N.J.S.A. 5:12-86c(4).

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which may be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks the revocation of respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . . .

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes a disqualifying offense under Section 86c(3) and that he no longer possesses the qualifications for licensure. Accordingly, the respondent's license must be **REVOKED**. I so **CONCLUDE**.

ORDER

It is hereby **ORDERED** that the petition of the Division against Michael A. Brennan be **GRANTED** and that the casino employee license no. 08500-21 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 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.

Sept 11, 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Sept 14, 1987
DATE

Receipt Acknowledged:

Michael J. Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker / * 5
OFFICE OF ADMINISTRATIVE LAW

SEP 16 1987
DATE

ml

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Indictment
- P-2 Judgment of Conviction and Order for Commitment

For the respondent:

- R-1 Letter of recommendation, dated May 16, 1987, from Mildred Fox
- R-2 Letter, dated May 28, 1987, Atlantic County Probation Department, from Marion Torian
- R-3 Letter of recommendation, dated May 16, 1987, from Shelley Daniels
- R-4 Letter of recommendation, dated May 3, 1987, from Brian L. McDonald
- R-5 Pay stubs from Joseph Fabi, Inc.
- R-6 Letter of recommendation from Anna Brennan

WITNESSES

For the petitioner:

None

For the respondent:

Natale Nistico
Michael Brennan
Louis Carbo
Francesco DiDati

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-255
OAL DOCKET NO. CCC 769-87
REGISTRATION NO. 61200-40
ORDER NO. 87-33-11

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

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 2, 1987,

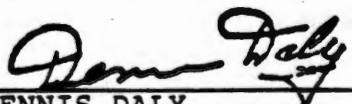
IT IS on this 9th day of September 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Willie J. Bridges is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; 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
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 769-87

AGENCY DKT. NO. 87-255

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

Petitioner,

v.

**WILLIE J. BRIDGES,
Respondent.**

**Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Willie J. Bridges, respondent, pro se**

Record Closed: July 2, 1987

Decided: July 13, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Willie J. Bridges, respondent. The Division alleged that Mr. Bridges had committed various

criminal violations, for which the Division seeks revocation of the respondent's casino hotel employee registration, No. 61200-40, pursuant to Section 129 of the Casino Control Act. (Act). The respondent contends that he is rehabilitated pursuant to Section 91(d) of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on January 6, 1987. The respondent requested a hearing on January 22, 1987. On February 3, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 9, 1987, and the matter was scheduled for hearing. A hearing was held on July 2, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

The facts in this matter are totally uncontroverted.

On March 21, 1979, the respondent was arrested by the Atlantic City Police Department based upon a complaint filed by the respondent's wife, Juanita Bridges. The complaint charged Mr. Bridges with Lewdness and Carnal Indecency, in violation of N.J.S.A. 2A:115-1; Assault with Intent to Rape, in violation of N.J.S.A. 2A:90-2; Rape and Carnal Abuse with a Woman-Child under the age of 16 years, in violation of N.J.S.A. 2A:138-1; and Debauching and Impairing the Morals of a Minor, in violation of N.J.S.A. 2A:96-3 (P-3).

On April 23, 1979, the respondent was indicted (No. 643-78-J) on all charges by an Atlantic County Grand Jury (P-1).

On May 14, 1979, the respondent entered a plea of guilty to carnal abuse in violation of N.J.S.A. 2A:138-1. The other charges were dismissed as part of a plea agreement.

Mr. Bridges committed the act of carnal abuse upon his 7-year -old step-daughter. On February 19, 1980, Mr. Bridges was sentenced to a 2-3 year sentence in a New Jersey State Prison; however, the prison sentence was suspended and Mr. Bridges was placed on probation for a term of 3 years (P-2).

Mr. Bridges explained that in 1979 he was a frequent user of drugs and alcohol. He stated that he sought professional help. However, he was unable to state either the type of professional help he received or where he received that help. Mr. Bridges claims to have attended Alcohol Anonymous meetings and Narco meetings but failed to provide any documentation to that effect. Mr. Bridges volunteered that he had stopped attending the meetings in 1984.

On August 6, 1985, Mr. Bridges was arrested and was charged by the New Jersey State Police with knowingly offering false information to his employer, the Wackenhut Corporation (a licensed, private detective agency) regarding his previous record of conviction. He failed to list his conviction in 1979 on State Police Form 202, which is a violation of N.J.S.A. 45:19-15.

On June 3, 1986, the respondent was indicted on two counts of false swearing, pursuant to N.J.S.A. 2C:28-2 (P-4).

On September 15, 1986, Mr. Bridges entered a plea of guilty to one count of false swearing. On October 3, 1986, the respondent was sentenced to probation for a period of 2 years, was fined \$500, was ordered to perform 25 hours of community service and was ordered to pay \$30 to the Violent Crimes Compensation Board (VCCB). The respondent's probation does not expire until October 3, 1988. Respondent acknowledges that he did not list his conviction of 1979 on the Wackenhut application. He explained that he would not have been hired as a security guard if Wackenhut Corporation had known of his conviction.

Mr. Bridges has several other arrests for lewdness and assault with intent to commit sodomy in 1978 and 1981. He denied these arrests until confronted with a United States Department of Justice Record Abstract (P-6) and an Atlantic City New Jersey Police Department Investigation Report , dated February 10, 1981 (P-7). Quite bluntly, Mr. Bridges' explanation for his carnal abuse conviction is certainly not believable and certainly cannot be justified under any circumstances.

The above is uncontroverted, documented and is thus FOUND AS FACT.

CONCLUSION OF LAW

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

Willie J. Bridges was convicted of a violation of N.J.S.A. 2A:138-1 in 1979 for carnal abuse done to his seven -year -old stepchild. In its complaint, the Division asserts that a conviction for carnal abuse under Section 2A is comparable to N.J.S.A. 2C:14-2.

N.J.S.A. 5:12-86 sets forth the casino license disqualification criteria. The statute states that an applicant shall be denied licensure for a conviction of all crimes of the first degree under Title 2C of the New Jersey Statutes. N.J.S.A. 2A:138-1 is a crime of the first degree.

N.J.S.A. 2A:138-1 was repealed effective September 1, 1979. The statute was related to penalties for rape and carnal abuse. In the Disposition Table, which is set forth in the beginning of the volumes of Title 2C, N.J.S.A. 2A:138-1 is listed as the source section of the revised section, N.J.S.A. 2C:14-2.

N.J.S.A. 2C:14-2 sets forth the elements of the crime of sexual assault. If the respondent had been convicted under N.J.S.A. 2A:14-2 for acts done to a seven -year-old child, he would be guilty of aggravated sexual assault. The statute notes that aggravated sexual assault is a crime of the first degree. Pursuant to N.J.S.A. 5:12-86(c), a conviction for a Title 2C crime of the first degree is a basis for disqualification.

The respondent would be disqualified regardless of whether his conviction was for a violation of N.J.S.A. 2A:138-1 or N.J.S.A. 2C:14-2. Convictions under both statutes are expressly made grounds for disqualification under N.J.S.A. 5:12-86(c).

There is no doubt that the respondent's convictions for violations of N.J.S.A. 2A:138-1, carnal abuse, and of N.J.S.A. 2C:28-2, false swearing fourth degree, are statutory disqualifying offenses under Section 86c(1) of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's convictions for violations of N.J.S.A. 2A:138-1 and N.J.S.A. 2C:28-2 disqualify him from being a registrant, pursuant to Section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Bridges is registered as a casino hotel employee. Respondent has no significant employment history in the casino industry. He was, however, employed briefly in 1985 by the Trump Casino Hotel.

Second, the respondent was convicted of the following:

1. On May 14, 1979, a violation of N.J.S.A. 2A:138-1, carnal abuse.
2. On September 15, 1986, a violation of N.J.S.A. 2C:28-2, false swearing.

Under Section 86c(1) of the Act, all first degree crimes are statutory disqualifiers. N.J.S.A. 2A:138-1 is a first degree crime. A conviction for false swearing, fourth degree is also a statutory disqualifier. A conviction for carnal abuse is heinous; a conviction for false swearing, merely reprehensible.

Third, the respondent asserts a long history of drug and alcohol abuse. It is significant that respondent has not attended an Alcoholics Anonymous or Narcotics Anonymous meeting since 1984.

Fourth, the respondent committed the offenses on March 20, 1979 and August 6, 1985. The last offense occurred approximately two years ago. Respondent's probation does not terminate until October 3, 1988.

Fifth, the respondent committed the carnal abuse offense at age 26. It is unlikely that his misconduct was due to immaturity. The same is true for the conviction for false swearing at age 34.

Sixth, the respondent's misconduct does not appear to be an isolated incident (P-6, P-7).

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

Eighth, the respondent has utterly failed to demonstrate rehabilitation.

Therefore, I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation pursuant to Section 91d of the Act.

ORDER OF DISPOSITION

It is **ORDERED** that the casino hotel employee registration (No. 61200-40) of Willie J. Bridges 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7 - 14 - 87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

July 16, 1987
DATE

Receipt Acknowledged:
Richard Zapp
CASINO CONTROL COMMISSION

July 17, 1987
DATE

Mailed to Parties:
Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Superior Court of New Jersey, Law Division - Criminal - Atlantic County Indictment No. 643-78-J, dated April 23, 1979**
- P-2 Judgment, dated February 21, 1980**
- P-3 Atlantic City, New Jersey Police Department Investigation Report, dated March 20, 1979.**
- P-4 Superior Court of New Jersey, Law Division - Criminal - Atlantic County Indictment No. 643-78-J, dated June 3, 1986**
- P-5 New Jersey State Police Investigation Report, dated December 16, 1985**
- P-6 United States Department of Justice Identification Report, dated February 13, 1981**

For the Respondent:

- R-1 Letter from Robert M. Lydon, General Manager, Royal Inn, dated July 4, 1987**
- R-2 Letter from Richard Laigaie , Operations Manager, Wells Fargo Guard Services, dated July 8, 1987**

WITNESS LIST

For the Petitioner:

Willie J. Bridges

For the Respondent:

Willie J. Bridges

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-71
OAL DOCKET NO. CCC 954-87
LICENSE NO. 31430-21
ORDER NO. 87-35-3

APPLICATION OF ALVIN H. BROOKS
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

IT IS on this *7th* day of October 1987, ORDERED that the initial decision is modified as follows:

- 1) To find the respondent's offense of theft by deception in violation of N.J.S.A. 2C:20-4, a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and -86(g) since the respondent was never convicted of this offense.
- 2) To find that the respondent has demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and -90(b).

IT IS FURTHER ORDERED that the application of Alvin H. Brooks for renewal of his casino employee license is granted substantially for the reasons stated in the initial

ORDER NO. 87-35-3

decision, which is incorporated herein by reference and made
a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED

JUL 27 1987

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 954-87

AGENCY DKT. NO. 86-EA-71

ALVIN BROOKS,

Petitioner,

v.

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

Respondent.

Alvin Brooks, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: July 9, 1987

Decided: July 17, 1987

BEFORE JEFF S. MASIN, ALJ:

Alvin Brooks applied to the Casino Control Commission ("Commission") for renewal of his casino employee license. On May 6, 1986, the Division of Gaming Enforcement ("Division") filed a letter with the Commission in which it recommended that Mr. Brooks' license renewal be denied because of questions concerning whether the applicant has the necessary good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89b(2).

Mr. Brooks requested a hearing on the proposal to deny his application and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held before Honorable Lillard E. Law, ALJ on April 6, 1987, and a prehearing order was issued on April 9. The hearing was held before Administrative Law Judge Jeff S. Masin on June 26, 1987, at the Ventnor Municipal Court. Following the hearing, Mr. Brooks was given time to supply documentation concerning certain payments to the Division of Unemployment and Disability Insurance. This document was received by the administrative law judge on July 9, 1987, and the record closed on that date.

ISSUES

The prehearing order established the issues for consideration as:

- 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: improper receipt of unemployment compensation benefits, analogous to theft under 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).
- C. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

STIPULATED FACTS

At the prehearing conference, the parties stipulated that Mr. Brooks collected Unemployment-Insurance Benefits while he was employed at the Claridge Hotel Casino and the Playboy Hotel Casino between the dates of March 1981 and July 1981.

TESTIMONY AND EVIDENCE

As noted, Mr. Brooks acknowledged his receipt of Unemployment Benefits while employed. During his testimony at the hearing, he readily admitted that he had committed a wrong when he allowed the unemployment authorities to continue to pay him

benefits even though he was aware that he should not have been receiving the same because he had become employed. Mr. Brooks, who resides in Pleasantville and is currently employed as a messenger at Spencer Gifts, related that he began employment in the casino industry at the Claridge and then went to the Playboy sometime in 1981. He also worked for the Golden Nugget for a short time before becoming employed at Harrah's. He began his employment with Harrah's Casino in May 1982. He was terminated for absenteeism on January 27, 1986, which date was his last date of employment in the industry. At the time of his termination he was working as a blackjack dealer.

According to records received in evidence from the Division of Unemployment and Disability Insurance, Mr. Brooks began to receive Unemployment Benefits in March 1981. He continued to collect benefits through the week ending July 11, 1981. On January 18, 1983, the Division sent Mr. Brooks a Notice of Hearing, advising him that as a result of an investigation of his unemployment insurance claim, it had learned that he had been employed during part of the period for which he received unemployment between March and July 1981. In fact, as Brooks acknowledged, he was employed at the Claridge and/or the Playboy. He explained that he had an application in process for employment at the time he was beginning to receive his Unemployment Benefits. He received his first unemployment check and then about a week later became employed at Playboy. According to his recollection, he continued to collect for a month or two and cashed the unemployment checks even though he knew it was wrong.

As a result of the claim against Brooks, the Division of Unemployment ultimately concluded that he owed \$1,294, including penalties. In fact, evidence received from the Division of Unemployment and placed in evidence as part of the unemployment records produced at this hearing, indicate that Brooks was employed by Playboy-Elsinore Associates for the weeks ending March 14, 21 and 28, 1981, and was employed by the Claridge for the weeks ending April 4, 1981 through July 11, 1981. During each of these weeks (with the exception of the week ending March 14, 1981) he received wages from employment and also received \$126 every two weeks from unemployment.

After a hearing the Division of Unemployment issued a Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification because of Willful Misrepresentation. Since this Determination, Brooks has paid back his entire obligation, the last \$160 of which was still pending on the date of the hearing, but was paid on July 2, 1987 (P-1 in evidence).

The parties produced exhibits J-1 and J-2, which are computer printouts from the New Jersey Unemployment Insurance Claims Office in Atlantic City, which appear to indicate that the total amount due from Brooks by way of refund for the fraud and fines was \$2,176. It is unclear why this total exceeds \$2,000 when the agency's Determination indicates that the overpayment and fine is \$1,294. However, according to Brooks' testimony and the information contained on the computer printout supplemented by the Receipt for Refund Benefits dated July 2, 1987, Brooks has paid all of the obligation to Unemployment.

Mr. Brooks is 28 years old. He has no dependents. He has just begun a second job in the laundry room of a motel.

DISCUSSION

The applicant acknowledged that his conduct in connection with the receipt of Unemployment Insurance Benefits in 1981 was wrong. Mr. Brooks offered no explanation for his conduct. It appears that he accepted the Unemployment Benefits while working solely in order to obtain more money, for whatever purposes he needed it.

Since 1981, Brooks has apparently not been involved in any untoward incidents. His improper receipt of over \$500 in Unemployment funds, which clearly involved misrepresentation to that agency of continued unemployment, certainly constituted a fraud against the Unemployment system, and would have provided a basis for a conviction of theft by deception under N.J.S.A. 2C:20-4.

It appears that since Mr. Brooks was confronted with his wrongdoing in January 1983, he has taken steps to repay his obligations to Unemployment. The \$160 balance which remained on his ledger prior to the trial date, which was paid on July 2, 1987, appears to constitute the fine that was imposed on top of the refund of the fraudulently obtained benefits. At the hearing Brooks noted that he originally thought that he had paid back all the monies due and had then become aware when he checked that he still owed the \$160.

In light of Mr. Brooks' admissions, which I **CONCLUDE** in and of themselves establish commission of acts which if prosecuted would have constituted a disqualifying offense pursuant to N.J.S.A. 5:12-86c, I **CONCLUDE** that he is disqualified from licensure unless he can establish rehabilitation. With respect to that issue, the evidence indicates Brooks was approximately 22 years old at the time of the fraud, which activity was a nonviolent episode whose primary victim was the admittedly significant public fisc. Mr. Brooks has repaid all outstanding obligations, albeit the last portion only recently. The record indicates that he has been employed in the casino industry both before, during and after the fraudulent activity. Although he was terminated for absenteeism in January of 1986 from his position as a blackjack dealer at Harrah's, there are no facts before me which would indicate anything specifically unusual or detrimental about the circumstances of that termination such that they should speak against the possibility of relicensure.

In considering the nature of the offense as it relates to the rehabilitation issue, one must note that this offense involved receipt of public funds by one allegedly unemployed who in fact was obtaining his wages from the casino industry. The holding of a casino job while defrauding the state of its unemployment funds is a serious matter. This circumstance would appear to weigh against a finding of rehabilitation. However, given the passage of time and the relative youth of Mr. Brooks at the time of the offense, as well as the fact that he has been in no trouble since 1981, I **FIND** that Mr. Brooks has rehabilitated himself from the adverse affects of his disqualifying activity and should therefore be permitted the renewal of his license. For the reasons expressed, it is **ORDERED** that the 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 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

July 17, 1987

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

July 23, 1987

Nicholas Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

July 24, 1987

Ronald L. Parkes, Jr.
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

Joint Exhibits:

- J-1 New Jersey Unemployment Insurance Claims Office computer printout
- J-2 New Jersey Unemployment Insurance Claims Office computer printout

On Behalf of Respondent:

- R-1 Letter of November 2, 1984, to Alvin Brooks from Henry Golembiewski,
Supervisor, Refund Processing and Crossmatch Section

On Behalf of Petitioner:

- P-1 Division of Unemployment and Disability Insurance receipt for refund of
benefits, dated July 2, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-EA-4
OAL DOCKET NO. CCC 4093-86
APPLICATION NO. 61047-22
LICENSE NO. 33680-22 (INACTIVE)
REGISTRATION NO. 36486-40
ORDER NO. 87-27-2

APPLICATION OF MARGARETTE C. BURROUGHS
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 15, 1987,

IT IS on this *9th* day of September 1987, ORDERED that the initial decision is rejected for the following reasons:

- (1) The Commission finds that the applicant did not understand that the certificate of debt obtained against her constituted a "judgment" which was required to be disclosed in response to question 18 of the Personnel History Disclosure Form - 2A which she completed. Therefore, the applicant's failure to disclose this information was not intentional and does not constitute a basis for disqualification pursuant to N.J.S.A. 5:12-86(b).

- (2) The Commission finds that absent disqualification under N.J.S.A. 5:12-86(b), the applicant possesses the good character, honesty and integrity required for licensure of a casino employee pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the application of Margarette C. Burroughs for a casino employee license is granted based upon the reasons stated herein.

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 4093-86

AGENCY DKT. NO. 86-EA-4

MARGARETTE C. BURROUGHS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC

SAFETY,

Respondent.

Margarette C. Burroughs, petitioner, pro se

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: May 1, 1987

Decided: June 10, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

- Margarette C. Burroughs, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee-nongaming (casino secretarial employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, ultimately took no position on the application, but identified concerns with the application by reason that the petitioner had failed to disclose information material to licensure in violation of section 86b of the Casino Control Act (Act), because of her failure to disclose on both her application form and to a Division agent a judgment entered in favor of the Division of

Unemployment and Disability Insurance, Department of Labor, and that the petitioner lacked the requisite good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference, by reason of her nondisclosures and by reason of her failure to repay the judgment.

PROCEDURAL HISTORY

Ms. Burroughs filed her Personal History Disclosure Form - 2A (PHDF-2A), which was a resubmission for a license which had expired, with the Commission on April 8, 1985. By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated December 12, 1985, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By letter dated May 6, 1986, the Division amended its initial report and made no recommendation on the application (R-7). The Commission again advised the petitioner that there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By notice dated June 12, 1986, Ms. Burroughs requested a hearing (R-7). On June 23, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 6, 1986, before Administrative Law Judge Stephen W. Thompson. The matter was heard on May 1, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Burroughs is 33 years of age (R-5). She resides currently in Vineland with her two children, ages 13 and 11.

The petitioner is a 1971 graduate of Holy Spirit High School in Absecon.

On September 30, 1972, the petitioner was married to William Falkinburg, the father of her two children. The marriage ended in divorce.

From 1974 to 1982, the petitioner resided at 309 South Xanthus Avenue in Absecon.

From July 1975 to May 1978, the petitioner was employed as a dog groomer by VIP Dog Groomers Kennel in Absecon. She left this position for better employment opportunities.

From May 1978 to June 1979, the petitioner was employed as a dog groomer by Terry's Dog Grooming in Ventnor. Again, she left this position for better employment opportunities.

From June 1979 to September 1981, the petitioner was employed as a dog groomer by Pampered Pet Palace in Northfield. She left this position because of a career change.

From September through November 1981, for a period of eight weeks, the petitioner was employed on a temporary basis as a food and beverage cashier by Boardwalk Regency Corporation (BRC), t/a Caesar's Atlantic City Hotel Casino. She was laid off from this position.

While employed at BRC, the petitioner obtained a casino employee registration and casino employee license no. 33680-22 (nongaming). She renewed her license until November 1984, when it expired.

From September to October 1981, during her period of employment at BRC, the petitioner collected unemployment benefits to which she was not entitled. The petitioner received an overpayment in the amount of \$450 (R-1). The reasons underlying the receipt of unemployment benefits were in dispute and will be discussed, infra. Nevertheless, the petitioner acknowledged that she knew then that she was not entitled to receive the benefits and failed to report her employment to the Division of Unemployment and Disability Insurance.

From January through August 1982, the petitioner was again employed by BRC as a front office cashier. She left this employment because she was unable to work a split shift.

From September 1982 to March 1983, the petitioner was employed in an audit capacity by Resorts International Hotel, Inc., t/a Resorts International Casino Hotel. The petitioner audited table games. She left this position because of baby-sitting difficulties caused by weekend work assignments.

By notice dated February 2, 1983, mailed to the petitioner at 3095 South Xanthus Avenue in Absecon, the Division of Unemployment and Disability Insurance notified the petitioner of alleged receipt of unemployment benefits to which she was not entitled by reason of concurrent employment, and set a date and time for a hearing (J-1). The petitioner denied that she received this notice. A record of hearing dated February 17, 1983, establishes that the petitioner failed to appear for the scheduled hearing (R-3).

From March to July 1983, the petitioner was employed as a typesetter by Turner Publications in Brigantine. Thereafter, from August 1983 to November 1984, the petitioner's employment was on a part-time basis. She left this employment because of an attempt to relocate.

From July 1983 to June 1984, the petitioner was employed by the then Playboy Hotel and Casino (Playboy) in a payroll clerk capacity. She left this position because of excessive hours and because she had part-time employment with Turner Publications.

From October 1983 to January 1985, the petitioner resided at 233 East Magnolia Avenue in Absecon, her parents' home. She resided at this address with her two children and with Victor Burroughs, her second husband. The petitioner filed a change of address form with the post office.

- On July 8, 1983, the Division of Unemployment and Disability Insurance mailed a notice to the petitioner that she had received an overpayment in unemployment benefits for which she was not eligible by reason of her then current employment, which notice was mailed to 309 South Xanthus Avenue in Absecon (R-1). The document indicates by handwritten notations that it was remailed to the petitioner on November 24, 1984, to 233 East Magnolia Avenue in Absecon. The notice sets forth a total overpayment in the amount of \$450 plus a fine in the amount of \$180, for a total amount due of \$630. The petitioner denied that she received this notice (R-2).

On October 3, 1983, the Division of Unemployment and Disability Insurance filed a certificate of debt with the Superior Court, which was recorded as a judgment in the amount of \$630 (R-4).

After she left Playboy in June 1984, the petitioner again applied to the Division of Unemployment and Disability Insurance for unemployment benefits during a brief period of unemployment. The petitioner was advised that she was not eligible for benefits because she had previously received benefits to which she was not entitled, and therefore, was obligated to reimburse the amount previously received, and because she had left her most recent employment voluntarily, i.e., had not been terminated. The petitioner has not applied for unemployment benefits since this incident.

The petitioner was notified that both her 1983 and 1984 State income tax returns were being retained by the State and applied to her debt owed to the Division of Unemployment and Disability Insurance (P-1). It is also apparent that the petitioner's homestead rebate was also retained for the same purposes, although the petitioner testified that she was unaware of this until discussions with Division agents.

From June to November 1984, the petitioner was employed as vault custodian by First Jersey National Bank/South in Atlantic City. The petitioner was responsible for safe deposit boxes, United States savings bonds and senior citizen bus and jitney discount tickets. She left this employment because of an attempt to relocate.

From January to March 1985, the petitioner resided in Maryland. She relocated because her husband was a horse trainer and followed the racing circuit. The petitioner visited her parents on weekends, when she received her mail. The petitioner had notified the post office of her change of address. During this period the petitioner was employed as an audit specialist by Memorial Hospital in Easton, Maryland.

In March 1985, the petitioner returned to New Jersey with her family and again resided with her parents at 233 East Magnolia Avenue in Absecon.

On April 8, 1985, the petitioner resubmitted her PHDF-2A to the Commission in order to obtain a reissuance of her expired casino employee license (R-5).

The petitioner testified that she read the entire form, including each question, and provided the answers by herself. Although the petitioner disclosed her divorce in response to question 18 on page 17, she did not disclose the judgment. The reasons underlying the nondisclosure were in dispute and will be discussed, infra. The petitioner testified that she knew to disclose her divorce because she had been so advised by the person who assisted her in completing her initial application.

From April 1985 until the present, the petitioner has resided at 5413 Dante Avenue in Vineland. The petitioner and her second husband separated in early 1985.

On October 31, 1985, the petitioner was interviewed telephonically by Division Agent Harry Curley, who has been assigned to the employee licensing section for the past three and one-half years. Although the date of the telephone interview was in dispute, the two dates in issue were reasonably close in proximity and the precise date does not affect the outcome of this case. Agent Curley's investigation of the petitioner did not reveal a criminal record, but did disclose the judgment in favor of the Division of Unemployment and Disability Insurance. The investigation also revealed that the petitioner's 1984 and 1985 homestead rebate checks had been retained by the State and applied to the judgment. The remainder of the interview was in dispute and will be discussed, infra.

Since April 8, 1985, the petitioner has been employed as a payroll clerk in the payroll department by Claridge at Park Place, Inc., t/a Claridge Hotel and Hi Ho Casino (Claridge). This employment is pursuant to her registration. The petitioner has not had any employment difficulties nor has she been disciplined.

By letter dated December 12, 1985, the Division objected to licensure of the petitioner by reason of her purported nondisclosures on her application form and to Agent Curley during the telephonic interview.

By letter dated January 10, 1986, from the petitioner to Chairman Read, the petitioner raised objections with the Division's opposition to her application and criticized the Division's investigative methods (P-1).

Revallee Brody, a Division agent for the past three and one-half years assigned to the employee licensing section, conducted a supplemental investigation. On

January 29, 1986, the agent conducted an in-person interview of the petitioner at the Division's offices in Atlantic City. The content of the interview was in dispute and will be discussed, infra.

By letter dated May 6, 1986, the Division restated its position concerning the petitioner's application to be without recommendation.

By submission made on June 12, 1986, the petitioner submitted Form A to the Commission, which was her request for a hearing (R-7). In her handwritten comments on Form A, the petitioner made reference to an attachment, which was a letter dated May 9, 1986, addressed to the petitioner from the Division of Unemployment and Disability Insurance, in which a payment schedule, in the amount of \$50 per month, was set forth.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the nondisclosure of the judgment on the petitioner's PHDF-2A and during her interview with Agent Curley; the interview with Agent Brody; the circumstances underlying the petitioner's receipt of unemployment benefits; the amount due from the petitioner to the Division of Unemployment and Disability Insurance; the manner in which the petitioner has attempted to repay her obligation, and the credibility of the various witnesses.

Concerning the nondisclosure of the judgment on her PHDF-2A, the petitioner testified that at the time she completed the application she was not aware of what a judgment was, although she knew what was meant by a debt. In addition, she did not know that the Division of Unemployment and Disability Insurance had obtained a judgment. The petitioner cited her several relocations and stated that she had never received any of the notices mailed by the Division of Unemployment and Disability Insurance. Last, she first learned of the judgment during the telephone discussion with Agent Curley.

This testimony is essentially consistent with the answers the petitioners gave to both agents and in her written communications to the Commission, i.e., that she had no knowledge of a judgment prior to notification by Agent Curley (P-1 and R-7). However, for reasons which will be explained, infra, I am not persuaded to believe the petitioner's testimony.

Concerning Agent Curley's telephone interview, the petitioner testified that she returned his call from her place of work. She denied that she was aware of any judgments, and that she was not aware that she owed the state any monies. However, she acknowledged her debt obligation when asked specifically about unemployment benefits. The petitioner claimed that Agent Curley was abusive in what he said to her and the manner in which he spoke, i.e., his manner was "grilling" and he did not believe her explanations. Although the petitioner was cooperative, she became very upset, and her coworkers believed she was dealing with an irate customer. In addition, Agent Curley informed her that the State did not license people who had not paid their bills. The petitioner told the agent that she did not know who to contact concerning repayment. The petitioner's testimony was essentially consistent with her letter to Chairman Read filed on January 10, 1986 (P-1).

Agent Curley testified that during the interview, he advised the petitioner that she might have a debt problem and then read question number 18, after which he explained debt matters. The petitioner stated that she understood. However, she responded in the negative when asked if she had any debt matters. When the agent referred to unemployment benefits, the petitioner again replied in the negative and became angry. When the agent identified the specific unemployment obligation, the petitioner responded that it was none of his business. However, she then reluctantly acknowledged the obligation and stated that repayment was being made by means of retention of her income tax refunds. Nevertheless, the petitioner disputed the amount due as stated by the agent. The agent suggested that the petitioner arrange to make restitution, to which she replied that it was not his problem and that she did not intend to make payments other than by means of her tax refunds. The agent stated that the petitioner became loud; however, he was pleasant to her.

Concerning Agent Brody's interview, the petitioner testified that she denied knowledge of a judgment, but acknowledged her debt. Thereafter, Agent Brody provided the petitioner with a name and telephone number of a person to contact in order to make repayment.

Agent Brody testified that the purpose of the reinterview was to inquire into the interview conducted by Agent Curley as well as the debt matter. Agent Brody read question number 18 to the petitioner, who replied that there were none which she could recall. When asked if she understood the question, the petitioner replied in the affirmative and stated that it would be something for which she would have gone to court. Agent Brody then confronted the petitioner with her unemployment debt, which the petitioner acknowledged, but claimed that it had slipped her mind. Further, the petitioner stated an intent to repay solely by means of the continued diversion of income tax refunds and homestead rebates. Agent Brody found the petitioner to be cooperative.

For reasons which will be discussed, infra, I am not persuaded to believe the petitioner's testimony; rather, I am persuaded to accept the testimony of the Division's agents in full.

The petitioner testified that she first learned of the judgment as a result of her discussions with Agent Curley. Further, she never received any notices from the Division of Unemployment and Disability Insurance, most likely because of her several relocations.

While this testimony is essentially not in dispute, there is no question that the petitioner knew of her unemployment debt and her obligation to make restitution as of June 1984, when her reapplication for unemployment benefits was denied, and at or about the time her 1983 State income tax refund was retained by the State.

The circumstances underlying the petitioner's receipt of unemployment benefits to which she was not entitled must also be examined. The petitioner testified that the reasons she received these benefits during a period of known ineligibility by reason of employment was that her employment at BRC was temporary in nature, there was a threat of foreclosure on her house, a threat of utilities being turned off and she was a single parent with two young children. In addition, in her letter to Chairman Read, the petitioner stated that she was recently separated from her husband (P-1). Although the apparent date of separation from her husband stated in this letter was consistent with her testimony, it was substantially inconsistent with the September 1979 date of the divorce as disclosed in response to question number 18 on her application, which reflected a divorce two years prior (R-5). This inconsistency, together with the findings that the petitioner was not credible, render her explanation to be unpersuasive.

The petitioner testified that the current amount due on the overpayment was approximately \$300. The petitioner contacted the Division of Unemployment and Disability Insurance representative provided by Agent Brody and agreed to a repayment schedule in the amount of \$50 per month. However, she never made such payments because she was never provided with a written statement of the arrangement, which she had requested and which was promised. Accordingly, the petitioner concluded that the Division of Unemployment and Disability Insurance was satisfied to continue to secure the petitioner's income tax refunds and homestead rebates. Further, her 1986 income tax refund had been taken as well. However, the fact that the petitioner does not now own a home and has not for several years suggests that there are no homestead rebates to be applied to the debt.

Agent Curley testified that on the morning of the hearing on May 1, 1987, he contacted a representative of the Division of Unemployment and Disability Insurance by telephone, and was advised that the petitioner's debt obligation, together with accumulated interest, exceeded \$500.

During the petitioner's testimony concerning her nonreceipt of a written statement of the method of repayment of her debt to the Division of Unemployment and Disability Insurance, this administrative law judge reexamined the file transmitted by the Commission for hearing. Contained in the file was exhibit R-7, which consists of the petitioner's request for a hearing (Form A) and, as attachments, a letter dated May 9, 1986 from Alex McDowall, Supervisor, Legal Processing, Division of Unemployment and Disability Insurance, addressed to the petitioner, as well as the Division's letter of May 6, 1986 addressed to Chairman Read. On Form A, the petitioner made handwritten reference to the letter from Mr. McDowall and inferred that she had agreed to a repayment schedule at the time she first learned of the "problem." The attachments to Form A were provided by the petitioner. Mr. McDowall's letter states that it was mailed subsequent to receipt of a request from the petitioner "for an installment arrangement and refunding unemployment benefits." Initially, the petitioner denied receipt of such a letter. When shown the document, the petitioner testified that she had no recollection of the letter, although she acknowledged her handwritten statements made on Form A and their direct reference to the letter.

Again, by reason of the petitioner's lack of credibility, which will be discussed, infra, I am not persuaded to accept her testimony in any respect concerning her attempts or intent to repay the debt. Further, Agent Curley's testimony regarding the amount of the debt was completely persuasive.

A resolution of the factual disputes depend substantially upon an assessment of the credibility of the various witnesses, primarily the petitioner. Although her testimony initially appeared to be plausible and sincere, several internal inconsistencies developed. More specifically, during the reinterview with Agent Brody, the petitioner denied knowledge of any judgment and professed to have forgotten about the unemployment debt. However, the petitioner had received and understood the Division's initial letter of objection, dated December 12, 1985, in which the judgment and debt were identified. This letter precipitated the petitioner writing to Chairman Read in early January, in which she stated that she had been unaware of the judgment and forgotten about the debt until she was informed by Agent Curley (P-1). Accordingly, at the time of her reinterview by Agent Brody only six weeks later, the petitioner was fully aware of the judgment and debt, and could not profess ignorance. Second, the petitioner's explanation of the circumstances underlying her receipt of unemployment benefits to which he was not entitled was premised substantially upon a recent separation from her husband as contained in her testimony and in her January 1986 letter to Chairman Read (P-1). However, the date of divorce set forth on her PHDF-2A indicates a time frame some two years prior to her receipt of unemployment benefits. The third inconsistency concerned the petitioner's adamant and insistent denial that she had never received written communication from the Division of Unemployment and Disability Insurance concerning a method of repayment, despite the fact that the petitioner had provided a copy of such a letter to the Commission as an attachment to her request for a hearing (R-7). Given the clear inference that the petitioner had personally secured a letter on repayment based upon information provided by Agent Brody, her testimony that she had forgotten about the document was simply not persuasive. Because of these serious inconsistencies, the petitioner's testimony was neither believable nor persuasive in any respect.

Agents Brody and Curley were not parties to the proceeding and did not have a direct interest in the outcome nor a bias, despite the fact that their employer is a party. Neither had any incentive to distort the essence of her or his communications with the petitioner. Their testimonies appear to be plausible, were consistent each with the other and were consistent with the documentary evidence. Also, the absence of credibility on

behalf of the petitioner enhances the persuasiveness of the testimonies of both agents. Accordingly, the testimonies of Agents Brody and Curley were believable and persuasive.

Nevertheless, it was abundantly evident that a dispute had occurred between Agent Curley and the petitioner during their telephonic discussion. Although this matter can be resolved without factual findings concerning the nature of this communication, it was also impossible to make such findings. This is because of the total absence of any corroboration of the testimony of either Agent Curley or the petitioner. Such problems exist routinely in matters which involve section 86b issues and where telephone interviews are conducted. Despite repeated requests and comments by this administrative law judge, no measures have been taken by the Division to avoid these difficult and unnecessary issues. More specifically, since these cases are easily identifiable during the course of investigation, there appears to be no reason why such interviews cannot be recorded on tape thereby avoiding the entire controversy.

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

1. The petitioner's testimony contained numerous internal inconsistencies, and was neither believable nor persuasive in its entirety.
2. The testimonies of Agents Brody and Curley were believable and persuasive.
3. In response to Agent Curley's inquiries during a telephone interview on October 31, 1985, the petitioner did not disclose either the judgment or the debt, although the petitioner did acknowledge the debt when confronted with the details thereof.
4. In response to Agent Brody's inquiries during the in-person interview on January 20, 1986, the petitioner did not disclose the judgment or debt until she was confronted with the details thereof.
5. The petitioner knew of the debt as of June 1984.
6. The petitioner's explanation of the circumstances underlying her receipt of unemployment benefits, i.e., her recent separation from her husband.

was inconsistent with the information provided on her PHDF-2A and was not believable.

7. The petitioner has not made any sincere effort to repay her debt. Further, the petitioner did not offer during her testimony to undertake any effort to repay the debt.
8. The amount of the debt owed by the petitioner to the Division of Unemployment and Disability Insurance is in excess of \$500.
9. The petitioner offered no evidence of her good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

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

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

So that fully informed 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. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But

not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

The fact that the judgment was not set forth on the PHDF-2A and that neither the judgment nor the debt was disclosed by the petitioner during her interviews by Agents Brody and Curley until confrontation with the details thereof satisfies the Division's burden. The absence of any credible explanation of the reasons for her failures to disclose precludes the petitioner from overcoming the Division's proofs. Therefore, the failures to disclose must serve to disqualify her from licensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner is disqualified from licensure by operation of section 86b.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Burroughs was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish her qualifications for licensure under sections 89b(2) and 90b. William Gonzales at 8. Therefore, the conclusion that Ms. Burroughs failed to disclose information material to licensure in violation of section 86b automatically precludes her from meeting her burden under section 90b. Further, an applicant's willingness to disclose fully all matters material to licensure is the most direct and reliable means of testing her good character, honesty and integrity. Nevertheless, it should be the easiest test for an applicant to meet if she does, in fact, possess good character, honesty and integrity.

In addition, the circumstances under which the petitioner obtained unemployment benefits, as well as her testimony in this matter, are serious negative concerns which were not explained. Also, the petitioner provided no evidence of her good character, honesty and integrity.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

It is **ORDERED** that the application of Margarette C. Burroughs for licensure as a casino employee - nongaming be **DENIED**.

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

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

June 10, 1987
DATE

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

June 10, 1987
DATE

Receipt Acknowledged:

DeLoas Zapp
CASINO CONTROL COMMISSION

June 15, 1987
DATE

Mailed to Parties:

Donald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- J-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance, Bureau of Benefit Payment Control - Notice of Hearing, February 2, 1983
- P-1 Letter to Honorable Walter N. Read from Margarette C. Burroughs, with attachments, received on January 10, 1986 (10 pages)
- R-1 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, Margarette C. Burroughs
- R-2 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance - Claimants Benefit Payment and Employment Record, Margarette C. Burroughs, Boardwalk Regency Corporation, August 3, 1982 and December 21, 1982 (2 pages)
- R-3 Record of Hearing, February 17, 1983
- R-4 Certificate of Debt filed on October 3, 1983 with the New Jersey Superior Court (2 pages)
- R-5 Casino Control Commission - Personal History Disclosure Form - 2A, Margarette Claire Burroughs, filed on April 8, 1985 (20 pages)
- R-7 Casino Control Commission - Form A, Request by Margarette Burroughs for a hearing, together with attachments, filed on June 12, 1986 (5 pages)

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-6 Id. Updated Credit Profile - Margarette C. Burroughs (not offered)

WITNESS LIST

For the petitioner:

Margarette C. Burroughs

For the respondent:

Revalee Brody

Harry Curley

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-221
OAL DOCKET NO. CCC 00449-87
REGISTRATION NO. 65093-40
ORDER NO. 87-35-5

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
EDUARDO CARTAGENA, :
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 September 16, 1987,

IT IS on this 6th day of October 1987, ORDERED that the initial decision is modified as follows:

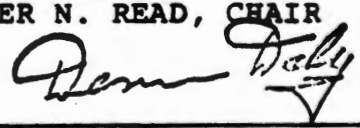
The Commission finds that in addition to the disqualifying offense found by the administrative law judge, the respondent intentionally failed to disclose his March 18, 1985, conviction for the disqualifying offense of possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19a(1) and that this conduct disqualifies him from licensure pursuant to N.J.S.A. 5:12-86(b); and

ORDER NO. 87-35-5

IT IS FURTHER ORDERED that the casino hotel employee registration held by Eduardo Cartagena is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

JUL 27 1987

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 449-87

AGENCY DKT. NO. 87-221

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

Petitioner,

v.

**EDUARDO CARTAGENA,
Respondent .**

**Ralph L. Fusco, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Eduardo Cartagena, respondent, pro se**

Record Closed: July 10, 1987

Decided: July 20, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Eduardo Cartagena, respondent. The Division alleged that Mr. Cartagena had committed a

criminal violation, for which the Division seeks revocation of the respondent's casino hotel employee registration, no. 65093-40, pursuant to section 129 of the Casino Control Act (Act). The respondent contends that he is rehabilitated pursuant to section 91d of the Act. The Division also asserts that Mr. Cartagena willfully failed to disclose his arrest of January 31, 1985, on his Personal History Disclosure Form -4 (PHD F-4), pursuant to N.J.S.A. 5:12-86b.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on December 4, 1986. The respondent requested a hearing on December 31, 1986. On January 12, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 12, 1987, and the matter was scheduled for hearing. A hearing was held on July 10, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

(A) Undisputed Facts

The respondent, Eduardo Cartagena, is 21 years old and a resident of Atlantic City, New Jersey. According to Mr. Cartagena, he left Atlantic City High School in the 11th grade.

On January 31, 1985, the respondent was arrested and charged by the Atlantic City Police Department with count 1, possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 24:21-20(a)(1), and count 2, possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1).

On February 19, 1985, the respondent was indicted (Indictment no. 85-02-0240-B) on both charges (P-1).

On March 18, 1985, the respondent entered a plea of guilty to count 2 of the indictment, possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1). Count 1 was dismissed.

On April 17, 1985, the respondent was sentenced to an indeterminate term in the Youth Reception Correction Center in Yardville, New Jersey. The Honorable Paul R. Porreca, J.S.C., stated in his reasons for sentencing:

"Defendant has a horrendous juvenile record and is obviously intent upon continuing his criminal ways into adulthood." (P-2).

Respondent entered the Intensive Supervision Program conducted by the Administrative Office of the Courts and successfully completed the program on March 5, 1987 (R-1). However, he acknowledged that he failed one drug, test but denies any involvement with drugs during that period.

The respondent completed his PHDF-4 on January 16, 1985. However, it is apparent that it was not filed until some months later. Mr. Cartagena commenced employment with the Trump's Castle Casino Hotel on February 29, 1986. He worked as a busboy there until March 30, 1987, when he admittedly "got high" on marijuana and was fired for failing to appear for work.

Mr. Cartagena has successfully completed the terms of his parole.

Mr. Cartagena is currently employed as a gas attendant by Cumberland Farms (R-2).

The above is documented, believable and is thus FOUND AS FACT.

(B) Disputed Facts

Mr. Cartagena explained the circumstances surrounding his arrest on January 31, 1985. He denies being a drug dealer. He acknowledged that on January 31, 1985, he received ten small bags of cocaine from an older Spanish male. He stated that he gave five of the bags to a friend in order to satisfy a debt. When he was

arrested, the respondent had five bags of cocaine in his possession. The respondent acknowledges that for at least three months prior to his arrest, he had a \$300 -per-week cocaine habit. Mr. Cartagena contends that he never sold drugs; however, he acknowledges making; at most, only \$150 per week. Mr. Cartagena was unable to explain the disparity.

Respondent's inability to acknowledge his misconduct, his evasiveness, the constant downcast eyes and his lackadaisical attitude at the hearing, persuade me that respondent's denials concerning the distribution of drugs are unbelievable.

I FIND, based upon the testimony and the demeanor of the respondent, that Eduardo Cartagena is an incredible witness.

CONCLUSION OF LAW

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

There is no doubt that the respondent's conviction on March 18, 1985, for a violation of N.J.S.A. 24:21-19(a)(1), possession of a controlled dangerous substance with intent to distribute, is a statutory disqualifying offense under section 86c(3) of the Act.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent's convictions for violations of N.J.S.A. 24:21-19(a)(1) on March 18, 1985, disqualify him from being a registrant, pursuant to section 86c(3) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

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

First, Mr. Cartagena is registered as a casino hotel employee. Respondent was employed by the Trump Castle Casino Hotel from February 29, 1986 until March 30, 1987. Mr. Cartagena was fired for absenteeism caused by his admitted use of marijuana on March 30, 1987.

Second, the respondent was convicted of the following:

On March 18, 1985, a violation of N.J.S.A. 24:21-19(a)(1), possession of a controlled dangerous substance with intent to distribute. Under section 86c(3) of the Act, a conviction for possession of a controlled dangerous substance is a statutory disqualifier.

Third, the respondent denies any involvement with the distribution of drugs. However, it would be impossible to sustain respondent's admitted \$300 -per- week cocaine habit with his earnings. The respondent failed to adequately explain the disparity.

Fourth, the respondent committed the offense on January 31, 1985. The last offense occurred over two years ago.

Fifth, the respondent committed the offense at age 19. It is likely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct does not appear to be an isolated incident. The respondent's admitted use of marijuana on March 30, 1987, does not indicate that respondent is rehabilitated from drug use.

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

Eighth, the respondent has not affirmatively established his rehabilitation. Although the respondent complied with the terms of his parole, his demeanor and lack of credibility at the hearing do not persuade me that respondent has demonstrated rehabilitation.

Therefore, I **CONCLUDE** that the respondent has not affirmatively established his rehabilitation pursuant to section 91d of the Act.

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

Pursuant to N.J.S.A. 5:12-86b, the Commission may deny a casino license to any applicant who is disqualified for:

Failure of the applicant to provide information, documentation and assurances requested 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 respondent completed his Personal History Disclosure Form -4 (PHDF-4) on January 16, 1985 (P-3).

On January 31, 1985, the respondent was charged with a violation of N.J.S.A. 24:21-19(a)(1), possession of a controlled dangerous substance with intent to distribute.

Subsequent to his arrest, the respondent filed his PHDF-4 with the Commission. The Division contends that the respondent had an obligation to correct his PHDF-4 since it was filed subsequent to his arrest on January 31, 1985.

The respondent states that he did not intentionally or knowingly fail to list his arrest. Respondent explained that he filled out the PHDF-4 prior to his arrest. When he filed the PHDF-4, he simply forgot to amend the form. Respondent's explanation seems plausible and credible. Therefore, based upon the testimony and the proofs presented, I CONCLUDE that the Division has failed to establish by the preponderance of the credible evidence that the respondent failed to provide information material to qualification, pursuant to N.J.S.A. 5:12-86b.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. The respondent has failed to affirmatively demonstrate rehabilitation. Therefore, I CONCLUDE that the respondent's registration must be REVOKED.

ORDER OF DISPOSITION

It is ORDERED that the casino hotel employee registration (no. 65093-40) of Eduardo Cartagena 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 my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

7-20-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

7-21-87
DATE

William J. Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

7-23-87
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Superior Court of New Jersey, Law Division - Criminal -
Atlantic County Indictment No. 85-02-0240-B, dated February 19, 1985**
- P-2 Judgment of Conviction, dated March 18, 1985**
- P-3 PHD F-4, dated January 16, 1985**

For the Respondent:

- R-1 Certificate of Completion, Intensive Supervision Program, dated March
5, 1987**
- R-2 Statement of Earnings, dated July 4, 1987**

WITNESS LIST

For the Petitioner:

Eduardo Cartagena

For the Respondent:

Eduardo Cartagena

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 86-201; 86-17
OAL DOCKET NOS. CCC 4394-86;
CCC 4395-86
REGISTRATION NOS. 50850-40;
43321-40
ORDER NO. 87-33-4

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

Complainant, :

v. : ORDER

DIANE M. CARVER AND :
MICHELLE E. FRISKO, :

Respondents. :

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission) by the administrative law judge; and exceptions having been filed by the Division of Gaming Enforcement (DGE); and the Commission having considered the entire matter at its public meeting of September 2, 1987,

IT IS on this 10th day of September 1987, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that these matters are remanded for resumption of the hearing to complete the record and for

the administrative law judge to file an initial decision based thereon, with credibility findings.

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 4394-86

CCC 4395-86

AGENCY DKT. NOS. 86-201

86-17

CONSOLIDATED

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,**

Petitioner,

v.

DIANE M. CARVER,

and,

MICHELLE E. FRISKO,

Respondents.

Nancy Scharff, Deputy Attorney General for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Lorraine Gormley, Esq. for respondent Diane M. Carver

Jack E. Granzow, Esq., for respondent Michelle E. Frisko

Record Closed: April 9, 1987

Decided: June 9, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission on January 3, 1986 seeking to revoke the respondent Frisko's casino hotel employee registration on the grounds that she stole liquor from a casino hotel room on May 31, 1985

while employed as a chamber maid. The Division filed a separate complaint with the Casino Control Commission on May 28, 1986 seeking to revoke the respondent Carver's casino hotel registration on the identical grounds. The complaints alleged that Carver and Frisko acted in concert.

The respondents requested hearings and the matters were transmitted to the Office of Administrative Law to be heard as contested cases pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq.

At a prehearing conference on August 15, 1986, the matters were consolidated for trial. The matters were heard on Thursday, November 6, 1986 in Atlantic City and on April 9, 1987 in Egg Harbor City at which time the record closed.

COLLATERAL PROCEDURAL HISTORY

Carver and Frisko were both charged with disorderly persons offenses of theft and conspiracy. They apparently blamed each other. The Casino Hotel believed Carver's version and reinstated her after three days. Frisko was not reinstated. Nevertheless both Frisko and Carver's cases proceeded to trial in the Municipal Court and both were convicted of theft. The conspiracy charges were dismissed. The Court records do not reflect these convictions accurately (see P8 and P9 in evidence). Frisko appealed her conviction to the Superior Court. Carver's then attorney inadvertently permitted the time to run on her appeal and it was never perfected. Frisko's appeal was heard and decided after this matter began but before it was completed. She was acquitted. It is conceded by the State that the record made before me is far more complete than the record made in Municipal Court. For reasons which will appear below, it seems to me that, but for Carver's failure to perfect her appeal, she would also have been acquitted.

THE DIVISION'S EVIDENCE

The Division first called Madeline Keller who, at the time complained of, was the housekeeping supervisor for the 35th, 36th and 37th floors of the Trump Plaza Hotel/Casino. These floors contain a penthouse, duplexes and suites usually reserved for persons euphemistically referred to as "high rollers." These persons, who wager large sums of money on games of chance, are rewarded by the Casinos with free rooms and liquor, among other things. The gravamen of the Division's complaint is that some of this

free liquor found its way onto the housekeeping cart of these working women as they cleaned their assigned rooms.

Ms. Keller said that Carver and Frisko had elected to work together from the same cart on May 31, 1985. She also said that she explained to both Carver and Frisko that it was company policy that only supervisors and butlers could remove leftover liquor from a departing guest's room on these three floors.

Keller related that Frisko and Carver began to clean the duplex of high roller #1. Keller then learned that high roller #1 had not yet vacated the room. She says she entered the room and found that liquor was missing. She told Frisko and Carver that "...everything in this room when (you) first started cleaning it better be back in the room when I come back to inspect it." She says that 20 minutes later when she reinspected the room the liquor was back in its place on the bar.

Later that morning high roller #2 was transferred to the penthouse from a duplex. Keller says she observed 5 bottles of liquor on the bar in #2's duplex before his transfer. She observed high roller #2 being transported with his luggage to the penthouse. She claims she told Frisko and Carver that the room was now empty. She says they told her they knew "that" since they had already searched the room for a tip. The respondents then went to lunch, according to Keller, without cleaning the room. While the respondents were at lunch Keller discovered that liquor was missing. She claims that she found 4 bottles of liquor on the respondent's cart under some hand towels. She reported this to housekeeping.

On cross examination Keller acknowledged for the first time that Carver and Frisko did not usually work on her floors. She also said that ten minutes elapsed between the time that respondents went to lunch and when she discovered the liquor. She also acknowledged that one bottle was left in the room, and she recalled seeing the guest carry one to the penthouse.¹

¹ Keller said she saw five bottles in the room the first time she went in. She says one bottle was left in the room. She says she saw #2 take a bottle with him to the penthouse. Four bottles were found on the cart. But Frisko says one bottle was on the cart in the a.m.

Mr. Jack Watt, front office manager of the Trump was the next witness. At the time of the incident he was the Executive Housekeeper. He received Ms. Keller's call and went to the scene with Bill Friend, an investigator. He said he took a statement from Carver (P4). He said he wrote P4 while Carver dictated it to him, although the 4th page was added later after it was determined to suspend Carver for three days. He also identified P5 as a statement taken from Frisko by an employee at his direction.

It appeared on cross examination that these statements were taken several days after the event of May 31, 1985. Watt claimed that on the day in question Frisko was then shown the liquor from the cart and she said "...Ms. Carver was responsible for the liquor." Watt also said that the policy was to have either the supervisor or butler remove liquor from a guest room. He did not recall how the policy was promulgated but he said that in fact it was adhered to.

Bill Friend, a house detective, testified next for the State. He accompanied Watt to the scene and began his investigation by interrogating Frisko. He reports that she denied all knowledge of the liquor. He showed her the 4 bottles. He claims she said they were on the cart in the morning. Later she said Diane Carver took the liquor. Friend also photographed the 4 bottles, (P6), returned them to "food and beverage", and obtained a receipt, (P7).

During Mr. Friend's examination, court records were identified indicating that the final adjudication of this matter in the Municipal Court was not clear.

This concluded the testimony on November 6, 1986.

On April 9, 1987, Agent Daniel Keit testified for the Division. He did not have independent recollection of the details of the incident. He deferred to his report. His report reveals that Frisko blamed Carver for stealing the liquor and that Carver blamed Frisko for stealing the liquor.

The State then called Frisko as a witness. Frisko said she was not aware of the policy on the 35, 36 and 37th floors which required calling the butler to remove liquor. She normally worked floors 32 and 33, not usually considered high roller floors. She denied discussing the policy with Ms. Keller. She also said that she and Carver "picked up" in room 3620, 3023, 3720 and 3722 (high roller #2's duplex) before lunch and she saw

Diane Carver taking the bottles out of the room, or at least heading in that direction with them. She did not see what Carver did with the liquor. It later appeared that she was confusing the incident in high roller #1's room with high roller #2. She did say that earlier in the day she saw a bottle on the cart left over from the night before. She said this was not unusual. She denied making the statements attributed to her by Carver; that she was planning to have "David" take the liquor out of the hotel for her at lunch time. She said the usual way she disposed of liquor was to pour open bottles down the drain and set full bottles in the service elevator. She says that when she was being interviewed the detective only talked about "missing liquor", he didn't identify from which room it was supposed to be missing.

She appeared to be genuinely confused as to the events of May 31, 1985, especially from which room the liquor was allegedly stolen. Her explanation of how liquor was actually disposed of seemed to be an accurate description of what in fact happened, despite company policy.

The State's last witness was the respondent Diane Carver. These were not her usual floors either. Carver said that there was a bottle of liquor on the cart before they started work that morning, according to Frisko, and that Frisko told her she was planning to have "David" take it out for her at lunch time. This all occurred before lunch.

She said she was not aware of the liquor policy on the upper floors but did say that Keller explained it to her that day in Frisko's presence. She discussed her statement and acknowledged it was correct. Apparently the casino believed her version of the events because she was suspended for three days for "having knowledge of one bottle of liquor on the cart and not reporting it." She recalled being convicted of theft in the Municipal Court. She attempted to get the public defender (assigned counsel?) to appeal. She says he suggested to her that she appeal on the basis of "incompetent counsel." She went to Frisko's lawyer who referred her out of the office. Eventually the time for appeal ran on her.

FACTUAL DISCUSSION

There is no eyewitness to the commission of this offense. There is no admission against interest or confession in this case. If a crime was intended, it was not completed, the bottles remained in the hotel. It is not crystal clear that all the bottles came from high roller #2's room.

All this aside, experience tells us that one of these respondents probably intended to steal liquor, but the question is—which one? Accordingly the respondent moved for judgment on the grounds that the Division failed to prove an offense by a preponderance of the evidence.

FACTS, CONCLUSION OF LAW AND DISPOSITION

I **FIND** that four bottles of liquor were discovered on a housekeeping cart inside the Trump Plaza Hotel on May 31, 1985.

I **FIND** that the respondents Michelle Frisko and Diane Marie Carver, among other persons, had access to the housekeeping cart on May 31, 1985.

I **FIND** that the respondent Diane Marie Carver was convicted of stealing liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I **FIND** that the respondent Michelle Frisko was acquitted of stealing liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Michelle Frisko committed the offense of theft of liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Michelle Frisko aided and abetted and/or conspired with Diane Marie Carver to steal liquor from the Trump Plaza Hotel/ Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Diane Marie Carver committed the offense of theft of liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Diane Marie Carver aided and abetted and/or conspired with Michelle Frisko to steal liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

Accordingly, I **CONCLUDE** that the registration of Michelle Frisko is not inimical to the Casino Control Act or to casino operations.

I **ORDER** that the complaint filed against Michelle Frisko seeking revocation of her casino/hotel employee registration be **DISMISSED**.

Accordingly, I **CONCLUDE** that the registration of Diane Marie Carver is not inimical to the Casino Control Act or to casino operations.

I **ORDER** that the complaint filed against Diane Marie Carver seeking revocation of her casino/hotel employee registration be **DISMISSED**.

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

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

DATE

June 9, 1987

EDGAR R. HOLMES, ALJ

Edgar R. Holmes, ALJ

Receipt Acknowledged:

DATE

June 10, 1987

CASINO CONTROL COMMISSION

Nicholas Zayas

Mailed to Parties:

DATE

JUN 12 1987

OFFICE OF ADMINISTRATIVE LAW

Ronald L. Parkey, Jr.

bc

EXHIBITS

For Petitioner:

- P-1 Photograph
- P-2 Photograph
- P-3 Photograph
- P-4 Statement, dated June 6, 1985, signed by Diane Carver
- P-5 Statement signed by Scott Lang
- P-6 Photograph
- P-7 Receipt
- P-8 Complaint against Diane Carver
- P-9 Disposition as to Michelle Frisko
- P-10 Acquittal of Michelle Frisko

DF-1 Report by Agent Keitt

For Respondent:

None.

WITNESSES

For Petitioner:

Daniel Keitt
Madeline Keller
Jack Watt
William Friend
Diane Carver
Michelle Frisko

For Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-122
OAL DOCKET NO. CCC 5621-86
LICENSE NOS. 00567-60; 00342-21
ORDER NO. 87-27-5

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
GARY J. CASSARO, :
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 July 15, 1987,

IT IS on this 16th day of July 1987, ORDERED that the initial decision is modified as follows:

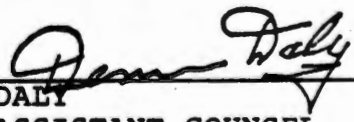
The conclusion that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(f) is rejected. The Commission does not find sufficient credible evidence in the record as a whole to demonstrate that the respondent's association with Robert Notaro is of such a nature as to be inimical to the policies of the Casino Control Act and to gaming operations.

IT IS FURTHER ORDERED that the casino employee license and gaming school instructor's license held by Gary J. Cassaro are revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5621-86

AGENCY DKT. NO. 84-122

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

Petitioner,

v.

**GARY J. CASSARO,
Respondent.**

**Barth F. Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Joseph G. Gindhart, Esq., for the respondent

Record Closed: April 22, 1987

Decided: June 8, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Gary J. Cassaro, respondent and the holder of casino employee license no. 00342-21 and casino gaming instructor's license no. 00567-60, had committed criminal misconduct which rendered continued licensure to be contrary to the policies of the Casino Control Act (Act), pursuant to sections 86c(1) and 86c(4) by means of section 86g, and that the respondent is an associate of a career criminal offender in

violation of section 86f, which establish that the respondent no longer possesses the requisite good character, honesty and integrity required by section 90b, which incorporates section 89b(2) by reference, for which the Division seeks revocation of the respondent's licenses, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The Division filed its complaint and its application for suspension of the respondent's licenses with the Casino Control Commission (Commission) on April 26, 1984. By order dated May 17, 1984, the respondent's licenses were suspended pending criminal charges. Thereafter and by reason of his acquittal, the respondent moved to vacate the order of suspension and dismiss the Division's complaint. By order dated August 21, 1986, the Commission vacated its order of suspension and denied the motion to dismiss the complaint. On August 25, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on October 7, 1986. Prior to the scheduled hearing date, the parties agreed to submit the matter on a stipulated record. The Stipulation as to the Record was submitted on February 26, 1987. On March 12, 1987, Deputy Attorney General Aaron filed his written closing statement. The record closed on April 22, 1987, without submission of a written closing statement by or on behalf of the respondent and despite several requests made by this office to counsel for the respondent.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Gary J. Cassaro is 34 years of age, is married and has two children. Currently he holds casino employee license no. 00342-21, issued by the Commission on May 25, 1978, and casino gaming instructor's license no. 00567-60, issued by the Commission on October 6, 1981.

Prior to his employment in the casino industry, the respondent was a teacher and lived on Staten Island (Exhibits 4 and 5). In 1978 the respondent relocated to Atlantic County.

For two years the respondent was employed by Resorts International Hotel, Inc., t/a Resorts International Casino Hotel. Initially the respondent was a baccarat dealer, and he was later promoted to the position of floorperson.

In 1980, the respondent was employed by Bally's Park Place, Inc., t/a Bally's Park Place Casino Hotel, where he remained for five years. Initially the respondent was a blackjack dealer, and was later promoted to the position of floorperson in baccarat. As a floorperson, the respondent supervised games and was responsible to observe dealers and correct errors.

In 1984, the respondent's salary as a floorperson was approximately \$40,000. His wife was also a floorperson and earned a similar salary.

At age 17, the respondent began to place bets with a bookmaker on various sporting events, including football, basketball and baseball. The respondent's betting activities continued steadily into 1984.

The respondent initially placed bets with a bookmaker named Joe Graziano, who operated in New York City. After the respondent relocated to Atlantic City and obtained employment in the casino industry he continued to place bets with Graziano. The respondent testified that Graziano was his friend and that they socialized together.*

In August 1983 a coworker introduced the respondent to Robert Notaro, a bookmaker. The respondent was advised that Notaro posted point spreads slowly and the respondent observed that Notaro was a poor bookmaker. The respondent acknowledged that he was friendly with Notaro in a bettor/bookmaker relationship.

* All references to "testimony" are to the jury trial conducted by the Honorable Mark Addison, J.S.C., from October 30 to November 4, 1985, in State of New Jersey v. Gary Cassaro, et als., Superior Court of New Jersey, Law Division-Criminal, DKT. No. SGJ118-83-7(1).

The respondent considered himself to be an educated bettor and most often bet on underdogs. It was apparent that the respondent was extremely well versed in bettor/bookmaker communications and that the respondent had a clear understanding of the nature of bookmaking operations.

The respondent commenced each football season with a bankroll of between \$8,000 and \$10,000 for the purpose of supporting his betting activity. On any given day he would bet an average of five percent of his bankroll.

The respondent placed the bets with Notaro on a regular and continuing basis and in amounts of \$200 to \$700 per event and on several events per day (Exhibits 6, 7 and 9). The respondent frequently called Notaro from a casino, while the respondent was on break at work. Also, the respondent placed bets with Notaro by telephone from the respondent's home and in the presence of his minor children, and from a roadside telephone booth while the respondent was en route to a christening. Occasionally, the respondent placed bets for friends with Notaro. The respondent placed bets with other bookmakers during the same periods of time.

The respondent testified that he knew bookmaking was illegal. Although he did not believe he would lose his job for making bets on sporting events, the respondent believed that such activities might cause a problem with his employment in the casino industry.

On May 5, 1984, the respondent and others were indicted by a state grand jury and were charged with violations of N.J.S.A. 2C:37-2a(1), participating in the proceeds of gambling activity - bookmaking; N.J.S.A. 2C:37-2a(2), materially aid bookmaking activity; N.J.S.A. 2C:5-2, conspiracy; N.J.S.A. 2C:37-2, maintenance of bookmaking paraphernalia, and N.J.S.A. 2C:2-6, complicity.

On May 17, 1984, the Commission suspended the respondent's casino employee and casino gaming instructor's licenses.

From October 30 until November 4, 1985, the respondent was tried before a jury (Exhibit 2). He was acquitted and the charges were dismissed.

At the time of his trial, the respondent was unemployed and resided with his parents in Hasbrouck Heights. All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT**.

(B) DISPUTED FACTS

In dispute were the nature of the respondent's conduct with Notaro, i.e., whether or not the respondent was a bookmaker; the nature of the respondent's relationship with Notaro; the respondent's rehabilitative efforts; and the respondent's current good character, honesty and integrity.

Detective Edward Johnson, a 14-year veteran of the New Jersey State Police, testified as an expert witness on gambling investigations on behalf of the State. The detective identified Notaro as a bookmaker with operations in southeastern New Jersey. After listening to recordings of various telephone calls placed by the respondent to Notaro, the detective concluded that the respondent was a bookmaker. More specifically, the detective was of the opinion that the respondent laid off bets, i.e., placed bets with Notaro in an attempt to balance the respondent's book (an equal amount wagered on each team in a sporting event), and the respondent discussed information with Notaro, the type of which is gathered only by bookmakers.

Mr. Cassaro testified on his own behalf and denied that he was a bookmaker, rather he was a bettor. In addition, he never laid off bets with Notaro. Nevertheless, the respondent acknowledged that he occasionally placed bets with Notaro for other bettors. The respondent never met Notaro, and he received his winnings and paid his losses through another bettor, also a licensed casino employee. Further, the respondent testified that he solicited from Notaro the movement of other bettors, which affected the point spread or line, in order to determine his bets, because he followed the practice of betting on the underdog. The respondent also testified that he occasionally gave Notaro information on a "hot" game or information concerning games which were not on Notaro's board, i.e., games on which no bet could be placed with Notaro. The respondent obtained this information from Graziano. Last, on one occasion the respondent agreed to place a bet on a horse race on behalf of Notaro ostensibly with a New York City bookmaker.

The outcome of this matter necessarily requires a resolution of the dispute between the detective's opinion as opposed to the respondent's denials. However, the absence of live testimony makes an assessment of credibility extremely difficult. Nevertheless, a determination can be made in this matter based upon an assessment of the tape recordings together with the transcript of the testimonies.

It was abundantly clear that Mr. Cassaro bet frequently and in substantial sums with Notaro, who was a known bookmaker. The overwhelming majority of their telephonic communications concerned the placement of bets by the respondent. Although the tape recordings indicate that there might have been more to the dealings between the respondent and Notaro than the mere placement of bets, it is not at all clear what other activities may have been taking place. More specifically, the detective's opinion that the respondent was acting as a bookmaker, because he was laying off bets to another bookmaker, was not clearly supported by the tape recordings.

Although the respondent's denials of misconduct and explanations for some of his actions, in part, were less than convincing, they included admissions against interest concerning his activities with other bookmakers and were more consistent with the content of the taped conversations than was the detective's opinion testimony.

In essence, it was not clearly established that the respondent was acting as a bookmaker. Rather, the relationship between the respondent and Notaro was essentially that of a bettor and his bookmaker. Nevertheless, there was some evidence that the respondent occasionally contacted other bookmakers, the inference being Mr. Graziano in New York City, in order to obtain information which was provided to Notaro. Also, the respondent placed a bet on a horse race for Notaro with another bookmaker and occasionally the respondent placed a bet with Notaro on behalf of a friend. It was also abundantly clear that the respondent had an intimate knowledge of Notaro's bookmaking operation. The respondent knew that Notaro obtained information concerning bets which could be accepted from other sources and also knew that Notaro would alter the point spread or line on a game in order to induce the respondent to make certain bets. The respondent sought out changes in the point spread in order to hopefully obtain a more advantageous position.

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

1. The opinions expressed by Det. Johnson were not supported by the documentary evidence and were not persuasive.
2. The respondent's denials of misconduct and explanations for certain portions of his conduct were supported by and consistent with the documentary evidence.
3. The respondent's explanation of his misconduct was more persuasive than the opinions of the detective.
4. There was no evidence that the respondent was a bookmaker.
5. The relationship between the respondent and Notaro was essentially that of a bettor and his bookmaker.
6. Nevertheless, the respondent had intimate knowledge of Notaro's bookmaking operation and the respondent contacted other bookmakers occasionally provided information to Notaro. Also, the respondent placed a bet on a horse race for Notaro with another bookmaker.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's conduct constitutes criminal disqualifying offenses under either section 86c(1) or 86c(4), and therefore, he cannot continue to hold a license.

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

Section 86g provides that a person be disqualified from licensure because of the commission of any act 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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's conduct constitutes violations of N.J.S.A. 2C:37-2a(1) and (2), promoting gambling, N.J.S.A. 2C:5-2, conspiracy to promote gambling, and N.J.S.A. 2C:2-6, complicity.

The provisions of N.J.S.A. 2C:37-2 deal with the unlawful promotion of gambling. The Division has charged the respondent with violations of sections 2a(1) and (2). In State v. Fischer, 183 N.J. Super. 79 (Law. Div. 1981), which in part involved a constitutional challenge, the court enunciated the elements of a violation of N.J.S.A. 2C:37-2a(1). It was held that the state must establish that:

[(1) defendant knowingly "accepted or received money or other property" and (2) he did so pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of gambling activity (Id. at 82).

The elements of the violation of N.J.S.A. 2C:37-2a(2) involve any conduct aiding gambling where a respondent is knowingly involved in: (1) the creation or establishment of a game, devise or activity; (2) the acquisition or maintenance of gambling materials; (3) solicitation or inducement of participants; (4) conduct of the playing phase, or (5) arrangement of the financial or recording phases. A requisite element in both offenses is that the respondent act "knowingly" as defined in N.J.S.A. 2C:2-2b(2).

The Division's proofs do not establish a violation of either section. Although the Division did establish that the respondent knowingly placed bets with an illegal bookmaking operation, it did not establish that he was a bookmaker. I so CONCLUDE.

The elements of conspiracy pursuant to N.J.S.A. 2C:5-2 include: (1) a criminal purpose, (2) an agreement and (3) an overt act by one or more of the conspirators. State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984), certif. den. 103 N.J. 463 (1986).

Similarly, the elements of N.J.S.A. 2C:2-6 are: (1) liability for one's own conduct, or (2) conduct of another for which one is legally responsible or both. A person is legally responsible when he causes another innocent or irresponsible person to engage in an offense and he has made accountable by the code or the law defining the offense. N.J.S.A. 2C:2-6(1)(2). A person may be legally responsible as an accomplice when, with the purpose of accomplishing the offense, a person solicits another, aids or agrees to aid such person in the planning or commission of the offense, or having a legal duty to prevent the offense fails to do so. N.J.S.A. 2C:2-6c(1). See, State v. White, 98 N.J. 122, 129 (1984) (accomplice must share with his partner the intent which is a basic element), and State v. Gelb, 212 N.J. Super. 582, 591 (App. Div. 1986) (defendant held guilty of aiding and abetting derailment).

The absence of any evidence that the respondent acted as a bookmaker serves to preclude the Division from establishing that the respondent was guilty of conspiracy or complicity concerning either his own purported bookmaking activities or those of Notaro. I so CONCLUDE.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a criminal violation which constitutes a disqualifying offense under section 86c(1).

(B) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86c(4) is more commonly referred to as the "inimical clause." The Division again attempted to establish, pursuant to section 86g, that the respondent committed the criminal misconduct identified under section 86c(1). Section 86c(4) would have become effective if the alleged criminal misconduct was proven but was of a lesser degree than that specified in section 86c(1). However, the absence of sufficient proof to establish such violations for purposes of section 86c(1) applies equally to section 86c(4). I so CONCLUDE.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed criminal misconduct which renders continued licensure to be inimical to the policies of the Act under section 86c(4).

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

Section 86f provides, in part, that an applicant or a licensee who is an associate of a career offender "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 or to gaming operations" be disqualified from licensure. The Division alleged that the respondent's association with Notaro was inimical to the Act and precluded continued licensure.

In In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979), the Commission held that an applicant's/licensee's associations with other persons may be considered in connection with qualifications for licensure under section 90b, which incorporates section 89b(2) by reference, as well as under section 86f. Under both sections the quality and importance of the association must be assessed by consideration of all significant circumstances underlying. Id. at 10 and 18. Further, the Commission held that a purported association under section 86f, i.e., an association with a career offender, would be "concerned with more than the reflection, if any, which the association has on the character of the applicant or other person required to be qualified." Id. at 18. The Commission further held that:

Even assuming the good character of such person, a continuing association with career offenders or other unsuitable persons might well be inimical to the Act or to legalized gaming where the nature and quality of the association would justly call into question the integrity of the regulatory process and of casino operations. Such a question would arise where the nature and quality of the relationship create a risk that the career offender might exercise some degree of influence or control over the association with regard to gaming operations or other business incidental to such operations. The danger of such indirect participation by career offenders or other unsuitable individuals cannot be tolerated. Therefore, if reliable evidence appears to show that the applicant or other person to be qualified is associated in any way with a person who is proven to be a career offender or otherwise statutorily unsuitable, the applicant must come forward with evidence to rebut such allegation or to demonstrate that the association is of such nature and to pose no appreciable threat to the proper functioning of legalized gaming in this State.

The uncontroverted facts establish that the respondent knowingly and on a frequent and substantial basis dealt with an illegal bookmaking operation. The respondent was also aware that some of his coemployees placed bets with Notaro. Further, the

respondent was prepared to wager 20 to 25 percent of his gross annual income with bookmakers. Although the respondent and his wife may have enjoyed a substantial income, such a commitment to nonessential and illegal activities weighs heavily against the respondent. It also indicates that the respondent was vulnerable to whatever influences may have been exerted by Notaro or Notaro's criminal associates. Although the respondent maintained that his financial stability was not impaired, his opinion was not realistic. Also, the respondent placed the bets with Notaro from the casino, ostensibly during his break periods, although the time sequence would suggest that bets were made at other times as well. Bets were also placed by the respondent from his home and in the presence of his minor children. The respondent also used coemployees as contact people with Notaro in order to collect or pay off his bets. These actions encourage other licensed employees to participate in illegal gaming activities. It must also be recognized that the respondent's betting activities occurred during the entirety of his adult life, and that given his age, his conduct was not due to immaturity. It was also apparent that the respondent exhibited no remorse for his conduct, rather he was indifferent. Last, it is abundantly clear that the respondent had detailed knowledge of Notaro's operations, and may well have known and been in communication with those persons to whom Notaro was ultimately responsible. For the limited purposes of this hearing I am persuaded that Notaro, as a bookmaker, is a career criminal offender. It was also evident that Notaro attempted to use his relationship with other casino employees/bettors in order to improperly secure complimentary services and other benefits from the casinos. In light of these factors, it is abundantly evident that the respondent had an association with Notaro, which was nefarious in nature, and which created a reasonable potential for Notaro or his criminal associates to affect negatively the respondent's activities as a licensed casino employee in lawful gaming activities. This potential establishes that the association between the respondent and Notaro is of the type with which section 86f is specifically concerned. The respondent's actions exhibit a total and reckless disregard for his own and his family's welfare, as well as the integrity of the regulatory process and of casino operations.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent's association with Notaro is inimical to the policies of the Act and to gaming operations, pursuant to section 86f.

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

A licensee faced with the existence of a section 86c(1), (2), or (3), disqualifier has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. However, the absence of such a disqualifier nullifies the respondent's obligation to establish his rehabilitation. I so **CONCLUDE**.

(E) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Cassaro was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The respondent's association with Notaro in violation of section 86f is sufficient to raise serious doubts concerning the respondent's good character, honesty and integrity and continuing licensure. Accordingly, the burden is upon the respondent to demonstrate his continuing qualification for licensure. The mere fact that the respondent was not a bookmaker is not sufficient proof of his qualification. Further, the respondent offered no evidence of a modification of his past behavior nor of his current character, honesty and integrity. Accordingly, the respondent has failed to carry his burden. I so **CONCLUDE**.

In addition, even absent a section 86f violation, it is abundantly clear that the respondent's voluntary and intentional gambling conduct committed by a licensee during the period of his employment in the industry as well as during the performance of his employment duties and with a full understanding that his actions might negatively affect his employment in the casino industry, establish sufficient doubt as to his continuing qualification under section 90b that in the absence of any evidence to the contrary, he is not now qualified. I so **CONCLUDE**.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

(F) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. However, the Division seeks revocation of the respondent's casino employee and casino gaming instructor's license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . .

For the reasons expressed, the respondent's conduct constitutes a disqualifying offense under section 86f and establishes that he no longer possesses the qualifications required for licensure under section 90b. Accordingly, the respondent's licenses must be **REVOKED**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against Gary J. Cassaro be **GRANTED**, and that casino employee license no. 00342-21 and casino gaming instructor's license no. 00567-60 be **REVOKED**.

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

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

June 8, 1987
DATE

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

Receipt Acknowledged:

June 9, 1987
DATE

Deborah Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 11 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Stipulation as to the Record; which identifies the following documents:

- (1) State of New Jersey v. Gary Cassaro, et als., Superior Court of New Jersey, Law Division - Criminal, Dkt. No. SGJ118-83-7(1), Indictment, filed March 5, 1984 (13 pages)
- (2) State of New Jersey v. Gary Cassaro, Superior Court of New Jersey, Law Division - Criminal, Dkt. No. SGJ-118-83-7(1), Judgment of Acquittal, November 4, 1985
- (3) State of New Jersey v. Gary Cassaro, Superior Court of New Jersey, Law Division - Criminal, Dkt. No. SGJ-118-83-7(1), Partial Transcript of Proceedings, October 31, 1985 (94 pages)
- (4) State of New Jersey v. Gary Cassaro, Superior Court of New Jersey, Law Division - Criminal, Dkt. No. SGJ-118-83-7(1), Partial Transcript of Proceedings, November 1, 1985 (187 pages)
- (5) State of New Jersey v. Gary Cassaro, Superior Court of New Jersey, Law Division - Criminal, Dkt. no. SGJ-118-83-7(1), Partial Transcript of Proceedings, November 4, 1985 (28 pages)
- (6) Composite Tape Recording No. 83-25-T1
- (7) Composite Tape Recording No. 83-25-T2
- (8) Summary Log of Taped Conversations (8 pages)
- (9) Transcript of Taped Conversations (81 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-30
OAL DOCKET NO. CCC 5644-86
ORDER NO. 87-26-19

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

ORDER

V. :
CLARIDGE AT PARK PLACE, INC. :
t/a THE CLARIDGE HOTEL AND CASINO, :
Respondent. :

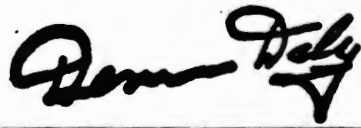
Proceedings having been held before the Office of
Administrative Law; and an initial decision/settlement
having been filed by the administrative law judge; and the
Commission having considered the entire record in this
matter at its public meeting of July 8, 1987,

IT IS on this 15th day of July 1987, ORDERED that the
initial decision/settlement is adopted; and

IT IS FURTHER ORDERED that the respondent is assessed a
civil penalty of \$10,000 substantially for the reasons
stated in the initial decision, which is incorporated herein
by reference; and

IT IS FURTHER ORDERED that the 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 5644-86

AGENCY DKT. NO. 86-30

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.,
T/A THE CLARIDGE HOTEL AND CASINO,**
Respondent.

**Timothy C. Ficchi, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Gloria E. Soto, Esq., for the respondent (Charles J. Hanlon, Jr., Esq. at the
prehearing conference only)**

Record Closed: June 2, 1987

Decided: June 4, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Claridge at Park Place, Inc., t/a the Claridge Hotel and Casino (Claridge), respondent and the holder of a plenary casino license, with the commission of various violations of the provisions of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties. N.J.S.A. 5:12-1 et seq. and N.J.A.C. 19:40-1.1 et seq. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on January 23, 1986. The respondent filed its answer and request for a hearing with the Commission on April 21, 1986. On August 26, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on September 29, 1986, and the matter was scheduled for hearing.

FINDINGS OF FACT AND CONCLUSION

On several occasions the parties attempted to resolve the matter. At the commencement of the scheduled hearing the parties again negotiated extensively. These negotiations included a full and candid discussion of the merits of the alleged violations, including the seriousness and extent thereof the respondent's defenses, mitigating factors, the prior disciplinary history of the respondent and penalty. In addition, the parties were aware of and considered decisions rendered by the Commission in other similar matters. Ultimately, the parties agreed to a settlement, which includes an extensive Stipulation of Facts concerning each allegation, and which has been set forth in a stipulation of facts and Settlement Agreement, filed on April 22, 1987, and an Addendum to Stipulation of Facts and Settlement Agreement, filed on June 2, 1987, which are attached hereto and fully incorporated herein. I have reviewed the submission and the terms of the settlement and I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by the stipulations which contain the signatures of counsel for each party.
2. The settlement represents a just and equitable resolution of and imposes an appropriate penalty for the violations, which is supported by the detailed stipulation of facts.
3. The proposed settlement, including the assessment of monetary penalties, is fully consistent with the prior disciplinary history of the respondent.
4. The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and these proceedings by **CONCLUDED**; it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

June 4, 1987
DATE

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

Receipt Acknowledged:

June 5, 1987
DATE

DeLores Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 9 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

RECEIVED
STATE OF N.J.
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO: CCC 5644-86
AGENCY DOCKET NO: 86-30

STATE OF NEW JERSEY)
DEPARTMENT OF LAW & PUBLIC SAFETY)
DIVISION OF GAMING ENFORCEMENT)
Plaintiff,)
vs.)
CLARIDGE AT PARK PLACE, INC.)
t/a THE CLARIDGE HOTEL AND CASINO,)
Respondent.)

CIVIL ACTION
STIPULATION OF FACTS
AND
SETTLEMENT AGREEMENT

1. Claridge at Park Place, Incorporated, a New Jersey Corporation (hereinafter called "Claridge"), is the successor in interest to Claridge Limited, a New Jersey limited partnership, which succession in interest occurred on October 31, 1983. Claridge has been a corporation organized and existing under the laws of the State of New Jersey since August 29, 1983 and at all times referenced herein has had its principal place of business located at South Indiana Avenue and the Boardwalk, in the City of Atlantic City, County of Atlantic, and State of New Jersey.

2. Claridge 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 thereunder.

Said license was issued to Claridge effective October 31, 1983, and Claridge has been conducting its casino hotel operations pursuant to said license continually to date since that time. Prior to October 31, 1983, the plenary casino license had been issued to Claridge Limited effective on July 23, 1982 and renewed on July 23, 1983.

3. Claridge is the holder of, and operates pursuant to, a Certificate of Operation effective October 31, 1983. Prior to the succession of its interests to Claridge, Claridge Limited was the holder of a Certificate of Operation effective July 23, 1981 at which time Claridge Limited was the holder of a temporary casino permit, and Claridge Limited and Claridge have conducted their casino hotel operations pursuant to said Certificates of Operations continually to date since that time including all times referenced herein. Said Certificates of Operations entitled Claridge Limited, and entities Claridge, to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder.

4. On or about February 21, 1981, Claridge entered into a lease agreement with Kramer Beverage Company, Inc. in order to lease storage space in a warehouse facility located at 110 North Virginia Avenue, Atlantic City, New Jersey. A copy of the lease is included herein as Exhibit A.

5. The lease agreement between Claridge and Kramer Beverage Company, Inc., referred to in paragraph 1. above, had a term of two (2) years, commencing on April 15, 1981 and ending on April 14, 1983, with an option to renew the lease for an additional two (2) years.

6. On or about July 13, 1981, Claridge, through its counsel Ribis, McCluskey & Sweeney, filed a petition (#194101) with the Casino Control Commission seeking approval to store accounting records at an off-site warehouse facility. The off-site facility which was described within the petition was located at 110 North Virginia Avenue, Atlantic City, New Jersey. A copy of the petition (#194101) is included herein as Exhibit B.

7. Following a review of the warehouse premises by Division of Gaming Enforcement representatives, a letter dated October 8, 1981, interposing no objection to the use of the warehouse at 110 North Virginia Avenue as an off-site records storage facility, was sent by the Division to the Commission. A copy of the Division's letter is included herein as Exhibit C.

8. On or about October 16, 1981, subsequent to a review by the staffs of the Commission and Division, the Division of Financial Evaluation and Control of the Casino Control Commission, through authority delegated to it by the Commission, approved Claridge's petition (#194101) filed on July 13, 1981, permitting Claridge to store original accounting records, after the records had been microfilmed, at an off-site warehouse facility. The off-site facility which was approved for off-site storage was located at 110 North Virginia Avenue, Atlantic City, New Jersey. A copy of the approval letter is included herein as Exhibit D.

9. On or about October 11, 1982, a Claridge representative notified a representative of Kramer Beverage Company that Claridge elected to exercise its option under the lease and extend the lease term for two (2) additional years, said lease term's expiration to

be extended to April 14, 1985. A copy of the notification letter is included herein as Exhibit E.

10. In or about June of 1984, Claridge representatives decided to obtain new and improved warehouse space for Claridge's storage needs. As a result of this decision, Claridge representatives sought to secure alternate storage space and entertained proposals from brokers and land owners. See interview report of George Morton - Exhibit F.

11. On September 28, 1984, Claridge's Administrative Assistant to the President, George Morton, recommended to Claridge President William Dougall, for various reasons, that Claridge enter into a lease arrangement for space in a warehouse located on Deliliah Road in Egg Harbor Township, New Jersey. Said warehouse was under construction at the time of George Morton's recommendation. A copy of the recommendation is included herein as Exhibit G.

12. On or about December 26, 1984, Claridge entered into a lease agreement with Delilah Road Limited Partnership for the purpose of leasing storage and office space at the Delilah Road facility previously described. A copy of the lease agreement between Claridge and the Delilah Road Limited Partnership is included herein as Exhibit H.

13. The lease agreement between Claridge and Delilah Road Limited Partnership, referred to in paragraph 9. above, had a lease term of five (5) years commencing on February 1, 1985.

14. On or about February 14, 1985, Claridge's former Chief Compliance Officer, Frank A. Bellis, Jr., contacted, by telephone, Division Agent Carl Bodenschatz to discuss the physical layout, key

control and security procedures in the Delilah Road warehouse with reference to gaming equipment and slot machines. A copy of the memorialization of their conversation is included herein as Exhibit I.

15. Claridge's Chief Compliance Officer, Frank A. Bellis, Jr. advised the Commission staff, by letter dated March 7, 1985, that Claridge sought approval for the storage of records and gaming equipment at the warehouse and office facility at Delilah Road. A copy of Frank A. Bellis, Jr.'s letter is included herein as Exhibit J.

16. During the period commencing March 7, 1985 and ending April 10, 1985, Claridge, through its former Chief Compliance Officer, Frank A. Bellis, Jr., had several conversations with Division Agent Carl Bodenschatz in reference to the Delilah Road warehouse involving key control procedures, the alarm system, and the fencing off of areas within the Delilah Road warehouse. See Exhibit K and Exhibit L.

17. On or about March 21, 1985, Agent Raymond Acampora, Division of Gaming Enforcement, and other Division Agents of the Games Unit, met with former Chief Compliance Officer Frank A. Bellis, Jr. and Executive Director of Security, John Scott, at the Claridge Hotel and Casino to review blueprints and documentation concerning the Delilah Road warehouse. Recommendations were made by the Games Unit and, upon implementation by Claridge, a full inspection by the Games Unit was to be made. See Division Exhibit M.

18. On April 2, 1985, Claridge's Chief Compliance Officer, Frank Bellis, wrote a letter to William Delaney, Director of the

Casino Control Commission's Division of Financial Evaluation and Control, regarding Mr. Bellis' conversation with Commission Audit staff member Mary Hoffman concerning the warehouse facility at Delilah Road. A copy of this letter is included herein as Exhibit N.

19. On April 4, 1985, Frank Bellis wrote to Division Agent Carl Bodenschatz to memorialize their conversation during which Mr. Bellis expressed Claridge's intention to withdraw its initial request to have an alcoholic beverage storage area in the Delilah Road warehouse. A copy of this letter is included herein as Exhibit K.

20. During the period of time between March 29, 1985 and April 15, 1985, Claridge hired an outside contractor, Ricci Transportation Company, to transport storage items from Claridge's North Virginia Avenue warehouse in Atlantic City to the Delilah Road warehouse in Egg Harbor Township. A copy of Ricci Transportation Company's invoices for the transporting of these storage items is included herein as Exhibit O.

21. On or about April 10, 1985, Ricci Transportation Company transported 3,501 boxes of original forms, records and documents pertaining to Claridge's operations and approved hotel from the North Virginia Avenue warehouse in Atlantic City to the Delilah Road warehouse in Egg Harbor Township. A copy of the box storage inventory of the books, records and documents is included herein as Exhibit M (attachment).

22. On or about April 17, 1985, Claridge transferred gaming equipment to the warehouse at Delilah Road. See Exhibit P. A copy of a letter from Claridge Casino Administrator John Concordia,

dated May 16, 1985, listing the gaming equipment stored from April 17, 1985 is included herein as Exhibit M. (attachment)

23. During the time period between April 15, 1985 and February 21, 1986, Claridge transported additional forms, records and documents pertaining to its operations and approved hotel from its casino/hotel premises to the warehouse at Delilah Road.

24. On April 15, 1985, Deno Marino, Manager of the Audit Unit, Casino Control Commission, spoke to former Claridge Chief Compliance Officer, Frank Bellis regarding an inspection of the premises at the Delilah Road warehouse. A copy of the memorialization of that conversation is included herein as Exhibit Q.

25. On April 23, 1985, Division Agent Carl Bodenschatz prepared a report to his supervisor, Richard Handzo, regarding his review and conditional recommendation of the Delilah Road warehouse and its suitability for the storage of slot machines and gaming equipment. A copy of this report is included herein as Exhibit R.

26. On May 6, 1985, Commission Assistant Counsel Carol Welsch informed the Division, by letter, that the Commission would treat Frank Bellis' March 7, 1985 letter as a petition for relief and requested the Division's position on this matter, in writing, to the Commission. A copy of this letter is included herein as Exhibit S.

27. On May 7, 1985, Division Audit Section Agent John Santilli prepared a report to his supervisor, Albert White, detailing his observations of the Delilah Road warehouse on May 3, 1985. The purpose of this review was to advise on the adequacy of Claridge's warehouse from the perspective of the facility's

suitability for the storage of books, records and documents. A copy of this report is included herein as Exhibit T.

28. On May 30, 1985, Deputy Attorney General Kevin F. O'Toole wrote to the Commission setting forth the Division's position regarding Claridge's requested approval for the off-site storage at the Delilah Road warehouse. A copy of this letter is included herein as Exhibit U.

29. On June 12, 1985, Division Agent John Santilli contacted Charles Hanlon, Claridge's Vice President of Compliance and Legal Affairs regarding the movement of storage items to the Delilah Road warehouse. Mr. Hanlon provided a brief chronology as to the events leading to the move. A copy of the memorialization of their conversation is included herein as Exhibit V.

30. On June 25, 1985, Deputy Attorney General Kevin F. O'Toole wrote a letter to the Commission staff to clarify the Division's position and request that Claridge supply additional information prior to Commission approval of the warehouse. A copy of this letter is included herein as Exhibit W.

31. On June 26, 1985, Division Agent Raymond Acampora prepared a follow-up report to his supervisor, Richard Handzo regarding Claridge's implementation of recommended security measures at the Delilah Road warehouse. A copy of this report is included herein as Exhibit M.

32. On July 16, 1985, the Commission's Chief Auditor, Michael Wozniak, wrote a letter to Claridge's Vice President of Compliance and Legal Affairs, Charles Hanlon, outlining additional information needed to continue consideration of Claridge's off-site petition. A copy of this letter is included herein as Exhibit X.

33. On August 13, 1985, Mr. Hanlon replied to Michael Wozniak's letter of July 11, 1985. A copy of Charles Hanlon's letter is included herein as Exhibit Y.

34. On October 16, 1985, Assistant Counsel for the Commission, Carol Welsch, wrote a letter to Charles Hanlon, to advise Claridge that the internal controls for the safety and accessibility of previously microfilmed documents at the Delilah Road warehouse were adequate but were inadequate for unmicrofilmed original documents. A copy of this letter is included herein as Exhibit Z.

35. On November 27, 1985, Claridge's Director of Regulatory Affairs, Gloria Soto, replied to Carol Welsch's October 16, 1985 letter. A copy of Claridge's letter is included herein as Exhibit AA.

36. On January 21, 1986, Claridge's Director of Regulatory Affairs, Gloria Soto, wrote a letter advising the Commission staff that the March 7, 1985 letter of Frank Bellis was intended to secure approval for the storage of gaming equipment as well as liquor. A copy of Gloria Soto's letter is included herein as Exhibit BB.

37. On January 27, 1986, the Division, through Deputy Attorney General Kevin F. O'Toole, wrote a letter to Commission Chairman Walter N. Read regarding Claridge's request for approval to store records at the off-site warehouse at Delilah Road indicating that all the requirements of N.J.A.C. 19:45-1.8(c) had been complied with and recommending approval of the relief sought. A copy of this letter is included herein as Exhibit CC.

38. On February 21, 1986, the Commission issued an Order granting approval for the use of the Delilah Road warehouse. A copy of the Order is included herein as Exhibit DD.

WHEREAS Respondent, Claridge at Park Place, Inc., acknowledges that it transported original books, records and documents pertaining to its operations and approved hotel to an unapproved off-site location where they were stored in violation of N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(c).

WHEREAS Respondent, Claridge at Park Place, Inc., acknowledges that it transported gaming equipment to an unapproved location where they were stored in violation of N.J.S.A. 5:12-100(b).

WHEREAS the actions of Respondent, Claridge at Park Place, Inc. involve the failure to obtain Commission approval when approval was statutorily and regulatorily mandated.

WHEREAS respondent Claridge at Park Place, Inc., at the time of the violations, provided notice to the regulatory authorities, but did not allow the approval process to be completed prior to the movement of original books, records and documents and gaming equipment to an unapproved off-site location.

WHEREAS the parties recognize the need to comply with the Casino Control Act and Commission regulations promulgated thereunder, and Claridge has agreed to comply with the aforementioned statutory and regulatory provisions, recognizing the significance of any departures therefrom.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

Respondent, Claridge at Park Place, Inc., shall pay the sum of ten thousand (\$10,000) dollars to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations and claims raised in the Division of Gaming Enforcement's Complaint.

Timothy C. Ficchi

Timothy C. Ficchi
Deputy Attorney General
Attorney for Plaintiff
State of New Jersey
Department of Law and
Public Safety
Division of Gaming
Enforcement

Dated: April 22, 1987

A012787/28

Gloria E. Soto

Gloria E. Soto, Esq.
Vice President, Compliance
& Legal Affairs
Attorney for Respondent
Claridge at Park Place, Inc.

Dated: April 22, 1987

ADDENDUM TO STIPULATION OF FACTS
AND SETTLEMENT AGREEMENT

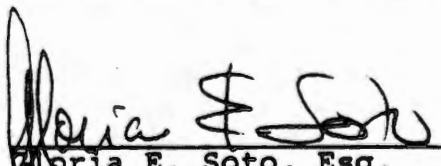
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STATE OF N.J.
DEPT. OF LAW
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Attached to this Stipulation of Facts and Settlement Agreement in the matter of State of New Jersey v. Claridge at Park Place, Inc., OAL Dkt. No. CCC 5644-86, Agency Dkt. No. 86-30, and made a part hereof, is the following instance of a past regulatory violation of the Claridge:

On April 23, 1986, the Casino Control Commission unanimously approved a Stipulated Settlement between the Division of Gaming Enforcement and Claridge involving consolidated cases Docket Nos. 84-212 and 85-311. Case No. 84-212 filed against Claridge pertained to Claridge's failure to obtain Commission approval prior to implementing changes in their patron identification procedures for the issuance of counter checks at the gaming tables. This was agreed by the parties, and approved by the Commission, as violative of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. Pursuant to the terms of the Stipulated Settlement, a fine was imposed upon Claridge in the amount of \$17,500 for the consolidated cases referenced above.



Timothy C. Ficchi
Deputy Attorney General
Attorney for Plaintiff
State of New Jersey
Department of Law and Public
Safety
Division of Gaming Enforcement



Gloria E. Soto, Esq.
Vice President, Compliance
& Legal Affairs
Attorney for Respondent
Claridge at Park Place, Inc.

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May 27, 1987

Honorable Walter N. Read
Chairman
CASINO CONTROL COMMISSION
3131 Princeton Pike, Bldg. #5
CN-208
Trenton, New Jersey 08625

RE: State of New Jersey v. Claridge At Park Place, Inc.
OAL Docket No. CCC 7840-86 Agency Docket No. 87-88

Dear Chairman Read:

Please accept this letter Brief from the Claridge At Park Place, Inc. ("Claridge") objecting to the Division of Gaming Enforcement's ("Division") Interlocutory Appeal of the Order of the Office of Administrative Law granting a Motion for Stay and Order of Inactivity in the above-captioned matter.

INTRODUCTION

By order dated May 14, 1987, the Honorable Richard L. Voliva, Jr., Administrative Law Judge, granted Claridge's motion requesting a stay of this proceeding pending the outcome of a pending Claridge petition for declaratory ruling which is currently before the Casino Control Commission ("Commission"). In short, Judge Voliva correctly recognized that the issues raised in the present litigation is "substantially similar" to the issues raised in that petition, or "at the least ... will have a direct bearing upon this case". Division, however, contends that Judge Voliva's well-reasoned decision to grant this motion is erroneous. As discussed in detail below, Division's arguments in support of this contention are, at best, misplaced.

HONORABLE WALTER N. READ
May 27, 1987
Page Two

PROCEDURAL HISTORY

On September 24, 1986, the Division filed its complaint against Claridge alleging inter alia, violations of N.J.A.C. 19:45-1.25(e). The Division's complaint arises out of events which occurred at Claridge on or about January 9, 1986. Specifically, at approximately 12:17 A.M., on gaming day January 9, 1986, a patron approached Claridge cage personnel and requested the encashment of certain money orders. Claridge cage personnel, recognizing the negotiable nature of the presented instruments, encashed the money orders as requested. Later the same evening, the patron requested a second encashment which was also honored. Due to the limited hours of the issuer's "Clearing Center", Claridge personnel were not able to directly contact, via telephone, the issuing institution prior to encashment. Subsequent to encashment, however, Claridge learned that the money orders had been stolen approximately three (3) years prior to their acceptance.

On October 31, 1986, Claridge filed its Answer and Request for a Hearing. This matter was then transmitted to the Office of Administrative Law ("OAL") on or about November 24, 1986. A prehearing conference call was held with the Honorable Lillard E. Law, Administrative Law Judge on January 8, 1987. This matter was then scheduled for a hearing on May 18 and 19, 1987. On April 28, 1987, Claridge filed with the OAL a motion for a stay of the proceeding pending the outcome of its petition for a declaratory ruling In The Matter Of The Petition Of The Claridge At Park Place, Inc., For A Declaratory Ruling Pursuant To N.J.A.C. 19:42-9.1 As To The Requirements Of N.J.A.C. 19:45-1.25(e) As They Pertain To The Acceptance Of Recognized Traveler's Checks By A Casino Licensee (PRN 319503). By letter brief dated May 11, 1987, the Division opposed Claridge's motion. By Order dated May 14, 1987, Claridge's motion was granted.

The Division is now seeking to have the Commission reverse the May 14, 1987 Order. At this juncture, Claridge vehemently objects to Division's motion for Commission to review Judge Voliva's May 14, 1987 granting a Stay pending final resolution of Claridge's petition. The motion, as granted, serves to avoid the duplication of efforts by the Commission and the OAL. Further, the motion in no manner undermines Division's statutory authority, pursuant to N.J.S.A. 5:12-76, to enforce the provisions of the Casino Control Act ("Act"). For these reasons, as set forth below, Claridge respectfully requests that Commission deny Division's instant request and leave undisturbed Judge Voliva's May 14, 1987 Order.

HONORABLE WALTER N. READ
May 27, 1987
Page Three

INTERLOCUTORY REVIEW OF THE
ALJ'S RULING IS INAPPROPRIATE
IN THE PRESENT LITIGATION

The New Jersey Supreme Court held in In The Matter Of The Appeal Of Certain Sections Of The Uniform Administrative Procedural Rules, 90 N.J. 85, 100 (1982), that ALJ orders are "subject to review on an interlocutory basis...only in the interest of justice or for good cause shown". The Court stated:

In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case. Id. at 100.

The Court, in announcing this rule, expressly recognized that "[i]t is anticipated that interlocutory review of ALJ orders will be exercised sparingly". Id. at 100. Division, in the instant matter, has failed to demonstrate good cause for such review. Moreover, its request lacks arguments of any real merit to support its suggestion that justice will be served by a Commission ruling reversing Judge Voliva's order granting the stay.

Claridge is fully cognizant of Commission's indicated preference to handle cash equivalent verification matters on a case by case basis. In The Matter Of The Application Of Resorts International Hotel, Inc. For A Declaratory Ruling Regarding Cash Equivalents (PRN 045410). Judge Voliva's order granting a stay is fully consistent with this stated Commission preference. The crux of Division's argument, in this regard, is that unlike the pending declaratory ruling petition, the present litigation offers a concrete set of facts, hence the matters present separate and distinct issues. In truth, both matters present an interpretive question of the scope and meaning of N.J.A.C. 19:45-1.25(e) and consequently involve identical issues. This was exactly the finding of Judge Voliva.

HONORABLE WALTER N. READ
May 27, 1987
Page Four

Division has consistently maintained the position that the language "necessary verification" as set forth in N.J.A.C. 19:45-1.25(e) requires, in most circumstances, direct contact with the issuing institution prior to encashment of cash equivalents. Division, in its brief in the instant matter, fails to recognize that its position, as to telephone verification, is a conclusion of law. Hence, if the provisions of N.J.A.C. 19:45-1.25(e) do not require that a casino licensee directly contact the issuing institution prior to encashment, then failure to perform such procedures would not give rise to a regulatory violation.

Contrary to Division's interpretation of the meaning of N.J.A.C. 19:45-1.25(e), casino licensees, including Claridge, have taken the position that the impact of this regulation lacks a requirement that direct contact with the issuing institution occur prior to encashment. The very essence of cash equivalents, more commonly referred to as negotiable instruments, is that they are freely transferable by delivery. Resorts International Hotel, Inc. v. Salmone, 178 N.J.Super. 598, 604 (App. Div. 1981); and see Uniform Commercial Code as adopted in N.J.S.A. 12A:3 101 et seq., N.J.S.A. 12A:3 102(1)(e). Accordingly, a requirement that direct telephone contact with the issuing institution prior to encashment hinders the negotiability and severely reduces the utility of such instruments.

Resolution of these competing interpretations of N.J.A.C. 19:45-1.25(e) has been properly brought before the Commission in the presently pending declaratory ruling. The Commission is the "expert" in effectuating the policies set forth in its enabling legislation and regulations promulgated thereunder. Judge Voliva, in granting the stay, correctly deferred to the Commission's judgement as to this question of law which is the crux of both the pending declaratory ruling and the present litigation.

In the present litigation, the ALJ is presented with the task of applying the law as proscribed by N.J.A.C. 19:45-1.25(e) to a particular set of facts. Regardless of any dissimilarities between the respective types of cash equivalents, Commission's final resolution of the pending declaratory ruling would offer substantial guidance to the ALJ in applying the provisions of N.J.A.C. 19:45-1.25(e) to the specific facts presented in the pending litigation. It would be inequitable to deny Claridge the benefit to be derived from such guidance. Hence, Judge Voliva correctly concluded that "the benefits derived from a stay outweigh the minimal delay which would be incurred...". Moreover, a cogent statement as to what the law is i.e., whether telephone contact with the issuer is required prior to encashment of traveler's checks would facilitate further refinement, on a case by case basis, of the procedures required, pursuant to N.J.A.C. 19:45-1.25(e), prior to encashment of other types of cash equivalents.

HONORABLE WALTER N. READ
May 27, 1987
Page Five

Claridge, in arriving at its position, appreciates Division's concerns that its enforcement powers, pursuant to N.J.S.A. 5:12-76, would be frustrated if casino licensees were permitted to file declaratory ruling petitions to hamper the prosecution of regulatory violations. If, in fact, Claridge had filed the presently pending declaratory ruling petition subsequent to the institution of Division's complaint in this matter, Claridge would fully agree with Division's position that review and reversal on an interlocutory basis is warranted. The present matter does not present such a case.

The pending declaratory ruling petition was filed November 15, 1985; well before the institution of the present complaint. The facts demonstrate that Claridge is, in no manner, attempting to frustrate Division's enforcement powers by filing declaratory ruling petitions to forestall the orderly proceeding of filed complaints. Moreover, Commission's ruling in The Petition Of GNOC Corp., t/a Golden Nugget For A Declaratory Ruling Pursuant To N.J.A.C. 52:14B-8 And N.J.A.C. 19:42-9.1 (PRN 205601), a matter cited favorably by Division, in actuality supports Claridge's position. There, after Division filed complaints against both Claridge and Golden Nugget alleging violations of the Act and regulations promulgated thereunder, GNOC filed a petition, joined by Claridge, seeking an interpretation of the Act and regulations under which the violations were alleged.

Prior to the Commission denying the requested declaratory ruling, Commissioner Armstrong, during oral argument, stated:

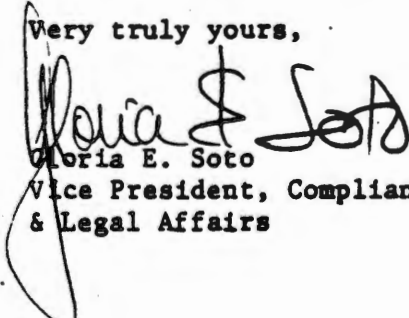
I am extremely concerned that if we accept the petition for declaratory ruling here, that we are going to open the floodgates to frequent situations where every time a complaint is filed, and I am not suggesting that [counsel] did this frivolously, and this is not directed specifically to him, but I am concerned about precedent, and circumstances presented in this case, where appropriately set, that we can open up the floodgates to petitions being filed repeatedly when the Division has filed a complaint, and I am not aware of that many violation complaints that the Division has filed against a casino licensee where they have been dismissed.
CCC Public Meeting Transcript, 8/20/86, T116-117.

HONORABLE WALTER N. READ
May 28, 1987
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The declaratory ruling petition, filed after the institution of Division's complaint, was denied because Division had properly brought the questions of fact and law before the Office of Administrative Law and, as such, those questions should remain before that tribunal. The present matter is wholly distinguishable. Here, Claridge properly brought the question of law pertaining to N.J.A.C. 19:45-1.25(e) to the Commission well before the institution of Division's pending complaint. In order to avoid the duplication of efforts, and receive the guidance derived from Commission's ultimate resolution of the declaratory ruling petition pertaining to N.J.A.C. 19:45-1.25(e), Judge Voliva correctly granted a stay.

To conclude, Claridge respectfully requests Commission to deny Division's instant request for review, on an interlocutory basis, and leave undisturbed the motion for a stay granted on May 14, 1987. Interlocutory review of ALJ orders should be exercised sparingly. 90 N.J. at 100. Division has failed to demonstrate good cause or how the interest of justice are to be served by such review.

Very truly yours,


Gloria E. Soto
Vice President, Compliance
& Legal Affairs

GES:dsk

c: Hon. Lillard E. Law, ALJ
~~_____~~
Thomas Lowe, Clerk, OAL
JOseh M. Nardi III, DAG

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-137
OAL DOCKET NO. CCC 4452-86
ORDER NO. 87-31-17

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

Complainant, : ORDER

v. :

CLARIDGE AT PARK PLACE, INC. :

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision-settlement by the Office of Administrative Law resolving the complaint of the Division of Gaming Enforcement against the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of August 12, 1987,

IT IS on this 18th day of September 1987, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Claridge at Park Place, Inc., pay a civil penalty in the amount of \$1,100, as stipulated in the settlement, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 4452-86

AGENCY DKT. NO. 86-137

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

Petitioner,

v.

CLARIDGE AT PARK PLACE, INC.

T/A CLARIDGE HOTEL CASINO,

Respondent.

**Wendy Alice Way, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Gloria E. Soto, Esq., for respondent

Record Closed: May 10, 1987

Decided: July 8, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The New Jersey Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed a complaint and amended complaint before the Casino Control Commission (Commission) alleging that respondent Claridge at Park Place, Inc., t/a Claridge Hotel Casino (Claridge) violated certain New Jersey Alcoholic Beverage Control (ABC) statutes and regulations, as incorporated by reference into the New Jersey

Casino Control Act, as well as regulations promulgated by the Commission, by illegally decanting wine and illegally bottling wine in improperly labeled containers and; that respondent caused certain bottles of alcoholic beverage to be overfilled. Respondent Claridge responds to the Complaint and Amended Complaint by way of Answer and Request for a Hearing together with Affirmative Defenses seeking, among other things, dismissal of the complaints with prejudice.

PROCEDURAL ASPECTS

The Division filed its Complaint before the Commission on April 28, 1986, which was subsequently served upon respondent. Respondent Claridge filed its Answer and Request for a Hearing on June 10, 1986. On July 7, 1986, 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. Thereafter, on July 30, 1986, the Division filed its Amended Complaint which was transmitted and received at the OAL on August 1, 1986.

On August 5, 1986, the OAL was in receipt of respondent Claridge's Motion for Stay and Consolidation. The basis of respondent's Motion for Stay and Consolidation was grounded, in part, upon a complaint filed against GNOC, Corp., t/a The Golden Nugget Hotel Casino, wherein GNOC, Corp. requested a Declaratory Ruling interpreting certain sections of statute and regulation governing alcoholic beverage and determining that GNOC, Inc. was not in violation thereof. Respondent Claridge moved to be joined in the Declaratory Ruling requested by GNOC, Corp., asserting that the legal issues in GNOC's, Corp.'s Petition were applicable to Claridge. The Division opposed Claridge's application and Motion. On August 22, 1986, the undersigned issued an Order whereby respondent Claridge's application for a stay was granted and; it was further ordered that the instant matter be consolidated with State v. GNOC, Inc. (OAL DKT. NO. CCC 3858-86, Agency Dkt. 86-136) and State v. Bally's (OAL DKT. NO. CCC 4448-86, Agency Dkt. No. 86-186). On September 8, 1986, the Commission ordered that GNOC's declaratory ruling petition be dismissed.

A prehearing conference was held on October 16, 1986, at which, among other things, the issues to be determined were set forth. It was further agreed by the parties that a second prehearing conference was to be held on February 13, 1987 with the plenary hearing scheduled for the days of February 23 through March 5, 1987. At the February 13,

1987 second prehearing conference, respondent Claridge, joined by respondent's GNOC and Bally's, propounded and served a Motion to Compel Discovery upon the Division. The Division propounded a Motion for Summary Judgment in its favor with respect to the herein proceedings.

SETTLEMENT DISCUSSIONS

During the prehearing and discovery phase of these consolidated matters, all parties concerned were aware that a similar matter was before this administrative tribunal for decision by way of cross-motions for summary decision in the matter of State v. Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (Sands) (OAL DKT. NO. CCC 3857-86, Agency Dkt. No. 86-134, initial decision December 18, 1986; Commission's Final Order, March 16, 1987). The scheduled hearing dates in the instant matters were adjourned awaiting the Commission's final order in State v. Greate Bay. As a consequence of the Commission's decision in Greate Bay, the parties to the instant actions engaged in intensive settlement discussions and negotiations which resulted in duly executed Consent Orders of settlement.

SEVERANCE OF THE CONSOLIDATED MATTERS

Having carefully reviewed and considered the entire record before me, I hereby move, sua sponte, to sever the consolidation of the three cases previously ordered consolidated for hearing. The purpose of this action is to deal fairly and independently with the parties so as not to confuse the resultant penalties agreed to by the respondents. Accordingly, this decision is concerned only with the resolution of the matter between the Division and respondent Claridge.

STIPULATED FACTS

The following facts have been agreed upon and stipulated by the parties.

1. Plaintiff, by and through its Division of Gaming Enforcement, 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, Claridge at Park Place, Inc., t/a Claridge Hotel and Casino (hereinafter "Claridge") 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 1235 Indiana Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey.
3. Claridge is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was initially issued to Claridge in 1982 and has been renewed annually since that time. Claridge has been conducting its casino hotel operations pursuant to said license continually to date since the initial issuance of its license including all times referenced herein.
4. Claridge is the holder of, and operates pursuant to, a Certificate of Operation effective July 23, 1981 at which time Claridge was the holder of a temporary casino permit. Said Certificate of Operation entitles Claridge to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.
5. By resolution dated July 24, 1985, the Commission renewed respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the period of July 23, 1985 - July 23, 1986.
6. Pursuant to its C.H.A.B. license, Claridge is authorized to serve patrons of its casino hotel alcoholic beverages as well as to store alcoholic beverage inventories on-site in certain specific areas authorized for same.
7. On or about October 19, 1985, the Division conducted an on-site inspection of Claridge's casino hotel facility.
8. Said inspection resulted in the Division's discovery that surplus wine left over from banquets was poured into ABC canisters, dispensed to ABC outlets and resold to patrons therefrom. Specifically, partially full bottles of Chantefleur Rose were poured into ABC canisters and dispensed to outlets as Rose wine. Similarly, 18 liter casks of California Cellar Chablis were used to fill 5 gallon ABC canisters marked "White" and "Chablis" and dispensed to outlets.
9. On or about May 24, 1986, the Division conducted a follow-up, on-site inspection of Claridge's casino hotel facility.
10. Said inspection resulted in the Division's discovery of three (3) bottles of Seagram's Crown Royal which appeared to have been refilled and retopped. Said bottles were found in the Basement Liquor Storage Room.

11. The three (3) bottles as aforesaid were impounded by the Division for the purpose of comparison testing and a receipt ~~was~~ executed therefor.
12. On or about May 30, 1986, the four (4) bottles as afore-described were transported to the New Jersey State Police Laboratory located in the City of West Trenton, County of Mercer and State of New Jersey.
13. The contents of the four (4) bottles as aforesaid were tested and analyzed at the aforesaid laboratory. A copy of the Report of the New Jersey State Police Laboratory which sets forth the results of the Examination of Evidence is attached hereto and made a part hereof as Exhibit A.
14. Said Report certifies that two (2) of the four (4) bottles which had been impounded by the Division from Claridge had been "overfilled."

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charged Claridge for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as Title 33 and the regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and,

WHEREAS, the Division contends and Claridge admits that the activities of the Claridge as described more fully above in paragraph 8 constitute the illegal bottling/decanting of wine in violation of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:23.23(a)(2) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d);

WHEREAS, the Division contends and Claridge admits that Claridge's possession of the two (2) overfilled bottles described more fully above in paragraphs 10 through 14 constitutes illegal bottling prohibited by N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2), as well as N.J.S.A. 33:1-2(a) and N.J.A.C. 13:23-23(a), as incorporated by reference into N.J.S.A. 5:12-103(d).

SETTLEMENT

WHEREAS, the parties are desirous of amicably settling this litigation without the necessity of a full hearing; and

WHEREAS, the matters raised by the Division's Complaint have been addressed by the cessation of the aforementioned illegal activities; and

WHEREAS, the Division agrees to withdraw its Motion for Summary Judgment and Claridge has agreed to withdraw its Motion to Compel Discovery.

PROPOSED PENALTY

That Claridge pay the sum of One Thousand Dollars (\$1,000) as a civil penalty for violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23(a)(2) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d);

That Claridge pay the sum of Fifty Dollars (\$50) per overfilled bottle as aforescribed in paragraphs 10 through 14 for a total of One Hundred Dollars (\$100) for violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-23.23(a)(2), as incorporated by reference into N.J.S.A. 5:12-103(d);

That upon approval of the Commission of the foregoing and upon payment of the total sum of One Thousand, One Hundred Dollars (\$1,100), this matter shall be deemed fully adjudicated and resolved.

FINDINGS

Having reviewed and considered the record before me, I **FIND** that:

1. The parties have voluntarily entered into the settlement of this matter as evidenced by their signatures on the Consent Order; and
2. The settlement is a fair one and disposes of all issues in controversy; and
3. The settlement is consistent with the law.

CONCLUSIONS

I **CONCLUDE**, therefore, that the proposed penalty of \$1,100 be imposed upon respondent Claridge as agreed upon in the Consent Order.

I further **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

ORDER

It is hereby **ORDERED** that the parties comport with the terms and conditions of the duly executed Consent Order and that this matter is hereby **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.

DATE

7/8/87

LILLARD E. LAW, ALJ

Lillard E. Law (REV. 2)

Receipt Acknowledged:

DATE

July 9, 1987

CASINO CONTROL COMMISSION

Mike Louis Zayas

Mailed to Parties:

DATE

July 13, 1987

OFFICE OF ADMINISTRATIVE LAW

Ronald L. Park

ml/EE

EXHIBITS

None

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-373
OAL DOCKET NO. CCC 0595-87
LICENSE NOS. 00714-21 and 00521-60
ORDER NO. 87-32-6

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

Complainant, :

ORDER

v. :

JAMES C. COUCH, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 19, 1987,

IT IS on this 27th day of August 1987, ORDERED that the initial decision is modified as follows:

Those portions of the initial decision in which the ALJ stated that once the Division of Gaming Enforcement establishes an inimical offense the burden shifts to the respondent to establish rehabilitation are rejected. In the Application of Donna M. Davis for a Casino Key Employee License, 8 N.J.A.R. 301 (Commission decision December 27, 1985) the Commission held that the rehabilitation provisions of N.J.S.A. 5:12-91(h) and -90(d) are subsumed in the inimical analysis.

Therefore the rehabilitation factors listed in these sections of the Casino Control Act should be considered before concluding that an offense is inimical. It should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is disqualifying pursuant to N.J.S.A. 5:12-86(c)(4). Similarly, pursuant to State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987), once a presumptively inimical offense has been established, the respondent has the burden of going forward with evidence to demonstrate that the offense should not be considered inimical under the circumstances. However, it is inappropriate to ascribe a burden of proof in these circumstances.

IT IS FURTHER ORDERED that the casino employee and gaming school instructor licenses held by James C. Couch are revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0595-87

AGENCY DKT. NO. 85-373

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

Petitioner,

v.

JAMES C. COUCH,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

James C. Couch, respondent, pro se

Record Closed: June 18, 1987

Decided: July 10, 1987

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 and gaming school instructor 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 held on June 8, 1987, and the record remained open until June 18, 1987, to give respondent a further opportunity to submit character references. To the date of this writing, none has been received.

The questions presented are whether respondent's convictions undermine his good character, honesty and integrity, N.J.S.A. 5:12-90b and make his continued licensure inimical to casino operations, N.J.S.A. 5:12-86c(4). If so, the burden shifts to respondent to establish rehabilitation, N.J.S.A. 5:12-90h.

The basic facts are undisputed. On August 8, 1985, respondent was arrested and charged with: theft by unlawful taking, N.J.S.A. 2C:20-4; receiving stolen property, N.J.S.A. 2C:20-7; possession of CDS (marijuana), N.J.S.A. 24:21-19a(1); possession with intent to use (drug paraphernalia), N.J.S.A. 24:21-47; and possession of CDS (cocaine), N.J.S.A. 24:21-19b(3). The incident which gave rise to these charges occurred on the casino floor. Respondent was employed as a dealer at the Tropicana and was observed taking four \$25.00 checks from the bank of a blackjack table at which he was dealing. A search of his person revealed the checks and one marijuana cigarette. A subsequent search of a locker that he shared with other employees revealed a water pipe and six additional \$25.00 gaming checks. On March 12, 1986, he was found guilty in municipal court of theft under \$200, possession of one marijuana cigarette, and possession of drug paraphernalia, a water pipe. The remaining charges were dismissed.

Respondent is 30 years old. He acknowledged his wrongdoing and indicated that these misdeeds were caused by his drug addiction. Prior to this incident, he had completed a drug rehabilitation program at the Carrier Clinic, paid for by his employer. Respondent acknowledged that he was told by professionals at the Carrier Clinic that the casino atmosphere was too highly charged for him and that he should seek employment elsewhere. He had been employed in the casinos since the advent of gaming in New Jersey, and this incident has been his only brush with the law. Respondent testified that since his conviction he has left Atlantic City and with the aid of his family has remained drug-free. He now does some construction work.

This is the substance of the record. The theft and drug convictions, arising as they do out of an incident on the casino floor, serve to undermine respondent's good character and to establish inimicality. It was for respondent to show rehabilitation. The rehabilitation criteria of the Act require that we weigh the gravity of the offense, the surrounding circumstances, recurrences, and any affirmative proofs of rehabilitation. N.J.S.A. 5:12-90h. Though the crimes committed here are not particularly heinous, that they were committed on the premises of a casino and in the course of employment tends to heighten their gravity. Also noteworthy is the admission by respondent that he was

informed by the Carrier Clinic that he would be well advised to seek employment outside the charged atmosphere of the casinos. As fewer than two years have passed since the offenses took place and as nothing substantive has been presented to show that things are now different, I do not believe that respondent has established rehabilitation.

Based on the foregoing, it is my conclusion that petitioner has established inimical conduct and lack of good character and that respondent has not proven rehabilitation. It is **ORDERED** that respondent's licenses as a casino employee and as a gaming school instructor be **REVOKED**.

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

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

7/10/87
DATE

Solomon A. Metzger
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

7-13-87
DATE

Alfred J. Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

7-16-87
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS

For petitioner:

- P-1 Investigation Report
- P-2 Complaint

For respondent:

- R-1 Letter from Art Paskalis, Director, Associated Business Careers, dated April 20, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-116
APPLICATION NO. 66027-21
OAL DOCKET NO. CCC 669-87
ORDER NO. 87-38-5

APPLICATION OF ANNA Z. DABROWSKA
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 15th day of October 1987, ORDERED that the initial decision is modified as follows:

- (1) The reference on page three of the initial decision to a June 1, 1987, arrest for possession of CDS in violation of N.J.S.A. 24:21-20a(1) is corrected to indicate that this arrest took place on June 1, 1984; and
- (2) The ALJ's conclusion that the applicant has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90(h) is rejected as unnecessary. Rehabilitation is only applicable to individuals who are disqualified from licensure pursuant to N.J.S.A. 5:12-86(c). Since it was neither alleged nor found that the applicant was

ORDER NO. 87-38-5

disqualified under section 86(c), the issue of rehabilitation should not have been considered.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 669-87

AGENCY DKT. NO. 87-EA-116

ANNA Z. DABROWSKA,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**
Respondent.

Jerry H. Steiner, Esq., for petitioner

William E. Mountford, Jr., Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Date: July 2, 1987

Decided: August 21, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) opposes the application of petitioner, Anna Z. Dabrowska, for a casino employee license as a casino teller. The Division asserts that by virtue of petitioner's past arrests for possession of Controlled Dangerous Substance she lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2). Petitioner contends that she is successfully rehabilitated and, therefore, the casino employee license should be issued.

PROCEDURAL HISTORY

On November 24, 1986, the Division delivered a letter to Casino Control Commission (Commission) opposing petitioner's application for a casino employee license. On January 9, 1987, 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. Thereafter, on April 6, 1987, a prehearing conference was conducted by the undersigned. At the prehearing conference it was determined, among other things, that the matter would be heard on May 26, 1987, by Administrative Law Judge Joseph F. Fidler. The matter was adjourned and subsequently assigned to the undersigned. The hearing was held on July 2, 1987, at the Atlantic City Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record closed as of July 2, 1987. However, due to the illness and hospitalization of the undersigned, extensions were requested and granted for the execution of the herein initial decision.

THE ISSUES

The issues to be determined by this administrative tribunal were agreed upon at the prehearing conference on April 6, 1987, and are as follows:

- A. 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)?
- B. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act?

UNCONTESTED FACTS

The following facts are neither contested nor disputed and, therefore, are hereby adopted as **FINDINGS OF FACT**.

At the time of hearing, petitioner was 28 years of age, single, living at home with her mother and handicapped father. Petitioner was graduated from Pleasantville High School, Pleasantville, New Jersey, in June 1977. She was awarded a New Jersey

Scholarship for higher education and attended Atlantic Community College for two years. However, she did not graduate nor receive an Associate degree. While attending Atlantic Community College, petitioner was at various times employed by Thrift Drugs, Inc. and the Atlantic City Medical Center.

On April 15, 1981, when petitioner was 22 years of age and employed by the Atlantic City Medical Center as a pharmacy technician, she was arrested at the medical center by the Atlantic City Police for the possession of Controlled Dangerous Substance (CDS) (Exhibit R-1). The investigating officer, Detective William J. McKnight requested and received petitioner's permission to search petitioner's locker. The locker search revealed the following items found therein: 13 grams of field tested cocaine; 20 white pills later identified as phenobarbital; 32 white tablets later identified at Doridan, a CDS; 49 pills in two boxes of 24 and 25 respectively later identified as Placidyl, a CDS; and, other unidentified capsules and tablets.

Respondent was charged with four (4) counts of possession of CDS in violation of N.J.S.A. 24:21-20(a)(1) and two (2) counts of possession of CDS with Intent to Distribute in violation of N.J.S.A. 24:21-19(a)(1), (Exhibit R-2). Bail was set at \$17,000 and she was released upon her posting of \$1,700 or 10% cash (Exhibit R-2). Petitioner was accepted into the Atlantic County Pretrial Intervention Program (PTI) on September 1, 1981. Subsequent to her successful completion of PTI, the charges were dismissed on February 22, 1982.

On June 1, 1987, petitioner was driving her motor vehicle in the area of Port Republic, New Jersey, when she was stopped by the New Jersey State Police for a minor motor vehicle violation (backing on to a highway). Subsequent to the motor vehicle stop, the trooper requested to see petitioner's driving credentials and as petitioner opened the glove compartment of the vehicle, the trooper observed a small plastic container with rice and a plastic pack with a white powder. The trooper removed the plastic container from the vehicle and advised petitioner and her female companion they were both under arrest. Petitioner's companion turned over a small amount of marijuana to the trooper which was in the companion's handbag (Exhibit R-3). The weight of the illegal drugs was determined by the New Jersey State Police Laboratory Report to be: 0.41 grams of marijuana possessed by petitioner's companion and, 0.01 grams of methamphetamine found in petitioner's motor vehicle glove compartment.

Petitioner was charged with possession of CDS, N.J.S.A. 24:21-20(a)(1). The complaint was remanded and amended to charge petitioner with use of CDS, a disorderly persons offense under N.J.S.A. 24:21-20(b). She subsequently pled guilty to the charge and was fined \$200 for the offense plus \$10 court costs.

Petitioner Dabrowska is presently the holder of a casino hotel employee registration #44315 which is not in issue at these proceedings. She has been employed under her registration at Caesars Casino/Hotel since on or about October 7, 1982. Petitioner is presently assigned to Caesars Account Receivable department.

FACTS IN DISPUTE

Petitioner testified on her own behalf asserting, among other things, that the 1981 offense resulted in her holding the illicit drugs for her boyfriend. She asserted she had been involved with this boyfriend, Ron, since 1979. She associated with Ron and Ron's friends, who were very undesirable. After her arrest in 1981, petitioner broke up with Ron and disassociated herself from Ron's friends.

Petitioner testified she became reassociated with her former boyfriend Ron in April 1984. Ron had convinced petitioner that he had changed his lifestyle and was no longer associated with his undesirable friends. In April 1984, petitioner went to Florida with a female friend and left her motor vehicle with Ron. Petitioner returned to New Jersey, retrieved her motor vehicle and had no need to open its glove compartment until she was stopped by the New Jersey State Police on June 1, 1984. Petitioner contends that the small amount of illegal drugs found in her vehicle on that date was not hers but, rather, belonged to Ron. Petitioner no longer sees or associates with Ron. Petitioner contends that she has never used illegal drugs nor possessed any such drugs since June 1, 1984.

This latter contention appears to be corroborated by Anne T. McFadden, CAC, who asserts that petitioner is not at risk for alcohol/drug addiction (Exhibit P-1).

Mr. Dabrowska presented a series of letters attesting to her reputation for good character, honesty and integrity (Exhibits P-3 through P-10). Petitioner asserted, on

the record, that all of those submitting the letters of recommendation knew of her two prior arrests although only one letter made any reference to petitioner having made "some mistakes in the past." (Exhibit P-8)

Petitioner asserts that she is seeking a gaming license in order to be eligible for a promotion in Caesars Finance Department as a Hotel Casino Credit officer. The license is necessary in order for petitioner to go to the casino cage for the conduct of business. In addition, petitioner asserts that her supervisor wants everyone employed in the casino Finance Department to be licensed.

DISCUSSION AND CONCLUSIONS

The Division contends that petitioner's drug-related conduct demonstrates that she lacks the requisite good character, honesty and integrity for licensure as a casino employee. N.J.S.A. 5:12-1b(8) holds that licensure under the Act is a revocable privilege which is conditioned upon the individual licensee's proper and continued qualification to possess the license. An applicant or licensee who may be otherwise disqualified to hold licensure is, however, provided the opportunity to overcome the prohibition against licensure by an affirmative demonstration of rehabilitation. N.J.S.A. 5:12-90h sets forth eight specific factors to be considered where a determination of an applicant's rehabilitation is to be made. Those eight factors 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 occurred;
- (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 consideration of petitioner's status with respect thereon, the following facts have been established on the record.

First, Ms. Dabrowska currently holds a casino hotel employee registration, which is not challenged in the proceedings. Petitioner is presently employed by Caesars Hotel/Casino in its Finance Department under her present registration. She seeks to upgrade her employment status through a promotion to a position of Hotel Casino Credit in its Finance Department. A license is necessary for the upgraded position due to the fact that petitioner would be required to enter the casino floor to conduct credit transactions at the casino cage.

Second, the two separate drug related arrests and charges are serious. However, the April 15, 1981 six (6) count complaint was dismissed, subsequent to petitioner's successful completion of the PTI program, and; the June 1, 1984 charge of violating N.J.S.A. 24:21-20a1, was downgraded to a disorderly persons offense under N.J.S.A. 24:21-20b. There was no guilty plea or finding of guilt with respect to the April 15, 1981 arrest and charges. With regard to the downgraded June 1, 1984 offense, petitioner entered a plea of guilty and was fined \$200 plus \$10 costs. Petitioner was neither incarcerated nor placed on probation for the disorderly persons offense.

Third, petitioner testified, credibly, that her possession of cocaine on April 15, 1981, was for the purpose of transmitting it to her boyfriend. In re Perrone's Estate, 5 N.J. 514, 522 (1950); State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955). She also testified credibly, that on the occasion of the State Police motor vehicle stop on June 1, 1984 and discovery of illegal drugs in the glove compartment of her motor vehicle, she had no knowledge of the drugs existence and believed that it was placed in the automobile by her then boyfriend. Perrone's Estate; Taylor. The herein record demonstrates that petitioner was not, nor is not, addicted to drugs or alcohol. Her involvement with illicit drugs was attributable to her willingness to win friends without due consideration of the circumstances (Exhibit P-1).

Fourth and Fifth, petitioner's arrest on April 15, 1981, occurred when she was 22 years of age and employed at the Atlantic City Medical Center as a pharmacy technician. The second offense occurred on June 1, 1984 when petitioner was 24 years of age while employed by Caesars Hotel/Casino.

Sixth, the two offenses are related to the extent of petitioner's involvement with her former boyfriend, Ron. Again, there has been no showing that petitioner was or is a drug user or addict.

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

Eighth, petitioner has demonstrated substantial rehabilitative efforts. She has been declared drug free and not at risk for either alcohol or drug addiction. Petitioner has earned a most positive employment record within the casino industry prior to and subsequent to her two drug related arrests in 1981 and 1984. She has been advanced in position in the non-gaming arena of the casino industry. Petitioner now seeks further advancement opportunities in Caesars Finance Department as a Casino Credit Office, which requires licensure. Petitioner admits to her past mistakes; which are attributable to her bad judgment with respect to the choice of friends and the influence she allowed them to have over her. She asserts, convincingly, that she is selective with regard to her friends and acquaintances and will not permit others to exert undue influence over her. Petitioner is not on probation nor under the strict scrutiny of the courts of law enforcement officials. There is nothing more petitioner can do to establish her rehabilitation.

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

Petitioner Drabowska is required to establish by clear and convincing evidence, her reputation for good character, honesty and integrity, pursuant to Section 90b, which incorporates Section 89b(2) of the Act by reference. The Commission has held that an unfavorable reputation, which raises questions that must be addressed by the 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 element. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979). Where, as here, the Division objects to petitioner's licensure under Section 89b(2) of the Act, it is therefore incumbent upon petitioner, the applicant, to present clear and convincing proof of facts upon which this administrative tribunal may reasonably reach a conclusion as to her suitability for

licensure. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Co. for Casino License, Casino Control Commission (November 13, 1980). In accordance with the legislature's intended strict regulatory control of the casino industry, it is therefore imperative that the character and background of an applicant be closely scrutinized. Boardwalk Regency Corp.

Petitioner's testimony as to events which lead to her two arrests is entirely credible; i.e. that she held CDS for her boyfriend while employed by the Atlantic City Medical Center in 1981, and she believed her boyfriend left the small amount of drugs discovered in her motor vehicle by the State Police in 1984. In re Perrone's Estate; Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E.&A. 1934); State v. Taylor. It is apparent that petitioner's misconduct was aberrational and greatly influenced by a person for whom she had deep emotional ties. She has broken those ties with her former boyfriend and has become extremely circumspect about friends and associates in order to avoid undesirable influences and associations. Petitioner has achieved a high degree of respectability with her work place colleagues supervisor personnel with whom she also socializes. There is no evidence that petitioner presents a risk to the public or to the integrity of the gaming industry in this State. An examination of the evidence clearly and convincingly demonstrates that Ms. Dabrowska is a person of good character, honesty and is entirely suitable for licensure in the casino industry. See: Boardwalk Regency Corp..

I **CONCLUDE**, therefore, that petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under Section 90b of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that the application of Anna Z. Drabowska for the issuance of as 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.

21 August 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

August 24 1987
DATE

[Signature]
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 26 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

ij

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter, undated, to Jerry H. Steiner from Anne T. McFadden, CAC
- P-2 Letter, March 4, 1982, To Whom It May Concern, from Dorrie Welsh, President, Personalized Property Services, Inc.
- P-3 Letter, October 29, 1986, To Whom It May Concern, from Robert Rush, Front Office Manager (Caesars)
- P-4 Letter, undated, To Whom It May Concern, from Gregory C. Boatwright
- P-5 Letter, May 2, 1987, To Whom It May Concern, from Ms. Rose Kane-Weiner, Front Office Manager
- P-6 Letter, May 5, 1987, To Whom It May Concern, from Stephanie Gabish
- P-7 Letter, May 8, 1987, To Whom It May Concern, from Linda R. Johnson
- P-8 Letter, May 11, 1987, To Whom It May Concern, from Eris C. Stone
- P-9 Letter, May 11, 1987, To Whom It May Concern, from Rachelle Richardson
- P-10 Letter, May 12, 1987, To Whom It May Concern, from Ruth M. Pratt, Casino Hotel Collection Manager, Caesars
- P-11 State of New Jersey v. Anna Dabrowska Order of Dismissal Under Rule 3:28
- P-12 Memorandum, Superior Court of New Jersey, Dismissal through Pre-Trial Intervention
- P-13 Employee Evaluation (2)
- P-14 Hourly Employee Annual Performance Review, 6/7/85
- P-15 Hourly Employee Annual Performance Review, 4/10/86
- P-16 Employee Evaluation, December 17, 1986
- P-17 Employee Evaluation, May 21, 1987
- P-18 Letter, December 29, 1983, to John C. Pinelli from (Mrs) Billie Andrews, Hotel Manager (Caesars)
- P-19 Letter, December 4, 1984, to Dan Zarzencny from (Mrs) Billie Andrews, Hotel Manager (Caesars)
- P-20 Letter, August 20, 1985, to Mrs. Nancy Ramondo from Aref M. Haffar, Executive Director, Hotel Operations (Caesars)

For the Respondent:

- R-1 Atlantic City, New Jersey, Police Department Investigation Report, 4/15/81
- R-2 State of New Jersey v. Anna Z. Dabrowska, Complaint, 15 April 1981
- R-3 State of New Jersey Police Investigation Report, 6/1/84
- R-4 Request for Examination of Evidence, 11/5/85
- R-5 State of New Jersey v. Anna Z. Dabrowska, Complaint, 1 June 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-220
OAL DOCKET NO. CCC 5622-86
LICENSE NO. 31949-21
ORDER NO. 87-33-6

STATE OF NEW JERSEY, DEPARTMENT	:	
OF LAW & PUBLIC SAFETY, DIVISION	:	
OF GAMING ENFORCEMENT,	:	
Complainant,	:	<u>ORDER</u>
v.	:	
CATHERINE ELIZABETH D'AGUSTO	:	
a/k/a CATHERINE BLISS,	:	
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 exceptions to the initial decision having been filed with the Commission by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of September 2, 1987,

IT IS on this *14th* day of September 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The Commission finds that the respondent committed the offense of distribution of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-19(a)(1), which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c)(3) and 86(g).
2. The Commission finds that the respondent

ORDER NO. 87-33-6

failed to demonstrate her rehabilitation from this disqualifying offense pursuant to N.J.S.A. 5:12-90(h) or establish the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license held by Catherine Elizabeth D'Agusto, a/k/a Catherine Bliss, be revoked; and

IT IS FURTHER ORDERED that Catherine Elizabeth D'Agusto, a/k/a Catherine Bliss, be prohibited from reapplying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

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 5622-86

AGENCY DKT. NO. 85-220

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

Petitioner,

v.

**CATHERINE ELIZABETH D'AGUSTO
A/K/A CATHERINE BLISS,
Respondent.**

**Norma Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

George H. Emmer, Esq., for respondent

Record Closed: April 1, 1987

Decided: July 30, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division), filed a Complaint dated May 23, 1985, with the Casino Control Commission (Commission) seeking, among other things, the revocation of the casino employee license of respondent Catherine E. D'Agusto, grounded upon the allegation that she had been arrested and had been charged with the distribution of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-19a(1).

PROCEDURAL ASPECTS

The Division filed its Complaint against respondent with the Commission on May 29, 1985. On August 21, 1986, the Commission advised respondent that it had transmitted the matter to the Office of Administrative Law (OAL). On April 25, 1986, the OAL was in receipt of the transmitted matter, which had been deemed a contested case for determination by the OAL, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On December 2, 1986, a prehearing conference was conducted by Administrative Law Judge Edgar R. Holmes. Thereafter, a hearing was held before the undersigned at the Pleasantville, New Jersey, Municipal Court on April 1, 1987, at the conclusion of which, the record was considered closed on that date. Due to the subsequent illness and hospitalization of the undersigned, extensions for the execution of this initial decision were requested and granted, pursuant to N.J.A.C. 1:1-16.6 (now, N.J.A.C. 1:1-18.8).

ISSUES TO BE DETERMINED

At the December 2, 1986 prehearing conference, the parties agreed that issues to be determined by this administrative tribunal are as follows:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(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 the 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 Casino Control Act.

UNDISPUTED FACTS

Based upon the testimony and documents entered into evidence at the hearing, the following facts are neither disputed nor controverted and, therefore, are hereby adopted as **FINDINGS OF FACT**.

On August 9, 1984, Detective Richard Mursheno and Detective Rogalski of the New Jersey State Police, telephoned the residence of respondent Catherine Elizabeth D'Agusto and posing as narcotics distributors, made arrangements for a purchase of marijuana-sinsemilla. Detective Rogalski placed the telephone call, which Detective Mursheno overheard. The arrangement was for the two undercover state troopers to meet D'Agusto for the purchase at the Paoli Bar on Route 30 in Cologne, Galloway Township, New Jersey. At approximately 9:30 p.m. on August 9, 1984, the two detectives met D'Agusto at the Paoli Bar. After some discussion it was agreed the detectives would pay D'Agusto \$300 for two ounces of the high grade marijuana. D'Agusto demanded payment prior to delivery and upon the payment of \$300, D'Agusto informed the undercover agents that the marijuana was placed underneath her motor vehicle which was in the bar's parking lot. Detective Mursheno gave D'Agusto \$300 and went to D'Agusto's blue Toyota to retrieve the substance while Detective Rogalski remained with D'Agusto. Mursheno returned to the bar and after advising D'Agusto that the two undercover agents would remain in touch with her for further narcotics transactions, they departed company (Exhibit P-1).

On August 10, 1984, Detective Mursheno transported and delivered the packaged substance for an analysis to the New Jersey State Police Special and Technical Services Section, Forensic Science Bureau (Exhibit P-1). On September 14, 1984, Mursheno was in receipt of a laboratory report from the Forensic Science Bureau, dated September 11, 1984, which stated that the submitted specimen was cannabis sativa (marijuana) and had a total weight of 52.1 grams (Exhibits P-1 and P-3).

On October 23, 1984, Detective Mark G. Emmer of the New Jersey State Police, filed a complaint against D'Agusto with the Galloway Township, Atlantic County, New Jersey, Municipal Court (Exhibit P-4). On October 24, 1984, Detective Emmer placed D'Agusto under arrest and charged her with the distribution of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-19a(1) (Exhibit P-2).

On February 27, 1985, D'Agusto was recommended for participation in the Atlantic County Pre-Trial Intervention Program (PTI), pursuant to R. 3:28 and N.J.S.A. 2C:43-12, with special conditions, one of which required D'Agusto to undergo urine monitoring for a six-month period (Exhibit P-5). D'Agusto successfully completed the urine drug screen for the six-month period (Exhibits R-1, R-2 and R-3). She also turned informant and aided the State Police with the apprehension of known illegal drug dealers.

On September 11, 1985, an Order of Dismissal under R. 3:28 was entered by the Superior Court, Atlantic County, Law Division, upon D'Agusto's successful completion of the PTI program (Exhibit P-6).

In or about August 1984, respondent D'Agusto was in the process of a divorce action from her husband. At that time, she was living with an individual identified on the record as Catherine Clifford. Ms. Clifford had represented to D'Agusto that Clifford was working as an informer in connection with illegal drugs with the New Jersey State Police

At the time of the herein hearing, respondent D'Agusto was 33 years of age, divorced and the mother of a 14-year-old female child. Respondent has sole custody of her minor child.

Respondent has had employment in the casino industry under her dealer license at Harrah's Marina and the Golden Nugget Hotel/Casino. She has also been employed as a groom from time to time at the Atlantic City Racetrack. D'Agusto obtained the marijuana from Robert Kaufman, a then licensed casino employee employed at Harrah's Marina as a dealer and who was able to obtain large quantities of the narcotic. Kaufman would supply D'Agusto with one-ounce packages of marijuana and instruct D'Agusto to sell it for a certain determined price and to transmit the proceeds to Kaufman. D'Agusto did not profit by way of monetary gain on the sales of the substance but, rather, she was able to retain some of the illicit drug for her own use to support her habit.

Respondent is currently self-employed as a one-half owner of a enterprise known as The Sub Shop. The Sub Shop is located on Market Street in Camden, New Jersey, across the street from the Campbell Soup Company.

Respondent D'Agusto has neither sold nor used marijuana since her entry in the PTI program.

This concludes a recital of the undisputed findings of fact in this matter.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes 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." 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's criminal misconduct constitutes a disqualifying offense under section 86c(3) despite the fact that such conduct was not prosecuted under the criminal laws of this State, as provided by N.J.S.A. 5:12-86g. The Division maintains that notwithstanding respondent's entry into the Atlantic County PTI program, her arrest and subsequent indictment for possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19a(1), constitute a violation under section 86c(3) of the Act. Section 86c(3) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to "any high misdemeanor under section 19 of P.L. 1970, C. 226 (C. 24:21-19)" be disqualified for licensure.

There is no dispute that respondent's act was a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute; it was not prosecuted but, rather, rises to a statutory disqualifying offense under section 86c(3) by way of section 86g of the Act.

I CONCLUDE, therefore, that the Division has established, by a preponderance of the reliable and credible evidence, that respondent's acts constitute a violation of N.J.S.A. 24:21-19a(1), a disqualifying offense for further licensure, pursuant to section 86c(3) of the Act by way of section 86g.

I find that respondent has demonstrated, through her rehabilitation efforts, that she possesses the required good character, honesty and integrity. In In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8, the Commission held that an unfavorable reputation is not the determination criterion for licensure, although it raises questions which must be addressed by an applicant. Rather, the Commission held, the individual's actual character and attributes of good character, honesty and integrity are the key. When, as here, the Division raises objections to licensure under section 89b(2) of the Act, it places the burden upon the applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to the suitability for licensure. See also, In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Aside from the admitted offensive act respondent committed on August 9, 1984, she has shown, credibly, that she possesses the requisite good character, honesty and integrity by: (1) the successful completion of the PTI program; (2) her restraint and abstinence from drug and narcotic use; and (3) her motivation to improve herself by engaging in partnership and enterprise which requires hard work and long hours in order to be a successful business. These rehabilitative efforts have shown, by clear and convincing evidence, that she possesses the attributes required under section 86b(2), and I so **CONCLUDE.**

An applicant or a licensed respondent subject to a disciplinary proceeding where it is alleged that the applicant or licensed employee has committed a section 86c disqualifying act has the opportunity of continued licensure by affirmatively demonstrating his or her rehabilitation. The applicable statute is found at section 90h of the Act and includes the following factors to be considered in evaluating whether or not an applicant or licensed employee has been rehabilitated:

- (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 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 regard to the above-cited factors to be considered in evaluating rehabilitation, I make the following findings in respondent's case.

1. Ms. D'Agusto is the holder of a casino employee license no. 31949-21 and has been employed as a dealer by Harrah's Marina and the Golden Nugget Hotel/Casino. Consequently, she has had direct and substantial contact with casino patrons and responsibilities for actual gaming activities.

2. Respondent admits she was in possession of and sold two ounces of marijuana for the price of \$300 to undercover New Jersey State Police. The act to which she admits is in violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. This is an automatic disqualifying offense under N.J.S.A. 5:12-86c(3), although she was not prosecuted under the criminal law as provided by section 86g. There was no showing that respondent sold or distributed drugs to employees or patrons of the casino industry. However, it was demonstrated that respondent's supplier of the marijuana was a Robert Kaufman, a then casino employee licensed as a dealer at Harrah's Marina Hotel/Casino. The act of distributing a controlled dangerous substance was, in itself, a serious offense. Its seriousness was exacerbated by its nexus to the casino industry.

3. Respondent contends that in or about August 1984 she was under stress because of a prior accident in which she had taken a bite of an apple in which a razor blade had been placed. Further, she was undergoing a divorce action from her then husband. She asserts that she received no money for the drug transactions carried out on behalf of Robert Kaufman, but, rather, in lieu of payment she was permitted to retain some of the marijuana for her own use. She contends that the use of the drug reduced her stress and permitted her to cope with the problems she faced at that time.

4. The alleged offense occurred on August 9, 1984, when respondent was 30 years of age.

5. Although it was not established on the record, it may be inferred that respondent's drug dealing had been a continuous activity rather than an isolated event. This inference is drawn by respondent's own testimony where she represented that she was able to retain some of the "pot" for her own use from the sales of the marijuana directed by Kaufman.

6. There were no express social conditions which contributed to the offense.

7. Respondent has made substantial and significant rehabilitative efforts. She acknowledged her misconduct and opted to enter the PTI program which she successfully completed. She was counseled and supervised by a Mr. McLean, presumably an agent of the Atlantic County PTI program. She was also monitored by Mr. McLean for a period of six months with respect to drug or narcotic use and was found to be negative on all tests administered to her. Respondent has remained drug-free. All indications for a full rehabilitation from her drug problems are positive. She has been motivated to enter into a business venture with a partner in the City of Camden, New Jersey. This act, coupled with her abstinence from drug use, is a positive rehabilitative effort by respondent.

Having carefully reviewed and considered the totality of this matter, and having given fair weight thereto, I **CONCLUDE** that respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER

Accordingly, it is **ORDERED** that the Complaint by the Division against Catherine Elizabeth D'Agusto, a/k/a Catherine Bliss, be and is hereby **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.

30 July 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

July 31, 1987
DATE

Receipt Acknowledged:

LeRoy Zapp
CASINO CONTROL COMMISSION

AUG 4 1987
DATE

Mailed to Parties:

Ronald L. Parkey x
OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 State Police Investigation Report
- P-2 New Jersey State Police Arrest Report
- P-3 Lab report
- P-4 Complaint from Galloway Township Municipal Court, signed by Det. Mark G. Emmer
- P-5 Eligibility report, dated 2/27/85
- P-6 Order of dismissal

For the respondent:

- R-1 Drug screen test, dated 5/14/85
- R-2 Drug screen test, dated 8/13/85
- R-3 Drug screen test, dated 7/18/85

WITNESSES

For the petitioner:

Trooper Richard Mursheno

For the respondent:

Catherine Elizabeth D'Agusto

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-469

OAL DOCKET NO. CCC 8923-86
(CCC 577-86
ON REMAND)

LICENSE NO. 26384-21
ORDER NO. 87-33-2

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
JOHN C. DESERINO, :
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 September 2, 1987,

IT IS on this 15th day of October 1987, ORDERED that the initial decision is modified as follows:

1. The administrative law judge's conclusion that the respondent's three shoplifting offenses rendered his licensure inimical is rejected.

A finding of disqualification should not be based on an individual's collective criminal record. Rather, disqualification pursuant to N.J.S.A. 5:12-86(c)(4) must be based on a finding that the respondent committed a specific offense which, when viewed in the light of all the circumstances, would lead the

ORDER NO. 87-33-2

Commission to believe that participation by that person either would undermine public confidence in the integrity of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (Commission decision, February 26, 1979).

In addition, in the Application of Donna M. Davis for a Casino Key Employee License, 8 N.J.A.R. 301 (Commission decision, December 27, 1985) we held that because the notion of rehabilitation is subsumed in the inimical analysis, it is unnecessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to N.J.S.A. 5:12-86(c)(4);

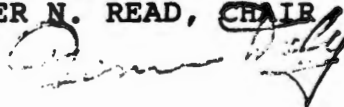
IT IS FURTHER ORDERED that the casino employee license held by John C. Deserino is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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;

ORDER NO. 87-33-2

IT IS FURTHER ORDERED that this action shall not prevent the respondent from obtaining a casino hotel employee registration.

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 8923-86

(OAL DKT. NO. CCC 577-86

ON REMAND)

AGENCY DKT. NO. 85-469

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

Petitioner,

v.

JOHN C. DESERINO,

Respondent.

Barth Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

John C. Deserino, respondent, pro se

Record Closed: July 17, 1987

Decided: July 24, 1987

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 John C. Deserino's casino employee license no. 26384-21, pursuant to sections 129 and 130 of the Casino Control Act (Act). The Division sought revocation of the respondent's license by reason of its contentions that (1) the respondent had committed criminal offenses which

rendered continued licensure to be inimical to the policies of the Casino Control Act, pursuant to sections 86g and 86c(4); (2) the respondent had been convicted of a disqualifying offense under section 86c(1); and (3) he lacks the requisite good character, honesty, and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent opposed the action and contended that he was rehabilitated.

PROCEDURAL HISTORY

By complaint to the Commission, the Division objected to the respondent's continued licensure, asserting that the respondent had been convicted of or had committed several shoplifting offenses, some of which are disqualifying offenses under section 86c(1), some of which are disqualifying offenses under section 86c(4), and some of which are disqualifying offenses under section 86c(4) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent that he had a right to a hearing. By application dated January 6, 1986, the respondent requested a hearing. On January 22, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on January 26, 1986, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A telephonic prehearing conference was held on April 18, 1986. The hearing was scheduled for June 23, 1986, was adjourned, and was rescheduled for September 8, 1986, before Administrative Law Judge Richard L. Voliva. On September 8, 1986, no appearance was made by or on behalf of the respondent, and on October 22, 1986, Judge Voliva issued an Initial Decision of Abandonment in this case.

The respondent provided an explanation for his nonappearance at the scheduled hearing to the Commission and requested another opportunity for a hearing. The Commission considered the respondent's request at its public meeting of December 3, 1986, and issued an order on December 22, 1986, remanding the case to the Office of Administrative Law. The case was retransmitted to the Office of Administrative Law, which was received on December 23, 1986, 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 5, 1987, before Administrative Law Judge Edgar R. Holmes. The issues set forth at the prehearing conference to be resolved at the hearing were:

- 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: a third-degree theft resolved criminally as shoplifting on November 17, 1983.
- B. Whether respondent's continued licensure and/or 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 numerous violations of the shoplifting statute.
- C. 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).
- D. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.
- E. The Division will offer proof of the respondent's termination for cause from the Golden Nugget in rebuttal to the respondent's offers of proof of his rehabilitation.
- F. What other sanctions, if any, pursuant to sections 129 and 130 of the Act should be applied?

A hearing commenced on June 2, 1987, in the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey. At that time, the respondent requested an adjournment so he could obtain the assistance of counsel. His request was granted, and the case was adjourned. The case was rescheduled, and a hearing was held on July 17, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. At that time it was determined that Cape-Atlantic Legal Services had declined to represent the respondent, and the respondent indicated that he could not afford private counsel. As such, the respondent elected to proceed without the assistance of counsel. The record closed at the conclusion of the hearing.

THE FACTS

(A) UNDISPUTED FACTS

1. In September 1981, the respondent received a casino employee gaming license (a 21 license).
2. On June 21, 1982, the respondent was reprimanded and sent home for arguing with another employee in the front of the Golden Nugget (P-5).
3. On January 27, 1983, the respondent was reprimanded and given a warning for becoming loud in the lobby of the Golden Nugget (P-5).
4. On June 28, 1983, the respondent was suspended from the Golden Nugget for three days for being disrespectful to Mr. Wynn's Executive Assistant (P-5).
5. On November 2, 1983, the respondent was suspended from the Golden Nugget for falsifying his time card (P-5).
6. On November 17, 1983, the respondent was arrested for shoplifting a Radio Shack Model 100 32K computer. On January 24, 1984, the respondent pleaded guilty to shoplifting in violation of N.J.S.A. 2C:20-11. For this offense the respondent was ordered to pay \$100 restitution for damage done to the door of the store, \$25 court costs, and a \$25 Violent Crimes Compensation Board penalty (P-1).
7. Two hours and ten minutes after first being arrested on November 17, 1983, the respondent was again arrested for shoplifting in violation of N.J.S.A. 2C:20-11. He attempted to steal a Sony Walkman, valued at \$99.99, from the Bradlee's Department Store. The respondent was also charged with two counts of simple assault in violation of N.J.S.A. 2C:12-1a(1). These charges were dismissed on January 24, 1984, as they were merged with the charge contained in paragraph 6 above (P-2).

8. On June 8, 1984, the respondent was suspended from the Golden Nugget for being incompetent and unable to perform his duties and for being disrespectful to the Executive Director of Hotel Operations (P-5).
9. On July 23, 1984, the respondent was given a warning for unsatisfactory work performance (P-5).
10. On October 27, 1984, the respondent was suspended from the Golden Nugget for three days for being disrespectful to his supervisor (P-5).
11. On December 12, 1984, the respondent was given a warning for leaving his work area without permission (P-5).
12. On December 19, 1984, the respondent left his work area without permission, and became insubordinate and abusive. He was suspended immediately and was terminated from his employment on December 20, 1984 (P-5).
13. On April 27, 1985, the respondent was arrested and charged with shoplifting in violation of N.J.S.A. 2C:20-11. It was alleged that he attempted to steal a screwdriver valued at \$1.97 from K-Mart. On June 3, 1985, this charge was dismissed (P-3).
14. On April 29, 1985, the respondent was arrested for shoplifting in violation of N.J.S.A. 2C:20-11. It was alleged he attempted to steal a computer disc valued at \$249.99 from Sears. On May 8, 1985, the respondent pleaded guilty to this offense and was sentenced to 30 days in jail, which was suspended, and was ordered to pay a \$300.00 fine, \$25.00 court costs, and a \$25.00 Violent Crimes Compensation Board penalty. As a condition of his suspended sentence, the respondent was required to complete a shoplifting course (P-4).

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

(B) DISPUTED FACTS

The respondent is 38 years old and has worked all of his adult life. He was married, is now divorced, and has an 18-year-old son who resides with him. In the past he used drugs. On November 17, 1983, he was under the influence of valium and heroin at the time he tried to shoplift the computer. P-1 indicates that the value of the computer was \$1150.00. The respondent contests this and asserts that the real value of the computer was \$399.00. The respondent indicated that he was still under the influence of drugs later that night when he attempted to shoplift the Sony Walkman. The respondent stated that he was under the influence of the drugs, was not thinking clearly, and attempted to shoplift the items for Christmas presents.

The respondent also disputes the screwdriver incident which was dismissed. The store detective stated that the respondent had placed a screwdriver in his hair and had apparently shaken it out prior to being taken into custody (P-3). The respondent asserted that the security guards knew him. He admitted looking at a screwdriver but stated that when he bent over he dropped a pen out of his pocket, picked it up, and returned it to his pocket. He returned the screwdriver to the rack. Upon leaving the store, he was approached and questioned regarding the screwdriver. He indicated that he did not have it, but the store detective did not believe him. No screwdriver was found on his person.

The respondent was 33 years old when he began using drugs. Drugs had always been around him, and he began to use heroin. He became addicted to it and began to do things he would not ordinarily do. He had a \$100.00-to-\$200.00-a-day habit. If he could not get heroin, he would get sick and then take valium. In 1985, he stopped using drugs. He could see that drugs were ruining his life, and he was losing everything he had. He voluntarily entered the Drug and Alcohol Rehabilitation Center of the Carin Hospital in Reading, Pennsylvania. He remained as an inpatient for twelve days, and upon his release, he attended weekly outpatient drug counseling sessions for six months and if needed, he would attend more frequently. He stated that he started to get urges, so approximately one-and-a-half-to-two years ago, he went to the Institute of Human Development.¹ He

¹ The Institute for Human Development is a rehabilitation facility for drug and alcohol dependencies.

was placed on an outpatient program involving daily counseling and daily doses of methadone. The respondent is still in the program and attends counseling sessions three days per week. He is presently on a detoxification program and should complete detoxification within 30 days.

On April 1, 1987, the respondent successfully completed the 300-hour course for slot machine mechanics taught at the Atlantic Community College's Casino Career Institute (R-3). On April 16, 1987, the respondent also completed the 40-hour course entitled "Introduction to Microprocessor Slots" taught at the institute (R-2). The respondent wishes to seek employment in the casino industry as a slot machine mechanic. He has always enjoyed mechanics, and he desires to seek employment in this area. He has not yet applied for a position at any casino; however, someone at Ceasar's indicated that he might be able to obtain a mechanic's position.

The respondent submitted one letter of recommendation. Mr. John A. Murphy, Assistant Manager, Tropicana Hotel and Casino, wrote:

I have been a past supervisor for John Deserino and I am aware of his current involvements, John was under my direct supervision while he was employed at the Golden Nugget Hotel /Casino. During that time, John was a fully satisfactory employee, initially. It seemed to me that as time went on, John began to falter [sic] as a matter of fact, John seemed to become a different person.

I am sure that if John has completed a form of rehabilitation for his personality changes he will again be a fine contributor [sic] to society. (R-1.)

The respondent testified that his actions were stupid. He is sorry and remorseful for what he has done. He states that he "feels great now." He gets more pleasure out of making something out of his life rather than just doing drugs. He no longer uses drugs, and he asserts that he is a changed person who is now able to control his feelings. The respondent desires to use his experience in a positive manner in the future.

Of primary concern was the respondent's credibility concerning his testimony about the circumstances underlying his difficulties. Initially, the respondent's position in this matter must be recognized. He is the holder of a casino employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from

my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with and corroborated by the documentary evidence and the fact that the respondent's explanation for his conduct revealed additional criminal misconduct beyond the knowledge of the Division, I am persuaded to believe that he testified truthfully. His testimony was extremely candid, straightforward, consistent and believable. In the final analysis, I am persuaded to accept his testimony in all respects. I so **FIND**.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) 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 sections 86c(1), 86c(4) and 86g and, therefore, he cannot continue to hold a license.

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Included in this section as a statutory disqualifier is "N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees)." The respondent was convicted of two violations of N.J.S.A. 2C:20-11 and was accused of committing two other violations of N.J.S.A. 2C:20-11. The Division alleges in its complaint that "a violation of N.J.S. 2C:20-11...is per se a disqualifying offense pursuant to section 86c(1) of the Casino Control Act." N.J.S.A. 2C:20-11 has its own gradation provision. It does not use the standard gradation provision for theft offenses contained in N.J.S.A. 2C:20-2. N.J.S.A. 2C:20-11 provides in pertinent part:

c. Gradation. Any person found guilty of an offense under subsection b. is a disorderly person, except that notwithstanding the fine provided under 2C:43-3, such person shall be sentenced to pay a fine of not more than \$500.00 for a first offense; to pay a

fine of not less than \$100.00, not more than \$500.00 for a second offense and to pay a fine of not less than \$250.00, for more than \$1,000.00 for a third and any subsequent offense. Additionally, notwithstanding the term of imprisonment provided in 2C:43-8, any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of not less than 30 days.

The respondent was thus convicted of a disorderly persons offense, not a crime of the second or third degree. As such the respondent's conduct is not a per se statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

Assuming for purposes of argument that the Division had charged the respondent with having committed the statutory disqualifier under section 86c(1) of theft in violation of N.J.S.A. 2C:20-3 by means of section 86g, the only offense which would have possibly qualified as a crime of the third degree is the theft of the computer charge. The Division alleged that the value of the computer was \$1150.00. The respondent, however, asserted that the value of the computer was only \$399.00, and thus the offense would not have been a crime of the third degree. I find it very difficult to believe that a small 32K personal computer sold for \$1150.00². I **FIND** that the computer did not sell in excess of \$500.00. I further **FIND** that the Division did not allege in its complaint any purported statutory disqualifiers under section 86c(1) other than violations of N.J.S.A. 2C:20-11, which are not statutory disqualifiers pursuant to section 86c(1).³

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the respondent has committed a statutory disqualifier pursuant to section 86c(1).

N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Section 86g provides that a person be disqualified from licensure because of the commission of any act 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 is more

² I note that Radio Shack's current model 102, which is the successor to the model 100, lists at full retail at \$499.00.

³ While all of the elements of a violation of N.J.S.A. 2C:20-11 were established at the hearing, the Division might not have been able to establish all of the elements of a violation of N.J.S.A. 2C:20-3.

commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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 established that the respondent was convicted of two counts of shoplifting and that the respondent committed at least one other shoplifting offense. Although the respondent's convictions are not listed as disqualifiers under section 86c, such conduct when committed by a license holder raises serious concerns. Further, when the circumstances underlying the criminal misconduct are drug related, the offenses take on a far greater significance. Here, the respondent admitted candidly that he had a serious drug habit and committed criminal misconduct while under the influence of drugs. Under these circumstances, this evidence renders continued licensure to be inimical to the Act. The respondent stipulated that he did in fact commit at least three shoplifting offenses. This along with the documentary evidence submitted by the Division, establishes the charged misconduct. Although the charged misconduct is not an included disqualifier under section 86c(1), it is clear that the misconduct was extremely serious in nature.

Nevertheless, the respondent has made substantial rehabilitative efforts. He has acknowledged fully and accepted responsibility for his misconduct, and has acknowledged his actions openly and honestly even beyond the scope of the specific allegations. Further, I am persuaded that the respondent recognizes his past errors and will no longer participate in illegal drug activities. It was apparent that the respondent has suffered substantially by reason of his misconduct. Also, the respondent has voluntarily sought therapy for his drug problem and completed an educational program which will allow him to secure new employment and begin to rebuild his life. He is on his way to being a constructive and contributing citizen.

The remaining issue is whether the respondent's rehabilitative efforts are sufficient to overcome his prior misconduct. They are not. Although the respondent has made outstanding progress, more time must pass in order to assess accurately the alteration of his behavior and his commitment not to repeat his misconduct in the future. He is just completing his therapy now and is still in the process of detoxification. These

efforts are laudable, and I urge the respondent to continue making progress; however, I do not feel that the respondent has met the test of time. The respondent testified that drugs were plentiful at the Golden Nugget, and that he was often offered drugs for favors or tips while working at the Nugget. The respondent is going to have to demonstrate that he can work in such an environment and not revert to his old habits. Only time can tell us the answer to this question.

Other than the respondent's criminal record, the Division established that while employed at the Golden Nugget, the respondent had a dismal employment record, was elusive, and had little respect for authority. He was disciplined on numerous occasions and this raises serious questions regarding his character, honesty, and integrity. On the other hand, since that time, the respondent has made numerous attempts to turn his life around and to rehabilitate himself. All of his actions are laudable, but while there is evidence of rehabilitation and current good character, honesty, and integrity, I question whether this evidence is sufficient to rise to the level of clear and convincing evidence. I simply believe that insufficient time has passed to establish that his drug dependency has been removed and that he no longer presents a risk to the industry.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Deserino was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the

trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

(C) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . . .

For the reasons previously expressed, it is clear that the respondent's criminal misconduct renders continued licensure to be inimical to the policies of the Casino Control Act and that he no longer possesses the qualifications for licensure. Accordingly, the respondent's license must be revoked. I so **CONCLUDE**.

While I feel constrained based upon the Commission's prior decisions to conclude that the respondent's license be revoked, I recommend that the Commission reexamine its position. In Division of Gaming Enforcement v. Wynette Harris, (N.J. App. Div., October 1, 1983) A-3774-81T2 (unreported), the court held that the Commission did have the authority to impose sanctions other than revocation and the "the authority to impose a revocation implies the authority to withhold such revocation." This case is an unusual case. The respondent was addicted to drugs. He has sought therapy, attained an education in order to start a new trade, and is attempting to turn his life around. Under such circumstances he needs the support services which society can provide and a job by which to survive. If the respondent had been off drug counseling for a period of time (maybe two years), I might have recommended licensure. However, as I have indicated above, he needs more time to demonstrate that he has "kicked his habit." At the same time, he needs a job in order to live so that he will not revert to his old habit. Under such circumstances, I recommend the Commission take a page from the criminal courts and use creative sentencing. I would suggest that this respondent might be a good candidate to have his license revoked but that the revocation would be suspended for two years. If at the end of that time, the respondent's drug counselor and employer certify to the Commission that the respondent has remained drug-free, a good employee, and has good character, honesty and integrity, the revocation would be lifted. However, if at any time during the two-year period, his drug counselor or employer informs the Commission that the respondent has reverted to his old habits, the Commission could immediately lift the suspension and impose the revocation. This would enable the respondent to get a decent job as a slot machine mechanic, for which he has just trained, and give him a chance and the tools to make something out of his life, and yet at the same time, the Sword of Damocles would be dangling over his head in case he should slip and transgress.

In case the Commission decides not to suspend the revocation and does in fact revoke the respondent's license, I would like to inform the respondent of the existence of N.J.A.C. 19:41-8.8. That section provides that if one's license is revoked, reapplication for licensure may not be made for a period of five years. Paragraph (g) of that regulation does allow the applicant to petition the Chairman of the Commission to issue an order authorizing early reapplication at any time.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino employee license of John C. Deserino be **GRANTED** and that license no. 26384-21 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 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.

24 July 87
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

July 28, 1987
DATE

Richard Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 29 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Ventnor Municipal Court Complaint SN 55900 with Police Arrest Report, dated 11-17-83, Property Report and Voluntary Statement of William Curry, Case 83-11606
- P-2 Ventnor Municipal Court Complaints S 37594 and S 37585 with Police Arrest Report, Voluntary Statements of Timothy Huang and Gwen Tullio, and Property Report, Case 83-11609
- P-3 Pleasantville Municipal Court Complaint S 321657 with Police Arrest Report, dated 4-27-85, and Police Operation Report, Case 85-6117
- P-4 Egg Harbor Township Municipal Court Complaint W 107892 with Police Arrest Report, dated 4-29-85
- P-5 Certified Copy of Golden Nugget Employment Records: John C. Deserino, Employee No. 5739

For the respondent:

- R-1 Letter of John A. Murphy, Assistant Manager, Tropicana Hotel and Casino, dated June 2, 1987
- R-2 Atlantic Community College letter and certificate for respondent's completion of the 40-hour Introduction to Microprocessor Slots course
- R-3 Atlantic Community College letter and certificate for respondent's completion of the 300-hour Slot Machine Mechanic course

WITNESSES

For the petitioner:

None

For the respondent:

John C. Deserino, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-198
REGISTRATION NO. 14267-40
OAL DOCKET NO. CCC 1169-87
ORDER NO. 87-32-4

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

Complainant, :

ORDER

v. :

GLENN M. DEVITO, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 19, 1987,

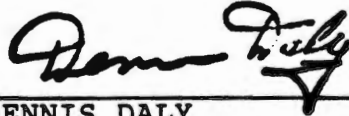
IT IS on this 27th day of August 1987, ORDERED that the initial decision is modified to find:

that the offenses committed by the respondent, namely, possession of CDS with intent to distribute and distribution of CDS in violation of N.J.S.A. 24:21-19a(1), are disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(3) and -86(g) rather than N.J.S.A. 5:12-86(c)(1) and -86(g).

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1169-87

AGENCY DKT. NO. 85-198

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

Petitioner,

v.

GLENN M. DE VITO,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Michael Mallin, Esq., for respondent

Record Closed: June 30, 1987

Decided: July 15, 1987

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 Glenn M. DeVito's casino hotel employee registration no. 14267-40, pursuant to N.J.S.A. 5:12-91 and 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had committed a disqualifying offense under section 86c(1), by means of section 86g, 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 sous chef in casino hotel restaurants. By complaint to the Commission, dated May 15, 1985, the Division objected to the respondent's continued registration, asserting that the respondent had been charged with possession of a controlled dangerous substance (CDS) (marijuana) with intent to distribute, distribution of said controlled dangerous substance, and conspiracy to distribute said controlled dangerous substance, which are disqualifying offenses under section 86c(1) and section 86g. Based upon the complaint, the Commission notified the respondent on May 22, 1985, 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 21, 1985, which was received by the Commission on June 24, 1985, the respondent requested a hearing. On February 23, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on February 26, 1987, 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 matter was held before me on May 5, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- 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: possession of a CDS (marijuana) with intent to distribute, distribution of said CDS, and conspiracy to distribute said CDS, in violation of N.J.S.A. 24:21-19a(1), N.J.S.A. 24:21-19a(1), and N.J.S.A. 24:21-24.
- B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was held on June 30, 1987, in the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the records were closed.

THE FACTS

In September 1984, Sgt. John Mazzeo of the Cumberland County Prosecutor's Office, Investigations Section, and Detective Lieutenant Barry Grasso of the Salem City Police Department were transferred from their normal duties to a special undercover operation in Atlantic City.¹ On January 4, 1985, Officers Mazzeo and Grasso were on a counter-drug operation and were assigned to the Florida Pub. Once there, they saw William J. Gilbert. They had previously been told that Gilbert was a source of illicit drugs. Detective Grasso approached Mr. Gilbert and asked him if he could purchase some marijuana.

In 1985, the respondent lived across the street from the Florida Pub in Atlantic City, New Jersey. On January 4, 1985, the respondent went to the Florida Pub to drink a couple of beers. The respondent occasionally went to the Florida Pub to drink beer as it was a local establishment. On previous trips to the Florida Pub, he had met William J. Gilbert. He had spoken to Gilbert on several previous occasions and only knew Gilbert from the pub. On January 4, 1985, Gilbert approached the respondent and asked him if he knew anyone who had any marijuana. The respondent answered "yes," left the pub, went to his home, obtained a baggie of marijuana, and returned to the pub.

Gilbert and the respondent then entered the bathroom of the pub followed by Detectives Grasso and Mazzeo. In the bathroom, Detective Grasso spoke to Gilbert. The respondent gave Gilbert the baggie of marijuana. Gilbert then gave the baggie to Detective Grasso, who gave Gilbert \$40.00. The four then left the bathroom.

The respondent remained in the pub and drank a couple of beers before going home. The detectives departed the pub, and then had the substance in the baggie field-tested. The substance field-tested positive for marijuana. The marijuana was then forwarded to the State Police Forensic Laboratory for further testing. The specimen was tested and was determined to be 6.5 grams of marijuana, a Schedule I Controlled Dangerous Substance (P-1).

¹It is standard procedure to exchange officers from other counties for use in undercover operations.

Based on the above, the respondent was indicted by an Atlantic County Grand Jury and was charged with: Count One, possession of a controlled dangerous substance (marijuana) with intent to distribute, in violation of N.J.S.A. 24:21-19a(1); Count Two, conspiracy to distribute a controlled dangerous substance, in violation of N.J.S.A. 24:21-24; and Count Three, distribution of a controlled dangerous substance (marijuana), in violation of N.J.S.A. 24:21-19a(1) (P-2). Pursuant to a plea bargain, on September 3, 1985, the respondent entered a plea of guilty to the lesser included offense of possession of marijuana under 25 grams, in violation of N.J.S.A. 24:21-20, which is a disorderly persons offense. A Conditional Discharge was granted, the respondent was placed on probation for one year, and was ordered to perform 50 hours of community service (P-3, 4 & 5). The respondent successfully completed his probationary period and performed his community service. As a result, the Conditional Discharge was dismissed on December 8, 1986 (P-4).

The respondent indicated that he had never smoked marijuana or used drugs. When questioned about the source of the marijuana, he indicated that earlier on January 4, 1985, John Bivona, who was the brother-in-law of the Executive Chef at Resorts, visited the respondent at the respondent's home. Mr. Bivona had brought the baggie with him and left it at the respondent's house by mistake. The respondent did not want the marijuana in his house, so later that night, when asked by Mr. Gilbert if he knew where he could get some marijuana, the respondent obtained Mr. Bivona's marijuana. The respondent knew Mr. Gilbert was going to sell the marijuana, and the respondent participated in the sale. The respondent did not simply dispose of the marijuana because when Mr. Gilbert asked him about some marijuana the respondent decided that he "didn't want to get rid of it for nothing." Subsequent to the sale of marijuana to the police officers, the respondent received \$20.00 from Mr. Gilbert for the sale of the marijuana. When Mr. Bivona returned looking for his marijuana, the respondent told him it was gone.

The respondent is 30 years old and has lived in Atlantic City for 8 years. In 1977, he received an associate degree in Culinary Arts from the Culinary Institute of America. He has worked in the restaurant industry for 16 years. In 1980, he became employed as the sauciee at LaPalais at Resorts, and became the sous chef in charge of the restaurant. In 1984, he became the sous chef in charge of Charlie's Restaurant at the Golden Nugget. In June 1985, his registration was suspended by the Commission as a result of the indictment in this case. In February 1987, after the Conditional Discharge was dismissed, the Commission reinstated the respondent's registration, and the

respondent is now the sous chef in charge of the Casa DiNapoli restaurant at the Showboat. He is responsible for all the hiring, ordering, scheduling, menu planning, costing, and kitchen operations at the restaurant. He is, in effect, the manager of the restaurant and works directly under the executive chef for the entire casino.

The respondent has received several awards for his culinary expertise. In 1982, he received a certificate of appreciation for assisting five executive chefs in completing their master chef titles in Ennstal, Austria (R-1). In 1981, 1982 and 1983, he won first prize for his entries in their fields at the Annual Salon of Culinary Arts sponsored by the Societe Culinaire de New York (R-2, 3, 4 & 7). In 1982, he won second prize at the Atlantic City Food Show and received a certificate of appreciation from the Academy of Culinary Arts for building the world's largest birthday cake (R-7). Since 1985, the respondent has not been active in community or civic groups other than to perform his community service portion of his probation. He was involved with the opening of the Showboat and works 10-12 hours per day, 6 days per week.

The respondent submitted two letters of recommendation. The first, written by George McNeill, Executive Chef de Cuisine, Showboat Hotel, Casino and Bowling Center, provides:

Mr. Glenn DeVito has been employed with the Showboat Hotel, Casino and Bowling Center since pre-opening. He currently holds the position of Sous Chef of our Casa di Napoli gourmet Italian restaurant.

Chef DeVito is dependable, reliable and displays excellent culinary skills. He is in good standing with the company and truly an asset to our organization. (R-8)

The second, written by Barbara G. Siracusa, Social Services Coordinator, The Salvation Army, provides:

This will serve to inform you that Mr. DeVito has satisfactorily completed his assigned community service hours, under the direction of The Salvation Army. During his six weeks with the agency, he demonstrated a cooperative nature and maintained a positive attitude.

Mr. DeVito performed his tasks quickly, yet meticulously. He recognized what had to be done, and discovered the most efficient way to complete it. He was truly a major asset to The Salvation Army, and his efforts were much appreciated. (R-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 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 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 respondent's testimony in all respects.

FINDINGS OF FACT

1. On January 4, 1985, respondent gave 6.5 grams of marijuana to William J. Gilbert.
2. William J. Gilbert sold the 6.5 grams of marijuana to Detective Barry Grasso for \$40.00 at the Florida Pub, Atlantic City, New Jersey.
3. The respondent was present at the sale and subsequently received \$20.00 from William J. Gilbert for the sale of the marijuana.
4. The respondent was indicted by an Atlantic County Grand Jury and was charged with possession of a controlled dangerous substance with intent to distribute, distribution of a controlled dangerous substance, and conspiracy to distribute a controlled dangerous substance.
5. Pursuant to a plea bargain, on September 3, 1985, the respondent entered a plea of guilty to the lesser included offense of possession of marijuana under 25 grams.
6. A Conditional Discharge was granted, the respondent was placed on probation for one year, and was ordered to perform 50 hours of community service.

7. The respondent successfully completed his probationary period and performed his community service. The Conditional Discharge was dismissed on December 8, 1986.
8. The respondent is 30 years old, has lived in Atlantic City for 8 years, and is currently employed as the Sous Chef in charge of the Casa DiNapoli restaurant in the Showboat. At the time of the offense, the respondent was 27 years old.
9. The respondent has won several awards for his culinary skills.
10. As a result of the indictment in this case, the respondent's casino hotel employee registration was suspended by the Commission from June 11, 1985 until February 6, 1987.

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 under New Jersey law at the time of application a violation of any of the following provisions of law:

. . . .

- (3) Any high misdemeanor under section 19 of P.L. 1970, c.226 (C.24:21-19) . . .

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

N.J.S.A. 24:21-27, Conditional discharge for certain first offenses; expunging of records, provides in pertinent part:

- a. Whenever any person who has not previously been convicted of any offense under the provisions of this act or, subsequent to the effective date of this act, under any law of the United States, this State or of any other state, relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under section 20 of P.L. 1970, c. 226 (C. 24:21-20), the court, upon notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

.

- (2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of such person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law.
- b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of three years. Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of P.L. 1970, c. 226 (C. 24:21-29) or any law of this State.

DISCUSSION

The Division contends, by means of section 86g, that the respondent committed a violation of N.J.S.A. 24:21-19a(1), possession of a CDS (marijuana) with intent to distribute; a violation of N.J.S.A. 24:21-19a(1), distribution of a CDS (marijuana); and a violation of N.J.S.A. 24:21-24, conspiracy to distribute a CDS (marijuana), which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued registration.

(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(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to "any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19)" be disqualified from licensure. The Division contends that the respondent's participation in the sale of 6.5 grams of marijuana to police undercover agents on January 4, 1985, constitutes a high misdemeanor violation of N.J.S.A. 24:21-19, 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;

.

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; . . .

The Division established, and the petitioner admitted during his testimony, that he possessed and distributed a controlled dangerous substance (marijuana). Accordingly, I **CONCLUDE** the the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constituted a violation of N.J.S.A. 24:21-19. I further **CONCLUDE** that, pursuant to N.J.S.A. 24:21-19b(3), the offense constitutes a high misdemeanor.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the unprosecuted offense committed by the petitioner is a disqualifying offense under section 86c(1), pursuant to section 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86g and 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;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;

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

First, Mr. DeVito is a casino hotel registrant and is employed as a sous chef. As such, he does not have direct responsibilities for actual gaming activities and has minimal potential contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 24:21-19, possession and distribution of a controlled dangerous substance. The respondent, however, pleaded guilty to a violation of N.J.S.A. 24:21-20a(4), possession of 25 grams or less of marijuana, which is a disorderly persons offense and not a statutory disqualifier under N.J.S.A. 5:12-86c. Pursuant to N.J.S.A. 24:21-27, after the respondent pleaded guilty, the court, without entering a judgment of conviction, granted the respondent's motion for conditional discharge and placed the respondent on probation. Upon the respondent's successful completion of the probationary period, the court dismissed the proceedings against him. Termination of supervisory treatment and dismissal under this section is without court adjudication of guilt and is not deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense. The one-time possession of 6.5 grams of marijuana is a minor offense, and the Division conceded this point at trial. The Legislature specifically provided separate penalties for persons who possessed small quantities of illegal drugs and established the conditional discharge procedure as a rehabilitative tool so that the first-time offender would not be immediately processed through the criminal justice system with the creation of a criminal record. See, State v. Sanders, 169 N.J. Super. 596 (Law Div. 1979); State v. Teitelbaum, 160 N.J. Super. 430 (Law Div. 1978); and State v. Banks, 157 N.J. Super. 442 (Law Div. 1978).

Third, this appears to have been a one-time occurrence. The marijuana belonged to John Bivona, who had visited the respondent earlier in the day and had inadvertently left the marijuana in the respondent's house. The respondent wanted to get rid of the marijuana, and when asked later that night if he knew where to get any marijuana, he responded affirmatively. The respondent used poor judgment in deciding not to "get rid of the marijuana for nothing." This moment of greed has had serious impact upon him.

Fourth, the respondent's misconduct occurred on one day over two years ago, January 4, 1985.

Fifth, the respondent was 27 years of age at the time of the offense.

Sixth, the respondent's misconduct was isolated in nature. He has not committed any other prior or subsequent violations of criminal laws. In addition, the respondent successfully passed four random urinalysis tests during his probationary period.

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

Eighth, the respondent successfully completed his probationary period, was an asset to the Salvation Army when performing his community service, has remained trouble-free for two and one-half years, and played an integral role in the opening of the Showboat. The respondent is presently employed in the casino industry and performs a responsible job in an outstanding manner. The respondent knew of this pending revocation proceeding, yet he still accepted employment at the Showboat in an attempt to reestablish his good reputation in the industry. In addition, the respondent's registration had been suspended by the Commission because of this offense for one and one-half years. The respondent has expressed remorse for, and has no intention of repeating, his misconduct. The respondent is an excellent and sought-after chef who has won several awards. While he is sought after by major establishments outside of the New Jersey area, he is a New Jersey resident and wishes to make Atlantic City his home. I believe there is little likelihood, if any, of the respondent repeating his misconduct. Accordingly, the respondent has established his rehabilitation.

I **CONCLUDE** that the respondent has 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 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.

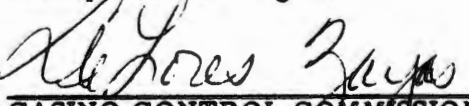
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

15 July 1987
DATE


STEVEN L. CARNES, ALJ

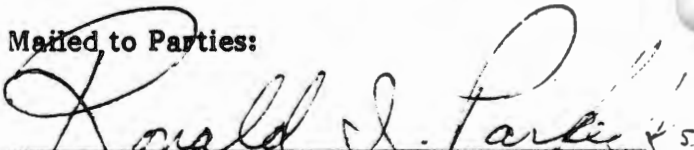
July 16, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

JUL 20 1987
DATE

Mailed to Parties:


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

FOR PETITIONER:

- P-1 New Jersey State Police Laboratory Report, dated February 28, 1985, identifying the substance as 6.5 grams of marijuana
- P-2 Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Indictment No. 85-04-0543-B, against Glenn DeVito
- P-3 Order for Presentence Investigation, re: Glenn DeVito, indicating down-graded charge and conditional discharge
- P-4 Application for and Order terminating the respondent's probation and dismissing the charge for successfully completing the conditional discharge
- P-5 Atlantic County Superior Court Criminal Record in the case of State v. Glenn DeVito

FOR RESPONDENT:

- R-1 Certificate issued to respondent October 10, 1982, for assisting five individuals in obtaining their Master Chef status in Ennstal, Austria
- R-2 First Place Certificate issued by the Societe Culinaire Philanthropique of New York at the 113th Annual Salon of Culinary Arts, 1981
- R-3 First Place Certificate issued by the Societe Culinaire Philanthropique of New York at the 114th Annual Salon of Culinary Arts, 1982
- R-4 First Place Certificate issued by the Societe Culinaire Philanthropique of New York at the 115th Annual Salon of Culinary Arts, 1983
- R-5 Philadelphia Inquirer article, dated May 29, 1983
- R-6 Atlantic City Press article from 1981
- R-7 Resume of respondent
- R-8 Letter, dated June 29, 1987, from George McNeill, Executive Chef De Cuisine, Showboat Hotel, Casino and Bowling Center
- R-9 Letter, dated June 29, 1987, from Barbara G. Siracusa, Social Service Coordinator, The Salvation Army, Atlantic City

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-95
APPLICATION NO. 41120-21;
OAL DOCKET NO. CCC 229-87
ORDER NO. 87-44-6

RENEWAL APPLICATION OF ROCHELLE A. DOWNING
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 18, 1987,

IT IS on this *28th* day of December 1987, ORDERED that the initial decision is modified as follows:

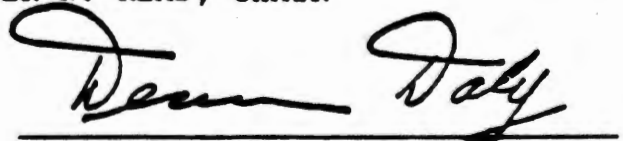
- (1) the Commission finds that the applicant is disqualified pursuant to N.J.S.A. 5:12-86(c)(1); and
- (2) the Commission corrects the disposition of this case to reflect that the application of Rochelle A. Downing for renewal of her casino employee license is granted as opposed to the ALJ's recommendation that the objection of the Division of Gaming Enforcement is dismissed.

ORDER NO. 87-44-6

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision as modified which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 229-87

AGENCY DKT. NO. 87-EA-95

ROCHELLE DOWNING,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

John Gilbert, Esq. for petitioner

Joanne Ciancimino, Deputy Attorney General, for respondent (W. Cary
Edwards, Attorney General of New Jersey, attorney)

Record Closed: September 24, 1987

Decided: October 2, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) objected to the petitioner's relicensure as a blackjack dealer by letter to the Casino Control Commission (Commission) dated November 5, 1986, on the grounds that the petitioner committed an unprosecuted criminal offense, to wit: theft by deception contrary to N.J.S.A. 2C:20-4 in the third degree, and is therefore disqualified from relicensure. These allegations are made pursuant to N.J.S.A. 5:12-86c and g, the Casino Control Act (Act). The petitioner requested a hearing by letter dated December 19, 1986 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. There was a pretrial conference on May 26, 1987. The matter was tried to a conclusion on September 24, 1987 and the record closed on that day.

THE DIVISION'S EVIDENCE

The Division submitted documentary evidence without objection: R-1 through R-5, which details the history of the petitioner's unemployment benefits debt.

The petitioner received unemployment benefits totaling \$2,193.75 from September 20, 1981 through January 24, 1982 while she was employed by a nursing home and therefore ineligible for unemployment benefits. This was reduced to a judgment after a scheduled hearing which the petitioner did not attend but to which she submitted a written plea of guilty, which acknowledged her wrong - doing, described how it occurred and promised to pay back the full amount. She has done so. On April 22, 1987, the Chief of Bureau of Benefit Control filed a Warrant for Satisfaction of the judgment in the Superior Court.

The State rested its case on these documents. The petitioner does not contest the evidence but proceeds on theories of mitigation and rehabilitation pursuant to N.J.S.A. 5:12-90h. I therefore find as a fact that the petitioner collected unemployment benefits exceeding \$500. during the period September 20, 1981 through January 24, 1982 knowing that she was not entitled to the same.

I **CONCLUDE** that the petitioner's conduct was equivalent to the commission of the offense of theft by deception contrary to N.J.S.A. 2C:20-4 in the third degree and that she is therefore disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c and g unless rehabilitated pursuant to N.J.S.A. 5:12-90h.

REHABILITATION

The rehabilitation statute mandates licensure upon the affirmative showing of rehabilitation from a disqualifying offense subject to the applicants being otherwise qualified pursuant to statute.

The petitioner is a 28 year old woman who suffers from asthma and epilepsy. She is presently medicated. As a result, her speech and movements are somewhat slow. In addition, she had a bad case of courtroom "jitters." She often appeared confused and gave inappropriate answers. Underlying all of this, she exhibited a warm and friendly personality and appeared to be a genuinely nice person.

She claimed that her epilepsy resulted from a head injury caused by a fall in Caesars pantry. She woke up in the hospital. She incurred over \$4000. worth of medical bills. She states that her reason for obtaining unemployment benefits despite the fact she was employed was to help her discharge her financial obligation to the hospital and to her physicians.

Additional facts to which the petitioner testified are that she graduated from dealer school, and although she has a somewhat spotty employment record earlier in her casino career, her recent record is excellent and she produced an award from the Showboat, her employer, for outstanding job performance (P-1). She also has letters from a supervisor and a fellow employee recommending her job skills and her honesty (P-2 and P-3).

A witness, Carol Braithwaite, testified on the petitioner's behalf. The witness is a member of the Atlantic City community, an administrative assistant at Atlantic Human Resources, and has known the petitioner for 13 years. She knows the petitioner's reputation in the community and she reports that she has an excellent reputation for good character, honesty and integrity.

Based upon the testimony and exhibits, I make the following **FINDINGS** pursuant to the rehabilitation statute:

1. The petitioner seeks to maintain her employment as a casino booth cashier. She is currently employed in this capacity at the Showboat.
2. The offense is not serious. No person was injured as a result of the respondent's conduct. She has made the State whole. Nevertheless, theft offenses deeply concern the casino industry.
3. The offense occurred in part because the petitioner was in debt for medical services provided to her.

4. The offense occurred in 1981 and 1982.
5. The petitioner was 22 years old when the offense occurred.
6. The offense was a single criminal offense conducted over a period of time.
7. The petitioner's inability to obtain third party payment for her medical bills and her discovery that unemployment benefits were much greater than her actual earnings may reflect social conditions which contributed to this offense.
8. The respondent received a recommendation of her supervisor, a co-worker and a member of the community who knows her well. She has recently received an award for her job performance. She has made full and complete restitution. Had the Department of Labor chosen to prosecute the petitioner criminally in 1983 rather than pursue a civil remedy, she would by now have long since served a period of probation. She acknowledged her guilt immediately upon the commencement of the civil action against her and exhibits remorse now. She did not state on the record that she felt remorse but she hung her head in shame at every mention of the offense and sobbed audibly.

I **CONCLUDE** that the petitioner has affirmatively demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90h. In this case the reasons upon which I conclude that the respondent has demonstrated rehabilitation also clearly convince me that she possesses good character, honesty and integrity.

I further **CONCLUDE** that the petitioner has the requisite reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b2 and 90b.

ORDER

I **ORDER** that the Division's objection to the petitioner's application for relicensure 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.

October 2, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

October 6, 1987
DATE

Receipt Acknowledged:

Melores Zayas
CASINO CONTROL COMMISSION

OCT 7 1987
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For the Respondent:

- R-1 Claimants Benefit and Employment Record
- R-2 Schedule of Overpayments
- R-3 Notice and Record of Hearing
- R-4 Certificate of Debt
- R-5 Warrant for Satisfaction

For the Petitioner:

- P-1 Award
- P-2 Letter from Karen DeLuca, Coin Cashier Manager, Showboat, dated May 17, 1987
- P-3 Letter from Diana Miranda

WITNESSES

For the Respondent:

None.

For the Petitioner:

Rochelle A. Downing
Carol Braithwaite

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-141
OAL DOCKET NO. CCC 7566-86
REGISTRATION NO. 33158-40
ORDER NO. 87-33-7

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

Complainant, :

v. :

RAYMOND A. EDGERTON, :

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 the Commission having considered the entire record of these proceedings at its public meeting of September 2, 1987,

IT IS on this *14th* day of September 1987, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Raymond A. Edgerton is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: _____

DENNIS DALY



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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

Petitioner,

v.

**RAYMOND A. EDGERTON,
Respondent**

INITIAL DECISION

OAL DKT. NO. CCC 7566-86

AGENCY DKT. NO. 87-141

**Joanne Ciancimino, Deputy Attorney General (W. Cary Edwards, Attorney
General of New Jersey, attorney) for petitioner
Raymond A. Edgerton, respondent, pro se**

Record Closed: June 1, 1987

Decided: July 30, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on October 29, 1986, seeking revocation of the respondent's casino hotel employee registration because he was charged with selling drugs in a casino. 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. and N.J.S.A. 52:14B-1 et seq. The matter was pretried on December 23, 1986 and a plenary hearing was conducted on May 21, 1987 after a postponement at the respondent's request from March 23, 1987. The record was continued open until June 1, 1987 in order to receive additional documents from the respondent. None were forthcoming.

STATEMENT OF THE CASE

The Division alleges that the respondent was convicted of a sale of controlled dangerous substance in a casino while he was employed on April 9, 1986, an offense which ought to constitute a disqualification from casino registration pursuant to N.J.S.A. 5:12-86c(3) and 91b unless the respondent is rehabilitated pursuant to N.J.S.A. 5:12-91d.

FACTUAL DISCUSSION

The respondent admitted that he was convicted of the sale of cds to an undercover agent on April 9, 1986. P6 confirms his conviction. In addition, respondent admitted that he committed the act complained of in the Caesars Boardwalk Regency Casino/Hotel while he was employed there and in a uniform so identifying him and that the sale was to a person unknown to him at the time. He quibbles, however, over the details of the crime and seeks to minimize his involvement. It is clear from the language that the respondent employed at the time of the sale, from the language that he employed in the courtroom, from the admissions he made, from the mistakes that he made in his testimony, from his demeanor, including his speech patterns, body language and affect, that he is still a substance abuser if not an active street dealer in cocaine. In addition, he admitted that he worked under the table while he was collecting unemployment from this layoff. Additionally, he acknowledged that he had a prior drug arrest in 1983 which was disposed of by way of a conditional discharge.

I **FIND** that the respondent was convicted of a crime listed at N.J.S.A. 5:12-86c(3) to wit: N.J.S.A. 24:21-19a(1).

I **FIND** that the respondent committed his crime in the course of his employment in a casino hotel.

I **CONCLUDE** that the respondent's registration should be revoked pursuant to N.J.S.A. 5:12-91b because he is disqualified as a result of selling drugs during his course of employment in a casino hotel.

REHABILITATION

It is possible to save a registrant from disqualification provided the registrant can affirmatively show rehabilitation pursuant to N.J.S.A. 5:12-91d.

- 91d (1) The registrant seeks re-employment as a Convention Servers Worker. He is a Porter.
- 91d (2) The offense was serious, a sale of drugs by an employee in uniform to an agent posing as a patron.
- 91d (3) The respondent says he made an accommodation sale; it appears to have been for profit.
- 91d (4) The offense occurred on April 9, 1986.
- 91d (5) The registrant was 22 years old when the offense occurred.
- 91d (6) This was a first conviction for the sale of drugs. The respondent admitted continuing drug use.
- 91d (7) The respondent claims that he is a country boy from Arkansas and was ill prepared for the drug abuse which he says permeates the casino industry. He was inadvertently drawn in. He appears however, to resist getting out.
- 91d (8) The respondent submitted one letter of recommendation from a supervisor (R1). It is an excellent letter of recommendation. It shows that he has great potential. It is not enough. He is an unrehabilitated drug offender and has an equal potential to do great damage to the casino industry.

I **FIND** that the respondent has failed to affirmatively show that he is rehabilitated.

I **ORDER** that the respondent's casino hotel employee 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for
consideration.

July 30, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Aug 4, 1987
DATE

Edgar R. Holmes
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Raymond A. Edgerton

For the Respondent:

Raymond A. Edgerton

EXHIBIT LIST

For the Petitioner:

- P-1 New Jersey State Police Investigation Report dated April 9, 1986
- P-2 New Jersey State Police Property Report
- P-3 Request for Examination of Evidence
- P-4 Laboratory Report
- P-5 Certified Copy of Indictment
- P-6 Certified Copy of Judgment and Conviction

For the Respondent:

- R-1 Letter of Recommendation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-80
OAL DOCKET NO. CCC 7282-86
ORDER NO. 87-36-27

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	<u>ORDER</u>
v.	:	
JOSEPH A. ERACE,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision-settlement of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 23, 1987,

IT IS on this 30th day of October 1987, ORDERED that the initial decision-settlement is adopted; and

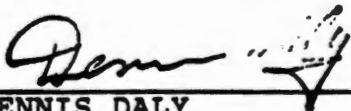
IT IS FURTHER ORDERED that Joseph A. Erace is barred from any position with Local 54 or any other labor organization required to be registered pursuant to N.J.S.A. 5:12-93 which would require the filing of a Labor Organization Disclosure Form with the Commission based upon his disqualification pursuant to N.J.S.A. 5:12-86(b) and (f)

ORDER NO. 87-36-27

as more fully stated in the initial decision-settlement
which is incorporated herein by reference and made a part
hereof.

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

SETTLEMENT

OAL DKT. NO. CCC 7282-86

AGENCY DKT. NO. 87-80

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

Petitioner,

v.

JOSEPH A. ERACE,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Michael M. Mustokoff, Esq., an attorney-at-law of the Commonwealth of Pennsylvania, admitted pro hac vice, for respondent (Duane, Morris and Heckscher); **Harry A. Horwitz**, Esq., attorney of record (Davis, Reberkenny & Abramowitz, attorneys)

Record Closed: August 5, 1987

Decided: August 27, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Joseph A. Erace, respondent and a business agent employed by the Hotel Employees, Restaurant Employees and Bartenders' International Union Local 54 (Local 54), with authorization to represent Local 54 and members of Local

54 in employment matters relating to employees licensed under the Casino Control Act (Act) and employed by casino hotels or casino licensees, and also a member of Local 54's executive board, should be disqualified from such activities by reason of alleged violations sections 86b and 86f of the Casino Control Act, as incorporated by section 93b. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 19, 1986. The respondent filed its notice of defense and request for a hearing with the Commission on October 14, 1986. On October 27, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on December 10, 1986, and the matter was scheduled for hearing.

FINDINGS OF FACT AND CONCLUSION

The parties have conducted extensive negotiations and reached a settlement of the matter. These negotiations included a full and candid discussion of the merits of the alleged violations and the defenses thereto. Ultimately, the parties agreed to a settlement, which includes an extensive stipulation of facts concerning each allegation, and which has been set forth in the Stipulation, filed on August 5, 1987, which is attached hereto and fully incorporated herein. I have reviewed the submission and the terms of the settlement, and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by the stipulation, which contains the signatures of counsel for each party as well as the respondent.
2. The settlement represents a just and equitable resolution of the matter, which is supported by the detailed stipulation.
3. The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**. It is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

This recommended decision may be 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

August 27, 1987

RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

August 28, 1987

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

SEP 1 1987

OFFICE OF ADMINISTRATIVE LAW

ij/ee

W. CARY EDWARDS
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By: R. Lane Stebbins
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Philadelphia, Pennsylvania 19102

and

HARRY A. HORWITZ, Esq.
P.O. Box 5459
Cherry Hill, New Jersey 08002

Attorneys for Respondent
Joseph A. ERACE

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-80

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

Plaintiff, :

vs. :

JOSEPH A. ERACE :

Respondent. :

STIPULATION

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming

Enforcement by R. Lane Stebbins, Deputy Attorney General, and Michael M. Mustokoff, and Harry A. Horwitz, Attorneys for Respondent, JOSEPH A. ERACE, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. The Hotel Employees, Restaurant Employees and Bartenders International Union, Local 54 (hereinafter "Local 54") is a labor organization representing employees licensed or registered under the Casino Control Act (hereinafter "Act"), N.J.S.A. 5:12-1 et seq., and employed by a casino hotel or a casino licensee.

2. N.J.S.A. 5:12-93 was effective at all times relevant to the within matter and states that each labor organization representing employees licensed or registered under the Act and employed by a casino hotel or a casino licensee "shall register with the commission annually..."

3. N.J.A.C. 19:41-12.1 was effective at all times relevant to the within matter and states that the term "agent" means: "any person, whether compensated or not, who is authorized or allowed to represent a labor organization in any employment matter relating to employees licensed under the Act, or employed by a casino hotel or casino licensee."

4. Respondent JOSEPH A. ERACE was hired on March 9, 1981, by Frank Gerace, then President of Local 54 as a business agent for Local 54.

5. In the course of his employment as a business agent by Local 54, Respondent JOSEPH A. ERACE was authorized to represent members of Local 54 in employment matters which members of Local 54 are licensed or registered under the Act and employed by a casino hotel or a casino licensee.

6. Respondent JOSEPH A. ERACE was appointed on December 14, 1981, by Frank Gerace to the Executive Board of Local 54 and was subsequently elected to the Executive Board by the union membership.

7. Respondent JOSEPH A. ERACE at all times relevant to this matter was an agent within the meaning of N.J.A.C. 19:41-12.1.

8. N.J.A.C. 19:41-12.8 was effective at all times relevant to the within matter and states that:

Every officer, agent and principal employee of a labor organization, union or affiliate required to register with the Commission pursuant to Section 93 of the Act and the regulations of the Commission shall be qualified in accordance with criteria contained in Section 86 of the Act.

9. N.J.A.C. 19:41-12.9(a) was effective at all times relevant to the within matter and states, in pertinent part, that:

In order to be qualified in accordance with section 93 and 96 of the act, every officer, agent and principal employee of a labor organization, union or affiliate required to register with the commission pursuant to section 93 of the act and the regulations of the commission shall file with the commission a "labor organization individual disclosure form" which shall be completed, signed and filed in accordance with the requirements of N.J.A.C. 19:41-7.1

10. Respondent JOSEPH A. ERACE at all times relevant to this matter was required to register and be qualified in accordance with the criteria contained in Section 86 of the Act.

11. N.J.S.A. 5:12-86 was effective at all times relevant to the within matter and states, in pertinent part, that disqualification shall occur upon:

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, utilizing 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.

12. In a written opinion dated September 28, 1982, entitled In the Matter of the Hotel and Employees and Bartenders International Union Local 54, a copy of which is attached hereto as Exhibit A and incorporated therein, the Commission, following a factual hearing regarding the affairs and leadership of Local 54, found and determined that Nicodemo Scarfo ("Scarfo") is a career offender and an active member of a career offender cartel.

13. In its Local 54 opinion, the Commission found and determined that Frank Gerace was an associate of Scarfo and that the association between Gerace and Scarfo was inimical to the policies of the Act due to business associations and a consistent pattern of appointments to union positions, including the appointments of Frank Materio, Robert Lumio, Albert Diadone, Frank Lentino and Respondent JOSEPH A. ERACE, by Gerace of persons associated

with Scarfo thereby allowing Scarfo to influence the affairs of Local 54. Accordingly, Frank Gerace was found by the Commission to be disqualified pursuant to N.J.S.A. 5:12-86(f).

14. In a written opinion dated November 18, 1985 entitled In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti, (hereinafter "the Merlino and Leonetti opinion") which is incorporated herein by reference, and attached herein as Exhibit B, the Commission, following a factual hearing regarding the exclusion of Lawrence Merlino ("Merlino"), found and determined that Merlino is a career offender.

15. In the Merlino and Leonetti opinion, the Commission, following a factual hearing regarding the exclusion of Phillip Leonetti ("Leonetti"), found and determined that Leonetti is a career criminal offender and an associate of Scarfo.

16. If called to testify at an administrative hearing of the captioned matter Respondent JOSEPH A. ERACE would assert his privilege not to testify pursuant to the Fifth Amendment to the United States Constitution in response to questions relating to the matters set forth in the within complaint.

17. If a hearing were to take place in the captioned matter, the Division of Gaming Enforcement would call witnesses who would testify as set forth in paragraphs 18 through 23 and paragraph 28, below, and the attachments referenced therein.

18. On or about February 6, 1982, at the premises of Adamar of New Jersey, Inc., t/a the Tropicana, a casino hotel licensed by the Commission and operating in Atlantic City, New Jersey, Respondent JOSEPH A. ERACE introduced an employee of the Tropicana to several persons, including Scarfo, Leonetti and Merlino,

specifically identifying these individuals as his "friends" and subsequently stating to the employee that if surveillance of the group by the casino license continued his "friends would take care of him [i.e. the Surveillance Personnel]." Thereafter, Respondent ERACE was observed by Tropicana surveillance employees conversing with Scarfo, Leonetti and Merlino, in a "businesslike" manner, for approximately 15 minutes while standing in the Tropicana hotel lobby. A copy of the Transcripts of Testimony by D. Savarese and R. Brown are attached hereto as Exhibits C and D and incorporated herein.

19. Respondent JOSEPH A. ERACE is an associate of Scarfo, Leonetti and Merlino.

20. In 1983 and 1984 Ronald Moretti, a Federal Bureau of Investigation agent then in an undercover capacity using the name of Ronald Marino, participated in a criminal investigation concerning junket activity with Atlantic City casino licensees. Specifically, Moretti held himself out to Respondent ERACE, and others, as a participant in a junket business and sought the assistance of career offenders and others to obtain introductions to casino employees for the purpose of bringing junkets to casino facilities. A copy of the testimony by Moretti given on April 14, 1986, in United States v. Simone, Criminal No. 85-330 is attached hereto as Exhibit E and incorporated herein.

21. In 1983 and 1984, at the direction of Scarfo and Leonetti, Respondent JOSEPH A. ERACE became involved in a casino marketing or junket business in which Ronald Moretti was allegedly a participant. See Exhibit E at pg. 66 line 24 to page 67 line 7; page 56 line 20 to page. 57 line 2.

22. In 1983 and 1984 Respondent JOSEPH A. ERACE and Ronald Moretti met on numerous occasions with regard to junket business. Respondent JOSEPH A. ERACE and Ronald Moretti also met with Leonetti during the same time period to discuss the junket business.

23. In 1983 and 1984, Respondent JOSEPH A. ERACE introduced Ronald Moretti, and others, to various casino executives who were involved in the junket or casino marketing business of their respective employers. See Exhibit E at page 52 line 22 to page 53 line 1.

24. N.J.S.A. 5:12-76(b)(1) was effective at all times relevant to the within matter and states that the Division shall investigate the qualifications of each applicant before any license, certificate or permit is issued pursuant to this Act.

25. N.J.S.A. 5:12-94(a) was effective at all times relevant to the within matter and states that:

a. Upon the filing of an application for any license or registration required by this act, other than a casino license, and after submission of such supplemental information as the commission may require, the commission shall request the division to conduct such investigation into the qualification of the applicant, and the commission shall conduct such hearings concerning the qualification of the applicant, in accordance with its regulations, as may be necessary to determine qualification for such license or regulation.

26. N.J.S.A. 5:12-80 was effective at all times relevant to the within matter and states that:

d. 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 for 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 person may be denied or revoked by the commission.

27. Respondent JOSEPH A. ERACE at all times relevant to this matter was a registrant within the meaning the Act and is subject to the informational requirements of N.J.S.A 5:12-80(d).

28. On July 17, 1986, at the request of the Division of Gaming Enforcement, Respondent JOSEPH A. ERACE appeared at a sworn interview at which time he was asked questions relative to his association with career criminal offenders and others. The questions propounded by the Division included inquiry regarding the personal knowledge of, discussions or meetings with, and business affiliations between Respondent JOSEPH A. ERACE and Scarfo, Leonetti, Merlino, Salvatore Merlino and Saul Kane. Questions were also propounded concerning Respondent ERACE'S knowledge of any association or affiliation between Frank Gerace and the aforementioned individuals. Respondent JOSEPH A. ERACE refused to provide substantive answers to numerous questions material to his qualifications through the invocation of his privilege against self-incrimination. A copy of the transcript of the sworn interview of Respondent ERACE is attached hereto as Exhibit F and incorporated herein.

29. N.J.S.A. 5:12-86(b) was effective at all times relevant to the within matter and states disqualification shall occur upon:

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.

30. In July of 1986 and subsequent to the filing of the Complaint in this matter, Respondent JOSEPH A. ERACE tendered his resignation from the Executive Board of Local 54.

31. At its regular meeting in December of 1986, the Executive Board of Local 54 accepted the resignation of Respondent JOSEPH A. ERACE from that body.

32. Effective January, 1987 and subsequent to the filing of the Complaint in this matter, Respondent JOSEPH A. ERACE was reassigned by Local 54 from his position as a business agent for members of Local 54 who are licensed by the Commission and employed by a casino licensee to a position as business agent for members of Local 54 who are not employed by casino licensees. Respondent ERACE has no employment contract but receives a weekly salary from Local 54 of \$610 with a weekly expense allowance of \$60.

33. Based upon the foregoing, the Commission may properly conclude that Respondent JOSEPH A. ERACE is an associate of career criminal offenders in a manner which creates a reasonable belief that the association is of a nature inimical to the policy of the Casino Control Act and gaming operations and, accordingly, is disqualified pursuant to the provisions of N.J.S.A. 5:12-86(f).

Furthermore, Respondent JOSEPH A. ERACE will not challenge any such finding or order by the Commission in any court of competent jurisdiction.

34. Based upon the foregoing, the Commission may properly conclude that Respondent JOSEPH A. ERACE failed to supply required information, documentation and assurances and failed to supply facts material to his qualifications and, accordingly, is disqualified pursuant to N.J.S.A. 5:12-86b. Furthermore, Respondent JOSEPH A. ERACE will not challenge any such finding or order by the Commission in any court of competent jurisdiction.

35. Respondent, JOSEPH A. ERACE, will not seek nor accept any position with Local 54, or any other labor organization required to be registered pursuant to N.J.S.A. 5:12-93, which would require his filing with the Commission of a Labor Organization Individual Disclosure Form.

36. The parties mutually understand that no right or privilege currently enjoyed by Local 54 will be affected by this agreement under bills currently pending before the New Jersey State Legislature.

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

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

DATED: August 3, 1987

By R Lane Stebbins
R. Lane Stebbins
Deputy Attorney General
Division of Gaming Enforcement

DATED: 7-17-87

Joseph A. Erace
Joseph A. Erace, Respondent

Michael M. Mustokoff 7/10/87
Michael M. Mustokoff, Esq.
Attorney for Respondent

Harry A. Horwitz 7/27/87
Harry A. Horwitz, Esq.
Attorney for Respondent

A010787/37

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-25
AND 87-335
REGISTRATION NO. 66914-40
APPLICATION NO. 69968-22
OAL DOCKET NOS. CCC 6147-87
AND CCC 2559-87 (CONSOLIDATED)
ORDER NO. 87-42-11

APPLICATION OF FRED FRANKLIN, JR.
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

FRED FRANKLIN, 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 (Commission); and exceptions having been
filed; and the Commission having considered the entire
record of these proceedings at its public meeting of
November 4, 1987,

IT IS on this 11th day of December 1987, 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 and made a part hereof.

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 2559-87 and
CCC 6147-87 (CONSOLIDATED)
AGENCY DKT. NOS. 87-335 and
88-EA-25

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

Petitioner,

v.

FRED FRANKLIN, JR.,

Respondent.

Ralph L. Fusco, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Fred Franklin, Jr., respondent, pro se

Record Closed: September 10, 1987

Decided: September 18, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking to revoke respondent's casino hotel registration and petitioner's letter urging that respondent's separate application for licensure be denied, pursuant to N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Respondent requested a hearing, and the matters were transmitted to the Office of Administrative Law as contested cases, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on September 10, 1987, at which time the matters were consolidated pursuant to N.J.A.C. 1:1-17.1, and after which the record closed.

As respondent acknowledged his prior criminal conduct, including offenses which are statutory disqualifiers pursuant to N.J.S.A. 5:12-86c, the questions presented are whether he can now establish his good character and rehabilitation. N.J.S.A. 5:12-90 and 91.

The basic facts are undisputed. In August 1980, respondent was arrested in Neptune Township for possession of marijuana under 25 grams, N.J.S.A. 24:21-20a, and possession of narcotic paraphernalia, N.J.S.A. 2A:170-77.5. He was found guilty in municipal court and placed on a six-month conditional discharge. In May 1981, respondent was arrested in New York City for possession of controlled dangerous substances, analogous to N.J.S.A. 24:21-20a(1); possession of a dangerous weapon, a knife, analogous to N.J.S.A. 2C:39-1, and trespass, analogous to N.J.S.A. 2C:18-3. These charges were dismissed. In September 1981, respondent was arrested by Asbury Park Police for possession of marijuana under 25 grams, N.J.S.A. 24:21-20a(1); loitering, N.J.S.A. 2C:33-12a, and possession of an alcoholic beverage, N.J.S.A. 2C:33-15. He was found guilty of all three offenses and fined \$100 and court costs. Respondent was last arrested as a result of three incidents in January and February 1984, in which he sold controlled dangerous substances to an undercover police officer in Asbury Park. He was indicted on three separate counts for each incident, for possession of a controlled dangerous substance, Doriden-Empirin, N.J.S.A. 24:21-20a; possession with intent to distribute, N.J.S.A. 24:21-19a(1), and distribution, N.J.S.A. 24:21-19a(1). On September 25, 1984, he pled guilty to the three counts of distribution, and was sentenced to time served, a period of five months, and a probationary term of two years to run concurrently with the condition that he enter a long-term inpatient drug treatment program. The remaining charges were dismissed.

Respondent is 25 years old. He testified that he became a drug user during his teenage years and sold drugs to maintain his habit. He now looks at his last arrest and conviction as a turning point in his life and at the 21 months spent at the Institute for Human Development, the drug rehabilitation center in Atlantic City in which he enrolled, as his rescue. He successfully completed the program in June 1986, and has been drug-free since that time. Toward the end of his stay he was permitted to seek employment, and in April 1986, became employed by the Trump Castle in the maintenance department. He remains so employed and testified that he has a good record there.

Respondent submitted a number of character references, including a letter from the Institute for Human Development which reads as follows:

Mr. Franklin entered the program on January 22, 1985, as a condition of probation. At that time he displayed an attitude of resentment and resistance common to those entering into long-term treatment. However, after a short adjustment period (30 day orientation) and a keener awareness of the treatment process his level of participation began to show marked improvement. His level of motivation towards the development of a firm recovery foundation continued throughout his treatment stay.

....

In closing I would like to say that the barometer for measuring success in the recovering person is unremitting, due to time factors (life long process) involved. However, when an individual through his consistent demonstration of socially acceptable behavior indicates that positive changes occurred, I feel it is then our duty to lend support to those individuals. In view of this [I] would strongly support a decision by the Commission which would allow Mr. Franklin to maintain his present license and be eligible for renewal.

Mr. Michael B. March, an assistant manager of Environmental Services at Trump's Castle, also testified on respondent's behalf. He has been with Trump's Castle since February 1987, and was employed in a similar capacity at Resort's International prior to that time. He supervises 179 employees and testified that respondent is among a handful whose diligence and potential were worthy of special mention. He has never testified before on behalf of any employee; however, he felt compelled to support respondent both because he does not wish to lose his services and because his attitude and performance evidence a clear change of direction.

This is the substance of the record. As respondent acknowledged his prior misdeeds, it was for him to establish rehabilitation and good character. The act sets forth various criteria by which to measure rehabilitation, which include looking to the nature of the offenses, their recurrence, the age of the licensee/registrant, and tangible evidence that he has eschewed his prior course and embarked on a proper one. N.J.S.A. 5:12-90h and 91d. The offenses listed here, the last and most serious of which occurred in the early part of 1984, took place when respondent was fairly young. Additionally, most of his offenses appear to stem from his drug habit. Respondent was unusually candid in discussing his prior record and sought to make no excuse for it. He completed a long-term

drug rehabilitation program and the professionals there view his efforts and progress most positively. Moreover, Mr. March, a highly credible and sincere witness, testified that respondent is both diligent and a person of high potential.

Based on the foregoing, it is my conclusion that respondent has clearly established his good character and rehabilitation. It is **ORDERED** that his casino employee license be granted, and that he be permitted to retain his casino hotel 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 Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

DATE

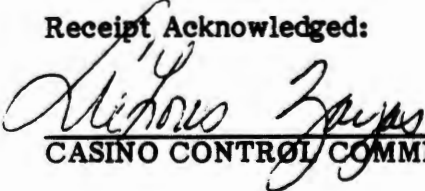
9/18/87


SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

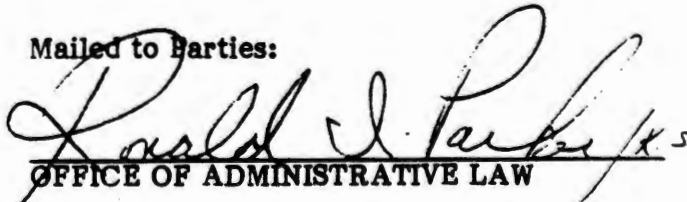
9-22-87


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

SEP 23 1987


OFFICE OF ADMINISTRATIVE LAW

ml/ee

EXHIBITS

For petitioner:

P-1 Indictment No. 585-3-84

For respondent:

- R-1 Letter from Ronald T. Smith, C.S.A.C., to Casino Control Commission,
dated March 27, 1987
- R-2 Letter from Michael March, dated April 6, 1987
- R-3 Letter from Michael March, dated April 3, 1987
- R-4 Letter from Rochelle M. Primas, dated September 2, 1987

WITNESSES

Fred Franklin, Jr.
Michael B. March

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EL-31
OAL DOCKET NO. CCC 7480-84
ORDER NO. 87-39-16

EXCLUSION OF GIUSEPPE GAMBINO
FROM CASINO HOTEL FACILITIES

:
:
:
AMENDED 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 New Jersey Casino Control Commission (Commission); and Giuseppe Gambino having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of October 14, 1987,

IT IS on this 9th day of November 1987, ORDERED
that the initial decision is modified as follows:

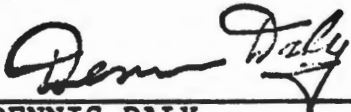
1. The Commission finds that based on the evidence in the record Giuseppe Gambino is an associate of Rosario Gambino, a career or professional criminal offender, and as a result of this association, is an individual whose presence in a licensed casino facility would be inimical to the interests of the State of New Jersey and of licensed gaming pursuant to N.J.A.C. 19:48-1.3(a)(2); and
2. To eliminate as unnecessary the determination of the ALJ that Rosario Gambino be excluded since this was already accomplished by the Commission's exclusion order dated January 25, 1985, Docket No. 83-EL-30.

AMENDED ORDER NO. 87-39-16

IT IS FURTHER ORDERED that Giuseppe Gambino be declared an excluded person pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq., for the reasons stated in the initial decision as modified, which is incorporated herein by reference, and made a part hereof; and

IT IS FURTHER ORDERED that Giuseppe Gambino shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

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 7480-84

AGENCY DKT. NOS. 83-EL-30 &

83-EL-31

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ROSARIO GAMBINO AND GUISEPPE

GAMBINO,

Respondents.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Richard L. Friedman, Esq., for the respondents (Avena, Hendren, Friedman and Klamo, attorneys)

Record Closed: January 12, 1987

Decided: September 2, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the petitions of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on October 25, 1983, requesting that the names of the respondents be placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment, pursuant to section 71 of the Casino Control Act (N.J.S.A. 5:12-1 et seq. and N.J.A.C. 19:48-1.1 et seq.). The Division contends that the respondents meet the the criteria for the placement of their names on the exclusion list, alleging that the respondents are career or professional

offenders and associates of career offenders and that their presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming, pursuant to N.J.A.C. 19:48-1.3.

PROCEDURAL HISTORY

The Division's verified petitions for placement on the exclusion list were filed with the Casino Control Commission on October 25, 1983. The Commission determined at a preliminary hearing that there is a reasonable possibility that the respondents satisfy the criteria for placement of their names on the exclusion list. On September 12, 1984, the Commission entered preliminary orders declaring the respondents to be excluded persons under the act and regulations and prohibiting the respondents from entering any portion of the premises of a casino hotel facility in Atlantic City.

By letter to the Commission dated September 24, 1984, counsel for the respondents requested a full evidentiary hearing, pursuant to N.J.A.C. 19:42-4.6. On October 5, 1984, 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 22, 1984, at which time certain amendments to the Division's petitions were accepted.

By letter dated October 30, 1984, counsel for the respondents informed the undersigned that respondent Rosario Gambino had been convicted in federal court of various offenses relating to narcotics charges. In view of this conviction, respondent Rosario Gambino withdrew his application for a hearing regarding his exclusion. Counsel further advised that he would continue in his representation of Guiseppe Gambino. Accordingly, the contested case remaining for determination concerns the petition to place the name of Guiseppe Gambino on the exclusion list.

The hearing in this matter was originally scheduled to commence on January 22, 1985. However, an adjournment was granted from that date at the joint request of the parties, who advised that Rosario and Guiseppe Gambino were soon to be tried on a criminal indictment in the United States District Court under Title 18 of the United States Code. The matter was then rescheduled to be heard on March 22, 1985.

On March 21, 1985, counsel for the Division requested an adjournment of the hearing scheduled for the following day, representing that he had his adversary's consent. Counsel stated that an essential expert witness was unavailable for the hearing and the adjournment request was granted.

Counsel for the parties subsequently agreed to reschedule the hearing for May 14, 1985, and the parties appeared for the hearing on that date. However, when the record was opened, counsel for the Division stated that facts had come to his attention which required a further investigation. Counsel further stated that it was a reasonably realistic possibility that further investigation would result in the Division seeking to withdraw its petition by dismissal without prejudice. Counsel for the respondent joined in the Division's request for an adjournment, which request was then granted.

By letter dated May 21, 1985, the Division stated its intention to proceed to a hearing. The matter was then scheduled to be heard on September 20, 1985. However, it was again necessary to adjourn the hearing because of the unavailability of the Division's expert witness. The matter was then scheduled as a peremptory hearing date on November 18, 1985, and the parties were informed that no adjournments would be granted.

On October 10, 1985, the Division filed its amended verified petition for placement on the exclusion list. The hearing thereafter commenced as scheduled on November 18, 1985. At that time, factual testimony and certain documents and other items were admitted into evidence. The Division confirmed that it intended to call as its expert witness Gino L. Lazzari, Inspector of Field Investigations for the Pennsylvania Crime Commission. Since the name of this expert had only recently been provided to counsel for the respondent, the Division agreed to permit the taking of his deposition that day.

The hearing resumed on January 10, 1986. At that time, argument was heard on the motion of the respondent to exclude the testimony of Mr. Lazzari, and the motion was denied. However, Mr. Lazzari was attending a funeral that day and was unavailable. His testimony was subsequently taken on March 7, 1986. A few days prior, the parties had taken the deposition of New Jersey State Police Detective Sergeant Michael McLaughlin, who had also been identified by the Division as a potential expert witness. As a result of his deposition testimony, counsel for the respondent served the detective sergeant with a

subpoena duces tecum seeking all reports prepared and filed by Detective McLaughlin pertaining to information relating to respondent Guiseppe Gambino's involvement in unlawful criminal enterprises from 1972 to the present.

On May 1, 1986, the Office of the Attorney General filed a motion on behalf of the New Jersey Division of State Police to quash the subpoena. The respondent's answer to the motion was filed on May 19, 1986. A further hearing session was conducted on May 30, 1986. At that time, the motion of the Division of State Police to quash the subpoena was denied. It was determined that compliance with the subpoena would not be unreasonable or oppressive, as the subpoena was sufficiently specific in directive, relevant in purpose and limited in scope. With the condition that the subpoena not apply to disclosure of any confidential informants or investigative methods, the Division of Gaming Enforcement was ordered to either produce the subpoenaed documents, decline to offer the testimony of Detective McLaughlin, thereby eliminating the need for the documents, or seek an interlocutory appeal to the Casino Control Commission.

After consultation with his superiors, counsel for the Division of Gaming Enforcement advised that the Division would not call Detective Sergeant McLaughlin as a witness. The Division then offered into evidence Exhibit P-18, which was a pending Atlantic County indictment against the respondent for one count of unlawful entry in a licensed casino, contrary to N.J.S.A. 5:12-118. Following the admission of this document, the Division called the respondent as a witness. The respondent stated that it was his wish to not answer any questions under his Fifth Amendment privilege against self-incrimination, because of his pending criminal case. It was determined that his apprehension of criminal prosecution was reasonable and that the respondent was entitled to invoke the privilege against self-incrimination.

The Division of Gaming Enforcement then rested its case and, by his counsel, respondent indicated that he had no testimony or exhibits to offer. However, counsel for the respondent represented that the respondent had a pending application for admission into the Pre-trial Intervention Program in regard to the Atlantic County indictment and he requested that the record remain open to permit the respondent to submit proof of his admission into the Pre-trial Intervention Program when it became available. Counsel for the Division did not object and the respondent's request was granted.

The order admitting the respondent into the Pre-trial Intervention Program was not soon forthcoming, and the parties were advised by letter dated September 17, 1986, that the record would be considered closed. However, on January 12, 1987, counsel for respondent submitted the Superior Court order directing the admission of respondent Guiseppe Gambino into Atlantic County Pre-trial Intervention Program. In the interest of fairness this order was admitted into evidence as Exhibit R-1 on January 12, 1987, and the record was closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

THE EVIDENCE

On September 12, 1984, the Casino Control Commission entered its preliminary order declaring respondent Guiseppe Gambino an excluded person pursuant to section 71 of the Casino Control Act and Commission Regulations N.J.A.C. 19:42-4.1 et seq. and N.J.A.C. 19:48-1.1 et seq. It was ordered that the respondent not be permitted to enter any portion of the premises of a casino hotel in Atlantic City. The preliminary order was admitted into evidence as Exhibit P-1. An attachment to the order indicates the respondent is a resident of Cherry Hill, New Jersey, who was born on January 9, 1946. His occupation is listed as unknown. Under the heading "miscellaneous information" the attachment states the following:

A United States criminal indictment filed December 20, 1983, charged Guiseppe Gambino with conspiracy to defraud the United States Government by obstructing and hindering the Treasury Department and conspiracy to commit offenses against the United States in violation of various sections of Titles 18 and 31 of the United States Codes; he is considered to be an inimical presence.

Division of Gaming Enforcement Agent John E. McLaughlin testified at the hearing that he was on duty at the Tropicana Casino Hotel in Atlantic City on June 24, 1985, when a call came to the inside surveillance unit that stated the respondent might be present, gambling in the casino. Surveillance cameras were focused on the subject and Agent McLaughlin obtained the list of excluded persons and the photobook so that he could make a comparison. In his opinion, the subject appeared similar to the photo of Guiseppe Gambino, an excluded person.

Agent McLaughlin testified that he proceeded to the casino floor and observed the subject playing baccarat. The pit boss informed the agent that the subject was being rated as a player under the name Joseph Longo. According to Agent McLaughlin, he returned to the surveillance unit and called his headquarters. He was then informed by his superior that Joseph Longo was a name that Guiseppe Gambino had used in the past.

A copy of a video monitor photo was admitted into evidence as Exhibit P-2. This photo shows the subject sitting in pit 14 at 2:31 a.m. on June 24, 1985. According to Agent McLaughlin, this photo formed part of his identification of the respondent. It was his testimony that the respondent, who was present at the hearing, was the man shown in the photo.

According to Agent McLaughlin, he returned to the gaming floor and had the pit boss ask the subject to step over. The subject complied and was told by Agent McLaughlin that it was suspected that he was Guiseppe Gambino. Agent McLaughlin asked for identification and the subject produced a driver license bearing the name Guiseppe Gambino.

The respondent was taken to the Division office, given his Miranda rights warning, and was charged with knowingly entering the premises of a licensed casino hotel while being on the Casino Control Commission exclusion list, in violation of N.J.S.A. 5:12-118. A color photo of the respondent which was taken at that time was admitted into evidence as Exhibit P-3.

Agent McLaughlin did not attempt to question the respondent after he was advised of his rights. The respondent was permitted to call an attorney and they had a conversation which was not heard by Agent McLaughlin. At the respondent's request, Agent McLaughlin spoke to the attorney and was told that the matter was a mistake; the respondent could not be charged because the matter was in litigation. Notwithstanding the attorney's statement, a complaint charging the respondent with a violation of section 118 of the Casino Control Act was issued (Exhibit P-4). The complaint was signed by New Jersey State Police Detective Joseph O. Eden, who assisted Agent McLaughlin during the incident. Detective Eden's testimony at the hearing was substantially in accord with that of Agent McLaughlin. He stated that when the respondent was first questioned on the

casino floor, he produced a temporary driver license and identified himself as Guiseppe Gambino. Detective Eden testified further that the respondent never stated that he was anyone other than Guiseppe Gambino.

Following the testimony of the agent and the detective, the Division sought to introduce into evidence photocopies of news accounts concerning the June 24, 1985 incident. These items were not offered for the truth of their contents, but rather, as proof that the respondent is a newsworthy person who has come to the public's attention. Counsel for the respondent argued, in essence, that the contents of the newspaper articles would not be reliable evidence and would therefore be prejudicial. After some useful discussion, the Division agreed to withdraw its offer of newspaper articles and the parties agreed to the following stipulation:

Guiseppe Gambino is a person who has been named in numerous articles in such newspapers as the Camden Courier Post, the Atlantic City Press, the Philadelphia Inquirer, the Newark Star Ledger, and the Burlington County Times, and as a result, Mr. Gambino is a person in the public eye.

The respondent was subsequently indicted by the Atlantic County Grand Jury on one count of unlawful entry in a licensed casino, a fourth degree offense contrary to N.J.S.A. 5:12-118. A copy of indictment number 86-03-0572-B-CP was admitted into evidence as Exhibit P-18. The matter remains pending. However, by order of Superior Court Judge Paul R. Porreca dated December 19, 1986 (Exhibit R-1), Guiseppe Gambino was admitted into the Atlantic County Pretrial Intervention Program. Satisfactory completion of the Pre-trial Intervention Program would result in dismissal of the indictment.

The respondent has had other significant contacts with the criminal justice system. Guiseppe Gambino and his brother Rosario were arrested by federal agents in March 1980 in connection with their alleged involvement in an international heroin smuggling operation. The Gambinos and eight others were indicted thereafter on charges of conspiring to import into the United States large quantities of heroin (Exhibit P-8). The respondent Guiseppe Gambino was tried on these charges in the United States District Court in Brooklyn, New York, and was acquitted in March 1981. His brother Rosario was also subsequently acquitted of these charges.

Numerous arrests were made in Italy in connection with the alleged international heroin smuggling operation. Guisepppe and Rosario Gambino, and their brother Giovanni Gambino, were named with 73 other individuals as defendants in the Italian prosecution. The Gambino brothers remained in the United States and were tried and convicted in absentia. The Italian indictment alleged that some of the defendants had acted by prior agreement with Rosario and Guisepppe Gambino and other persons unidentified, all in collusion with organized crime in the United States, to cause heroin to be packaged for shipment from Italy to the United States. The Italian court found the respondent, his brother Rosario, and numerous other defendants guilty of the felonies of association for criminal intent and of association for criminal intent for the purpose of trafficking in narcotics. The respondent and his brother Rosario Gambino were sentenced in absentia to a term of 20 years imprisonment and a fine of \$150 million lire (Exhibit P-17). The Italian sentence was entered on June 6, 1983.

On December 20, 1983, the respondent and his brother Rosario were indicted by the United States Grand Jury, sitting in and for the District of New Jersey in Camden, on charges of conspiracy to defraud the United States Government by obstructing and injuring the Treasury Department in administering the Currency and Foreign Transactions Reporting Act and to commit offenses against the United States in violation of Titles 18 and 31 of the United States Code. The indictment alleged that the conspiracy to defraud the United States occurred between March 20, 1978 and March 15, 1979, in connection with the defendants' purchase and sale of a piece of real estate in Cherry Hill, New Jersey. This indictment was admitted into evidence as Exhibit P-6. It is undisputed that respondent Guisepppe Gambino was found not guilty of these charges following a jury trial in the United States District Court on February 21, 1985 (Exhibit P-6). Rosario Gambino was also found not guilty.

The foregoing constitutes the respondent's record of criminal arrests and indictments. The only charges resulting in a conviction were those tried in absentia in Italy. However, the respondent's brother Rosario Gambino was the subject of another indictment. On March 26, 1984, Rosario and five others were named in an 18 count indictment by the United States Grand Jury sitting in and for the District of New Jersey at Newark. The indictment alleged a conspiracy to distribute and distribution of heroin, contrary to certain sections of Titles 18 and 21 of the United States Code (Exhibit P-7).

A four page excerpt from the 1985 report of the Pennsylvania Crime Commission was admitted into evidence as Exhibit P-16. According to this report, Rosario Gambino and his cousins Erasmo and Antonio were convicted in the United States District Court on October 23, 1984, of marketing one kilo of heroin in South Jersey. Rosario Gambino was sentenced to 45 years in prison and was fined \$105,000. Erasmo Gambino was sentenced to 34 years in prison and was fined \$95,000, and Antonio Gambino was sentenced to 30 years in prison and was fined \$50,000.

The crime commission report stated that, according to federal authorities, the defendants sold two pounds of heroin to federal undercover agents and guaranteed that they could fill a monthly order of 22 pounds of heroin at a cost of 4.3 million dollars per order. The report also referred to the sentencing memorandum submitted by the United States Attorney's office. This memorandum reportedly explained in detail the extent of Rosario Gambino's involvement in a major narcotics distribution ring and his leadership of that group. It also reportedly detailed his financial position and his involvement in a number of other potential criminal areas. The following excerpt from the sentencing memorandum, set forth in the 1985 Pennsylvania Crime Commission Report, is significant:

Rosario Gambino's criminal activities extended to arson and extortion as well. In 1980, the Bureau of Alcohol, Tobacco and Firearms presented a report of its investigation into a series of arsons which included highly incriminating evidence against Rosario Gambino. Notable among these arsons were two which plainly appear related to efforts by Rosario Gambino and his brother, Guiseppe Gambino, to take over a pizza franchise at the Cherry Hill Mall in Cherry Hill, New Jersey.

Both Rosario Gambino and his brother were observed by local police officers at the scene of the pizza restaurant under suspicious circumstances following the arson. Shortly thereafter, the restaurant manager received an anonymous telephone threat to close the restaurant and return to New York. Two days later the manager's automobile was destroyed by a firebomb.

Another excerpt from the sentencing memorandum submitted to the United States District Court by the United States Attorney is material to the present matter. The memorandum stated:

... Rosario Gambino has dedicated his life to corrupt activities. The nature of the offenses attributed to him and the roles he has played in those offenses offer convincing proof that he was a professional criminal who is associated with an extensive criminal organization. According to investigative reports compiled by the Italian Ministry of the Interior, Department of Public Safety, the Pennsylvania Crime Commission and the New Jersey State Police, this organization is the Gambino crime family of La Cosa Nostra.

A five page excerpt from the Pennsylvania Crime Commission 1980 report, "A Decade of Organized Crime," was admitted into evidence as Exhibit P-9. Beginning on page 70, the crime commission report discusses the influence of the Gambino crime family. The report states:

The Gambino's - New Jersey crime figures and cousins of the late Carlo Gambino, the deceased head of the New York crime family who had been acknowledged as the "boss of bosses" - have a presence in the Philadelphia-South New Jersey-Delaware area. Their presence was particularly publicized in March of 1980, when Guiseppe and Rosario Gambino were arrested in their Cherry Hill restaurant - Valentinos - for alleging participating in an international heroin smuggling operation, after police in Milan, Italy, confiscated 41.5 kilograms (about 91 lbs.) of heroin destined for the United States. The heroin had an estimated street value of about 60 million dollars, making it one of the largest drug busts in the United States.

In 1972, Carlo Gambino's cousins moved from New York to southern New Jersey, an area which had generally been controlled by Angelo Bruno. The two crime bosses-Gambino and Bruno-had been friends. Bruno's wife, Sue, owned property in Florida with Carlo Gambino. Three of the Gambino cousins, brothers Rosario, Guiseppe and Giovanni, had visited Bruno at his South Philadelphia home on Easter.

The New Jersey Gambinos have established several businesses, including pizza shops, bars and restaurants, in New Jersey, Pennsylvania, and Delaware. Guiseppe was at a meeting at Valentino's restaurant with Bruno and Paul Castellano, who later became head of the Gambino crime family. Guiseppe has testified that Bruno personally solicited the vending machine business at Valentino's. The nightclub has also obtained insurance through Presidential Insurance Company, a firm owned by Ralph Puppo, Bruno's son-in-law.

The Division offered additional evidence concerning Rosario Gambino and his presence in licensed casinos. A two page excerpt from the report and recommendations of the State of New Jersey Commission on Investigation on the Abuse and Misuse of

Credit Controls at Atlantic City Casinos was admitted into evidence as Exhibit P-10. At page 52, the report states that testimony demonstrating how insufficient credit controls have permitted the incursion of organized crime elements into New Jersey's casinos came from Lieutenant Colonel Justin Dintino, Executive Officer and a 30 year veteran of the New Jersey State Police. According to the report, Dintino recalled in his testimony that the State Police had found in 1980 that organized crime members and associates were receiving credit and free food, free rooms and other "complimentary" services in the casinos. The state police initiated a random sampling of 500,000 credit records in 1982, which Dintino said disclosed continuing credit and complimentary services going to organized crime. Among other recipients of the credit and complimentary services named by Dintino was Rosario Gambino, who was described as an international heroin trafficker who had received over \$1,000 in complimentary services. Dintino warned that a more thorough analysis of casino credit files would "uncover a significant number of other organized crime members and associates who have been extended credit and comps."

New Jersey State Police Investigator's reports dated March 3 and 7, 1983, were admitted into evidence as Exhibit P-12. These reports indicate that Rosario Gambino was present in the Playboy Casino Hotel on March 2 and 6, 1983. On the first of the two dates, Rosario Gambino was observed playing baccarat. Significantly, it was noted that Rosario Gambino was strictly a cash player who frequently placed money on cash deposit, always under the name of Joseph Longo. This is the same name utilized by the respondent Giuseppe Gambino when he was playing baccarat at the Tropicana Casino on June 24, 1985, in violation of the Commission's preliminary order of exclusion.

Also admitted into evidence was a four page excerpt of Lieutenant Colonel Dintino's testimony during the United States Senate Judiciary Committee hearings on Organized Crime in America (Exhibit P-15). In this 1983 testimony, Dintino stated that the South Jersey faction of the Gambino crime family is primarily involved in illegal alien trafficking and heroin importation. According to Dintino, the faction is responsible directly to New York and is closely aligned with the Badalamenti and Inzerillo "families" in Sicily. Many of the members have been indicted and convicted of narcotics violations and the faction has acquired significant holdings in the pizza industry.

The excerpt of testimony (Exhibit P-15) includes a chart of the Gambino crime family, which lists Paul Castellano as "boss." "Caporegimes" for the South Jersey faction are Giovanni (John) Gambino and Antonio Inzerillo. Among those listed as soldiers of the

Gambino crime family are the respondent Guiseppe Gambino, Erasmo Gambino, Rosario Gambino, Antonio Buscetta, Emanuel Adamita, and Salvatore Gallina. These other individuals are those names in the Division's exclusion petition as being close associates of the respondent. Lieutenant Colonel Dintino specifically described Guiseppe Gambino as a soldier in the Gambino crime family who is extensively involved in international narcotics trafficking.

Testifying on behalf of the Division as an expert on organized crime was Gino Lazzari, Inspector of Field Operations for the Pennsylvania Crime Commission. Mr. Lazzari's experience is extensive. Prior to his employment with the Pennsylvania Crime Commission, he was employed by the Federal Bureau of Investigation for 32-1/2 years. For approximately 16 years, the FBI assigned Mr. Lazzari to the Organized Crime Squad in Philadelphia. This assignment included developing intelligence information concerning members of organized crime.

Mr. Lazzari has been with the Pennsylvania Crime Commission since 1979. His duties include acting as a liaison with other law enforcement agencies and maintaining contact with sources of information concerning organized crime members and associates. Among the agencies with which Mr. Lazzari works are the Pennsylvania State Police, the Philadelphia Police Department, the Delaware and Montgomery County District Attorney's Offices, the New Jersey State Police, the Federal Bureau of Investigation, the Drug Enforcement Administration, United States Customs, and the United States Department of Justice. According to Mr. Lazzari, he works with other local, county and federal agencies as well. Mr. Lazzari testified that his work as a member of the Organized Crime Squad for the FBI included development of criminal informants who would furnish information which would be used to obtain probable cause for approval of federal wire taps.

Mr. Lazzari testified that La Cosa Nostra is the principal organized crime group in the United States, and it is an association of people intent on earning a living through illegal means. It is the expert opinion of Mr. Lazzari, derived from both his own investigation and from other law enforcement personnel and sources, that Guiseppe Gambino is a member of the Gambino crime family of La Cosa Nostra. His major criminal involvement concerns the importation of heroin into the United States. According to Mr. Lazzari, Guiseppe Gambino is also suspected of involvement in arson and importation of illegal aliens from Sicily.

Mr. Lazzari testified that he learned from an extremely reliable source that the respondent had met a number of times with Paul Castellano at Valentino's to discuss Gambino crime family business. According to the same source, the respondent was seen many times with Philadelphia crime boss Angelo Bruno. Mr. Lazzari acknowledged that the respondent has never been convicted of a crime in the United States. He candidly stated that his opinion of Guiseppe Gambino's involvement in organized crime is not affected by the absence of convictions. He noted that it has not been easy to obtain convictions of members of La Cosa Nostra because witnesses are reluctant to testify.

FINDINGS OF FACT

The evidential standard applicable to this proceeding is that contained in section 107a(6) of the Casino Control Act, which states:

The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

The foregoing standard means that ultimate factual findings in this matter may be based upon any relevant evidence, including hearsay, regardless of the fact that such evidence may not be admissible in a civil action, so long as that evidence is the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs. The Division of Gaming Enforcement has presented evidence which satisfies this standard. Pennsylvania Grime Commission employee Gino Lazzari has identified the respondent as a member of the Gambino crime family of La Cosa Nostra. Mr. Lazzari identified the primary criminal activity of the respondent to be international heroin trafficking. Mr. Lazzari's opinions were based for the most part on information derived from reliable but undisclosed informants. His testimony was the subject of cross-examination and no evidence was presented to contradict the information presented by Mr. Lazzari's testimony.

The testimony of Mr. Lazzari was presented in a straightforward and sincere manner and it was entirely believable. However, his testimony did not stand alone. It was

corroborated by the 1980 and 1985 Pennsylvania Crime Commission reports (Exhibits P-9 and P-16). It was also corroborated by the testimony of Lieutenant Colonel Dintino before the United States Senate Judiciary Committee hearings on Organized Crime in America (Exhibit P-15). The indictments are also reliable evidence, even when acquittals resulted, because each represents the determination of a grand jury that sufficient evidence existed to believe the charge if the evidence on hand were not explained or contradicted. In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities, Commission decision, Dkt. Nos. 82-EL-19 and 20 (November 18, 1985); Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471 (1971), cert. den. 405 U.S. 1065 (1972). Finally, the testimony and other evidence concerning the respondent's presence in a licensed casino while on the list of excluded persons is believable and is unrefuted.

The evidence presented by the Division of Gaming Enforcement satisfies the standard of section 107a(6) of the Casino Control Act. It is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. Based upon these proofs and the foregoing discussion, I **FIND AS FACT** that Guiseppe Gambino is a member of the Gambino crime family of La Cosa Nostra. I **FIND** that he has engaged in international heroin trafficking, an offense often associated with organized crime. I **FIND** that the respondent is suspected of involvement in other organized crime activities. In addition, I **FIND** that the respondent has been an associate of Paul Castellano, Angelo Bruno, and others who have been members of organized crime families. Finally, I **FIND** that the respondent was knowingly on the premises of a licensed casino hotel on June 24, 1985, while his name was on the Casino Control Commission list of excluded persons, in violation of N.J.S.A. 5:12-118.

CONCLUSIONS OF LAW

Section 71 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), requires the Casino Control Commission to provide by regulation for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. The Commission's exclusion regulations are set forth at N.J.A.C. 19:48-1.1 et seq. N.J.A.C. 19:48-1.3(a) states that the exclusion list may include any person:

1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
3. Who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

At N.J.A.C. 19:48-1.1, the Commission has defined "career or professional offender" to mean any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state. "Inimical to the interest of the State of New Jersey or of licensed gaming" is defined 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. Finally, "occupational manner or context" is defined to mean the systematic planning, administration, management, or execution of an activity for financial gain.

Based upon the credible testimony of Gino Lazzari and other reliable corroborating evidence, I have found that Guiseppe Gambino is a member of the Gambino crime family of La Cosa Nostra and that his primary criminal activity involves importation of heroin into the United States. I have also found that the respondent has been an associate of persons identified as members of organized crime families. It is clear from these findings that the respondent's presence in a licensed casino would be 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. Accordingly, I **CONCLUDE** that the respondent is a career or professional offender whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey and of licensed gaming. I further **CONCLUDE** that

the respondent's association with career or professional offenders is such that his presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey and of licensed gaming.

Thus, I finally **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing by a preponderance of the relevant and credible evidence that the name of Guiseppe Gambino should be placed on the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment. Respondent Rosario Gambino having withdrawn his request for a hearing regarding his exclusion, his name shall also be placed on the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the petitions of the Division of Gaming Enforcement requesting that the names of Rosario Gambino and Guiseppe Gambino be placed upon the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino establishment 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 2, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9-3-87
DATE

Dolores A. Sost
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 8 1987
DATE

Ronald L. Parker / x 5
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Preliminary Order of Exclusion with attachment
- P-2 Copy of Video Monitor Photo, dated June 24, 1985
- P-3 Photo, dated June 24, 1985
- P-4 Criminal Complaint, dated June 24, 1985
- P-5 Not in evidence
- P-6 Indictment, dated December 20, 1983, with judgment of acquittal
- P-7 Indictment, dated March 26, 1984
- P-8 1980 Indictment
- P-9 1980 Pennsylvania Crime Commission Report (Excerpt)
- P-10 New Jersey State Commission of Investigation Report (Excerpt)
- P-11 Not in evidence
- P-12 Investigator's Reports
- P-13 Not in evidence
- P-14 Not in evidence
- P-15 United States Senate Judiciary Committee Testimony (Excerpt)
- P-16 1985 Pennsylvania Crime Commission Report (Excerpt)
- P-17 Italian Sentencing Order
- P-18 Atlantic County Indictment

For the respondent:

- R-1 Order of Admission to Pre-trial Intervention Program

WITNESSES

For the petitioner:

John E. McLaughlin

Joseph O. Eden

Gino L. Lazzari

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-197
LICENSE NO. 40194-21
OAL DOCKET NO. CCC 2644-87
ORDER NO. 87-46-3

APPLICATION OF REGETTA M. GARDNER

FOR RENEWAL OF HER

ORDER

CASINO EMPLOYEE LICENSE

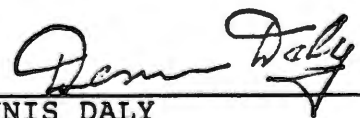
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 2, 1987,

IT IS on this 3rd day of December 1987, 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 and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

OCT 22 1987

State of New Jersey

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2644-87

AGENCY DKT. NO. 87-EA-197

REGETTA M. GARDNER,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Regetta M. Gardner, petitioner, pro se

**Nancy Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: August 31, 1987

Decided: October 15, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of petitioner, Regetta M. Gardner, for renewal of her casino employee license. By letter report to the Casino Control Commission, dated March 23, 1987, the Division of Gaming Enforcement objected to the licensure renewal of the petitioner. A prehearing conference was conducted by Administrative Law Judge Edgar R. Holmes on July 6, 1987, and at that time the following issues to be resolved were identified:

1. 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: 2C:20-4 in the third degree.

2. Whether the petitioner possess the requisite good character, honesty and integrity for casino control employee licensure, pursuant to N.J.S.A. 5:12-89b(2).
3. Whether the petitioner, if she has committed an otherwise disqualifying offense, has affirmatively established her rehabilitation, pursuant to Section 90h of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

Following her receipt of the Division's letter of objection dated March 23, 1987, the petitioner sent a letter to the Casino Control Commission dated April 7, 1987, which was construed to be a request for a hearing. On April 20, 1987, 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. Administrative Law Judge Holmes conducted the prehearing conference on July 6, 1987, and the matter was reassigned to me for the hearing. The hearing was held on August 31, 1987, at the Brooklawn Municipal Building, Brooklawn, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 28 year old resident of Camden, New Jersey. She lives with her mother and her two sons, who are eight years and four years old. The petitioner provides the sole support for her children.

The petitioner has applied for renewal of casino employee license no. 40194-21, originally issued by the Casino Control Commission in 1982. The petitioner has been an employee of the Sands Hotel and Casino in Atlantic City since July 25, 1981. She was originally hired in the housekeeping department. According to the petitioner, she became a blackjack dealer at the Sands in June 1984. A letter from James Tuthill, Assistant Shift Manager at the Sands, was admitted into evidence as Exhibit P-1. According to Mr. Tuthill, the petitioner's periodic evaluations have been above average and her attendance is excellent. She has had no disciplinary actions taken against her and she has been commended by customers for her friendliness and attitude. According to Mr. Tuthill, the petitioner's prospects for continued employment are good.

On December 28, 1978, when she was 19 years old, the petitioner applied to the Camden County Board of Social Services for Aid to Families with Dependent Children

(AFDC). The petitioner was determined to be eligible for assistance, which she received for herself and her minor child from December 1978 until April 1982 (Exhibit R-4). On January 28, 1982, the petitioner signed an application and affidavit for continuation of assistance (Exhibit R-2).

It is undisputed that the petitioner indicated on her affidavit for continued assistance that she was without income from any source. However, it is also undisputed that she had earnings from her employment at the Sands Casino from July 1981 until April 1982 which were never reported to the Camden County Board of Social Services. This information was discovered when the New Jersey Division of Public Welfare conducted a wage match and the petitioner's employment and wages were then verified by her employer (Exhibit R-3). As a result of her failure to report her income from employment, the respondent received an overpayment of AFDC, food stamps, and medicaid benefits from August 1981 through April 1982 in the amount of \$2762.54 (Exhibits R-5 & R-6).

On August 6, 1984, the Camden County Grand Jury filed an indictment against the petitioner on one count of theft of \$2762.54 from the Camden County Board of Social Services by deception, contrary to N.J.S.A. 2C:20-4 (Exhibit R-7). On March 13, 1985, the petitioner signed a reimbursement agreement whereby she promised to repay to the Camden County Board of Social Services the balance of her assistance at the rate of \$120 per month, beginning April 15, 1985 (Exhibit R-14). By order entered March 25, 1985, proceedings on the petitioner's indictment were postponed and she was released into the custody of the Camden County Pre-trial Intervention Program (Exhibits R-11 and R-12).

The conditions for the petitioner's successful participation in the Pre-Trial Intervention Program required that she report for counseling, that she make restitution payments of \$120 per month, and that she perform 50 hours of community service. The petitioner testified that her community service hours were satisfied by performing cleaning services at the Camden County Social Services building. She also reported to her probation officer as required once a month. Based upon her successful program participation, the indictment against the petitioner was dismissed on May 9, 1986 (Exhibit R-13).

Testifying at the hearing, the petitioner candidly acknowledged that she had not lived up to her agreement to repay the Camden County Board of Social Services \$120 per month. She has made payments from time to time when her work schedule was on a

full-time basis. Because her work schedule was occasionally part-time and her earnings were substantially reduced, she was unable to maintain the schedule of payments set forth in the reimbursement agreement. When the petitioner received a settlement for an automobile accident in the spring of 1987, she applied that amount to her debt. As of July 1987, the balance which she owes is \$1984.23 (Exhibits R-16 and P-2).

The petitioner candidly admitted that she has not managed her money well. Fluctuating between full and part-time employment has created a financial problem, and she has accumulated a number of credit card debts. She attributed part of the problem to her purchase of an automobile. Because of her debts, the petitioner is in the process of filing for bankruptcy. She has retained the services of a lawyer for this process and she will incur an additional expense as a result. It was the sincere and credible testimony of the petitioner that she prefers to work and she intends to never have to collect welfare benefits again. However, if she were in that situation, she would definitely report any earnings which she received. She acknowledged her wrongdoing and explained that she had relied on bad advice when she continued to collect welfare benefits while waiting to see if her job at the Sands would be secure.

Gertrude H. Taylor testified on the petitioner's behalf. Ms. Taylor has known her since the petitioner was a child. She described the petitioner as being destitute when her first child was born; the petitioner's income did not cover her expenses. According to Ms. Taylor, the petitioner has always been honest and she had never done anything wrong before. Ms. Taylor has a very high opinion of the petitioner and she testified that the petitioner's word has always been good.

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 her individual qualifications for 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 Casino Control 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 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, her reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, pursuant to Section 86g of the Act.

It is undisputed that the petitioner was indicted for theft by deception, in violation of N.J.S.A. 2C:20-4. The petitioner was admitted into and satisfactorily completed the Pre-Trial Intervention Program. The indictment was subsequently dismissed and there was no conviction. However, the respondent has admitted the commission of the offense.

The commission of theft or a related offense under N.J.S.A. 2C:20-2 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier for licensure, pursuant to Sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500 but less than \$75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involved the amount of \$2762.54, I **CONCLUDE** that the respondent has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the respondent's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to Sections 86c(1) and 86g of the Casino Control Act.

Section 90h of the Casino Control Act provides that the petitioner shall not be denied renewal of her casino employee license on the basis of her commission of an 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;
- (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.

The petitioner committed the offense of theft by deception when she received welfare benefits to which she was not entitled between August 1981 and April 1982. She was 22 years old when this offense commenced and she was the mother of a small child. The earnings which she failed to disclose to the Board of Social Services arose from her new employment in the casino industry after a substantial period of unemployment.

The petitioner did not disclose her earnings because she relied on the bad advise of her child's father, who told her to continue to collect welfare benefits until she knew whether her casino employment would be secure. She admitted her offense and signed a reimbursement agreement. The petitioner satisfactorily completed the terms of the Pre-Trial Intervention Program and the indictment against her was dismissed.

The petitioner, despite her one serious offense, has a reputation for honesty. It was her mistake in judgment to continue to receive welfare benefits without reporting her earnings. She has attempted to reimburse the Board of Social Services for the benefits to which she was not entitled. However, her expenses from supporting herself and her two children have been significant in relation to her income. Frequently her employment has been on only a part-time basis. As a result, she still owes a substantial sum of money to the Board of Social Services. Because of her debts, she is in the process of filing for bankruptcy and she will incur attorney's fees as a result.

I do not construe the petitioner's decision to file for bankruptcy as the act of one who feels no responsibility for her obligations. Rather, it is the decision of one who needs to bring order to her financial situation so that she can get back on her feet economically. The petitioner was sincere and candid. She acknowledges her wrongdoing and she has testified convincingly that she would never become involved in such conduct again.

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 her 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 her burden of establishing by clear and convincing evidence that she presently 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 her casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Regetta M. Gardner for 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.

October 15, 1987
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

October 16, 1987
DATE

Receipt Acknowledged:

Nelson Zapp
CASINO CONTROL COMMISSION

OCT 20 1987
DATE

Mailed to Parties:

Ronald E. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Recommendation from Assistant Shift Manager, dated August 18, 1987
- P-2 Reimbursement Payment Receipt dated July 21, 1987

For the respondent:

- R-1 Employee License Renewal Application
- R-2 Application and Affidavit for Assistance
- R-3 Wage Verification
- R-4 Summary Report
- R-5 Summary Report
- R-6 Overpayment Schedule
- R-7 Indictment
- R-8 Report of Claim Determination
- R-9 Report of Criminal Investigation
- R-10 Bench Warrant
- R-11 Order of Postponement and Admission to Pre-Trial Intervention Program
- R-12 Pre-Trial Intervention Program Evaluative Report and Plan of Counseling
- R-13 Order of Dismissal
- R-14 Reimbursement Agreement
- R-15 Supplementary Summary Report
- R-16 Letter dated August 21, 1987, confirming reimbursement balance

WITNESSES

For the petitioner:

Regetta M. Gardner
Gertrude H. Taylor

For the respondent:

Regetta M. Gardner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-37
AND 87-EA-37A
APPLICATION NOS. 44999-21
AND 00251-70
OAL DOCKET NO. CCC 6131-86
ORDER NO. 87-37-3

APPLICATION OF FRANK N. GELB FOR A CASINO
EMPLOYEE LICENSE (JUNKET REPRESENTATIVE)

AND

ORDER

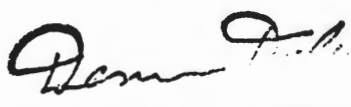
APPLICATION OF GELB PROMOTIONS, INC.
FOR A JUNKET ENTERPRISE LICENSE

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; and the
Commission having considered the entire record of these
proceedings at its public meeting of September 30, 1987,

IT IS on this 13th day of October 1987, ORDERED that
the initial decision is adopted; and

IT IS FURTHER ORDERED that the applications of Frank N.
Gelb for a casino employee license and Gelb Promotions, Inc.
for a junket enterprise license are granted substantially
for the reasons stated in the initial decision, which is
incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**FRANK N. GELB AND
GELB PROMOTIONS, INC.**
Petitioner,

v.

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

INITIAL DECISION

OAL DKT. NO. CCC 6131-86
AGENCY DKT. NO. 87-EA-37 and
87-EA-37A

Donald M. Kaplan, Esq. (Horn, Kaplan, Goldberg, Gorney and Daniels, attorneys),
for petitioner

**Barth F. Aaron, Deputy Attorney General (W. Cary Edwards, Attorney General of
New Jersey, attorney), for respondent**

Record Closed: May 4, 1987

Decided: July 28, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) dated May 12, 1986, objecting to the licensure of Gelb Promotions, Inc., as a Casino Service Industry and Junket Enterprise, and to the licensure of its qualifier, Frank N. Gelb, as a Junket Representative.

The applicants 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. 52:14B-1 et seq. The matter was pretried on November 10, 1986 and a prehearing order identifying the issues was prepared to which the Division objected. The prehearing order was amended on December 19, 1986, restating the burden of proof on an N.J.S.A. 5:12-86f issue to which the Division reserved its right to except by letter dated January 8, 1987. The matter was heard on April 22 and April 23, 1987 in Ventnor City Hall and the record closed on May 4, 1987 upon receipt of post hearing exhibits.

STATEMENT OF THE CASE

Petitioner Frank N. Gelb is a boxing and television promotor. The Division alleges that he has associated with organized crime figures and failed to satisfactorily explain his association.

ISSUES

The precise issues which this alleged association raises are as follows:

A. Does Frank N. Gelb possess the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-92 and 94 and 102?

B. Is or was Frank N. Gelb an associate of a career offender or career offender cartel in such a manner which could create a reasonable belief that the association is or was of such a nature as to be inimical to the policy of the Casino Control Act (Act) and to gaming operations as defined by N.J.S.A. 5:12-86f?

ISSUE A

The burden of proof on the issue of good character is upon the applicant. Section 89b(2), which is incorporated by reference into the relevant statutes describes the information which must be submitted for review to the agency. The "...information shall include, without limitation, data pertaining to the family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates concerning at least the ten year period preceeding the filing of the application..."

THE PETITIONER

Frank N. Gelb graduated from Overbrook High School in Philadelphia. He served in the Navy then entered the family furniture business. In 1972 he opened a branch store in Norristown, Pa. He met a police officer in Norristown who was also a professional boxer. They became friends and Gelb was asked by the boxer, one Leroy "Hurricane" Roberts, to be his "fight" manager. Gelb became a successful fight manager and soon acquired a stable of boxers. Within a few years Gelb enjoyed an international reputation as a boxing manager, booking agent and promotor. He began to promote other kinds of events. His father joined him in the business. The firm first moved to 1015 Chestnut Street in Philadelphia and more recently to Atlantic City. Gelb's father has since retired. Gelb is married and the father of four children; one a lawyer, one in law school and two in college.

CHARACTER EVIDENCE

Rabbi Alan B. Lucas of the congregation of Beth Judah in Ventnor, New Jersey, a community adjacent to Atlantic City, testified to Gelb's reputation. He recalled that the petitioner's reputation preceeded him to Atlantic City. He received a telephone call from Gelb's Philadelphia Rabbi "singing his praises" and advising Rabbi Lucas to make sure the Gelbs became members of his congregation.

Rabbi Lucas described Gelb's reputation in the Ventnor community as 'flawless'. He credited him with involvement in some of the best Jewish community programs in recent years. He further described Mr. and Mrs. Gelb as 'ministers to the community'.

The Rabbi said that in his duties to his congregation, to the Jewish Federation and to other community committees, he observes that the Gelb's are invariably sought out as leaders and patrons.

It was obvious from the Rabbi's testimony that he held Frank N. Gelb in the highest repute.

Arnold Cream, who is only slightly better known as Jersey Joe Walcott, testified to Frank Gelb's reputation. He has known Frank Gelb and his family from

the time he was heavyweight champion of the world and during the time he was boxing commissioner for the State of New Jersey (1977 to 1984). He described Gelb as a reputable, respectable and honest citizen and a fine young man. On cross examination he asserted that he talked to a lot of people regarding Gelb's promotions in "...the fight game". He said that "...everyone that I've talked with respects him and enjoys working with him, and often told me at various times if everybody in boxing was like Frank Gelb and his family, it would be a much better profession."

Frank B. Doggett, M.D., Chief Ring Physician for the New Jersey State Athletic Control Board testified to Gelb's reputation; he called it "excellent". He said this was his personal opinion.¹

Howard Persina, Executive Director of the Atlantic City Convention Center Authority has known the petitioner since 1975. He has found him to be truthful, honest and to have integrity. He has never heard anything to the contrary.

Rabbi Morris Dembowitz has known Gelb and his family since 1959. He described the entire family as possessing a sense of honesty and integrity. He described Gelb and his father as having a unique relationship. He described Gelb as having an interest and involvement in his synagogue, his community and in Israel.

Larry Hazard, New Jersey State Athletic Control Board Commissioner since 1985 (successor to Arnold Cream) and a former boxing referee testified that he has never had to discipline the petitioner and that Gelb "...always ran his business according to our rules and regulations." He acknowledged that Gelb showed the character traits of honesty and integrity.

1

There was a Rule 63 (28) objection to this witnesses testimony because it was not based upon hearsay, but actual character is also an issue in a Casino Control Act employee licensing proceeding and I overrule the objection.

Howard E. McCall, Pennsylvania State Athletic Director from December 1975 until April of 1980, has known Gelb for approximately 12 to 14 years. He says Gelb has a fine reputation in boxing for honesty and integrity. He says Gelb is the kind of person he would do business with; that his decisions would be in the best interests of all concerned. He said Gelb is the kind of promotor he would want to see involved in boxing.

He said he currently does business with Gelb as both an agent and promotor and that Gelb properly handles his boxers and his finances and gives "a fair shake."

Frank Ciaccio, a county detective for the Montgomery County District Attorneys Office and former Norristown Police Department detective has known Frank Gelb for over 20 years. Frank Ciaccio has been involved with juveniles for his entire 34 years as a policeman. He is a former Golden Gloves Diamond Belt and professional boxer who operates a boxing program for youngsters.

He testified at length about the help provided to his boys program by Frank Gelb. Gelb did fund raising, and assisted him in organizing exhibitions for such varied organizations as the Catholic War Vets, St. Francis School, Jewish Community Center, Coatsville Army Hospital, Valley Forge Hospital. Gelb provided celebrities, ideas, wrote and typed letters for him. He said Gelb's reputation in the Norristown community was the best; he would want him as a neighbor, he would want him as a brother.

Alvin Goodman, Esq., Deputy Boxing Commissioner for the State of Florida and Vice President of the International Boxing Federation and the United States Boxing Association who is also a practicing attorney and formerly a Justice of the Peace and Chairman of the City of Miami Boxing Commission and member of the World Boxing Association, affianced on April 22, 1987 that he has the highest respect and regard for the integrity, honor and endeavors of Mr. Frank Gelb and in his professional dealings he found him to be trustworthy, committed and an extremely reliable person (P-26).

D. Chester O'Sullivan, Athletic Commissioner for the State of Maryland, affianced on April 22, 1987, that Frank Gelb has a reputation of excellence with regard to his good character, honesty and integrity in the boxing community and

that he personally knows Frank Gelb and believes him to be a man of high caliber, good character, unblemished integrity and would hope that all people involved in the boxing profession would be of Gelb's standards (P-27).

Bill Brennan, Virginia State Athletic Commissioner affianced on April 22, 1987 that he has known Gelb for the past 12 to 15 years during the time that Brennan was State Commissioner and president of the World Boxing Association. He says Gelb has a reputation for excellence with regard to his good character, honesty and integrity in the boxing community. He also personally believes that Gelb is a man of high standards, good character and unblemished integrity (P-28).

I **FIND** that the petitioner personally and in his capacity as qualifier for Gelb Promotions, Inc., has produced clear and convincing evidence that he has the requisite reputation for, and actually possesses, the good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12- 89b(2), 92, 94 and 102.

ISSUE B

This issue resolves itself upon an analysis of the relationship which obtained between the petitioner and Blinky Palermo and his friend (now deceased) Frank D'Alfonso aka Frankie Flowers. There is no question that the petitioner had some association with both Palermo and the deceased; he acknowledges it, and in fact, his own descriptions of the relationship are the only evidence in this record that such a relationship existed.

Given that an association existed, the preponderance of evidence in the whole record must show that either or both Palermo and D'Alfonso are or were career offenders or members of a career offender cartel and that the association is inimical to the Casino Control Act and casino operations before licensure can be denied.

The burden of proving the converse of this proposition cannot be placed upon the petitioner because citizens are quite properly denied access to police investigation and intelligence files, the most obvious repository of information covering persons criminal backgrounds.

BLINKY PALERMO

The Division alleges and may some day prove that Blinky Palermo is a career or professional offender.²

Gelb says that this relationship with Palermo began when Palermo, whose physician had an office across the hall from Gelb's office in the building at 1015 Chestnut Street, Philadelphia, stopped in one day, introduced himself, and regaled Gelb with stories about boxing in the old days. These visits continued sporadically. Both Gelb and Palermo attended a Veteran Boxers Association Mothers Day Banquet on May 9, 1982, but not together. In addition, Blinky Palermo had access to good quality smoked fish and Gelb's father often ordered some from him using the company telephone.

Apparently Palermo once asked Gelb to be a reference for him at the Pennsylvania Boxing Commission and Gelb properly refused. Gelb says he has not seen Palermo in over 3 years. He described Palermo as a little frail old man with a wealth of knowledge about boxing history.

While the petitioner's recollection of his conversations and meetings with Palermo is hazy, if his relationship is as casual as he describes it to be then there is nothing unusual about his recollection being hazy. There is no evidence in this record that his relationship to Palermo is other than casual and is based upon Palermo's knowledge of the old days in the fight business. In this regard Palermo is a kind of historic resource, whatever else he may be.

2

On January 21, 1986 the Division's petition to place Blinky Palermo temporarily upon the exclusion list pursuant to N.J.S.A. 5:12-71(a), N.J.A.C. 19:42-45 and N.J.A.C. 19:48-1.3(a) was dismissed without prejudice by the Casino Control Commission, Docket 84-EL-45.

It is obvious that the State of New Jersey Commission of Investigation and the Division of Gaming Enforcement do not believe Frank Gelb's version of his relationship with Palermo, See page 173 lines 11 through 23 Executive Session Testimony of Frank Gelb before the State of New Jersey Commission of Investigation, p23 in evidence and page 9 of the Division letter of May 12, 1986 to the Casino Control Commission objecting to licensing. But one cannot conclude, absent other evidence, that those persons of whom policemen are cynical are therefore wicked. Cynicism, like time to a lawyer, is a policeman's stock in trade.

The only other evidence in this case concerning Palermo's membership in a criminal cartel was the parties stipulation that one Joseph Morace, an investigator with the Pennsylvania Crime Commission would have testified that:

1. Angelo Bruno was the head of a Philadelphia Crime family that bore his name until his death in 1984.
2. That one Frank D'Alfonso was thought to be Bruno's successor until his death by shooting in 1985.
3. That Blinky Palermo was a low level Bruno crime family member in the 1970's and early 1980's.
4. That Steven Traitz was indicted for bribing judges in Philadelphia on behalf of his Roofer's Union.

I am unable to find or conclude from this record that Palermo is or was a career offender or member of a criminal cartel nor am I able to find or conclude that the relationship between petitioner and Palermo is such that it would be inimical to the Casino Control Act or to casino operations.

FRANK D'ALFONSO AKA FRANKIE FLOWERS

According to the Division's letter of May 12, 1986 to the Casino Control Commission, Frank D'Alfonso is a major associate of the Philadelphia cosa nostra family. The authority for this statement is the Pennsylvania Crime Commission Report of 1983 which is not in evidence. In addition, the Final Boxing Report of the State of New Jersey Commission of Investigation (S2) described Frank D'Alfonso as

"...a Scarfo-Bruno mob moneymaker until he was shot to death on a Philadelphia street in July 1985" p. 51.

This report, written in a tabloid style, and of which the then attorney general was critical (P2) is the only evidence in this record that D'Alfonso is a career offender or member of a career offender cartel, except for the stipulation of Joseph Morace's testimony. The petitioner acknowledges that he has read newspaper accounts of D'Alfonso's beating and/or shooting which described D'Alfonso as a mafia leader after he last saw D'Alfonso.

This evidence is insufficient to Find or Conclude that D'Alfonso was either a career offender or member of a career offender cartel.

Gelb claims he was first introduced to Frank D'Alfonso by Blinky Palermo on an occasion when D'Alfonso drove Palermo to a doctor's visit in Gelb's building. He learned that D'Alfonso had a ticket brokerage business in South Philadelphia. On 3 or 4 occasions thereafter, D'Alfonso called on Frank Gelb requesting tickets for Atlantic City shows for his ticket brokerage business, a service Gelb performed for all center city ticket brokers.

On one occasion D'Alfonso came to Gelb's office when Gelb was alone and Gelb asked D'Alfonso to make a bank deposit for him in the bank downstairs on his way out of the building, which Alfonso did in fact do. This transaction came to the attention of the police. Gelb has been questioned about it on prior occasions. See (S1) Report of April 23, 1982 prepared by Victor N. DiCicco, Agent, Pennsylvania Crime Commission and (P23) Executive Session Testimony of Frank Gelb, State of New Jersey Commission of Investigation p. 292 line 7 et seq. Everyone wants to know why Gelb gave a bank deposit to D'Alfonso to make for him, rather than make it himself or have his father or secretary make it for him.

At this administrative hearing, Gelb satisfactorily explained the discrepancies which the Commission of Investigations chose to point out on page 53 of its report. The Commission cautions the reader to remember that the checks given to D'Alfonso were not deposited on a Saturday. Gelb's explanation to the Commission depended upon it being a Saturday because he could not otherwise imagine why he was alone in the office. Subsequent investigation by Gelb however reveals that he

was alone on the weekday the checks were deposited because his father and their secretary were in Atlantic City on company business.

It is obvious DeCiccio asked Gelb the wrong question (not "why did D'Alfonso deposit checks for you", but "why did D'Alfonso have your checks in his possession?") Gelb's answer was appropriate under the circumstances. The checks were deposited, not in D'Alfonso's pocket.

Don King promoted the Holmes-Ali fight. Frank Gelb paid King for the right to closed circuit TV in certain Pennsylvania cities. King wanted \$300,000 for this right. Gelb did not have that amount of money or credit. He split his contract up into several parts in order to obtain the entire \$300,000. One portion of the contract went to Joseph Hand, another portion went to Robert Gabriel, an attorney whom Gelb knew and who was recommended to Gelb by his accountant.

It later appeared that Gabriel's investment was really client's funds. The client was D'Alfonso. Gelb says he did not know that Gabriel was using D'Alfonso's money. Gabriel says that Gelb did not know he was using D'Alfonso's money. D'Alfonso is dead, alas, and cannot be asked if Gelb knew Gabriel was using D'Alfonso's money.

MISCELLANEOUS ALLEGED CARTEL CONTACTS

Gelb owned a \$500 share in a cigarette vending company owned by an attorney and friend of Gelb's in Norristown, PA. This investment was made in the early 1970's. Gelb sold at a loss when the Division told him to. Apparently, the operating partner, attorney DeYoung, purchased his cigarettes from a company controlled by Angelo Bruno. Gelb says he didn't know. There is no proof attorney DeYoung knew.

There was no proof that Frank Gelb knew or associated with Stephen Traitz, the person under indictment and referred to in the stipulation. Some exhibits however, show a relationship between Traitz, Palermo and Gabriel, especially in connection with Palermo's attempt to obtain a boxing manager's license in Pennsylvania.

No criminal abstracts or records or rap sheets were introduced for any person named herein although on the cross examination of Frank Gelb by the Commission of Investigations, Blinky Palermo's alleged criminal record was gratuitously included in a question to Gelb (p. 48 and 49, Exhibit S2). But see Gelb's answer! He didn't know. Citizens do not have access to rap sheets.

I **CONCLUDE** that Frank Gelb is not an associate of a career offender or career offender cartel.

I **CONCLUDE** that Frank Gelb's association with Blinky Palermo and/or Frank D'Alfonso is not such that it would create a reasonable belief that his association would be inimical to the policy of the Casino Control Act or to casino operations pursuant to N.J.S.A. 5:12-86f.

ORDER OF DISPOSITION

I **ORDER** that the petitioner's applications 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 28, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALI

July 31, 1987
DATE

Receipt Acknowledged:
Alfonso Lopez
CASINO CONTROL COMMISSION

AUG 3 1987
DATE

dho

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

WITNESSES

For the Petitioner:

Alan B. Lucas
Frank N. Gelb
Arnold R. Cream
Frank B. Doggett, M.D.
Howard Persina
Morris Dembowitz
L. Hazard
H.E. McCall
F. Ciacco
E.M. Sheldon, CPA

For the Respondent:

None.

EXHIBIT LIST

Joint Exhibits:

- P-1 Affidavit of Dr. William Eliades, dated April 20, 1987.
- P-2 Article entitled 'Casino Panel Gambles on 'Blindy' Palermo' - Philadelphia Inquirer, January 16, 1986.
- P-3 Casino Control Commission Public Meeting Minutes, January 15, 1986.
- P-4 Excerpts from Program of Veteran Boxers Ass'n., Inc., Forty-Seventh Annual Mothers Day Banquet, May 9, 1982.
- P-5 Page 6 of Resorts International Hotel Casino Entertainment Schedule dated June 9, 1980.
- P-6 Rosemarie Patterson personal journal entry May 7, 1981.
- P-7(a) Lincoln Bank deposit slip, account of Gelb Real Estate, date stamped May 7, 1981.
- (b) Lincoln Bank checking account statement, May 1981 - Account of Gelb Real Estate.
- P-8(a) Poster for Braxton vs. Jackson match, Playboy Hotel/Casino, May 7, 1981.
- (b) Newspaper advertisement for Braxton v. Jackson Match, Playboy Hotel/Casino, Philadelphia Journal, May 5, 1981, page 41.
- P-9 Television License Agreement between Don King Productions, Inc. and Gelb Productions, Inc. dated August 18, 1980.
- P-10 Agreement between Gelb Productions, Inc. and Joe Hand dated August 18, 1980.
- P-11 Agreement between Gelb Productions, and Gabe Productions, Inc. dated September 15, 1980.
- P-12 (a) Bank Leumi Letter of Credit dated August 15, 1980.
- (b) Continental Bank Letter of Credit dated August 29, 1980.

- P-13 Affidavit of Maurice Gelb dated April 21, 1987.
- P-14 Installment note from Frank N. Gelb to Acceptance Associates of America, Inc., dated August 15, 1980.
- P-15 Accounting Ledger Sheet, Ali-Holmes Match, October 2, 1980
- P-16 National Union Fire Insurance Company closed circuit T.V. Breakdown Insurance Certificates for the following locations:
- (a) Harrisburg, Pa. Forum (No. 1350)
 - (b) Downingtown Inn, Downingtown, PA (No. 1343)
 - (c) Philadelphia Spectrum (No. 1333)
 - (d) Martin Luther King Arena, Philadelphia, PA (No. 1349)
 - (e) Pittsburgh Civic Center, Pittsburgh, Pa. (No. 1334)
 - (f) 109th Armory, Kingston, PA (No. 1344)
 - (g) Capitol Theatre, Williamsport, PA (No. 1348)
 - (h) Catholic Youth Center, Scranton, PA (No. 1347)
 - (i) Rajah Temple, Reading, PA (No. 1346)
 - (j) Warner Theatre, Erie, PA (No. 1345)
 - (k) Jaffa Temple, Altoona, PA (No. 1342)
- P-17 Gelb Productions Profit and Loss Sheet, Ali-Holmes Match October 2, 1980
- P-18 Gelb Productions, Inc., Lincoln Bank checking account checks and stubs
- (a) No. 2490 to Acceptance Associates of American, Inc. dated October 14, 1980
 - (b) No. 2492 to Gabe Productions, Inc., dated October 14, 1980
 - (c) No. 2499 to Bank Leumi dated October 15, 1980
 - (d) No. 2507 to Gabe Productions, Inc., dated October 27, 1980
- P-19 Frank Gelb Licenses:
- (a) Nevada State Athletic Commission - expired 12/31/79
 - (b) Indiana State Athletic Commission, No. 1682 - expired 3/2/81
 - (c) Texas, No. 1010 - expired 3/18/79
 - (d) New Jersey State Athletic Commission, No. 23 - expired 6/30/81
 - (e) Maryland State Athletic Commission, No. 0163 - expired 2/5/78
 - (f) Maryland State Athletic Commission, No. 0296 - expired 5/16/78
 - (g) Maryland State Athletic Commission, (Promotor) No. 1433 - expired 10/28/83
 - (h) Pennsylvania State Athletic Commission, No. 93 - expired 12/31/78
 - (i) Pennsylvania State Athletic Commission, No. 224 - expired 12/31/77
 - (j) Pennsylvania State Athletic Commission, No. 152 - expired 12/31/79

P-20 Frank Gelb Boxing Association Membership Cards:

- (a) United States Boxing Association - expired 12/31/80
- (b) United States Boxing Association - expired 12/31/83
- (c) World Boxing Association, 1978
- (d) World Boxing Association, 1979
- (e) North American Boxing Federation 1980-81
- (f) North American Boxing Federation 1981-82

P-21 Article entitled "Kimmelman Appraises N.J.'s Crime Problems" - Philadelphia Inquirer, January 26, 1986, page 48J

P-22 Transcript of testimony of Frank Gelb before State Commission of Investigation on May 30, 1985

P-23 Transcript of testimony of Frank Gelb before State Commission of Investigation on June 17, 1985

P-24 Transcript of testimony of Robert E. Gabriel before State Commission of Investigation on June 20, 1985

P-25 Transcript of testimony of Robert E. Gabriel before State Commission of Investigation on September 26, 1985

For the Petitioner:

- P-26 Affidavit of Alvin Goodman**
- P-27 Affidavit of D. Chester O'Sullivan**

For the Respondent:

- S-1 Pennsylvania Crime Commission report, dated 4/23/82**
- S-2 Organized Crime in Boxing Final Boxing Report of the State of New Jersey, dated 12/16/85**
- S-3 Sworn interview of Frank Gelb before the Division of Gaming Enforcement, dated 8/28/80**
- S-4 Sworn interview of Frank Gelb before the Division of Gaming Enforcement, dated 2/19/85**
- S-5 Testimony of Joe Hand before the State Commission of Investigation, dated 4/3/84**
- S-6 Testimony of Joe Hand before the State Commission of Investigation, dated 2/21/86**
- S-7 Testimony of Joe Hand before the State Commission of Investigation, dated 4/18/85**

APPLICATION OF JEFFREY M. GEORGE
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 9, 1987,

IT IS on this 2nd day of October 1987 ORDERED that the initial decision is modified as follows:

1. To reject the finding of the ALJ that the respondent's unprosecuted conduct constituted the offense of possession of a gambling device in violation of N.J.S.A. 2C:37-7 on the grounds that this determination is not supported by the evidence.
2. To find that the ALJ mistakenly considered the rehabilitation criteria of N.J.S.A. 5:12-90(h) after determining that the respondent's offense of promoting gambling was inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(4). In the Application of Donna M. Davis for a Casino Key Employee License, 8 N.J.A.R. 301 (Commission decision, December 27, 1985), the Commission held that because the rehabilitation provisions of the Act are subsumed in the inimical analysis, it

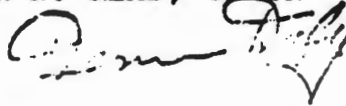
ORDER NO. 87-34-14

should never be necessary to consider these factors after concluding that a given offense is disqualifying pursuant to N.J.S.A. 5:12-86(c)(4).

IT IS FURTHER ORDERED that the application of Jeffrey M. George for a casino employee license (junket representative) is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Jeffrey M. George 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. 19:41-8.3.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR



BY:

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

JEFFREY M. GEORGE,
Petitioner-Applicant,

v.

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

INITIAL DECISION

OAL DKT. NO. CCC 8397-86
AGENCY DKT. NO. 87-EA-28

Jeffrey M. George, petitioner-applicant, pro se
Ellen N. Hersh, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: March 27, 1987

Decided: July 27, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) recommends to the Casino Control Commission (Commission) that it deny the issuance of a casino employee license to Jeffrey Matthew George (petitioner-applicant) for the position of junket representative as provided by N.J.S.A. 5:12-102. The Division alleges that petitioner-applicant 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. The Division also alleges that petitioner-applicant's licensure would be inimical to the policies of the Casino Control Act (Act), pursuant to N.J.S.A. 5:12-86c(4) 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. Further, the Division contends that petitioner-applicant lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within sections 102b and 90b of the Act. Mr. George asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed its letter before the Commission on July 23, 1986, recommending that the Commission deny the issuance of a casino employee license to petitioner-applicant. On November 20, 1986, Mr. George requested a hearing and that a prehearing be conducted by telephone. On November 26, 1986, 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 Administrative Law Judge (ALJ) Stephen W. Thompson on February 5, 1987. The hearing was held on March 27, 1987 at the Trenton OAL, Mercerville, New Jersey. Due to the illness and hospitalization of the undersigned, extensions were requested and granted for the execution of the herein initial decision, pursuant to N.J.A.C. 1:1-16.6.

THE ISSUES

- 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.
- B. Whether petitioner's licensure would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) 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.
- 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) as incorporated within section 102b and 90b.

D. Whether petitioner may demonstrate rehabilitation, pursuant to section 90h of the Casino Control Act.

BACKGROUND FACTS

Petitioner, Jeffrey Matthew George is aged 33 years, employed by Norfolk Southern Railway Company as a Draftsman-Signals in Roanoke, Virginia (P-4). Petitioner is a graduate of James Madison University with a Bachelor of Science degree in Business Administration which was awarded in 1976 (P-4, D-4). Petitioner is married, however, presently separated from his wife. He is responsible for \$180 per month in child support for one minor child (D-4).

Petitioner was introduced to the junket industry through various junkets taken to the Atlantic City, New Jersey casinos. He asserts that he is not a heavy gambler although he has been comped on various occasions at the Sands and Atlantis hotel/casinos. On August 13, 1984, petitioner applied for a Junket Representative license in accordance with section 102 of the Casino Control Act (D-4). Petitioner currently holds no valid license in the New Jersey casino industry. He was denied a Temporary License on October 12, 1984.

On July 23, 1986, the Division recommended to the Commission that petitioner's application for a Junket Representative License be denied grounded upon allegations set forth in its letter of that date. On November 20, 1986, petitioner requested a hearing on the Division's recommendation to deny him a valid license. The Division alleges that petitioner participated in an illegal gambling operation as a worker and was subsequently indicted in the Roanoke (Virginia) Circuit Court for conducting an illegal gambling operation. Petitioner denies that he was a worker in the illegal gambling enterprise asserting he was merely a participant with a friend. Both parties agree that the Roanoke indictment against petitioner was dismissed.

TESTIMONIAL EVIDENCE

Petitioner testified in his own behalf admitting, among other things, that he was on the premises known as 3369 Shenandoah Avenue, Northwest in Roanoke, Virginia on or about March 13, 1983, where an illegal gambling operation was in

place. Petitioner contends he was invited to the premises by a friend and that he was under the impression that there was to be a friendly poker game. When he arrived at the premises with his friend he was confronted by a man at the entrance way who subsequently allowed petitioner and his friend to pass through three (3) separate locked doors before entering the floor of the gambling enterprise. Petitioner asserted he arrived on the scene at approximately 7:00 p.m. and observed, among other things, a blackjack table and two dice tables. Petitioner testified that he neither played blackjack or dice during the one and one-half hours he was on the premises. He asserted that on one occasion when he was standing near a dice table next to the stickman, who was a friend of petitioners; the stickman asked petitioner to take over the dice game while the stickman went to the men's room. Petitioner complied with the request for a period of three or four minutes until the stickman returned to the dice table.

Petitioner testified he did not deal blackjack during the time he was on the premises and that the three or four minutes he substituted for the dice stickman was the extent of his participation in the illegal gambling activity. He contends there was another individual on the premises whose physical features are similar to his and that the police confused the other individual with petitioner. Petitioner also contends he would not have jeopardized his permanent employment and livelihood by engaging in an illegal activity which could have resulted in his termination had he been convicted of the offense. He asserts, moreover, that he was not convicted of any offense which forms the basis of the Division's recommendation to deny him a Junket Enterprise License.

As to the statutory elements under section 90h of the Casino Control Act with regards to petitioner's rehabilitation; he contends that before someone can be rehabilitated, that person "must have done something that was wrong" (TR.13). Petitioner asserts that he has done nothing wrong and the criminal charges brought against him were dismissed prior to any trial.

Detective Sergeant Bobby S. Lugar, Roanoke, Virginia, Police Department, testified at length with regard to petitioner's arrest and the circumstances leading up to his arrest on March 18, 1983. Lugar, assigned to the Vice Division, asserted that the Roanoke Police Department and the Virginia Commonwealth Police had been alerted to alleged illegal gambling activities at 3369 Shenandoah Avenue,

N.W. Both Police Departments had received complaints about the activity from spouses whose husbands had lost considerable sums of money, particularly on pay day. As a consequence of these complaints and other information, the Roanoke Police, under the leadership of Detective Sergeant Lugar, set up a surveillance of the identified and known premises.

Detective Sergeant Lugar became aware of a highly sophisticated security system employed by the operations of the alleged illegal gambling enterprise. This included the monitoring of the police radio frequency bands in order to intercept police communications which might involve the known premises. The monitoring of police communications provided the gambling operators with the opportunity to evacuate the premises and destroy any evidence of gambling paraphernalia. The entry to the gambling establishment was described by Lugar as follows:

Well, what we found later on on the entrance, once we entered the building, there is a double set of glass doors at the front and as I stated, it has a film covering over it. Once up entered these doors, you came into a small foyer, this is where the door man was seated. The next door you came to was a buzzer locked door, you had to activate a buzzer to let you in that door. Then you came into a little corridor. There is also, to let the people inside know that you are allowed to come in, the door man would push a buzzer, it would buzz in the back. Every time it would buzz in the back, they would open the door and allow the person through that door. (TR. 35-36)

Detective Sergeant Lugar was aware that under these conditions it was impossible to execute a valid search and detect incriminating evidence before its destruction. As a consequence, On March 17, 1983, the Roanoke Police Department, through legal counsel, applied before the Circuit Court for the City of Roanoke for authorization to entry and surveillance of the known premises. The application was approved and authorization granted for such entry and surveillance by the chief judge of the 23rd Judicial District of the Commonwealth of Virginia (D-2). On the same date and before the same chief judge, the Roanoke Police applied for and was issued a search warrant for the known premises (D-3).

On March 18, 1983, at approximately 5:30 a.m., Detective Sergeant Lugar and Detective P.W. Sullivan entered the known premises and concealed themselves

behind a 25 inch fan mounted on a wall, after photographing the gambling room and its contents. Detective Lugar testified that in their concealed position, the two detectives had a clear view of the room except the bar area where liquor and soft drinks were stored. Operators at the gaming establishment began to arrive at approximately 2:30 p.m. on March 18, 1983. Thereafter, from 2:30 p.m. to approximately 5:00 p.m. there was a steady flow of patrons on and through the premises, however, seldom more than 20 people present at any one time.

Detective Sergeant Lugar testified he documented petitioner George's arrival on the premises at 4:45 p.m. Thereafter, Lugar observed petitioner deal blackjack to patrons of the gaming operation. Lugar asserted that petitioner was at the blackjack table for approximately 20 to 30 minutes and then he would rotate to another blackjack table or act as the stickman at the craps table. This rotation occurred approximately every 20 minutes. Lugar asserted that petitioner was an operator of the games and not a player at all times he was observed. Lugar testified that from the time of petitioner's arrival on the premises at 4:45 p.m. until the police raid at 7:30 p.m., petitioner never left the room of the gambling area.

The execution of the search warrant was effectuated by way of a radio signal from Detective Sullivan inside the premises to Lieutenant Helm outside of the premises. Upon receipt of the signal the police forced their way into the gambling operation. Petitioner was one of 18 out of 20 people present on the premises to be placed under arrest. Lugar asserted that the two individuals not arrested or charged were merely watching and were not observed to have participated with the games in any manner. Lugar stated that nine of the 18 individuals arrested were charged with the felony of conducting an illegal gambling operation while the remaining nine were charged with the misdemeanor offense of participating in an illegal lottery or gambling operation. Petitioner was charged and indicted under the felony offense.

Detective Sergeant Lugar testified that all the charges were dismissed by an order of Judge Coulter of the Commonwealth's Circuit Court on the grounds of the lack of legal precedence for the issuance of the court order which allowed the police early entry onto the known premises for the purpose of surveillance prior to the execution of a search warrant. Consequently, petitioner and the others who were indicted were never brought to trial.

Detective Ronald Walraven, New Jersey State Police testified that he was assigned to investigate petitioner as a part of his duties and responsibilities with the Division's junket unit. The Detective asserted he conducted a telephone interview with petitioner on February 11, 1986, based upon the information petitioner had provided on his application for licensure. With regard to the events of March 18, 1983, Detective Walraven testified that petitioner admitted he was arrested on that date, however, petitioner told Walraven that petitioner was at a friend's house at the time of the arrest and that petitioner admitted he was a player in a craps game at the time of the police raid. Petitioner did not reveal to the Detective that his arrest was as the result of an illegal casino type gambling operation (D-4).

FINDINGS OF FACT

Having reviewed and considered the testimony and documents offered in this matter and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I make these FINDINGS OF FACT:

Petitioner's testimony, both conflicting and inconsistent with the evidence, must be measured as to its credibility. The party who has the burden of proof in an administrative hearing must prove the case by a preponderance of the evidence. The court, therefore, must "decide in favor of the party on whose side the weight of the evidence preponderates, according to the reasonable probability of the truth." Jackson v. 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 the fact.'" Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) [citation omitted]. 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 v. 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). A factor to be considered in a determination as to which party's version of an incident has the "reasonable probability of the truth" concerns "[t]he interest, motive, bias or prejudice of a witness which may affect his credibility and justify the jury, whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) [citation omitted], certif. den. 10 N.J. 316 (1952). Further,

"[a] trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with the 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). See also, In re Perrone, 5 N.J. 514 (1950).

Under the facts and circumstances of this matter, I **FIND** petitioner's testimony to be incredible and not to be believed.

Conversely, I **FIND** the testimony of Detective Sergeant Lugar and Detective Walraven to be credible.

Therefore, I **FIND** that Jeffrey M. George was an operator of an illegal gambling operation in Roanoke, Virginia on March 18, 1983.

Although petitioner George denied any involvement or participation in the illegal gambling enterprise before this administrative tribunal he, nevertheless, admitted to Detective Walraven that he was a participant in an illegal game on the date in question. While admitting his participation as a "player", petitioner misrepresented the circumstances which lead to his arrest to Detective Walraven by asserting that the illegal game was at a friend's house rather than the real facts that it was an organized casino type gambling operation.

I **FIND**, therefore, that petitioner's statements to Detective Walraven were incredible and not to be believed as was his testimony before this administrative tribunal.

DISCUSSION AND CONCLUSIONS

The Division has established, by a preponderance of the credible evidence, that on March 18, 1983, petitioner participated in the operation of an illegal gambling enterprise in Roanoke, Virginia. The evidence demonstrates that petitioner worked as a dealer in a blackjack game and as a stickman in a craps game. These acts, although unprosecuted, are equivalent to violations of New Jersey criminal statutes; i.e., N.J.S.A. 2C:37-2, promoting gambling and, N.J.S.A. 2C:37-7, possession of a gambling device. The N.J.S.A. 2C:37-7 offense, possession of a gambling device, constitutes an automatic disqualifier for licensure under N.J.S.A.

5:12-86c(1) of the Casino Control Act, by way of N.J.S.A. 5:12-86g which provides that:

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.

I **CONCLUDE**, therefore, that Jeffrey M. George committed acts which are substantially similar to per se disqualifying violations under N.J.S.A. 5:12-86c(1), by way of N.J.S.A. 5:12-86g.

I further **CONCLUDE** that Jeffrey M. George is disqualified from licensure as a junket representative, pursuant to the provisions of N.J.S.A. 5:12-102b.

Petitioner's participation in illegal gambling activities is a most serious act where he is seeking licensure to become involved in the legal gambling industry. The promotion of illegal gambling undermines the very foundation of the State's gaming policy through the subversion of both its purpose and effect. Thus, I **CONCLUDE** that petitioner's participation in the casino operations in any fashion would be inimical to the policies of the Casino Control Act. I **CONCLUDE**, therefore, that the application of Jeffrey M. George for licensure as a junket representative be **DENIED**. Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301.

With regards to the issue as to whether petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, the facts clearly demonstrate that petitioner articulated an untrue account of the events of March 18, 1983, either to this administrative tribunal or to Detective Walraven. In the instant matter, petitioner testified he neither participated in nor operated an illegal gambling activity. Walraven testified and documented petitioner's statement to the Detective concerning petitioner's participation in an illegal gambling activity which lead to petitioner's arrest on March 18, 1983. Moreover, petitioner misrepresented and mislead Walraven to believe that his arrest was the result of an informal gaming activity rather than the truth of the matter that his arrest was the direct result of his involvement with an illegal casino type operation.

Petitioner's conflicting and inconsistent statements resulted in this tribunal's finding that his testimony was and is incredible.

This finding, coupled with petitioner's involvement in an illegal gambling enterprise, can reasonably lead to the CONCLUSION that petitioner lacks the requisite good character, honesty and integrity for casino licensure. Petitioner has failed to demonstrate he possesses the requisite 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, Dkt. No. 79-CL-1 (Commission Decision February 26, 1979) at 15.

In consideration of the eight rehabilitation factors found at section 90h of the Act, reliance is placed, in part, upon the foregoing findings of fact and, in part, upon petitioner's testimony as follows:

Petitioner has applied for casino employee licensure as a junket representative pursuant to N.J.S.A. 5:12-102b. Petitioner had made some prior contacts with licensed casino marketing departments and was advised that he is required to obtain a casino employee license before the casinos would entertain any further discussions. Petitioner would promote his junket operation from the Commonwealth of Virginia if granted licensure.

Petitioner contends that he did nothing wrong, therefore he is not subject to rehabilitation. The acts of petitioner, as charged by the Division, are, however, serious when considering that petitioner was involved in an illegal casino type gambling operation. Although the Virginia indictment against petitioner was dismissed on technical grounds, that fact does not preclude an administrative tribunal from considering the nature of petitioner's acts for administrative purposes. Consequently, this tribunal found the acts of petitioner to be of such a serious nature that his licensure would be inimical to the legitimate gaming industry.

The charged offense occurred on March 18, 1983, when petitioner was twenty-eight years of age. There is no record that petitioner was ever arrested, charged or indicted for a similar offense. His only other record of arrest was for being drunk in public which, he asserts, was subsequently dismissed. Petitioner has

not undergone any psychological or other counselling because he does not believe he is in need of counselling.

I **CONCLUDE** that petitioner's lack of remorse and circumspection, when faced with his contradictory and inconsistent statements at the hearing concerning his involvement in the illegal activity, does not affirmatively demonstrate his rehabilitation.

Therefore, I **CONCLUDE** that petitioner has failed to satisfactorily establish his rehabilitation.

ORDER

Accordingly, it is **ORDERED** that the application of Jeffrey M. George for a casino employee license as a junket representative be and is hereby **DENIED**.

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

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

27 July 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

July 28, 1987
DATE

Alfred S. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 30 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Affidavit Connie Huff
- P-2 Affidavit Lyndell B. Brooks
- P-3 Affidavit Dennis W. Young
- P-4 Career Service Record George, Jeffrey Matthew

For the Respondent:

- D-1 Letter June 27, 1986 to Deputy Attorney General Ellen Hersh from Lt. Robert W. Helm
- D-2 Application - In the Matter of Surveillance and Investigation of an Illegal Gambling Operation Being Conducted at 3369 Shenandoah Avenue NW, Roanoke, Virginia
- D-3 Search Warrant
- D-4 State of New Jersey, Division of Gaming Enforcement

WITNESSES

For the Petitioner:

Jeffrey Matthew George

For the Respondent:

**Detective Sergeant Bobby S. Lugar
Detective Ronald Walraven**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 84-378(a) and (b)
LICENSE NO. 44927-21
REGISTRATION NOS. 42577-40 AND 41697-40
OAL DOCKET NOS. CCC 3936-86 AND
CCC 3937-86 (CONSOLIDATED)
ORDER NO. 87-37-6

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
 : ORDER
v. :
WARREN S. WARE AND ANDRE L. GIBBS, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 30, 1987,

IT IS on this 15th day of October 1987, ORDERED that the initial decision is modified as follows:

Disqualification pursuant to N.J.S.A. 5:12-86(c)(4) requires the identification of a specific inimical offense. Given the conclusion of the administrative law judge that the respondents had not committed the offenses alleged in the complaint, there was no need to address the inimical issue under N.J.S.A. 5:12-86(c)(4) and (g). The finding that the respondents were not disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and (g) is rejected as unnecessary.

ORDER NO. 87-37-6

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 3937-86

AND CCC 3936-86

(CONSOLIDATED)

AGENCY DKT. NO. 84-378

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

Petitioner,

v.

ANDRE GIBBS AND WARREN S. WARE,
Respondents.

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Andre Gibbs and Warren S. Ware, respondents, pro se

Record Closed: July 1, 1987

Decided: August 14, 1987

BEFORE RALPH J. TOLOMEO, ALJ:

PROCEDURAL HISTORY

Petitioner, Division of Gaming Enforcement, filed a complaint with the Casino Control Commission on November 13, 1984, seeking the revocation of respondent Gibbs' casino employee license No. 44927-21 and casino hotel employee registration no. 41697-40 and respondent Ware's casino hotel employee registration no. 42577-40. Respondents requested a hearing with respect to petitioner's action and the matters were

forwarded to the Office of Administrative Law as contested cases, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The cases were scheduled for prehearing conferences. Respondents failed to appear, which gave rise to initial decisions from the Office of Administrative Law determining that respondents had abandoned their hearing requests.

Thereafter, under date of June 10, 1986, the Casino Control Commission remanded the cases to the Office of Administrative Law, having determined that the matters were contested and granting respondents a second opportunity to a hearing.

On July 17, 1986, a prehearing conference was conducted by Stephen W. Thompson, Administrative Law Judge who issued a prehearing order scheduling the matter for hearing for September 18, 1986 before Beatrice S. Tylutki, ALJ. On July 28, 1986, Judge Tylutki ordered the matters consolidated. Because of illness, Judge Tylutki was unable to preside at the hearing on September 18, 1986 and the matter was reassigned to me. On September 18, 1986, a hearing was conducted at Ventnor City Hall, Ventnor, New Jersey. The record in these matters remained open to allow respondent Gibbs to file additional evidence regarding his good character, honesty and integrity. On January 5, 1987, the record in this matter was scheduled to close; however, because of illness, it did not. The same closed on July 1, 1987.

ISSUES

At the prehearing conference on July 17, 1986, the issues stated for determination at the hearing were:

- (1) Whether respondent Gibbs committed acts on September 20, 1984, which constitute statutory disqualification pursuant to N.J.S.A. 5:12-86c(1).
- (2) Whether respondent Gibbs can demonstrate rehabilitation as to the alleged statutory disqualifier pursuant to 90h and or 91b of the Casino Control Act.
- (3) Whether respondent Gibbs possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

- (4) Whether respondents Gibbs's and Ware's continued licensure and/or registration is inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and/or 86g.

EVIDENCE PRESENTED

At the hearing in this matter, petitioner presented Darell Willshire, a New Jersey State Police detective, assigned to the Casino Investigation Bureau, and Frederick Wheaton, a lieutenant of security with the Sands Hotel and Casino. Petitioner offered documents P-1 through P-4 into evidence. Both respondents, Gibbs and Ware, testified on their own behalf.

A summary of the testimony and documents indicates the following occurred on September 20, 1984. Andre Gibbs and Warren Ware had been playing basketball at the West Side Complex. They, along with friends, decided to go to the boardwalk. They were driven in a friend's car. En route, both Gibbs and Ware were dropped off, at their request, in front of the Sands Hotel and Casino so that they could "go to the bathroom." Although Gibbs had been in the facility before, a new entrance had been recently installed and the premises was then under renovation. The bathroom that respondents sought to utilize was off the casino floor. Both Gibbs and Ware entered the casino. At that time, they were observed by New Jersey Police Detectives Riggs and Willshire, a Division of Gaming Enforcement Agent, Walsh and Sands's Security Lieutenant Frederick Wheaton, all of whom believed both individuals to be under the age of 21. Gibbs and Ware were asked to identify themselves. They were also asked their age. Both Gibbs and Ware responded that they did not have any identification and that they were 20 years of age. Gibbs and Ware asked if they could leave and were advised that they could not leave. Detective Riggs said that they were to be taken upstairs. Gibbs objected to going upstairs and protested in a loud voice. Ware told Gibbs that they should go along and get this straightened out. Gibbs refused and was placed under arrest. During this episode on the casino floor, Gibbs yanked away from the law enforcement personnel who were attempting to escort him from the casino floor to the Gaming Enforcement Office, which is located on the second floor of the facility. Det. Willshire and Lt. Wheaton testified that Gibbs used profanities and created a disturbance on the casino floor.

Ultimately, Gibbs agreed to accompany the officers to the Division of Gaming Enforcement office and, accompanied by Detective Riggs, they proceeded up the steps to that location. Gibbs and Ware offered testimony that Detective Riggs taunted Gibbs while climbing the stairs and continued to do so when they got to the office.

Detective Riggs' report (P-1 Evidence) states: "Upon arrival at the office, an altercation broke out between the undersigned and the accused number 1 (Gibbs). He was subdued and additionally charged with aggravated assault on a police officer."

A lengthier version of the incident from Detective Riggs is contained in (P-2 Evidence Inv. Report of DSG Spingler), which states:

Once inside the office, Detective Riggs said he had Gibbs sit in a chair in the supervisor's room and again queried him about his age and identity. According to Detective Riggs, Gibbs got up from his chair and attempted to walk towards the door. Detective Riggs indicated that he tried to have the accused sit down again but was punched in the left eye by Gibbs. He said that Gibbs pushed him into a desk and a struggle ensued. Detective Riggs related that he defended himself and struck Gibbs in the right eye with his fist. He further advised that Gibbs broke away from his grasp and punched him in the mouth. Detective Riggs stated that his right-hand ring finger was bitten by the accused during the altercation.

Other State Police personnel, Division of Gaming Enforcement personnel and Sands security personnel, including Detective Willshire and Lieutenant of Security Wheaton, became involved during the struggle because the ensuing noise brought it to their attention. Detective Willshire testified that he observed Gibbs punch Detective Riggs in the face and he (Willshire) grabbed Gibbs from behind in an attempt to restrain him, at which time Gibbs was able to punch Riggs in the face with his right fist. Ultimately, Gibbs was subdued and handcuffed. During the incident between Riggs and Gibbs, Warren Ware, who was seated in the hallway area, heard what he described as "fighting" in the other room and ran under the arms of one of the Division of Gaming Enforcement agents to see "what was going on." Ware testified that he observed Gibbs over a desk with Riggs on top of the table striking Gibbs in the head with handcuffs. At that time, Ware was ordered by one of the DGE personnel, Charles Hale, to go back and sit down, which he did.

According to Ware's testimony: "They had Gibbs over there still working him over . . . Riggs came out shaking his hand like this and he is looking at his hand. He punches me in the eye and goes out the room."

Respondent Gibbs testified that he and Ware were approached by four gentlemen who surrounded them and flashed badges saying they were State Troopers. They were asked how old they were and both Gibbs and Ware replied they were 20 years old. They were told that they were too young to be in the casino. Ware and Gibbs said that they would leave. According to Gibbs, they were both grabbed and told, "you're not going anywhere." Gibbs was then asked his name, to which he responded that he did not understand what was going on. At that time, Gibbs testified that Riggs told him to "come with me." Gibbs asked Riggs what was the "probable cause." Riggs responded, "I'll fuck you up is the problem," to which Gibbs responded that he was not going anywhere. Gibbs further testified that at this time, Ware said, "Let's go with him and get this over with." Gibbs responded that he was not going anywhere and demanded to know the probable cause. At Ware's urging, Gibbs agreed to go with them.

Gibbs further testified that once they were off the casino floor at the employee's entrance, Riggs started pushing him stating, "Oh, do you wanna fight now? Do you want to be bad? Go ahead, do something." Gibbs testified that upon getting to the top of the stairs, Riggs pushed him a little and then into the room. Riggs then pushed him up against the desk and Gibbs did not know where Warren Ware was. Thereafter, Gibbs stated that:

He [Riggs] throws me out of this room, throws me into another room on the desk, pushing me up against the wall and then into the third room where in the meantime sits three or four desks and its two other detectives, I believe they are detectives, that's what they are classified as. So I stand up in the middle of the room like this with my hands behind my back and Riggs was constantly saying things.

Do something now. Fight me now. Argue now." So he pushes me, I do nothing.

The next time he pushed me and he pushed me over a desk . . . and when he pushed me over the desk, I touched the floor, came back. At this point he grabbed me. I grabbed him and we began to wrestle. The struggle went on for maybe two-to-three minutes and at this time I don't know how many state troopers in the office, at least five at least. Now, in the meantime I am defending myself.

Gibbs then related that he was held by other detectives when Riggs left the room and returned with a sharp metal object and began to hit him in the head. After this, he was handcuffed and struck in the face by Detective Riggs.

Thereafter, both Gibbs and Ware were charged in complaints with violation of N.J.S.A. 5:12-119(a) (entering the Sands Casino while under the legal age of 21 years); Ware was charged with a violation of N.J.S.A. 2C:29-1 (preventing Detective Riggs from making a lawful arrest by means of physical interference); Gibbs was charged with a violation of N.J.S.A. 2C:29-2 (purposely preventing Detective Riggs from affecting a lawful arrest), and N.J.S.A. 2C:12-1b(1) (causing injury to Detective Riggs by striking him about the face and also biting his right hand ring finger). The complaints were referred to the Atlantic County Prosecutor's office under date of October 22, 1984, which remanded the cases to the Atlantic City Municipal Court, amending the aggravated assault charge as to Gibbs to one of simple assault, a violation of N.J.S.A. 2C:12-1a (1).

Although Gibbs refused medical attention that evening, a few days later he testified that he was taken to the Atlantic City Hospital with injuries described as large cuts and gashes on the top of his head, a swollen black eye and a concussion.

He spent a month in jail before he was able to make bail. Ware was able to make bail within two days.

After several scheduled court dates which were adjourned, the charges against both Gibbs and Ware were dismissed by the municipal court judge on August 9, 1985. Gibbs and Ware testified that Det. Riggs never appeared at any of the scheduled court hearing dates.

FINDINGS OF FACT

From the evidence presented, there is no dispute that Andre Gibbs and Warren Ware were 20 years of age on September 20, 1984, and were on the casino floor of the Sands Casino. Both respondents acknowledge this fact and further indicate that they told the law enforcement and security personnel the same when approached. This is Found as Fact.

Although Gibbs maintains he was not sure who these four men were, he acknowledges that they " flashed badges and said they were State Police." I FIND as fact that the State Police detectives properly identified themselves as police officers in the performance of their duty.

What follows thereafter is in dispute. The evidence and testimony through petitioner's witnesses and documents suggest that respondent Ware was cooperative and attempted to influence Gibbs to cooperate. Petitioner's evidence paints Gibbs as an individual who was uncooperative, used profanity in a loud voice, and created a disturbance on the casino floor. For this conduct, he was arrested and escorted from the casino floor. Petitioner's evidence, exclusively through the reports of Detectives Riggs (P-1 Evidence) and Detective Sergeant Spingler (P-2 Evidence) suggests that once in the office in custody, Gibbs attempted to leave, and Riggs, in attempting to detain him, was "pushed into a desk and a scuffle ensued" during which Gibbs struck Riggs in the left eye, Riggs struck Gibbs in the right eye, and Gibbs again struck Riggs in the mouth. Riggs also told Detective Spingler that his right-hand ring finger was bitten by Gibbs during the altercation.

In contrast to the reports, respondent Gibbs testified that once off the casino floor, he was goaded by Detective Riggs and ultimately was required to defend himself when he was pushed around in the office. He testified he was held by others and struck repeatedly by Riggs with a metal object. Respondent Ware corroborates Gibbs to the extent that he heard what he described as "someone being thrown around in the other office" and, upon attempting to see what was occurring, observed Gibbs pushing over a desk being held and Riggs hitting Gibbs. Ware further testified that he was punched by Riggs when Riggs left the office to use the bathroom.

"Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone's Estate, 5 N.J. 514, 522 (1950).

In applying this standard, I have had the opportunity to observe both respondent Gibbs and respondent Ware testify under oath. Petitioner did not call Detective Riggs and represented that Detective Riggs was unavailable due to an injury he sustained which was not related to this incident.

Additionally, other witnesses who were in the office when the altercation started were not called by petitioner and only their brief comments, which are inconsistent, are contained in Detective Spingler's report (P-2 Evidence). It must be noted that Detective Riggs did not appear at any of the scheduled municipal court hearing dates and, because of the lack of his appearance, the charges against both Gibbs and Ware were dismissed. There is no evidence as to why he did not appear at those proceedings and inferences can be drawn therefrom.

I **FIND** that respondent Gibbs, when asked for identification and not being able to provide the same, became loud and resistant to requests to accompany the officers to the DGE office. I further **FIND** that he was arrested at that time and became somewhat belligerent by pulling away from the officers when they attempted to physically escort him from the casino floor. I further **FIND** that he did ultimately accompany the officers and that it was as a result of respondent Ware recommending that they do so. I further **FIND** that respondent Ware was cooperative at all times throughout this initial incident.

Having the opportunity to observe respondents Gibbs and Ware, and also specifically reviewing Detective Riggs' report (P-1 Evidence), I **FIND** that respondent Gibbs, although resistant, belligerent and somewhat hostile, did not initiate the physical confrontation between himself and Detective Riggs. This finding is primarily based on the testimony of respondent Ware, whom I **FIND** credible, who stated that he was not in the room but heard Riggs' comments to Gibbs when climbing the stairs and heard what he believed to be respondent Gibbs being thrown about the other office. At that time, he ran to that office and observed Gibbs subdued by other officers and then struck repeatedly by Detective Riggs. Additionally, in his report (P-1 Evidence), Detective Riggs described the situation as "Upon arrival at the office, an altercation broke out between the undersigned and accused number 1." These findings also consider the comments of State Police Detective; Martin Higgins, and Division of Gaming Enforcement Agents Charles Hale and Daniel Keitt (P-2 Evidence), who indicate they were in the office when the "altercation" between Riggs and Gibbs began. Higgins said that Gibbs "suddenly struck the detective in the face with his fist." Hale said that Gibbs "suddenly became violent and started to push Detective Riggs, whereby the detective (Riggs) grabbed him, trying to restrain his arms and place him into a chair." Keitt states he was seated with his back towards Gibbs, who had to be restrained by Detective Riggs. Keitt then states that as Riggs attempted to

restrain Gibbs, Gibbs punched Riggs about the face and head, at which time he (Keitt), along with Willshire, Higgins and Walsh, assisted Riggs and handcuffed the accused.¹

In summary, I **FIND** as fact that both respondents Gibbs and Ware were underage when they entered the floor of the Sands Casino on the evening of September 20, 1984, for purposes of utilizing the bathroom. They responded that they were 20 years old when asked their age. I further **FIND** as fact that they had no identification and that respondent Ware was cooperative when asked to accompany the investigating officers to the Division of Gaming Enforcement office, but respondent Gibbs was not. He became loud and abusive and refused to accompany the officers. Further, he pulled away when being placed under arrest, but ultimately voluntarily accompanied the officers to the office.

I further **FIND** as fact that a physical altercation between respondent Gibbs and Detective Riggs occurred in the office, during which respondent Gibbs wrestled with Detective Riggs and struck Detective Riggs on at least two occasions. However, I am not persuaded by a preponderance of the credible evidence that respondent Gibbs initiated this altercation for all of the reasons stated.

DISCUSSIONS AND CONCLUSIONS

ISSUE 1: Statutory Disqualification, and ISSUE 2: Rehabilitation—as to Respondent Gibbs

At the conclusion of the hearing in this matter, petitioner represented that the issue of respondent Gibbs' commission of a statutory disqualifying offense was withdrawn in that "certain physical damage had to be sustained by the detective, even though he was in the performance of his duty and that under the Casino Control Act, what happened to Detective Riggs did not come to that aggravated assault to such a degree as to be a statutory disqualifier."

A report of accidental injury or occupational disease, P-3 in Evidence, indicates that Detective Riggs sustained a contusion under the left eye, contusion and laceration of lip and laceration to right ring finger.

¹ It should be noted that none of these individuals testified, and this information is gleaned through the report of Detective Spingler (P-2 Evidence).

N.J.S.A. 2C:12-1b(5)(a) states:

A person is guilty of aggravated assault if he: . . .

Commits a simple assault as defined in sub-sections a.(1) and (2) of this section upon

- (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; . . . Aggravated assault . . . 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 reference to sub-sections a.(1) and (2) require that the perpetrator "attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or [n] egligently causes bodily injury to another with a deadly weapon."

Under the facts as found, and based on petitioner's representations, I do not find that the evidence establishes sufficient bodily injury nor that Gibbs either attempted to cause or purposely, knowingly or recklessly caused odily injury to Detective Riggs when he was goaded into an altercation and the episode exploded into a mutually combative situation. I **CONCLUDE** petitioner has not established by a preponderance of the credible evidence that respondent Gibbs committed the third degree crime of aggravated assault. There is not need, therefore, to determine the issue of rehabilitation with respect to respondent Gibbs regarding a statutorily disqualifying offense.

ISSUE 3: Inimicality as to Respondents Gibbs and Ware

One issue remaining is whether respondents Gibbs' and Ware's continued licensure and/or registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) and/or N.J.S.A. 5:12-86g.

In order to determine whether or not respondents' conduct is inimical to the policies of the Casino Control Act and to casino operations, it is necessary to determine whether such conduct would unavoidably tend to erode the public trust and confidence in the credibility, integrity and stability of casino operations and the regulatory framework created by the Casino Control Act. As to respondent Ware, who holds a casino hotel employee registration, it is alleged that he was under the legal age on a casino floor and obstructed justice when he "physically interfered with Detective Riggs attempting to prevent him from making a lawful arrest."

N.J.S.A. 5:12-119(a) provides:

No person under the age at which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino except by way of passage to another room.

The penalty for this offense is stated under N.J.S.A. 5:12-1.22 and determines a person violating any provision of the Act, the penalty for which is not specifically fixed... is guilty of a disorderly person offense.

Under the facts as found, Ware acknowledged to the investigating authorities that he was 20 years of age but was going to use the bathroom. He had no money or identification and cooperated with the investigating authorities as well as convincing Gibbs to accompany them to the office. All witnesses' accounts indicate that he was cooperative. When he was seated as instructed in the hallway outside the DGE office and heard what he described as "Gibbs being thrown about in the other room," he ran under the arm of one of the detectives and observed Gibbs being restrained. When directed to return to his seat, he did so. The investigating authorities allege that he was attempting to intercede in the altercation, which he denies. It is just as plausible that he wished to intercede on Gibbs' behalf as he had done previously on the casino floor by requesting Gibbs to cooperate. Petitioner's evidence indicates and I have found that Gibbs was arrested on the casino floor.

I **CONCLUDE** that respondent Ware's conduct in entering the casino to use the bathroom is not prohibited under the provision of N.J.S.A. 5:12-119(a) which allows him to enter a licensed casino under age by way of passage to another room. I further **FIND** and **CONCLUDE** that under the facts as found, respondent Ware did not violate the provisions of N.J.S.A. 2C:29-1 in that he did not attempt to prevent Detective Riggs from performing an official function: that is, making a lawful arrest. Therefore, I **CONCLUDE** that respondent Ware's conduct on the evening in question is not inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and/or N.J.S.A. 5:12-86g. I **CONCLUDE** that his registration should not be revoked.

As to respondent Gibbs, his conduct on the night in question differs from that of respondent Ware. Although he denies being loud, abusive and belligerent on the casino floor, all evidence, including that of respondent Ware, indicates the contrary. He refused to cooperate with the investigating authorities by going to the Division of Gaming Enforcement Office in the Sands facility. His continued conduct created a disturbance

which caused his arrest. He pulled away when the authorities attempted to physically escort him from the casino floor. However, consideration of rehabilitation factors must be reviewed before a conclusion can be made as to whether or not the conduct in question is or is not inimical under N.J.S.A. 5:12-86c(4). Donna Davis v. State of New Jersey, Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (August 12, 1985), aff'd by Commission (December 27, 1985).

A review of the information regarding rehabilitative factors presented by respondent Gibbs revealed that he is a craps dealer at the Trump Castle Casino. He is also a student at Atlantic County Community College. He has been actively involved in sports and stated that the summer following the incident in question, he met Detective Riggs and had a conversation during which Detective Riggs said he was sorry this happened. They shook hands and he hasn't seen Detective Riggs since. Respondent Gibbs has never been in trouble before nor since this incident, and as he stated at the hearing:

I can look at it from a logical standpoint and say to some degree that I was in the wrong maybe for not going upstairs with him when they said go upstairs. I can analyze that and see that now. I can see my feelings and I can see their feelings, you know. But still in all, then it's the other side as far as being hit and abused. Those types of things didn't have to happen. They didn't have to happen. They happened, you know. That's life. Me and Mr. Ware were trying to get these things over with in the past and move along with our lives because this is just a stumbling block. We are trying to improve ourselves, better ourselves and hopefully, you know, whatever happens happens. In the meantime, since then I have enrolled in college, I have held my job trying to get . . . better myself as a better person. I am not out here on the street being any type of criminal. I don't steal. I don't do drugs. I don't do any of these things. And I can look at that as positive. I know people within the city and other areas that don't want to work and rather get welfare and rather be supported by the state. I am not that type of person.

Regrettably, after being afforded an opportunity to provide additional evidence through letters from people who know him, respondent Gibbs failed to do so. Notwithstanding this failure, in reviewing the facts and circumstances presented through the evidence, respondent was 20 years of age when he walked onto the casino floor on September 20, 1984, to use the bathroom. He has since become a craps dealer at the Trump Castle Casino and obtained his casino employee license. He has, apart from this incident, never been in any trouble. It appears that this was an isolated and aberrant incident. Respondent Gibbs lives in Atlantic City and is attempting to improve the quality of his life through casino employment. Although his belligerent attitude certainly

precipitated the disturbance on the casino floor, caused his arrest, and could be considered a lack of respect for authority, in the totality of the circumstances, it does not rise to the level of egregious conduct. It certainly gave rise to the physical altercation which occurred in the DGE office, from which respondent Gibbs sustained injuries and spent more than a month in the Atlantic County Jail. It appears that his conduct was met in kind.

Under all the circumstances, having reviewed the conduct of the evening, respondent Gibbs' acknowledgment during the hearing of his poor judgment and lack of cooperation initially, and further, his present position as dealer in the Trump Castle Casino and enrollment at Atlantic County Community College, I **CONCLUDE** that respondent Gibbs' conduct complained of by petitioner is not inimical to the policies of the Casino Control Act and the casino industry.

ISSUE 4: Good Character, Honesty and Integrity as to Respondent Gibbs

The final issue is whether or not respondent Gibbs has established by clear and convincing evidence the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2). This section provides that each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity.

At the conclusion of the hearing, respondent Gibbs was afforded an opportunity to submit such information from his employer, school instructors and any other persons whom he believed would have knowledge regarding these qualities. As previously stated, he did not provide the same.

Under § 90b, which incorporates § 89b(2) by reference, respondent Gibbs is required to establish by clear and convincing evidence his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (Feb. 26, 1979). In that determination, 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. When the Division raises objection to licensure under § 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 of the suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

It is readily apparent that respondent Gibbs' conduct on the evening of September 20, 1984, was certainly less than minimum social standards require. As previously stated, he was loud, offensive and belligerent. He had the misfortune to suffer the consequences of his behavior. Since that time, he has demonstrated his abilities to rise above most of it. I must also observe that both respondents Gibbs and Ware came to this hearing unrepresented and believed that since the charges had been dismissed in municipal court, the matter was over. After lengthy discussions, some of which appear on the record, they recognized the seriousness of this matter and conducted themselves accordingly. There is nothing apart from this incident that indicates Gibbs is not a person of good character, honesty and integrity. Additionally, this episode occurred during a time when he was a registrant. No evidence has been offered to show that anything occurred prior to or after the evening of September 20, 1984, which creates suspicion regarding his good character, honesty and integrity. Mr. Gibbs has accepted the responsibility for his conduct, testified as to how he has improved his life since the incident and that he wants to keep his job. I **CONCLUDE** that respondent Gibbs presents no risk to the public or to the integrity of the gaming industry. I further **CONCLUDE** that at this time, respondent Gibbs is a person of good character, honesty and integrity, and is therefore suitable for licensure. He has established the same by clear and convincing evidence.

DISPOSITION

It is **ORDERED** that the complaint seeking the revocation of the registration of respondent Ware and the registration and licensure of respondent Gibbs 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.

August 14, 1987
DATE

Ralph J. Tolomeo
RALPH J. TOLOMEO, ALJ

August 14, 1987
DATE

Receipt Acknowledged:

Christina Lopez
CASINO CONTROL COMMISSION

AUG 19 1987
DATE

Mailed to Parties:

Philip J. Lopez
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Investigation Report
- P-2 Investigation Report
- P-3 Employer's first report of accidental injury
- P-4 Complaint and Status of Complaint

WITNESSES:

FOR THE PETITIONER:

Darell Willshire
Frederick Wheaton

FOR THE RESPONDENT:

Andre Gibbs
Warren Ware

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 85-362 AND
87-EA-160
REGISTRATION NO. 37228-40
APPLICATION NO. 60962-21
OAL DOCKET NO. CCC 2215-87
ORDER NO. 87-46-4

APPLICATION OF HUMBERTO D. GIRALDO
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

HUMBERTO D. GIRALDO,

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 (Commission); and exceptions to the initial decision having been filed by both parties; and the Commission having considered the entire record of these proceedings at its public meeting of December 2, 1987,

IT IS on this 4th day of December 1987, ORDERED that the initial decision is modified as follows:

The Commission has repeatedly found that the factors to be considered for rehabilitation and good character, honesty and integrity, although not co-extensive, do significantly overlap. Application of Charles Clenthscale for a Casino Employee License, Docket No. 79-EA-113, April 22, 1980. Considering the ALJ's favorable findings on rehabilitation, the Commission concludes

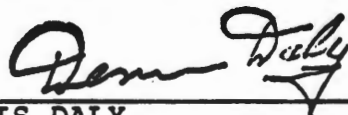
ORDER NO. 87-46-4

that Humberto D. Giraldo has established
his good character, honesty and
integrity by clear and convincing
evidence pursuant to N.J.S.A.
5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the application is granted
and the complaint is dismissed substantially for the reasons
stated in the initial decision, as modified, which is
incorporated herein by reference and made a part hereof.

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 2215-87

AGENCY DKT. NO. 87-EA-160, 85-362

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

Petitioner,

v.

HUMBERTO DEJESUS GIRALDO,
Respondent.

**Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

Daniel L. Cohen, Esq., for respondent (Krantz and Cohen, attorneys)

Luis Correa, Interpreter, for respondent

Record Closed: July 13, 1987

Decided: September 29, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

On February 27, 1987, the Division filed a complaint with the Casino Control Commission seeking revocation of the respondent's casino hotel employee registration because he was convicted of making false representations as to his social security number, a federal offense.

On March 16, 1987, the Division filed a letter with the Commission objecting to the respondent's application to be licensed as a slot attendant for the same

reason and for the additional reason that he lacks the good character, honesty and integrity for casino employee licensure as required by the Casino Control Act. The respondent requested a hearing on January 8, 1986 [sic] and the matters were consolidated on March 26, 1987. The matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case on April 1, 1987, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 19, 1987 and a plenary hearing was conducted on July 13, 1987 at which time the record closed.

FINDINGS OF FACT

The facts of this case are uncontested. Humberto D. Giraldo came to the United States illegally from Columbia, S.A. on September 14, 1981, and needed a social security number in order to obtain work. He made one up. He obtained a valid social security number in 1983. His prior use of a fictitious social security number was discovered in 1985 and he was criminally processed in 1985 and 1986. He is still on probation.

The exact charge to which the respondent pled guilty is as follows:

"That on or about March 22, 1983, at Atlantic City, in the District of New Jersey, the defendant

HUMBERTO DEJESUS GIRALDO - GALEANO a/k/a HUMBERTO GIRALDO, for the purpose of obtaining employment, wages, and other job-related benefits, knowingly and wilfully and with intent to deceive did falsely represent on a Tropicana Hotel/Casino employment application the number 083-74-5011 to be the social security account number assigned to him by the Secretary of Health and Human Services, when, in truth and in fact, as the defendant then and there well knew and believed, the said number was not the social security account number assigned to him by the secretary.

In violation of Title 42, United States Code, Section 408 (g)(2)."

LEGAL DISCUSSION

While the purpose of the Act to which the respondent pled guilty seems to be the punishment of persons who seek to obtain unauthorized or unearned benefits or third party payments from the Social Security System, or the Internal Revenue Service inter alia, the respondent clearly violated the language of the statute if not the spirit of the statute.

The issue raised is whether this mean spirited prosecution resulted in a conviction which would be substantially equivalent to a conviction under a New Jersey Statute collected under N.J.S.A. 5:12-86. It is argued that the offense is substantially similar to N.J.S.A. 2C:21-4(a). That statute reads as follows:

"Except as provided in subsection b. of this section, 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"

Subsection b of this section is inapplicable because that section deals with financial statements.

The history of the statute is not illuminating. According to the Final Report of the New Jersey Criminal Law Revision Commission, October 1971 Volume II, Commentary; the statutes which 2C:21-4 was intended to supplant were:

- 2A:91-3 False reports as to solvency of banks
- 2A:91-5 False entries by bank officers and employees
- 2A:91-6 Banks and trust companies, false statements, entries or reports to deceive examiners
- 2A:91-7 Building and loan and other associations, false statements, entries or reports to deceive examiners
- 2A:91-8 Building and loan and other association director or officer; false statement or report or misrepresentation
- 2A:111-9 Destruction of books of corporation, partnership, or association, or making false entries therein (See *State v. Cronin*, 86 N.J. Super 367 (App. Div. 1964, aff'd., 44 N.J. 5891 (1965).
- 2A:111-10 Keeping fraudulent accounts by directors, officers, etc., of corporation, partnership or association

- 2A:111-11 Making or circulating false statements by officers, e tc.,
of corporation, partnership or association
- 2A:111-12 Issuing false stock
- 2A:111-39 Dual contracts for purchase or sale of real property;
violations
- 2A:119-4 Stealing deeds, leases, account books and other written
instruments
- 2A:122-3 Malicious destruction of written instruments

None of these would have described the respondents conduct in utilizing a false social security number in order to conceal his illegal alien status.

To further complicate the construction of the statute, the drafters acknowledge that they have departed from the Model Penal Code; but they do not explain. Finally, the legislature when it adopted 2C:21-4, changed the language from that proposed by the Commission.

The cases collected in the annotated statutes after 2C was adopted are concerned with various aspects of theft from trusts or corporations by means of altered documents or else the concealment of irregular banking or insurance activities by means of false reports. In every case there appeared to be a victim or potential victim who suffered or could have suffered economic loss.

The common thread that appears to run through the 2A statutes and the 2C cases is the proscription of economic injury by one person or institution to another by means of false writings or records keeping. Indeed the all important purpose clause of 2C:21-4 includes the word "injury. " What is difficult however is the fact that it also includes the words 'to deceive...anyone" and "to conceal any wrongdoing."

INJURY

Clearly the respondent did not intend to injure anyone by utilizing a false social security number unless he intended to make a false social security claim. But in 1983 he obtained a valid social security number and thereafter used only his valid number. His sole intention was to obtain employment , and in order to do so he

used a false social security number to conceal his illegal alien status. His employer is bound to contribute to the system and would have done so no matter who it hired.

DECEIVE

That the respondent intended to deceive is apparent. He intended to deceive as to his illegal alien status. This deception did not harm his employer. At that time it was not a crime to hire an illegal alien.

On its face the statute appears to proscribe all deceptions contained in writing. Clearly that cannot be the effect of the statute. Otherwise poets and advertisers would be misdemeanants and speech writers would be felons.

CONCEALING WRONGS

It is wrong to come to the United States without permission because it is now illegal. It is only illegal because, although it is only a social policy of the United States Government, it is enforced penally. Therefore it is a crime mala prohibita and not mala in se.

Nevertheless the respondent was charged as a criminal offender and pled guilty to a criminal offense. He therefore had a consciousness of guilt. He took responsibility for a deception uttered in order to conceal a crime. A crime is a wrong.

DISQUALIFICATION

I **CONCLUDE** that the respondent committed an offense (a violation of Title 42 USC 408 (g)(2)) which is or would be a violation of New Jersey statute N.J.S.A. 2C:21-4a; a crime listed under N.J.S.A. 5:12-86c(1) and is therefore a disqualification from casino employee licensure pursuant to N.J.S.A. 5:12-90e and 91b unless he is saved from disqualification by an affirmative showing of rehabilitation pursuant to N.J.S.A. 5:12-90h and 91d.

REHABILITATION

The rehabilitation section of the casino control act requires the following findings of fact:

1. The respondent is a kitchen porter, utility man and steward. He has applied for a position as a slot attendant and has graduated as a blackjack dealer.
2. The offense was not serious. It was incidental to his commission of an immigration offense. He did not intend the harm which the statute seeks to prevent.
3. The offense occurred because the respondent sought to conceal his illegal alien status.
4. The offense occurred on March 22, 1983.
5. The respondent was approximately 32 years old when the offense was committed.
6. The offense occurred several times from 1981 to April 1983 and then stopped when the respondent obtained a valid social security card.
7. The social conditions which contributed to this offense occurred primarily in Columbia, S.A. They resulted in the respondent immigrating illegally to the United States. Once here, he had to obtain employment in order to live and to send money back to his family in Columbia.
8. The respondent is still on probation. In addition, he conformed his behavior to the law by obtaining a valid social security card prior to his arrest and conviction for using a false social security number.

I **CONCLUDE** that the respondent is rehabilitated pursuant to N.J.S.A. 5:12-90h and 91d.

CHARACTER

A further requirement of casino employee licensure, but not of registration, is possession by the applicant of good character, honesty and integrity pursuant to N.J.S.A. 5:12-90b and 89b(2).

There is no presumption that persons possess good character, honesty and integrity. It is incumbent upon applicants to prove it by clear and convincing evidence. N.J.S.A. 5:12-89b(2).

The fact finder shall consider...data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10 year period immediately preceeding the filing of its application." N.J.S.A. 5:12-89b(2).

This respondent has been a resident in the United States only 6 years, 2 of which were spent as an illegal alien. His family is in Columbia and he sends its members money. As a result he lives in reduced circumstances, without a car, television or VCR. He is a rentor and not a property owner.

He apparently has few if any business, professional and/or personal associates. These are apparently unremarkable since no one mentioned them at the hearing. He tells us that he has no criminal record in Columbia and, but for the federal conviction which occasioned this hearing, he has no other criminal record in the United States. His supervisors report that he is a good worker. His employment record is somewhat spotty. He has experienced some emotional illness not defined at the hearing.

None of these facts, including the conviction, convince me that the respondent is an unsavory character. The preponderance of the evidence is that the respondent is in the process of adjusting himself to a new life and circumstances very different from what he was accustomed to in Columbia.

I am not clearly convinced that the respondent has good character, honesty and integrity. It may be too soon in the adjustment to tell.

I therefore **CONCLUDE** that the respondent has failed to prove by clear and convincing evidence his reputation or possession of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) and 90b.

DISPOSITION

I **ORDER** that the complaint filed herein seeking revocation of the respondent's casino hotel registration be **DISMISSED** and I **FURTHER ORDER** that the respondent's application for a casino employee gaming 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 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.

Sept. 29 1987
DATE

10/2/87
DATE

OCT 5 1987
DATE

dho


EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Heide Vandegrift
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

Humberto Giraldo

For the Respondent:

Humberto Giraldo

EXHIBIT LIST

For the Petitioner:

- P-1 Arrest warrant - April 9, 1985
- P-2 NJ State Police report - April 10, 1985
- P-3 NJ State Police arrest report - April 12, 1985
- P-4 Criminal Ind. No. 85-164 (AET)
- P-5 Judgment of Conviction

For the Respondent:

- R-1 Letter - Caesars
- R-2 Letter - Trump's Castle
- R-3 Letter - Harrah's Marina
- R-4 Personal documentation - Claridge
- R-5 Letter - NJ Department of Labor
- R-6 Various documentation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-136
OAL DOCKET NO. CCC 3858-86
ORDER NO. 87-34-15

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

Complainant, : AMENDED ORDER

v. :

GNOC, CORP. :

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision - settlement by the Office of Administrative Law resolving the complaint of the Division of Gaming Enforcement against the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of September 9, 1987,

IT IS on this *28th* day of September 1987, ORDERED that the initial decision - settlement is adopted; and

IT IS FURTHER ORDERED that GNOC, Corp. pay a civil penalty in the amount of \$1,700, as stipulated in the settlement, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 3858-86

AGENCY DKT. NO. 86-136

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

Petitioner,

v.

**GNOC, CORP., t/a GOLDEN
NUGGET HOTEL CASINO,**

Respondent.

**Wendy Alice Way, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Latha A. Gilliam, Esq., for respondent

Record Closed: May 10, 1987

Decided: July 8, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The New Jersey Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed a complaint before the Casino Control Commission (Commission) alleging that respondent GNOC, Corp., t/a Golden Nugget Hotel Casino (GNOC) violated certain New Jersey Alcoholic Beverage Control (ABC) statutes and regulations, as incorporated by reference into the New Jersey Casino Control Act (Act),

as well as regulations promulgated by the Commission, by illegally decanting wine and illegally bottling wine in improperly labeled containers.

PROCEDURAL ASPECTS

The Division filed its Complaint before the Commission on April 28, 1986, which was subsequently served upon respondent GNOC. Respondent filed its Answer by way of Notice of Defense on May 20, 1986. On June 13, 1986, 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 24, 1986, a prehearing conference was held at which respondent GNOC propounded a motion to stay the proceedings together with a Petition and Supporting Affidavit, seeking a Declaratory Ruling by the Commission for an interpretation of certain statutes and administrative regulations under the jurisdiction of the ABC and Commission. The Division did not object to GNOC's application for a stay pending a determination by the Commission. Respondent GNOC's motion for a stay was granted by the undersigned by way of the prehearing order dated July 28, 1986, and subsequently by way of an Order dated August 5, 1986.

On August 22, 1986, this tribunal issued an Order of Consolidation of the instant matter with the pending matters entitled State v. Claridge at Park Place, Inc. (OAL DKT. NO. CCC 4452-86, Agency Dkt. No. 86-137), and State v. Bally's (OAL DKT. NO. CCC 4448-86, Agency Dkt. No. 86-186). On September 8, 1986, the Commission ordered that respondent GNOC's petition for a declaratory ruling be dismissed.

A prehearing conference was conducted on October 16, 1986, at which, among other things, the issues to be determined were agreed to and set forth on the record. It was further agreed by all parties that a second prehearing conference was to be held on February 13, 1987, with the plenary hearing scheduled for February 23 through March 5, 1987. At the February 13, 1987, second prehearing conference, respondent GNOC, joined by respondent Bally's and Claridge, propounded and served upon the Division a Motion to Compel Discovery. The Division propounded and served upon all respondents a Motion for Summary Judgment in its favor.

SETTLEMENT DISCUSSIONS

During the pendency of the herein consolidated matters, all parties to these actions were aware that a similar matter was before the OAL and the Commission in the matter of State v. Greate Bay Hotel and Casino, t/a Sands Hotel and Casino (OAL DKT. NO. CCC 3857-86, Agency Dkt. No. 86-134, initial decision December 18, 1986; Commission's Final Order, March 16, 1987). As a consequence of the Commission's decision and final order in Greate Bay, the parties to the instant actions engaged in intensive settlement discussions and negotiations. The hearing dates were, therefore, adjourned and the parties were able to enter into duly executed Consent Order of settlement of the issues in controversy.

SEVERANCE OF THE CONSOLIDATED MATTERS

Having carefully reviewed and considered the entire record before me, I hereby move, sua sponte, to sever the consolidation of the three cases previously ordered consolidated for hearing. This purpose of this action is to deal fairly and independently with the parties so as not to confuse the resultant settlements and penalties as agreed upon by the individual respondents. Accordingly, this initial decision is concerned only with the resolution of the matter between the Division and respondent GNOC.

THE SETTLEMENT AGREEMENT

As a consequence of the settlement discussions and negotiations, the parties entered into a duly executed Consent Order which is set forth in toto as follows:

THIS MATTER, having come before the Honorable Lillard Law, A.L.J., the Judge designated to preside over this contested matter which has been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Alice Way, Deputy Attorney General, and Latha A. Gilliam, Esquire, Attorney for respondent, GNOC, CORP., an pursuant to said discussions, the following facts have been agreed upon and stipulated:

1. Plaintiff, by and through its Division of Gaming Enforcement, now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, C.100, N.J.S.A. 5:12-1 et seq.) (hereinafter "the Act") of enforcing said Act and the regulations promulgated there-

under by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, GNOC, Corp., t/a Golden Nugget Hotel Casino (hereinafter "Golden Nugget"), 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 Boston and Pacific Avenues, in the City of Atlantic City, County of Atlantic and State of New Jersey.
3. Golden Nugget is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was initially issued to Golden Nugget effective October 14, 1981 and has been renewed annually on that date. Golden Nugget has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.
4. Golden Nugget is the holder of, and operates pursuant to, a Certificate of Operation effective December 12, 1980 at which time Golden Nugget was the holder of a temporary casino permit. Said Certificate of Operation entitles Golden Nugget to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder.
5. By resolution dated December 4, 1985, the Commission renewed respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the period December 12, 1985 through December 12, 1986.
6. Pursuant to its C.H.A.B. license, Golden Nugget is authorized to serve patrons of its casino hotel alcoholic beverages as well as to store alcoholic beverage inventories on-site in certain specific areas authorized for same.
7. On or about October 28, 1985, the Division conducted an on-site inspection of Golden Nugget's casino hotel facility.
8. Said inspection resulted in the Division's discovery that 18 liter casks of Almaden Burgundy and Chablis were used to fill 5 gallon metal canisters which dispense the wine to the Sweetheart Cafe. The metal canisters bear labels which state "White" and "Red".
9. On or about December 10, 1985, the Division conducted an on-site inspection of Golden Nugget's casino hotel facility.

10. Said inspection resulted in the Division's discovery that surplus wine left over from banquets had been stored in the Banquet Storage Area in fourteen (14) unlabelled carafes.
11. The Golden Nugget has received no prior notices from the Division concerning the violations alleged in the Division's complaint.

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charged Golden Nugget for various violations of N.J.S.A. 5:12-103 and the regulations promulgated thereunder as well as Title 33 and the regulations promulgated thereunder, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and Golden Nugget admits that decanting wine from original, tax paid casks into metal canisters which bore labels of "White" and "Red" in the C.H.A.B. authorized location of the Sweetheart Cafe would constitute the illegal bottling/decanting of wine into improperly labeled containers in violation of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23(a)(2) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the Division contends and the Golden Nugget admits that the possession of the surplus wine left over from banquets in fourteen (14) unlabeled carafes violates N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(1) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23 (a)(1) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d); and

WHEREAS, the parties are desirous of amicably settling this litigation without the necessity for a full hearing; and

WHEREAS, the problems raised by the Division's Complaint have been addressed by the cessation of the aforementioned illegal activities; and

WHEREAS, the Division agrees to withdraw its Motion for Summary Judgment and Golden Nugget agrees to withdraw its Motion to Compel Answers to Interrogatories;

IT IS, on this day of , 1987,

ORDERED, the Golden Nugget pay the sum of One Thousand Dollars (\$1,000) as a civil penalty for the violations of N.J.S.A. 5:12-103(f)(2), N.J.S.A. 19:50-1.6(u)(2) as well as N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d); and it is further

ORDERED that Golden Nugget pay the sum of Fifty Dollars (\$50.00) per unlabeled carafe for a total of Seven Hundred Dollars

(\$700.) as a civil penalty for the violations of N.J.S.A. 5:12-103(f)(2), N.J.A.C. 19:50-1.6(u)(1) as well as N.J.S.A. 33:1-2(a), N.J.A.C. 13:2-23.23(a)(1) and N.J.A.C. 13:2-28.1, as incorporated by reference into N.J.S.A. 5:12-103(d); and it is further

ORDERED that upon approval of the Commission and upon payment of the total sum of One Thousand Seven Hundred Dollars (\$1,700.), this matter shall be deemed fully adjudicated and resolved.

FINDINGS

Having reviewed and considered the record before me, I **FIND** that:

1. The parties have voluntarily entered into the settlement of this matter as evidenced by their signatures on the Consent Order; and
2. The settlement is a fair one and disposes of all issues in controversy; and
3. The settlement is consistent with the law.

CONCLUSIONS

I **CONCLUDE**, therefore, that the proposed penalty of \$1,700 be imposed upon respondent GNOC, Corp. as agreed upon in the Consent Order.

I further **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

ORDER

It is hereby **ORDERED** that the parties comport with the terms and conditions of the duly executed Consent Order and that this matter is hereby **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.

7/8/87
DATE

Lillard E. Law *(initials)*
LILLARD E. LAW, ALJ

Receipt Acknowledged:

July 9, 1987
DATE

Alfred Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 13 1987
DATE

Ronald L. Park
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS

None

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-193
OAL DOCKET NO. CCC 8595-86
REGISTRATION NO. 51894-40
ORDER NO. 87-38-6

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
RICHARD L. GOTTARDI, :
Respondent. :

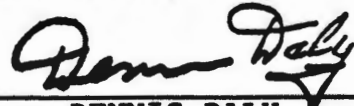
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 14th day of October 1987, 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 and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

SEP 3 1987

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 8595-86

AGENCY DKT. NO. 87-193

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

Petitioner,

v.

RICHARD L. GOTTARDI,

Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)

Andrew F. Lippi, Esq., for respondent

Record Closed: August 14, 1987

Decided: August 26, 1987

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 L. Gottardi's casino hotel employee registration no. 51894-40, pursuant to N.J.S.A. 5:12-91 and 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

By complaint to the Commission, dated November 3, 1986, the Division objected to the respondent's continued registration, asserting that the respondent had been indicted for two counts of aggravated assault and one count of terroristic threats. On February 10, 1986, the respondent entered a retraxit plea of guilty and was convicted of count one of aggravated assault, which is a disqualifying offense under section 86c(1). The remaining charges were dismissed. Based upon the complaint, the Commission notified the respondent on November 13, 1986, 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 18, 1986, which was received by the Commission on November 19, 1986, the respondent requested a hearing. On December 8, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on December 12, 1986, 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 Stephen W. Thompson on March 11, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).
- B. With regard to the alleged statutory disqualifier, whether the respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was convened on May 29, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. Both counsel were present, and two documents were entered into evidence at that time. As the respondent was not present on that date because of illness, the case was adjourned and was rescheduled for August 14, 1987.

A hearing was held on August 14, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

THE FACTS

In 1985, the respondent had been dating Colleen Bryne for four years. For a period of time, the two had been engaged to married. A few days prior to November 12, 1985, Ms. Bryne decided to terminate their relationship and moved out of their shared apartment. On November 11, 1985, the respondent found out that while he was gone from the apartment, Ms. Bryne had entered the apartment and had removed most of the respondent's possessions and property that they had jointly purchased. Later that evening, the respondent attended a birthday celebration for a friend at a bar. Ms. Bryne was also at the party. The respondent began drinking Alabama Slammers and he became intoxicated.

At approximately 5:15 a.m. on November 12, 1985, the respondent went to Ms. Bryne's house to talk to her. Since there were other people in the house, the two decided to go to the beach. When confronted about the missing property, Ms. Bryne snapped that everything was hers and that she had done nothing wrong. Ms. Bryne and the respondent loudly argued with each other and a neighbor telephoned the police.

When the police arrived, Officer Charles J. Holl found the respondent standing over Ms. Bryne, who was against the hood of a car, and the respondent was hitting Ms. Bryne about the head. Officer Holl tried to separate the respondent from Ms. Bryne and the respondent told the police officer to "get the fuck away from us, it's none of your business." The respondent then pushed the officer. The officer then advised the respondent that he was under arrest. Another police officer arrived. The respondent still refused to calm down, and he still had Ms. Bryne around the waist. Both officers tried to get the respondent to let Ms. Bryne go, and the respondent stated, "leave me alone, you're pissing me off." The respondent and Ms. Bryne were separated. Mr. Gottardi was again advised he was under arrest. He was still resisting by refusing the police officer's commands to get into a kneeling position to be handcuffed. The police officer told the respondent to put his hands on the vehicle. The officer grabbed the respondent by the arm and was going to pat him down. While attempting to do this, the respondent gave the officer an elbow to the chest. The respondent then became very violent towards the officers. The officer then tried to subdue the respondent. The officer then grabbed the respondent again in an attempt to handcuff him. The respondent grabbed the officer and a fight ensued. The respondent and the police officer fell to the ground with the

respondent on top. The respondent then proceeded to punch the police officer in the head. The other police officer, Sergeant O'Brien, pulled the respondent off Officer Holl and put the respondent on the hood of the vehicle, and Officer Holl put handcuffs on the respondent. Again, the respondent became extremely violent and broke free of the police officer's hold. They fell to the ground, and the respondent then began to strangle Officer Holl and Officer Holl struck the respondent once in his left side, rib area with the PR-24 police baton. This had no effect on the respondent. The respondent was still strangling Officer Holl, who then began to strike the respondent with his left hand in the head area. The respondent was still violent, and stated "I'm going to kill you, you don't know what it is like to be in love." The respondent had Officer Holl in a headlock and would not let go, and Sgt. O'Brien had to pry the respondent's arms and hands off of Officer Holl. Mr. Gottardi then reached around and struck Sgt. O'Brien several times in the head while screaming and yelling the whole time. Sgt. O'Brien then used his PR-24 police baton and struck the subject once in the right side and again on his right front stomach area. The officers finally subdued the respondent, handcuffed him, and transported him to police headquarters.

En route to City Hall the respondent stated that, "I'll catch you off duty someday, and get even for this, I'll kick you ass and you'll be alone, you don't know what it's like to be in love." The respondent began to cry and stated that he was sorry and asked Officer Holl if he would forget the whole thing and let him go.

During this time the officers observed respondent was under the influence of either alcohol and/or drugs.

When they arrived at the station, the respondent was unhandcuffed and was placed in cell #1. Again the respondent became violent screaming, shouting and shaking the cell door. This was kept up for about 15 minutes. The respondent then began to cry again.

Colleen Byrne went to police headquarters and wanted to know what was going on. She was told the respondent was being placed under arrest. The officer then observed a cut over her left eye. She was asked if she wanted to sign a complaint but she declined. The officers noted that she was also under the influence of either alcohol and/or drugs.

The respondent admitted he had been drinking and stated he rarely drank alcohol. He does not recall striking Ms. Bryne as he had been drinking. He indicated that when the police arrived he got scared and put his arms around Ms. Bryne. The police stated, "let her go." The respondent answered, "leave me alone, I love my girl friend." According to the respondent, Ms. Bryne then stated "leave him alone; he's o.k." The respondent stated that someone grabbed him from behind. He did not know it was a police officer; they struggled, and fell to the ground. He denied hitting the police officer but stated when they fell he landed on the police officer's hand, which left an abrasion on the officer's hand. The respondent stated he calmed down once on the ground, was handcuffed, and was transported to the police station. He initially stated he does not recall threatening to kill the police officer or saying he would get even. He later testified he may have said he would get even, but he indicated that he was drunk and did not mean it. He denied struggling with the police officers. He indicated that all he wanted to do was hold his girl friend.

On December 5, 1985, the respondent was indicted by the Atlantic County Grand Jury, indictment number 85-12-2082-B, charging him with having committed two counts of aggravated assault, in violation of N.J.S.A. 2C:12-1b(5)(a); one count of resisting arrest, in violation of N.J.S.A. 2C:29-2a(2); and one count of communicating terroristic threats, in violation of N.J.S.A. 2C:12-3a. On February 10, 1986, the respondent entered a retraxit plea of guilty to one count of aggravated assault, in violation of N.J.S.A. 2C:12-1b(5)(a). For this offense the respondent was sentenced to serve 20 days on weekends in the Atlantic County Jail, was placed on probation for two years, and was ordered to pay a Violent Crimes Compensation Board Penalty of \$25.00. The remaining counts of the indictment were dismissed.

For most of the last ten years, the respondent has lived in Brigantine with his parents. He has worked in the casino hotel industry off and on for four and one-half years. In 1983, he was employed as a bus person in the Marina Gardens Restaurant at Harrah's. He was terminated from this position while in a probationary status for calling off sick on Memorial Day 1983. From January 1984 until April 1986, the respondent was employed at Resorts, first as a bus person at the Boardwalk Cafe and then as a food server in the Deli. During the summer of 1986, the respondent was self-employed as a painter. In September 1986, the respondent became employed at Caesar's, and since December 30, 1986, he has been employed at the La Palais gourmet restaurant in Resorts. The respondent left Caesar's in order to accept better employment in the gourmet

restaurant in Resorts. He works 40 to 45 hours per week. He has gone from buffet service to gourmet service. The respondent stated that since he has been employed in gourmet service, he has been promoted from bus person to waiter, and next week he is to be promoted to captain.

In 1983, the respondent was arrested and charged with possession of under 25 grams of marijuana and possession of drug paraphernalia. The respondent was entered into and successfully completed the Pretrial Intervention Program. He admitted smoking marijuana in 1983. He was placed on urinalysis monitoring in 1983. He was again required to undergo urinalysis monitoring during his recent probationary period. All urinalysis testing indicated negative results. The respondent was recently released from probation. He was released early because of his good conduct. The respondent indicated that he rarely drank and that he quit drinking all together since the incident with Ms. Bryne.

The respondent has been active in his local community. He helped stripe lines on Brigantine's newly paved highways. He also volunteers to help feed the mammals at the Stranded Mammal Center. He also occasionally helps at the Humane Society.

The respondent was 21 years of age at the time of the offense, and he is 23 years of age at the present time. He now lives with his parents and helps support his family.

The respondent concluded that he loves casino work; it is his job. He asserts that the incident of November, 12, 1985, was a single, isolated incident. He admits that he made "a big mistake" and he states that nothing like that will ever happen again.

The Division disputed the respondent's testimony concerning the circumstances underlying the incident and questioned the respondent's honesty and integrity. As such, it is necessary to assess the respondent's credibility. Initially, 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. While the respondent admitted his misconduct, he testimony concerning the underlying circumstances paints a different picture from that of the police report. The respondent had a good recollection of the non-relevant issues, but his memory was lacking regarding the critical issues. Also, I question whether a Superior Court judge would have accepted a guilty plea for aggravated assault if the respondent testified

before him that he could not remember whether or not the respondent had hit or threatened the police officer. While recognizing that the respondent was intoxicated on the night in question and that fact could impair the respondent's recollection of the event of that evening, I question the respondent's candor at the hearing.

FINDINGS OF FACT

1. On November 12, 1985, the respondent became involved in an argument with his former fiancée, Colleen Bryne, regarding Ms. Bryne's removal of certain items of personal property from the respondent's apartment which the two had shared.
2. The respondent struck Ms. Bryne.
3. When Officer Charles J. Holl attempted to separate the respondent from Ms. Bryne and to arrest the respondent, the respondent elbowed Officer Holl, and a struggle followed.
4. While being transported to the police station, the respondent threatened to get even with Officer Holl by "kicking his ass" when he was off duty.
5. The respondent had attended a party that evening and was intoxicated.
6. The respondent was indicted and entered a retraxit plea of guilty to one count of assault upon the police officer causing bodily injury, in violation of N.J.S.A. 2C:12-1b(5)(a). The respondent was placed on probation for two years; however, he was recently released from probation early because of his good behavior.
7. The respondent has volunteered to help in his community by painting highways, assisting the Stranded Mammal Center, and assisting the Humane Society.
8. The respondent was 21 years of age at the time of the assault.

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 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 under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1)

N.J.S. 2C:12-1b. (aggravated assault 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 a 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, provided that 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;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual registrant." Section 129(1) 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 registration.

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Included in this section as a statutory disqualifier is "N.J.S. 2C:12-1b (aggravated assault, which constitutes crimes of the second or third

degrees)." The respondent was convicted of one violation of N.J.S.A. 2C:12-1b. The Division contends that the respondent's conviction for aggravated assault of a police officer in the performance of his duties by causing bodily injury disqualifies the respondent from continued registration.

N.J.S.A. 2C:12-1, "Assault," provides in pertinent part:

a. **Simple assault.** A person is guilty of assault if he:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

....

b. **Aggravated assault.** A person is guilty of aggravated assault if he:

....

- (5) Commits a simple assault as defined in subsections a. (1) and (2) of this section upon
 - (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or

....

Aggravated assault 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 was convicted of aggravated assault upon a police officer in the performance of his duties which resulted in bodily injury. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constituted a violation of N.J.S.A. 2C:12-1b(5)(a). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:12-1b, 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 offense committed by the respondent is
45 (a) a disqualifying offense under section 86c(1). The respondent is therefore disqualified from registration pursuant to N.J.S.A. 5:12-91b and 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;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the registrant under their supervision.

First, Mr. Gottardi is a casino hotel registrant and is employed as a waiter. As such, he does not have direct responsibilities for actual gaming activities but does have contact with casino patrons who enter his restaurant.

Second, an assault upon a police officer who is in the performance of his duties is always a serious offense. However, in this case there are circumstances which mitigate the seriousness of the offense. The respondent's fiancée and girl friend of four years had just left him and had taken the respondent's property from his apartment. He was depressed, went to a party, became intoxicated and then confronted his ex-fiancée. When the police attempted to separate the two intoxicated quarrellers, the respondent elbowed the officer and the two scuffling fell to the ground. This was not a case where the respondent knowingly wanted to assault the officer and the officer's injuries were minimal.

Third, this originated as a domestic quarrel between two persons who were terminating their relationship. It did not involve the casino industry. The respondent was upset about his fiancée leaving and taking his property, he became intoxicated, and went to Ms. Bryne's home in an attempt to either get her, or his property, or both back. A quarrel ensued, and the police were called to break up the quarrel. The respondent resisted, he and the police officer fell to the ground, and he was arrested.

Fourth, the respondent's misconduct occurred on one day almost two years ago, November 12, 1985.

Fifth, the respondent was 21 years of age at the time. His response of becoming intoxicated and initiating the confrontation was that of an immature person.

Sixth, while the respondent asserts that this was an isolated incident, the respondent does have one prior arrest for possession of under 25 grams of marijuana from when he was either 18 or 19 years of age in 1983. He successfully completed the Pretrial Intervention Program at that time.

Seventh, the termination of his engagement and the removal of his property from his apartment by his former fiancée was the genesis of this offense.

Eighth, the respondent successfully completed his probationary period and was in fact released early as a result of his good behavior. The respondent successfully passed all of his urinalysis tests during his probationary period, and he asserts he no longer drinks alcohol. The respondent has volunteered to serve his community by painting stripes on their newly paved highways and assisting at the Stranded Mammal Center and the Humane Society. The respondent is currently employed in the casino industry and performs in an acceptable manner. He has been promoted from buffet service to bus boy to waiter to captain in a gourmet restaurant. The respondent has indicated remorse regarding this offense, and that it will not happen again. While the respondent has established rehabilitation, this is an individual who still needs to grow in maturity. Hopefully he will learn from this experience and will abide by societal norms.

I CONCLUDE that the respondent has established his rehabilitation by clear and convincing evidence pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

Even though I question the respondent's candor and his maturity level, I am constrained by the provisions of N.J.S.A. 5:12-91d to **ORDER** 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.

August 26, 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

August 27, 1987
DATE

Receipt Acknowledged:

Richard Zapp
CASINO CONTROL COMMISSION

AUG 31 1987
DATE

Mailed to Parties:

Donald L. Park
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 Superior Court of New Jersey, Law Division-Criminal, Atlantic County
Indictment number 85-12-2082-B
- P-2 Judgement of Conviction, dated March 7, 1986.
- P-3 Brigantine Police Department Investigation Report, date November 18, 1985
re: incident involving Richard L. Gottardi on November 12, 1985.

For Respondent:

- R-1 Letter of Dennis Merta, Jr., Personnel Clerk, Resorts International Casino
Hotel, dated June 22, 1987
- R-2 Order terminating probation
- R-3 Letter of Detective Sergeant Arthur L. Gordy, Brigantine Police Department,
dated August 13, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-210
OAL DOCKET NO. CCC 05150-85
REGISTRATION NO. 40806-40
ORDER NO. 87-37-5

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

Complainant, :

: ORDER

v.

FRANKO L. GRANATO,

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 30, 1987,

IT IS on this 14th day of December 1987, ORDERED that the initial decision is modified as follows:

- (1) The administrative law judge misapplied the inimical analysis contained in N.J.S.A. 5:12-86(c)(4). The appropriate application is to identify the specific charge or conviction which constitutes an inimical offense. N.J.S.A. 5:12-86(c)(4) does not address overall conduct, but rather a specific offense which, although not enumerated in N.J.S.A. 5:12-86(c)(1) or (3), nevertheless warrants disqualification. The Commission finds that there is no particular offense which, from this record, constitutes a basis for disqualification pursuant to N.J.S.A. 5:12-86(c)(4).

ORDER NO. 87-37-5

- (2) On April 4, 1969, the respondent gave methadone to another. The Commission finds that this conduct constitutes distribution of a controlled dangerous substance (CDS), in violation of N.J.S.A. 24:21-19a(1).
- (3) Distribution of CDS is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(3) and (g), but because this conduct occurred in 1969, more than ten years preceding Mr. Granato's application for a casino hotel employee registration, it is not automatically disqualifying. However, the 10-year provision of N.J.S.A. 5:12-86(c)(4) requires the respondent to demonstrate by clear and convincing evidence that his conduct "...does not justify automatic disqualification...." Such a demonstration is that which is required upon a claim of rehabilitation pursuant to N.J.S.A. 5:12-91(d) and an analysis of the factors stated therein is appropriate. Upon examination of the record in this case, the Commission finds that the rehabilitation evidence supplied by the respondent is not sufficient to support a finding that he demonstrated rehabilitation by clear and convincing evidence.
- (4) The respondent is disqualified for the reasons stated herein; however, the Commission finds that disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent is permitted to retain his casino hotel employee registration because it is consistent with the public policy of the Act and required by the following interests of justice:
 - (a) The respondent's position as a server is a low level position which does not pose a threat to casino operations.
 - (b) The respondent's efforts towards rehabilitation are commendable, although his relatively recent abstinence from drug use (December 27, 1985), after severe addiction of long duration, precludes a clear and convincing finding of rehabilitation.

ORDER NO. 87-37-5

- (c) The respondent has an excellent employment record since his February 4, 1986, completion of the in-patient drug rehabilitation program at Coatesville VA Hospital.

IT IS FURTHER ORDERED that the respondent is prohibited from applying for any other registration, license, 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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

Petitioner,

v.

**FRANKO L. GRANATO,
Respondent.**

INITIAL DECISION

OAL DKT. NO. CCC 5150-85

AGENCY DKT. NO. 84-210

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards, Attorney
General of New Jersey, attorney) for petitioner**

Richard M. Pescatore, Esq., (Basile, Testa & Testa, attorneys) for respondent

Record Closed: May 29, 1987

Decided: August 4, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on June 19, 1984, 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. and N.J.S.A. 52:14B-1 et seq. The matter was preheard on November 15, 1985 and after several continuations, was finally heard in Atlantic City on Tuesday, April 28, 1987. The record was held open for 30 days in order to receive additional testimony by way of affidavit. None was received and the record closed on May 29, 1987.

ISSUES

The prehearing order identifies several issues. At the hearing, the Division elected to proceed on inimicality only, pursuant to N.J.S.A. 5:12-86c(4).

ADMISSIBILITY

In Administrative hearings convened under the Casino Control Act (Act), all relevant evidence is admissible. N.J.S.A. 5:12-107a(6).

In such hearings in which the issue is inimicality, pursuant to N.J.S.A. 5:12-86c(4), rehabilitation is a factor to be considered along with others "...before concluding that the offense in question is or is not inimical ". Davis v. Div. of Gaming Enforcement 8 N.J.A.R. 301 p. 314.

The Division seeks the admission of police reports in this matter, and in the event they do not show by a preponderance of the evidence that an offense was committed, they are offered on the alternative theory that numerous police contacts over a period of years adversely affects a registrants claim to rehabilitation. Mindful of the fact that Henry David Thoreau, Mahatma Gandhi and Martin Luther King, Jr. also had police contacts, I have nevertheless initially received in evidence the documents in question on the alternative theory when they fail to establish by a preponderance of the evidence that an offense was committed. I received them because the conduct described in the police reports is not the refusal to pay war taxes , the organization of general strikes or trespassing at lunch counters, but the taking and carrying away of safes, the selling of illegal drugs, the possession of hypodermic needles, the passing of fraudulent prescriptions and bad checks and the commission of petty theft.

EVIDENCE

P1 is a Vineland City Police arrest report purporting to show that the respondent and 4 other men broke into Howard Johnson's on February 14, 1959 and took away the safe; that they were given a suspended sentence of 2 to 3 years to

the New Jersey State Prison and fined \$500. It is not accompanied by any certified copy of the conviction. The conduct described therein took place almost 30 years ago. Nevertheless the respondent admitted the conduct during his testimony and at this hearing. He described it as a lark when he and his companions returned home from the service.

P2 is a Vineland City Police arrest report purporting to show that the respondent was arrested on July 30, 1969 by seven Vineland police officers when he was found in an apartment containing marijuana. The report also claims that the case was No-Billed on November 6, 1969. The respondent neither admitted or denied the offense at this hearing. I attribute no weight to this exhibit.

P3 is a Vineland City Police arrest report purporting to show that the respondent sold a prescription legend drug to a State Police officer on April 4, 1969, was fined \$500, paid \$10 costs and was placed on probation for one year. At this hearing the respondent admitted giving methadone to an undercover state trooper.

P4 is a Vineland City Police arrest report purporting to show that the respondent received stolen goods in January of 1972, was fined \$200 and \$25 costs and sentenced to 30 days, suspended. The respondent admitted that he was convicted of this offense during his testimony at this hearing.

P5 is a Vineland City Police arrest report purporting to show that the respondent possessed under 25 grams of marijuana on May 17, 1973, paid \$10 costs and received a suspended fine and jail sentence. The respondent recalled this conviction in his testimony at this hearing.

P6 is a City of Port Orange Florida General Case Report (Field) which purports to show that the respondent used a doctor's forged prescription blank to obtain Desoxyn on October 10, 1975. The respondent does not recall the details of this event. He admits he was addicted to "speed" at this time, that he lived in Port Orange at the time, and that he may have used a note or prescription pad.

P7 is a package containing a Vineland City Police arrest report purporting to show that the respondent presented a forged check in the amount of \$114.79 to a liquor store on August 30, 1975. P7 also contains an Indictment for this event to which the respondent pled guilty on June 16, 1976 and a certification by the County Court Clerk that the Indictment and Judgment of Conviction are true copies. The respondent's recollection of this event is vague, but he recalls making restitution.

P8 is a Vineland City Police arrest report purporting to show that the respondent possessed a hypodermic needle and a controlled dangerous substance (meth) on April 8, 1976. No disposition is shown and the respondent has no recollection of the arrest. I attribute no weight to this exhibit.

P9 is a package containing a Vineland City Police arrest report purporting to show that the respondent was found unconscious with a hypodermic needle and white powder in his possession on December 2, 1979. He was indicted for possession of heroin. He pled guilty to the indictment on October 23, 1980. The package also contains a certification of the Clerk of the Cumberland County Court that the Indictment and Judgment of Conviction are true copies. The respondent recalls this conviction.

P10 is a Vineland City Police arrest report purporting to show that the respondent possessed under 25 grams of marijuana on July 19, 1979 and paid a \$50 fine and \$25 costs. He recalls this conviction.

P11 is a Vineland City Police arrest report and Summons purporting to show that the respondent shoplifted a \$29.99 telephone from Wilmington Dry Goods on November 12, 1983, was fined \$175, \$25 costs and sentenced to 12 months probation. The respondent recalls the event and the conviction.

DRUG ADDICTION AND DRUG REHABILITATION

The respondent admits to chronic and severe drug addiction beginning in 1965 and continuing to November of 1985. He was unsuccessfully on the methadone treatment for approximately 10 years.

His problem was so severe that he was in drug programs on 9 different occasions during this period. On three occasions he actually completed the programs. Only the last one stuck. He was at the Coatesville Veterans Administration Program as an in patient from December 27, 1985 until February 4, 1986 (R1) and has been drug free ever since with the support of Narcotics Anonymous.

POST ADDICTION CONDUCT

This respondent has been employed as a waiter since his release from Coatesville. He reports that he is a valuable employee and works hard. He was given an opportunity to supply additional evidence of rehabilitation including letters of recommendation from persons who have supervised him, affidavits and/or an opportunity to present additional witnesses. He has not elected to do so. I can only conclude that the respondent is too absorbed in his recovery from drug addiction to have pursued other rehabilitative avenues such as vocational or academic training or community services. This is understandable, the respondent has 20 years of abusing drugs to make up for, but he has not shown that he is rehabilitated sufficiently from other offenses he has committed even though they may have been committed to support a drug habit.

FINDING OF FACT

I **FIND** that the respondent committed the offense of burglary and theft on February 14, 1959. While the Casino Control Act does not automatically apply the disqualification provision to offenses more than 10 years old, this offense is nevertheless relevant. It signals the beginning of a long trail of offenses which continued for 25 years.

I **FIND** that the respondent committed the offense of distribution of a prescription legend drug on April 4, 1969.

I **FIND** that the respondent committed the offense of receiving stolen goods in January of 1972.

I **FIND** that the respondent committed the offense of possessing marijuana under 25 grams on May 17, 1973.

I **FIND** that the respondent illegally obtained prescription legend drugs on October 10, 1975.

I **FIND** that the respondent committed the offense of presenting a forged check on August 30, 1975.

I **FIND** that the respondent committed the offense of possession of heroin on December 2, 1979.

I **FIND** that the respondent committed the offense of possession of marijuana under 25 grams on July 19, 1979.

I **FIND** that the respondent committed the offense of shoplifting on November 12, 1983.

I **CONCLUDE** that the respondent has committed offenses which indicate that his continued registration would be inimical to the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86c(4) and 91b.

ORDER OF DISPOSITION

I **ORDER** that the respondent's 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8/4/87
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

8/7/87
DATE

Receipt Acknowledged:
Richard Zayas
CASINO CONTROL COMMISSION

AUG 10 1987
DATE

Mailed to Parties:
[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Franko L. Granato

For the Respondent:

Franko L. Granato

EXHIBIT LIST

For the Petitioner:

- P-1 Vineland police arrest report, date of arrest 7/14/59**
- P-2 City of Vineland Police Department arrest report, date of arrest 7/30/69**
- P-3 City of Vineland Police Department arrest report, date of arrest 7/30/69**
- P-4 City of Vineland Police Department arrest report, date of arrest 4/28/72**
- P-5 City of Vineland Police Department arrest report, date of arrest 5/17/73**
- P-6 City of Port Orange, Florida, Police Department general case report**
- P-7 City of Vineland Police Department arrest report, date of arrest 4/9/76, with five page attachment**
- P-8 City of Vineland Police Department arrest report, date of arrest 4/8/76**
- P-9 City of Vineland Police Department arrest report, date of arrest 3/13/80, with six page attachment**
- P-10 City of Vineland Police Department arrest report, date of arrest 7/19/79**
- P-11 City of Vineland Police Department arrest report, date of arrest 11/12/83, with complaint attached thereto**

For the Respondent:

- R-1 Letter, dated 2/20/86, from J. Robert Marshall**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-245
OAL DOCKET NO. CCC 5817-85
LICENSE NO. 15113-21

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

Complainant, :

v. :

ORDER

JOSEPH R. GRASSO, :

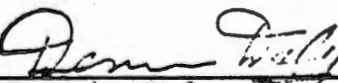
Respondent. :

Proceedings having been held before the Office of Administrative Law; and an initial decision/settlement having been filed with the Casino Control Commission by the administrative law judge; and the Division of Gaming Enforcement having moved before the Commission at its public meeting of March 19, 1986, to dismiss its complaint; and the Commission having considered the entire record of these proceedings,

IT IS on this 10th day of September 1987, ORDERED that the complaint filed by the Division of Gaming Enforcement against Joseph R. Grasso, Jr. is dismissed for good cause shown.

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

SETTLEMENT

OAL DKT. NO. CCC 5817-85

AGENCY DKT. NO. 84-245

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

Petitioner,

v.

JOSEPH R. GRASSO, JR.,

Respondent.

**William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,
Attorney General of New Jersey, attorney)**

Gregory Imperiale, Esq., for respondent (Harris and Fauntleroy, attorneys)

Record Closed: January 14, 1986

Decided: January 21, 1986

BEFORE JEFF S. MASIN, ALJ:

This matter was opened to 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. The Division of Gaming Enforcement charged that Mr. Grasso had engaged in conduct which required revocation of his casino employee license. The conduct involved alleged obscene phone calls and an allegedly obscene note which led to a charge of harassment, a violation of N.J.S.A. 2C:33-4, and a possession of marijuana charge involving marijuana under 25 grams, in violation of N.J.S.A. 24:21-20(a)4.

Mr. Grasso requested a hearing. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on October 30, 1985, and a prehearing order was issued on November 3, 1985. Thereafter, the parties appeared before Judge Masin at the Atlantic County Court House on January 14, 1986. At that time, the deputy attorney general, after consideration of various evidence problems as well as delays in the processing of this matter, determined to withdraw the Division's complaint against Mr. Grasso. Mr. Grasso voluntarily and on the record indicated his intention not to seek employment in the casino industry for a period of one year from the date of the Commission's approval of the Division's withdrawal. Mr. Grasso acknowledged on the record his understanding that he was entitled to contest the Division's allegations and put the Division to their proofs if he so desired. He acknowledged his desire to voluntarily refrain from any casino-related employment for the aforementioned one year period. In view of the administrative law judge's understanding of the evidential concerns of the Division as well as the recognition that Mr. Grasso was willing to voluntarily abstain from involvement in the industry for one year, the administrative law judge determined to accept the settlement of the parties. Mr. Grasso was advised that such settlement was subject to approval by the Casino Control Commission.

In view of the above, I **CONCLUDE** that the contested case between the parties has been concluded and that there are no further issues in dispute between the parties. The parties shall comply with their acknowledged positions as stated on the record. The contested case is **DISMISSED**.

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

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

January 21, 1986
DATE

January 22, 1986
DATE

JAN 24 1986
DATE

ml

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Nancy D. Jett
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parkey
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS

None

APPLICATION OF DONALD S. HABERMAN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 12, 1987,

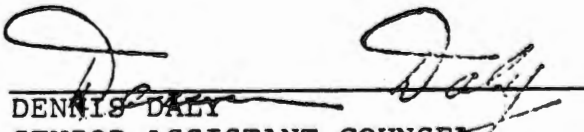
IT IS on this 9th day of September 1987 ORDERED that the initial decision is affirmed; and

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

IT IS FURTHER ORDERED that Donald S. Haberman 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 957-87

AGENCY DKT. NO. 86-EA-17

DONALD HABERMAN,

Petitioner,

v.

DEPARTMENT OF LAW & PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Donald Haberman, petitioner, pro se

**Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: June 8, 1987

Decided: June 18, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of petitioner, Donald Haberman, for licensure as a casino employee, permitting him to work as a blackjack dealer and/or count room employee. The Division of Gaming Enforcement (Division) opposes the petitioner's application for casino licensure based upon allegations that respondent failed to reveal facts material to qualification within the meaning of sections 86b and 90e of the Casino Control Act (Act). In addition, the Division contends that petitioner does not possess the requisite good character, honesty and integrity, pursuant to section 89b(2) of the Act, as incorporated by section 90b of the Act.

PROCEDURAL HISTORY

The petitioner filed a Personal History Disclosure Form - 2A (PHDF-2A) with the Casino Control Commission (Commission) on or about June 27, 1986. By letter report filed with the Commission on November 24, 1986, the Division opposed petitioner's application for licensure. Petitioner requested a hearing on January 21, 1987. On February 11, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 2, 1987, and the matter was scheduled for hearing on June 15, 1987. The hearing date was rescheduled at the request of the Deputy Attorney General. The hearing was held on June 8, 1987, at the Brigantine Municipal Building, Brigantine, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether the petitioner, with specific reference to his record of arrest, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria within the meaning of sections 86b and 90e of the Act.
- 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 of the Act.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Petitioner, Donald Haberman, is 31 years of age and maintains his residence in Brooklyn, New York.

In response to question number 16 of his PHDF-2A, the petitioner did not disclose his arrest on March 21, 1986, by the Berwick, Pennsylvania Police Department for theft by unlawful taking and receiving stolen property. On May 29, 1986, the charges against the petitioner were withdrawn by the complainant.

The petitioner also failed to disclose his arrest on June 3, 1986, by the New York City Police Department. Petitioner was charged with second-degree assault. The petitioner stated that he was arguing with his mother and had slapped her face. On June 25, 1986, Mr. Haberman received a one-year conditional discharge and was ordered to stay away from both his mother and sister.

The petitioner also failed to disclose his arrest on June 12, 1986, by the New York City Police Department for criminal trespass. According to the petitioner, he had been given permission by his mother to return to his home to pick up clothes. His sister was unaware that permission had been given and she called the police. The matter was dismissed after the complainant refused to testify (P-4).

It appears that the petitioner has been unemployed since April 1983 (P-1).

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

(B) DISPUTED FACTS

In dispute were the reasons for the petitioner's failure to disclose his entire criminal record history on his PHDF-2A. The petitioner testified that he did not disclose the March 21, 1986, June 3, 1986 and June 12, 1986 incidents because the charges were all dismissed and he did not believe it necessary to disclose these incidents.

The petitioner's explanations for his failure to disclose in the PHDF-2A are not persuasive. More specifically, his explanation that he did not have to disclose the three arrests in 1986 because they were dismissed is inconsistent with his testimony at the hearing. Petitioner asserted that the 1974 arrest was included in the PHDF-2A because a three-month probationary period was imposed by the court. Furthermore, the petitioner believed that the 1974 arrest was documented in court records. According to Mr. Haberman, the 1986 arrests were dismissed without conditions. However, the

petitioner was sentenced to a conditional discharge for one year on June 25, 1986, based upon the June 3, 1986 arrest for assault (P-7). In addition, according to petitioner, he was ordered to stay away from his mother and sister. Given the fact that the petitioner was granted a conditional discharge two days before he filed his PHDF-2A on June 27, 1986, it is inconceivable that petitioner was not aware of conditions placed upon his conditional discharge. Question 16 on the PHDF-2A clearly requires that all "arrests" be disclosed. Although I share the petitioner's concern about being required to disclose criminal charges which were dismissed, the information was clearly requested, and it is not within the petitioner's discretion to choose not to disclose such information.

After consideration of the entire record in this matter, I further **FIND** that petitioner's explanation for his failures to disclose on his PHDF-2A are inconsistent and are not persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

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

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

duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (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).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification. Further, neither the severity of an offense nor dismissal of the charges can serve to mitigate the significance of a nondisclosure. The petitioner's explanations of the reasons for his failures to disclose were unconvincing. The petitioner's reasons, particularly with regard to the June 3, 1986 incident, indicate that he made a conscious decision not to disclose. Therefore, the failure to disclose must serve to disqualify him from licensure.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner be disqualified from licensure by operation of section 86b.

(B) N.J.S.A. 5:12-89b(2) and 90b

Under sections 89b(2) and 90b of the Act, Mr. Haberman was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to

licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). 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 (September 5, 1980) at 8. Therefore, the conclusion that Mr. Haberman failed to disclose his entire criminal record history in violation of section 86b automatically precludes him from meeting his burden under section 89b(2). Further, an applicant's willingness to disclose fully his entire criminal record history is the most direct and reliable means of testing his good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he does, in fact, possess character, honesty and integrity.

I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2) and 90b.

ORDER OF DISPOSITION

It is **ORDERED** that the application of Donald Haberman for licensure as a casino employee be **DENIED**.

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

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

6-18-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

6-19-87
DATE

Richard Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

June 23, 1987
DATE

Ronald L. Park / s.
OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For the petitioner:

R-1 Letter from Mrs. Beatrice Haberman, dated June 6, 1987

For the respondent:

- P-1 Personal History Disclosure Form - 2A, dated June 27, 1986
- P-2 Pennsylvania State Police Criminal History Record for Donald S. Haberman, dated July 16, 1986
- P-3 State of New York, Division of Criminal Justice Services Criminal History Record for Donald Haberman, dated July 15, 1986
- P-4 Division of Gaming Enforcement Data Summary, undated
- P-5 New York City Police Arrest Report for Donald Haberman, dated August 26, 1986
- P-6 State of New York, Division of Criminal Justice Services Criminal History Record for Donald Haberman, dated April 9, 1987
- P-7 Criminal Court of the City of New York Certificate of Disposition, dated April 21, 1987
- P-8 New York City Police Department Arrest Report, dated August 26, 1986
- P-9 State of New Jersey Investigative Summary Report, dated January 13, 1984

WITNESS LIST

For the petitioner:

Alan Hillman
Donald Haberman

For the respondent:

Donald Haberman
Agent Revalee Brody

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-131
APPLICATION NO. 64667-21
OAL DOCKET NO. CCC 1101-87
ORDER NO. 87-38-7

APPLICATION OF SHIRLEY M. HAINES

FOR A CASINO EMPLOYEE LICENSE

ORDER

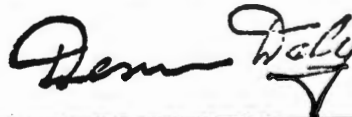
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 9th day of October 1987, 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 made a part hereof.

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 1101-87

AGENCY DKT. NO. 87-EA-131

SHIRLEY HAINES,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND

PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

William A. Thompson, III, Esq., for petitioner

William E. Mountford, Jr., Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 18, 1987

Decided: August 20, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

By letter to the Casino Control Commission (Commission) on January 8, 1987, the Division objected to the petitioner's licensure as a craps dealer because she had been indicted for theft by deception contrary to N.J.S.A. 2C:20-4 welfare fraud. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on February 24, 1987 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

There was a prehearing conference on May 19, 1987 and the parties convened for a plenary hearing in Pleasantville Municipal Court on August 18, 1987 at which time the record closed.

FACTS

It appears that the petitioner was indicted for welfare fraud in violation of 2C:20-4. Her alleged deception was the creation of a false impression that the other parent of her children was not living in the household.

This indictment was dismissed. At the hearing on the motion to dismiss, the petitioner agreed to reimburse the Division of Welfare at the rate of \$60 per month.

The petitioner testified, and the State did not rebut that she lived in a rental unit located one floor above that of her boyfriend who is her children's father. She frequently visited him both by day and by night. This caused the Welfare Agency to determine that the children were not deprived of the love and affection of an absent parent. This does not constitute theft. It may render a person ineligible for welfare.

I **CONCLUDE** that the petitioner did not commit an offense which would disqualify her from casino employee licensure pursuant to N.J.S.A. 5:12-86c (1), (2), (3), or (4).

GOOD CHARACTER, HONESTY AND INTEGRITY pursuant to N.J.S.A. 5:12-89b(2) and 90(b)

The Division's letter indicates that the indictment was the only negative information it possessed concerning the petitioner's good character, honesty and integrity.

This 22 year old woman has been a mother since she was 17 years old . As a result, she has not completed high school. She is a good reader however, and obviously intelligent. In addition, she is polite and possesses a charming personality. She graduated first in her class from dealers school. She has taken her turn at being choir director for her Church. Because she has been a full time mother since she was a girl, she has not had the time to acquire documentary evidence of

her good character, honesty and integrity as others have, be it letters from employers, certificates, diplomas, degrees, honors and awards. It is not necessary that she have these in order to prove her good character.

The only negative thing that can be said about her is that she owes the Welfare Division in excess of \$3,000. I am satisfied however, that the debt was acquired honestly. She will pay it when she is fully employed.

It is evident from respondent's demeanor that she has the requisite good character, honesty and integrity for casino licensure.

I **CONCLUDE** that the petitioner possesses the requisite good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b2 and 90b.

I **ORDER** that the Division's objection to the petitioner's casino employee licensure 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

(August 20, 1987)
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

August 25, 1987
DATE

Receipt Acknowledged:

William Zayas
CASINO CONTROL COMMISSION

AUG 25 1987
DATE

Mailed to Parties:

Ronald J. Parks
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Shirley Haines

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

R-1 Letter of Graduation

For the Respondent:

P-1 Indictment and Dismissal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-147
APPLICATION NO. 66067-21
OAL DOCKET NO. CCC 1853-87
ORDER NO. 87-42-8

APPLICATION OF COLDERIGE B. HARRIS
FOR A CASINO EMPLOYEE LICENSE

ORDER

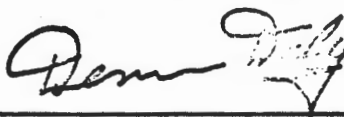
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 4, 1987,

IT IS on this 17th day of November 1987, 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 made a part hereof.

IT IS FURTHER ORDERED that the applicant show proof of New Jersey residency prior to the issuance of his license.

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 1853-87

AGENCY DKT. NO. 87-EA-147

COLDERIGE HARRIS,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

**Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards
Attorney General of New Jersey, attorney)**

Colderige Harris, petitioner, pro se

Record Closed: August 27, 1987

Decided: September 18, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission on February 20, 1987, objecting to the petitioners licensure as a casino teller because he was convicted of robbery in Philadelphia, Pennsylvania on September 15, 1978. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was conferenced on May 28, 1987 and a plenary hearing was held on August 27, 1987 in Atlantic City.

UNCONTESTED FACTS

On May 11, 1978 when the petitioner was 20 years old, he was in Center City Philadelphia with a friend, Eric Brothers. The petitioner and Eric were job seeking and later visited a liquor store. After some drinking, Eric and the petitioner decided to steal the pocketbooks of two women passersby. The purse was forcefully taken from one woman and the other reported that she was knocked down. Some witnesses chased the petitioner and Eric. They separated and the petitioner managed to board a bus. He saw Eric on the street and got off the bus just in time to be arrested by police. The petitioner pled guilty and was sentenced to 4 years probation.

I have examined the Pennsylvania statute for robbery (R-4) and I **FIND** that the petitioner was convicted of an offense in Pennsylvania which at the time of his application would be a violation of N.J.S.A. 2C:15-1 (robbery).

I **CONCLUDE** that the petitioner should be disqualified from casino licensure pursuant to N.J.S.A. 5:12-86c and 90e unless saved by rehabilitation.

REHABILITATION

Notwithstanding disqualification from casino employee licensure as a result of a criminal conviction pursuant to Section 86 of the Casino Control Act, an applicant will not be denied a casino employee license provided she can affirmatively show rehabilitation pursuant to N.J.S.A. 5:12-90h.

I **FIND** the following facts as required by the Casino Control Act rehabilitation provision:

1. The applicant has applied to be a casino teller.
2. The offense is serious. Victims of purse snatchings and muggings are often emotionally scarred.
3. This offense was a "purse snatch" on a downtown street in Philadelphia after the petitioner had been drinking. It must have been a random act of violence since the petitioner says he did not need the

money.

4. The offense occurred on May 11, 1978.
5. The petitioner was 20 years old when he committed the offense.
6. This was an isolated incident in an otherwise uneventful life.
7. This pro se petitioner did not specifically address social conditions which may have contributed to the offense.
8. The petitioner successfully completed probation. A condition of probation was that he attend school. The petitioner attended an automotive school and is certified to repair and rebuild starter motors and generators. The petitioner has had a spotty employment record which he believes is due to his criminal record. I note that he is a young, urban, black male for whom unemployment statistics are quite high. He has no prior or subsequent offenses. His neighbors and persons who have known him for most of his life, highly recommend him. He asserts, his mother hopes and his girlfriend believes, that he will not commit such a crime again. He appreciates the wrongfulness of his act. He said he would not want anyone to do that to him (robbery).

I am convinced that the respondent is rehabilitated from his crime. I **CONCLUDE** that the petitioner is rehabilitated within the meaning of N.J.S.A. 5:12-90h.

GOOD CHARACTER, HONESTY AND INTEGRITY

N.J.S.A. 5:12-89b2 and 90b

The petitioner testified both as a witness to his crime on the State's case and on his own behalf. As a result of what appears to be a basic shyness and reticence, his testimony was quite limited. He was not articulate and he was obviously uncomfortable during the entire proceeding. He presented himself well however, he was both well dressed and non-threatening in demeanor.

He appeared to be of no more than average intelligence. Consequently he has not sought additional schooling beyond high school and trade school. He has

no hobbies, belongs to no organizations and does not attend church. He is no longer engaged in sports. He does read newspapers. He is a football fan. His days are spent quietly; seeking employment, assisting his neighbors, staying close to home.

His mother is sure he will succeed when given an opportunity. She says that his mind and heart are clean.

A woman friend, who trusts him to watch her children, says he is a "great guy." She was surprised to learn that he was once a purse snatcher because he "is such a nice person."

It appears from the exhibits that the petitioner's entire neighborhood is behind him. There are letters from down one side of the block and up the other. Everyone appears to want him to succeed, they are all pulling for him. He has a reputation for good character, honesty and integrity in his neighborhood. I **CONCLUDE** that he has the required good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-90h.

I ORDER that the Division's objection letter be **DISMISSED**.

I note that the petitioner does not presently meet the residence requirement. No license may be issued until this condition is appropriately addressed.

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 18, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

September 22, 1987
DATE

Receipt Acknowledged:

Alfred J. Zagao
CASINO CONTROL COMMISSION

SEP 23 1987
DATE

Mailed to Parties:

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Colderige Harris
Iris Harris
Carmela Craig

For the Respondent:

Colderige Harris

EXHIBITS

For the Petitioner:

P-1 through P-17 Letters of Recommendation

For the Respondent:

R-1	Rap Sheet
R-2	Criminal Complaint
R-3	Court Minutes
R-4	Pennsylvania Statute-Robbery
R-5	PHD 2A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-11
OAL DOCKET NO. CCC 05754-86
LICENSE NO. 17812-21
ORDER NO. 87-48-11

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

Complainant, :

v. :

ORDER

ROBERT R. HARRIS, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 23rd day of December 1987, 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 and made a part hereof.

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 5754-86

AGENCY DKT. NO. 86-11

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

Petitioner,

v.

ROBERT R. HARRIS,
Respondent.

**William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Frederick Schofield, Esq., for respondent

Record Closed: September 22, 1987

Decided: November 6, 1987

BEFORE JEFF S. MASIN, ALJ:

On January 3, 1986, the Division of Gaming Enforcement ("Division") filed a complaint with the Casino Control Commission ("Commission") against Robert R. Harris, holder of a casino employee license, No. 17812-21 who, prior to his termination on November 24, 1985, was employed at the Trump Plaza Hotel/Casino as a slot attendant. The complaint alleged that Mr. Harris had been arrested on November 24, 1985 and charged with conspiracy, in violation of N.J.S.A. 2C:5-2, and theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, in connection with an incident in which Harris was alleged to have participated along with James Malachi Fields, a casino patron. The complaint and the criminal charges alleged that Harris and Fields together had taken an undetermined amount of Trump Plaza Casino tokens with a value of \$1 each with the intent to deprive

Trump of the tokens or the money for which they could be exchanged. In essence, the charges revolved around two incidents on November 24, 1985 in which it is alleged that Fields, as a patron, purposely jammed casino slot machines and that Harris, the attendant on duty in the area where the machines were located, participated in unjamming the machines and performing maneuvers upon them which permitted Fields to obtain tokens which he was not otherwise entitled to.

Subsequent to the filing of the complaint with the Commission, on July 1 and 2, 1986 Fields and Harris were tried on the criminal indictment, No. 86-01-0065B, in the Superior Court, Atlantic County, before Honorable Paul R. Porreca, J.S.C. The respondents waived their right to a jury trial and Judge Porreca, after hearing the evidence, found both defendants not guilty.

The complaint against Mr. Harris was transferred by the Commission to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 22, 1986 and a prehearing order was issued on November 7, 1986. The issues, as defined by the prehearing order, were as follows:

- A. Did the respondent commit a theft by unlawful taking in violation of N.J.S.A. 2C:20-3 in connection with an alleged incident on November 24, 1985?
- B. Would continued licensure of the respondent be inimical to the policies of the Casino Control Act and the interests of the casino industry, requiring revocation pursuant to N.J.S.A. 5:12-86(c)4?
- C. Does the respondent have the requisite good character, honesty and integrity for a casino employee license pursuant to N.J.S.A. 5:12-89(b)2?

Since the criminal charges were never proven against Mr. Harris and therefore there was no conviction for an enumerated disqualifying offense under section 86(c)3 of the Casino Control Act ("Act"), the Division pursues this matter pursuant to the authority granted in section 86g of the Act.

CONCLUSION

The evidence presented during the hearing in this case before Administrative Law Judge Jeff S. Masin on July 13 and September 3, 1987 consisted of relatively limited

testimony from a number of witnesses, the stenographic transcript of the criminal trial proceedings held before Judge Porreca, and a video tape purportedly showing the two incidents upon which the Division relies as proof of Mr. Harris' improper conduct. As will be noted below, counsel for respondent contends that admission of the video tape, which is admittedly a compilation of much longer original surveillance tapes and a dub of a dub of a dub of the original from the casino (which tapes are purportedly no longer available and which have never been available for display to the respondent and his counsel), is improper. I have considered that objection, and **FIND** that under the circumstances it is an insufficient basis for excluding the video tape. Nevertheless I **CONCLUDE** that the petitioner has failed to establish by a preponderance of the credible evidence that Mr. Harris did anything improper in connection with the incidents of November 24, 1985. In the absence of any such convincing proof, I **FIND** that his continued licensure would not be inimical to the policies of the Casino Control Act and the interests of the casino industry and further, that he has the requisite good character, honesty and integrity for licensure. As such, the complaint is dismissed.

EVIDENCE

The Video Tapes

Respondent objects to the admission of the video tape purportedly showing the improper incidents because it is a compilation tape prepared from the original master surveillance tapes and therefore, he believes, not the best evidence. In fact, the tape displayed in court is a copy of a copy of a copy of the original compilation tape. It is unclear whether the tape viewed in the administrative proceeding was shown at the criminal trial, although it does not appear that it was. Other tapes were apparently used in that proceeding.

Randall C. Fox, slot repair manager for the Trump Plaza Casino, testified that this ten-minute long tape is an edited version of the original which was over one hour long and which was compiled from the master surveillance tapes of the casino. Fox had viewed the originals and was present when the edited tape was made. No other evidence was presented as to the manner in which the compilation was prepared. It was represented that the original tapes were no longer in existence, having apparently been reused by the casino. The original tapes, and the one-hour compilation were never available for viewing by the respondent or his attorney.

It should be noted that there is no specific claim made by respondent that the compilation tape produced at the hearing contains any alterations or has been in any way tampered with. However, he argues that because he has not been able to see the original tapes, he cannot be certain that the ten-minute tape is a fair presentation of what actually was shown on the original tapes and therefore it may perhaps be misleading with respect to what in fact occurred on November 24, 1985.

It would obviously be preferable in a matter of this nature for the original surveillance tapes to be available for review by a respondent in the course of preparation for a disciplinary hearing before the Commission. It might well be appropriate for the Commission to direct that in the future such tapes be preserved in their entirety as soon as it becomes apparent that a matter has been forwarded for consideration to the State Police, the Division of Gaming Enforcement, the Commission, or any other regulatory or police agency. There should be no reason why these originals cannot be preserved until such time as the hearings had been completed. However, that was apparently not done in the present case. The representation of the attorney general, which is accepted by this judge, is that the tapes no longer exist.

Pursuant to the best evidence rule, Rule 70 of the New Jersey Rules of Evidence, "as tending to prove the content of writing, no evidence other than the original writing itself is admissible, unless (a) the writing is lost or has been destroyed without fraudulent intent by the part of the proponent. . . ." In the present matter, there is no allegation of fraudulent intent on the part of the Division, which in fact is apparently not responsible for the reuse of the original tapes. Further, having observed the compilation tape, there is no indication that that tape, showing what it does indeed show, is not an accurate reflection of what the camera recorded from the specific angles shown in those tapes. While the original master tapes might display other angles which might be helpful in this matter, I am satisfied, within the exercise of the discretion which the best evidence rule permits a judge to exercise in permitting the introduction of something other than the originals, that these tapes should be permitted in evidence.

The Witnesses

A review of the evidence in this case must of course begin with the video tape offered in evidence by the Division, which shows two incidents of purported improper conduct on the part of Mr. Harris in conjunction with Mr. Fields. A written description of what is shown on the tape is inadequate to convey exactly what does and does not appear

thereon. Rather than attempt a restatement of what the tape shows in extreme detail, this decision will comment upon what this judge, having considered the tape several times, including frame by frame reviews, considers to be the limitations of the evidence as a means of establishing Mr. Harris' alleged improper conduct.

As background for the tapes, the Division first presented testimony from Jeffrey M. Kashula, a slot supervisor for Trump Plaza, who testified about certain suspicions which he began to have in November 1985 concerning Mr. Fields. On November 22, Kashula filled two hoppers¹ in machines located next to each other which Fields was playing. This occurred early in the morning and it seemed unusual to the witness that machines so close to each other would each need filling so early in the morning. His instinct told him that there was something wrong. He notified Ben Shenker, his immediate supervisor. Kashula knew Fields as a player in the casino, who he had seen several times. Undisputed evidence presented by Kashula established that Fields was a "rated" player, who frequently received complimentary services from the casino. Rating cards were introduced which showed that Harris and others had regularly rated Fields because of his frequent extensive play, in accordance with a rating system established by the casino.

Kashula noted that Harris was a "good slot attendant," although he refused to say that he was "very good." He was aware that Fields generally played the slots in the area where Harris was the slot attendant on duty and Fields would occasionally ask him where Harris was working on a particular day when he came into play.

Ellen M. Cardile, who has served as a slot attendant and technician and is now a slot supervisor at Trump Plaza assigned to supervise slot attendants, also testified about her knowledge of Harris and Fields. In June 1985, Harris had advised her that Fields was a good customer who should be put on file as a regular player. This action by Harris was consistent with his job requirements.

Cardile also noted what she thought was somewhat suspicious conduct. Fields always seemed to play in Harris' area and always seemed to win. There were a lot of hopper fills in the areas where he played. She did not follow this thought up nor did she tell her supervisors.

¹The interior area of the slot machine into which tokens are placed.

The witness described Harris as a "very good slot attendant." She was questioned concerning 47 rating cards which had been reviewed at the criminal trial. These had been prepared by slot attendants, 7 of them by Harris. Fields was rated a "strong" player.

Randall C. Fox, slot repair manager since December 1983 and formally a slot mechanic and then assistant lead slot mechanic, testified as an expert with respect to the operation of the slot machines, particularly the Bally machine which was in use on the day of the incidents. The specific machines involved were numbers 100 and 101. Fox was familiar with the video tape, which was played in court. In describing the tapes, and Fox's testimony about them, I will also refer to my own observations of the material.

The witness testified that the slot machine has a exit slot where the coins come out into the tray during payouts. It is possible to jam the machine, by either deliberately reaching under the part of the door where the slot opening is located and holding the coins as they come down, or inadvertently, where a player may put his hand under in order to catch falling coins as they are paid out. If the coins back up into the channel, the machine can jam. It is then necessary for an attendant to come, open the door of the machine and, generally by using a small screwdriver, locate the jam and unjam it. Flashing lights show on the machine when it becomes jammed. Jammed machines are not at all usual in and of themselves.

The witness described the two incidents which purportedly involved illicit activity on the part of Fields and Harris. The first began at approximately 11:51 a.m. and the second at 12:01:01. In the first of the incidents, the surveillance cameras, which had been placed on Fields because of the suspicions reported by Kashula, show the player and his activities from both a side view and then from a behind the back, over the shoulder view. In the first incident, Fields is seen playing both machines 100 and 101. At 11:51:58, Fox observes Fields to reach over to machine 101, which is on his left, with his left hand, and place the hand in a cupped position, palm up, up under the portion of the door above the left end of the tray where the payout slot is located. At this point, according to Fox, Fields is jamming the machine. Indeed, as soon as he takes his hand away, the machine does begin to light up, showing that it is jammed. During the court's observation of this scene, on frame-by-frame view, it is noted that at 11:51:57 Fields moves his hand, open and palm up and apparently empty, to the machine, dipping his left shoulder and body toward the left and making a distinct upward curb of the open hand within the portions

slightly above the tray. In the judge's view, it is not entirely clear, but it appears that when Fields removes his hand he has no coins in it. He takes his left hand back toward his body and then puts it in the tray of machine 100. When he does so, there appears to be nothing falling from his hand into the tray.

The next portion of the tape shows the same incident from behind Fields' back. On close up, it can be seen that when the machine goes into a jam mode, it is showing the number 31, which Fox identified as a jam code caused by a coin back up, and also shows the numbers 006, which Fox identified as showing that 6 coins have been paid out. The payout should have been ten coins, which Fox was able to determine by seeing the rollers holding the symbols which denote to the player whether he has won or lost.

Mr. Fox notes that at 11:57:56 he believes that the tray looks half full. He opined that the tray would hold 500 to 600 \$1 tokens. At 11:52:35, when the lights were blinking and Harris had not yet come, there is a view of the tray which Fox says seems to show that there are no coins in the tray.²

²At the request of counsel on the morning of September 3, 1987, the parties and judge went on the floor of the casino in the presence of security officers prior to opening and Mr. Schofield deposited into the tray of the machine, in stages, one dollar tokens purchased from the casino. After observing this demonstration, the judge agrees that the tray will hold between 5 and 700 tokens and that approximately 650 or slightly above is probably a reasonable upper limit.

In determining whether any improper activity occurred, in the absence of any evidence as to any conversations which may have occurred between Harris and Fields, or of any eye-witnesses, or of any other direct evidence of impropriety, Fox relied, and the State in its arguments as to the existence of some impropriety, also relies heavily on what they believe are inconsistencies in the appearance of the trays before and after the jams. Thus, where it seems that the number of coins in the tray has increased significantly from that viewable before the jam to that viewable after Mr. Harris comes along, opens the machine, unjams it, and closes the machine back up, the State believes that Harris was taking action which allowed the machine to payout coins which should not otherwise have been paid to Fields, thus facilitating the stealing of the tokens. The observations of the trays are therefore highly significant. It must be emphasized before any further discussion that while the trays are at times visible, the nature of the camera work, the limitations of the medium, and other factors make it quite difficult to be entirely certain of what is occurring with respect to coins and the trays during Harris' activities within the machine. Further, as a viewer of the tapes will note, much of the activity involving the trays is photographed from behind Harris' back as he works in the machine. It is essentially impossible to tell exactly what Harris is doing during the time when he is presumably attempting to unjam the machine. There is no view which shows anything about Harris' actions within the machine that any witness, or any observer, can see which specifically and directly shows that Harris is setting the machine up in such a way as to pay out improperly or doing anything specifically other than apparently working to unjam the machine. Thus, again, the ability to draw some conclusions from the limited observations of the trays is crucial to the Division's case.

At 11:56:24, the judge, on review of the tape, noted a shot which appears to show a good 1/2 to 60 percent of the tray empty. This is the portion of the tray to the right of center and perhaps slightly to the left of center. At 11:57:28, while Harris is working on the machine with his back to the camera obscuring a goodly portion of the tray, it becomes clear that coins are going to the right side of the tray. Apparently, the Division contends that at this point Harris has done something in the manner in which he has reset the machine or has unjammed it which has allowed a large number of coins to enter the tray which were not previously there. As noted, by the time the tape shows 11:57:56, Fox opines that the tray is half full. Fox testified that in his opinion 2 to 300 coins had entered the hopper. At 11:57:47, the judge noted on review that Fields's left hand goes into the tray and he scoops out coins to the right of the machine. At this point, it appears that the tray holds many coins and that indeed the number could be in the hundreds, although there is no real way to be sure of this. It is necessary to try to estimate the depth of the hopper and therefore the depth of the coins laying therein and draw some conclusion as to the number of coins in the tray. At this point, only the right side of the tray can be seen and there is no close up view of the entire tray either just before Harris begins his ministrations or during or after he does so.

The second incident purportedly occurs just after noon. The same two machines are involved. At 12:01:01, Mr. Fields' hand appears to enter the tray area of machine 100, at which he is sitting, with the palm up and open. It is not as clear this time, from a view which is only from the rear rather than the side, as to how his hand appears, that is whether it clearly appears to be curving up under the door to the slot area. Fields moves his hand from this left hand portion of the tray across to the right hand side of the tray and then moves it to machine 101 and inserts coins. By this time machine 100 is showing flashing lights, indicating it is jammed. At 12:01:41 Harris arrives. At 12:01:44, it is clear that there are coins in the tray and Fox opined that in his testimony there were 100 to 200 observable. At 12:02:40, Harris closes the machine door. By 12:03:24, the judge observes that the tray seems to be more full on the left side of the tray, perhaps half-way to the top.

In connection with this second incident, when the machine jammed, 14 coins had been paid out. Fox testified that the payoff should have been 30. Again, it is the Division's position that the coins shown in the tray after Harris's work are sufficiently greater in number than those apparent before, when the machine first jammed, and that this indicates that Harris did something improper within the machine in order to pay Fields tokens which he was not entitled to.

On cross-examination, Mr. Fox agreed that where certain discrepancies occur a slot attendant has discretion to pay extra coins out in order to keep a customer happy. This is particularly true with top-rated players who the casino attempts to "take care of." During the hearing, a memorandum was referenced which showed that on July 17, 1984 all slot attendants were advised of their discretionary authority to make a payout of up to 20 coins. This was considered a public relations action which should be noted on a pink card.

Anthony P. Celona, director of slot operations for Trump Casino since May 1986, testified that he is in charge of the entire slot operations. He opined that the tray would hold 6 to 800 one-dollar tokens. On cross-examination, the witness acknowledged that he found no indication of an unusual amount of hopper fills occurring in connection with Fields or Harris.

Robert R. Harris testified in his own behalf. He discussed his work history, which goes back to 1957. He worked steadily as a parking lot manager from 1967 to 1980 and then became employed by Harrah's Marina. He worked in the advertising department and then in the payroll department and as a valet in the parking area. He transferred to Trump in 1985.

The witness testified concerning his activities on November 24, 1987 and denied that he had done anything improper. He knew Mr. Fields as a player who frequented the casino. He had no personal contact with him other than on the floor of the casino, was not a friend of his, had no social contact or other contact with the player outside of the casino. He denied that they had engaged in any collusive activity to cheat the casino. He never received any money from Fields.

The witness testified that generally it is the policy of the casino that slot attendants not handle guests' money which may be sitting in trays. However, sometimes in order to do his work, it is necessary to move coins around in the tray. When coins are stuck in a row in the exit ramp where the coins come out of the machine, when the machine is unjammed coins may fall in the tray and the client may get more pays than he was entitled to. Sometimes the roller will be up when he unjams the machine and hits the reset button and coins will keep coming out. Sometimes it is necessary to stop this stream manually by blocking up the exit slot and rejamming the machine.

The witness was familiar with the policy that permitted him to pay up to 20 coins if there is a dispute or question over a play. To the best of his knowledge, Harris did not do so on the day in question. However, with respect to one of the jams, there were coins in the exit ramp and when he unjammed it the roller arm on the top side was popped and the machine continued to pay out more than the coins which Fields should have gotten. At this point, it was necessary to stop the flow by rejamming the machine. Harris then reset the machine and it paid out some more coins. He cannot be sure how many were involved, but believes it may have been twenty-one dollar tokens, but probably not thirty.

Delia Harris, the respondent's wife who has known him since 1953, testified concerning his honesty and integrity. She works at Harrah's as a blackjack dealer and has been licensed since 1980. She is familiar with her husband's reputation for good character, honesty and integrity and it is "very good."

The respondent also presented character reference letters. These have been reviewed by the judge during consideration of this decision.

DISCUSSION

Of course, it is necessary that one view the tape in order to get the full flavor of what it does and does not show. Without belaboring the discussion of the evidence, suffice it to say that after having viewed the tape on several occasions, including detailed analysis of the tape on frame-by-frame advance, this judge did not find that the tape showed sufficiently, clearly, completely and distinctly views of the trays during either incident such that I could make clear determinations as to exactly what the condition of the trays were with respect to the coins in or not therein before the moments when Mr. Harris worked in the machines to clear the jams, nor was it completely clear and obvious how many coins entered the machines while Harris was working on them or just thereafter, or exactly where the coins came from. With respect to the first incident, while it is clear that at one point coins do appear entering the right hand side of the tray which had been apparently empty before, it is possible that these may have come from inside of the machine as a result of something Harris did or it is possible that they may have been in the tray on the left hand side, which cannot be seen at any time, and may have been moved over by Harris or by a movement of other coins entering from the exit ramp into the left hand side of the tray. Having reviewed the scene many times, I cannot

find that the preponderance of evidence as it appears from the tape and as interpreted by Mr. Fox is sufficient to allow me to conclude that several hundred coins exited the inside of the machine into the tray and further there is absolutely no way other than through supposition based upon Fox's testimony to tell whether these may have entered as a result of some improper action on the part of Harris. If indeed Harris was purposely and intentionally arranging the insides of the machine to allow a payoff that should not otherwise have occurred, one cannot see what he is doing, cannot tell whether he is functioning properly or not within the machine and can only speculate as to whether he is setting up Fields for an undeserved payout. With respect to the first incident, I **FIND** the observations allowed by the tape insufficient to permit a finding even by a preponderance of the evidence, much less by the criminal standard of beyond a reasonable doubt, which Judge Porreca clearly found had not been satisfied.

With respect to the second incident, again I do not find the observations sufficient to permit me to draw the negative conclusions about Harris' conduct. Once again it is impossible to see what he is doing inside of the machine and while at one point it does appear that there are many coins in the machine, there is just no way to be sure how they got in there or at what precise moment. While it is possible that Harris did something which he should not have in order to pay out to Fields, again, having carefully considered the tapes, I do not find them convincing enough to permit the negative findings. While there is no doubt that at 12:03-24 the tray seems more full on the left side than it had before, exactly how the coins got into the tray, how many there were, or whether they may have been in the tray any way is not all that clear.

With respect to the other evidence in the case, that is the suspicions which were expressed by Kashula and Cardile, I **FIND** that while again it is possible that something improper was going on and perhaps even Fields may have been doing something improper on his own because he had found that he would frequently get some extra coins when the machine was jammed and the attendant unjammed them, there is no evidence to support Harris' role in this activity, if indeed in fact it was improper. The suspicions which Cardile and Kashula had are insufficient, even when added with the observations on the tape, to permit a negative finding against the respondent. I have also considered the actions of Fields, including his habit of looking around while playing, which I **FIND** to be ambiguous and insufficient to permit any conclusion of impropriety.

A review of the criminal trial transcript, which mirrors much of the testimony received at the administrative hearing and also includes testimony of Mr. Fields (who was not called at the hearing) does not add anything of any significance to the strength of the Division's case.

Finally, it must be pointed out that the respondent's testimony appeared quite candid and sincere. While it was limited in scope and basically consisted of a strong denial of involvement, having considered Mr. Harris' background, which indicates that he has always been a hard worker who has remained steadily employed in a number of longstanding jobs for many years, I believe that Mr. Harris is not the type to have likely become involved in this type of a scam. I found his testimony to be quite convincing and credible and sufficient to justify the conclusion that he was not improperly involved in any illicit activities with Fields.

Based on all of the above, I **CONCLUDE** that the petitioner has failed to establish by a preponderance of the credible evidence any improper activity. Thus, as noted above, the conclusion is that the complaint against Mr. Harris should 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.

November 6, 1987
DATE

November 6, 1987
DATE

NOV 12 1987
DATE

ml

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Kieron Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

Joint exhibits:

- J-1 Transcript of State of New Jersey v. Robert Randall Harris and James Malachi Fields, Indictment 86-01-0065B, July 1, 1986
- J-2 Transcript of State of New Jersey v. Robert Randall Harris and James Malachi Fields, Indictment 86-01-0065B, July 2, 1986
- J-3 Trump Plaza \$1 token
- J-4 Indictment 86-01-0065B
- J-5 Judgment of Acquittal

On behalf of petitioner:

- P-1 Compilation tape
- P-2 Acknowledgment for Employee Manual

On behalf of respondent:

- R-1 Employee Manual
- R-2 For identification only - screwdriver
- R-3 Letter of July 10, 1987 from Mary A. Rasheed
- R-4 Letter of July 10, 1987 from Latham Pridgen
- R-5 Letter of May 2, 1984 from Ed Posey
- R-6 List of businesses with whom Harris sought employment after termination

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-376
OAL DOCKET NO. CCC 578-86
LICENSE NO. 1126-11
ORDER NO. 87-31-22

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

Complainant, : ORDER

v. :

JANE HAVERSTICK, :

Respondent. :

Proceedings having been held before the Office of Administrative Law; and an initial decision/settlement having been filed with the New Jersey Casino Control Commission (Commission) by the administrative law judge; and the Commission having considered the entire matter at its public meetings of July 29, 1987, and August 12, 1987,

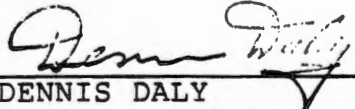
IT IS on this 10th day of September 1987, ORDERED that the initial decision/settlement is adopted and incorporated herein by reference; and

IT IS FURTHER ORDERED that substantially for the reasons stated in the initial decision/settlement, the casino key employee license of Jane Haverstick is suspended without pay for six weeks, from September 14, 1987, until October 25, 1987, inclusive; and

IT IS FURTHER ORDERED that Jane Haverstick pay a \$1,000 civil penalty, which is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

SETTLEMENT

OAL DKT. NO. CCC 578-86

AGENCY DKT. NO. 85-376

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

Petitioner,

v.

**BOARDWALK REGENCY CORP., T/A
CAESAR'S ATLANTIC CITY; AND JANE
HAVERSTICK,**

Respondents.

Kevin F. O'Toole, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

David Arrajj, Esq., on behalf of respondent Boardwalk Regency Corp. (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

G. Michael Brown, Esq., on behalf of respondent Jane Haverstick (Brown & Michael, attorneys)

Record Closed: June 2, 1987

Decided: June 4, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission pursuant to 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.

The parties have now submitted a stipulation of settlement as between petitioner and Jane Haverstick, and a stipulation of facts which also contains a statement of remaining legal issues as between petitioner and Boardwalk Regency Corp. (BRC), all of which is annexed.

Having reviewed the terms of the stipulations, and having participated in the extensive negotiations resulting in the settlement between petitioner and Haverstick and in the stipulations of fact and narrowing of legal issues as between petitioner and BRC, and counsel for petitioner and BRC having agreed that in their present posture these legal questions can be brought to the Commission directly, and a fair and just resolution having been achieved, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the terms of settlement and that these proceedings be and hereby are concluded.

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

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

6/4/87
DATE


SOLOMON A. METZGER, ALJ

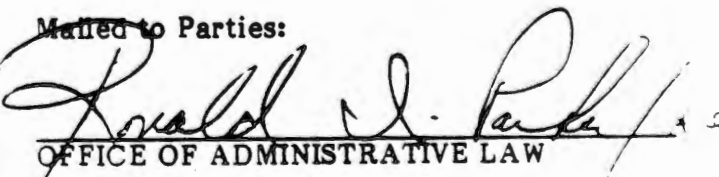
Receipt Acknowledged:

6/5/87
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 9 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

None

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Attorneys for Respondent, Jane Haverstick

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By: Kevin F. O'Toole
Deputy Attorney General

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 00578-86
AGENCY DOCKET NO. 85-376

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
 :
Plaintiff, :
 :
vs. :
 :
BOARDWALK REGENCY CORPORATION :
TRADING AS CAESAR'S ATLANTIC :
CITY; AND CREDIT EXECUTIVE :
JANE HAVERSTICK, LICENSE #1126-11, :
 :
Respondents. :

Civil Action
STIPULATION OF FACTS
AND
SETTLEMENT AGREEMENT

The parties, Division of Gaming Enforcement and Jane Haverstick having agreed, the following facts are stipulated as the facts of record in the within matter:

1. Jane Haverstick is the holder of a valid casino key employee license and is now, and was at all times relevant to the Complaint, employed by Caesars as a credit executive.

2. In the early part of January, 1985, Haverstick, in her official capacity, contacted a patron by the name of Joseph W. Thompson. Haverstick's contact, by phone, was for the purpose of

notifying Thompson that he had outstanding counterchecks which were due for deposit. In particular, eight (8) counterchecks of One Thousand Dollars and no cents (\$1,000.00) each, all issued on January 4, 1985, were due for deposit fourteen (14) days thereafter.

3. Thompson thereupon informed Haverstick that he would be mailing a check to Caesar's for the purpose of consolidating his countercheck obligation. That check was received on or about January 19, 1985, signed by Joseph W. Thompson but dated February 17, 1984. It was in the amount of Eight Thousand Dollars and no cents (\$8,000.00).

4. Haverstick then submitted Thompson's check to the Caesar's Casino Cage Department for processing. The check, however, was not immediately processed as a consolidation pending notification to Mr. Thompson regarding the mis-dating of his consolidation check. Haverstick was also informed by the cage that Thompson's outstanding countercheck obligations totalled Eighteen Thousand Dollars and no cents (\$18,000.00), not just Eight Thousand Dollars and no cents (\$8,000.00), and that the consolidation check would be insufficient to consolidate all of Mr. Thompson's outstanding counterchecks.

5. A few days later, Haverstick again contacted Thompson by telephone and explained the problems with the check. During the conversation, Thompson requested and Haverstick did alter the consolidation check by changing the date from February 17, 1984 to January 5, 1985 and by changing the amount from Eight Thousand Dollars and no cents (\$8,000.00) to Eighteen Thousand Dollars and no cents (\$18,000.00).

6. On March 18, 1985, Respondent Jane Haverstick was informally interviewed by Division Agent Richard Iannacone. During said interview, Respondent Haverstick stated that upon receiving the check from patron Joseph Thompson the check was altered as to the amount, and the date on the check was incorrect.

7. On April 1, 1985, the Division conducted a sworn investigative interview of Jane Haverstick. During the course of said sworn interview Respondent Haverstick stated that she did, in fact, insert the letters "een" on the check between the word "Eight" and "Thousand" in the written amount of the check. Respondent Haverstick also stated that she did not insert the number "1" in front of the numerical dollar amount of "8,000" on the check.

8. In her Notice of Defense and Request for Hearing, Respondent Haverstick admits that she did in fact alter the check and explains that the alterations were done at the request and instruction of the patron, Joseph W. Thompson.

9. Respondent Haverstick has reviewed the separately filed Stipulation of Facts and supporting Exhibits entered into between plaintiff Division of Gaming Enforcement and respondent Boardwalk Regency Corporation. Based upon said review, respondent Haverstick represents that the factual stipulations as they pertain to her conduct in the instant matter are true and correct to the best of her recollection. Accordingly, the separately filed Stipulation of Facts and supporting Exhibits are incorporated herein by reference and made a part hereof as if set forth at length.

WHEREAS, discussions have occurred by and between counsel for the parties hereto and, with the participation of and in

consultation with the Honorable Solomon A. Metzger, A.L.J. mutually acceptable terms of settlement have been agreed upon and consented to by the parties.

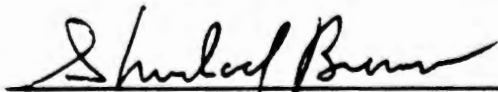
WHEREAS, Respondent Jane Haverstick acknowledges liability under Count III of the Division's Amended Complaint. Ms. Haverstick acknowledges the seriousness of the violation set forth therein and sincerely regrets its occurrence.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

1. Respondent Jane Haverstick agrees to the suspension, without pay, of her casino key employee license for a period of six (6) weeks and the imposition of a civil fine in the amount of One Thousand Dollars (\$1,000.00) pursuant to N.J.S.A. 5:12-129 for the violation attendant to Count III of the Division's Amended Complaint.
2. Plaintiff Division of Gaming Enforcement agrees to the dismissal of the allegations attendant to Count I of the Division's Complaint and Amended Complaint as they relate to Respondent Jane Haverstick.

BROWN & MICHAEL

DIVISION OF GAMING ENFORCEMENT


By: G. MICHAEL BROWN, Esq.


By: KEVIN F. O'TOOLE, DAG

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Attorneys for Respondent,
Boardwalk Regency Corporation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

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

:
: CCC DOCKET NO. 85-376
: OAL DOCKET NO.
: CCC 00578-86

Plaintiff,

vs.

BOARDWALK REGENCY CORPORATION
t/a CAESARS ATLANTIC CITY; and
CREDIT EXECUTIVE, JANE HAVERSTICK,
LICENSE NO. 1126-22,

:
: STIPULATION OF FACTS

Respondents. :

The matters involved having been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for plaintiff State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and David Arrajj, Esquire of Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys for respondent Boardwalk Regency

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Corporation, and certain matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

AS TO COUNT I

1. Respondent, Boardwalk Regency Corporation ("BRC"), 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 now has and at all times referenced herein has had its principal place of business located at the Boardwalk and Arkansas Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey.

2. BRC is now the holder of a casino license issued by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act ("Act") and the regulations promulgated thereunder. Said license was originally issued to BRC effective October 26, 1980, has been renewed each year thereafter and was last renewed effective on or about October 26, 1986.

3. BRC is the holder of, and operates pursuant to, an Operation Certificate originally issued effective June 26, 1979, at which time BRC was the holder of a Temporary Casino Permit. Said Operation Certificate entitles BRC to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

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4. Respondent Jane F. Haverstick is the holder of a valid casino key employee license #1126-11, originally issued by the Commission on or about May 30, 1980 pursuant to Section 89 of the Act. Jane F. Haverstick is now, and at all times referenced herein, has been employed by BRC as a Credit Executive.

5. BRC gaming patron Joseph W. Thompson, of Houston, Texas was authorized a \$15,000.00 credit line at BRC on or about July 15, 1982. Attached hereto as Exhibit A is a copy of Mr. Thompson's credit file.

6. On or about January 6, 1985, Joseph W. Thompson was granted a temporary increase in his credit line from \$15,000.00 to \$20,000.00.

7. On January 4, 5, 6 and 7, 1985, Joseph W. Thompson was issued, pursuant to his authorized credit line at BRC, fourteen (14) counter checks totaling \$18,000.00, itemized as follows:

<u>Counter Check Number</u>	<u>Counter Check Date</u>	<u>Counter Check Amount</u>	<u>Gaming Date Issued</u>
N453943	1/5/85	1,000.00	1/4/85
N453944	1/5/85	1,000.00	1/4/85
N450613	1/5/85	1,000.00	1/4/85
N450615	1/5/85	1,000.00	1/4/85
N450616	1/5/85	1,000.00	1/4/85
N450618	1/5/85	1,000.00	1/4/85
N458094	1/5/85	1,000.00	1/4/85
N458095	1/5/85	1,000.00	1/4/85
N454002	1/5/85	2,500.00	1/5/85
N453999	1/5/85	2,500.00	1/5/85
N453297	1/6/85	1,000.00	1/6/85
N453301	1/6/85	1,000.00	1/6/85
N452081	1/7/85	2,000.00	1/7/85
N453369	1/7/85	1,000.00	1/7/85

Copies of these counter checks are attached hereto as Exhibit B.

8. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a), the eight \$1,000.00 counter checks issued to Joseph W. Thompson on January 4, 1985 were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which were dated January 5, 1985.

9. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a) the two \$1,000.00 counter checks issued to Joseph W. Thompson on January 6, 1985 were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which date was January 6, 1985.

10. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a), the two counter checks issued to Joseph W. Thompson on January 7, 1985, in the amounts of \$2,000.00 and \$1,000.00 respectively, were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which date was January 7, 1985.

11. Pursuant to BRC's normal business practices, outstanding counter checks are deposited in 7, 14, or 30 calendar days from the date of issuance depending on their amount. All counter check deposits for a gaming patron which are individually and/or collectively \$5,000 or more are

reviewed by a credit executive prior to deposit. As part of his or her job responsibilities, the credit executive is to contact the gaming patron for the purpose of giving the patron advance notice of the pending deposit. If information is received that the gaming patron wishes to redeem or consolidate, the credit executive may place a "HOLD" on the deposit of the outstanding counter checks. BRC's procedure for effectuating a "HOLD" is for the credit executive to prepare a "Hold Slip" which is signed by the credit executive and forwarded to the Check Bank within the casino cage where it is maintained with the patron's original counter checks. Placing a "HOLD" on the deposit of outstanding counter checks is to extend the scheduled deposit pursuant to BRC's normal business practices but no later than the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). BRC's written procedure for depositing checks received from gaming patrons is contained in Section 28 of its internal control submission, a copy of which is attached hereto as Exhibit C.

12. On January 15, 1985, BRC's daily computer printout of outstanding counter checks due for deposit listed Joseph W. Thompson's eight \$1,000 counter checks dated January 5, 1985. On January 15, 1985, Jane Haverstick's supervisor, Director of Credit Robert Siegel, requested Ms. Haverstick to call Mr. Thompson pursuant to the practice described in

paragraph 11, supra. Ms. Haverstick called Mr. Thompson at his place of business in Houston, Texas and notified him that BRC expected to deposit shortly thereafter his eight \$1,000 counter checks dated January 5, 1985. Mr. Thompson informed Ms. Haverstick at that time that he would mail a check to BRC for the purpose of consolidating the eight \$1,000 counter checks.

13. Following the telephone conversation of January 15, 1985, as described in paragraph 12, supra., Ms. Haverstick prepared a BRC "Attention" card to be attached to Mr. Thompson's credit file for the purpose of informing the casino cage department that Mr. Thompson would be mailing a check to consolidate \$8,000 in outstanding counter checks. A copy of Ms. Haverstick's "Attention" card dated January 1, 1985 is attached hereto as Exhibit D.

14. On or about January 18, 1985, BRC credit executive Jan Schwartz prepared a "Hold Slip" regarding gaming patron Joseph W. Thompson's credit account. Said "Hold Slip" instructed the casino cage department to hold \$8,000 in counter checks until January 23, 1985 for the reason that the patron was sending a check to consolidate the counter checks. Ms. Schwartz' "Hold Slip" was prepared based upon the information contained on the "Attention" card attached to Mr. Thompson's credit file, as described in paragraph 13, supra. A copy of Jan Schwartz' "Hold Slip" is attached hereto as Exhibit E.

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15. On January 19, 1985, BRC received a Federal Express package from Mr. Thompson addressed to the attention of Ms. Haverstick. The package was delivered to the concierge's desk at BRC. Ms. Haverstick obtained the package at the concierge's desk and brought it to the credit area. The credit area at BRC is located adjacent to, but not within, the casino cage. Credit executives do not have access to enter the casino cage. However, there is a counter within the credit area where credit executives routinely interact with credit clerks and casino cage supervisory personnel. Said counter contains four windows, similar to general cashier windows, secured by a plexiglass partition with window inserts for transacting business between the credit executives and the casino cage department.

16. On January 19, 1985, while in the credit area, Ms. Haverstick opened the Federal Express package from Mr. Thompson. The package contained check number 764 signed by Mr. Thompson and drawn upon his checking account number 615-898 at the Northwest Bank and Trust, Houston, Texas. This check was dated "2/17/84", was made payable to "Caesars Boardwalk", the numerical amount thereof was "\$8,000.00" and the written amount thereof was "eight thousand" dollars. Upon examination of the check, Ms. Haverstick noticed that it was "stale dated".

17. On the same date, January 19, 1985, Jane Haverstick submitted Mr. Thompson's check number 764 to BRC's

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casino cage department. The check was not at that time accepted by the cage department as a consolidation check because of the stale date. BRC's casino cage department retained possession of Mr. Thompson's check for storage until such time as Mr. Thompson could be contacted and notified regarding the stale dating of the consolidation check. Ms. Haverstick prepared a BRC "Attention" card dated January 19, 1985 regarding the receipt of check number 764. A copy of said "Attention" card is attached hereto as Exhibit F.

18. On January 19, 1985, Casino Cage Shift Supervisor Nancy Nolan placed Mr. Thompson's check in safe deposit box #3 located inside the Main Bank of BRC's casino cage. Ms. Nolan prepared a note for Casino Cage Supervisor Gina Johnson regarding Mr. Thompson's personal check and left a message recorded on the Cage Shift Manager's Check List for January 21, 1985 so that Ms. Johnson would be aware of the personal check upon her arrival to work on Monday morning, January 21, 1985. A copy of the Cage Shift Manager's Check List for January 21, 1985 is attached hereto as Exhibit G.

19. On Monday, January 21, 1985, Casino Cage Supervisor Gina Johnson examined Mr. Thompson's personal check while in the Main Bank of BRC's casino cage. Ms. Johnson left Mr. Thompson's personal check on the counter inside the Main Bank and Casino Cage Shift Supervisor Claire Lodovico, when she reported to work on the swing shift, noticed the check on the

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Main Bank counter and placed it back into safe deposit box #3 located within the Main Bank. Ms. Lodovico then left a message for Ms. Johnson on the Cage Shift Manager's Check List for January 22, 1985. A copy of the Cage Shift Manager's Check List for January 22, 1985 is attached hereto as Exhibit H.

20. On or before January 22, 1985, Jane Haverstick became aware of the fact that Joseph W. Thompson's outstanding counter checks totaled \$18,000.00, not \$8,000.00, and that check number 764 would therefore not be in a sufficient amount to consolidate all of Mr. Thompson's outstanding counter checks.

21. On January 22, 1985, a cage shift supervisor retrieved Mr. Thompson's check number 764 from storage in the Main Bank's safe deposit box #3 and handed it to Jane Haverstick at a cage window opening on the credit area. While standing in close proximity to the cage window opening on the credit area, Ms. Haverstick contacted Mr. Thompson by telephone utilizing a telephone extension adjacent to the cage window. Upon hearing about the misdating and insufficient amount of the check, Mr. Thompson orally authorized Ms. Haverstick to alter both the date and the amount of the check on his behalf. Pursuant to Mr. Thompson's authorization, Jane Haverstick thereupon crossed out the date of "2/17/84" on the check and wrote above it the new date "1/5/85", together with the notation "Per J.W.T." Also pursuant to Mr. Thompson's authorization, Jane Haverstick altered both the numerical and

written amounts of check number 764 from \$8,000.00 to \$18,000.00. A copy of check number 764 with the alterations described above is attached hereto as Exhibit I.

22. Joseph W. Thompson, at the request of counsel for BRC, executed a written Certification indicating the authorizations given to Ms. Haverstick as described in paragraph 21, supra. The executed Certification was received by counsel for BRC on August 28, 1986 and provided to all counsel in this matter on September 3, 1986. A copy of Joseph W. Thompson's Certification is attached hereto as Exhibit J.

23. Following her alteration of check number 764, Ms. Haverstick submitted it to the cage, which handled it as consolidation check for \$18,000.00. The acceptance of the check for \$18,000.00 was posted to Mr. Thompson's credit file, a payment voucher, #432772, was prepared in the amount of \$18,000.00 to evidence the consolidation transaction, and the original outstanding counter checks were stamped paid. A copy of payment voucher #432772 is attached hereto as Exhibit K.

24. On January 22, 1985, following the acceptance of Mr. Thompson's check #764 as an \$18,000.00 consolidation check, Ms. Haverstick prepared a "Hold Slip" instructing the casino cage department to hold Mr. Thompson's consolidation check until March 5, 1985. Several additional extensions of the hold period occurred regarding Mr. Thompson's account pending

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receipt of a replacement check to be sent by Mr. Thompson. True copies of the "Hold Slips" pertaining to Mr. Thompson's account are attached hereto as Exhibit L.

25. On or about April 2, 1985, BRC received replacement check #102 from Joseph W. Thompson. Check #102 was drawn in the amount of \$17,620.00 on Mr. Thompson's personal checking account #2002764 at the Bank of Almeda, Houston, Texas. Mr. Thompson deducted \$380.00 for air fare reimbursement and provided BRC with a letter of explanation and copies of People's Express airline tickets. A copy of Mr. Thompson's letter, check #102, and the airline tickets are attached hereto as Exhibit M.

26. In calendar year 1985, BRC received approximately 15,000 personal checks from credit patrons. To the best of BRC's knowledge no personal checks of credit patrons were altered by representatives or employees of BRC at the request of any credit patron during calendar years 1984 and 1985.

27. BRC has no policies, procedures or practices authorizing the alteration of the written or numerical amount of a credit patron's personal check at the request of the credit patron. Its only procedure regarding the alteration of credit patron personal checks is contained in Section 26 of its system of internal accounting controls submitted to the Commission and Division pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.26, a copy of which is attached hereto as Exhibit N. Pursuant thereto if a date on a personal

consolidation check is completed incorrectly, the check bank cashier will, in the upper right corner of the check, above the incorrect date, write: "original date _____" to indicate the correct consolidation date for the check. This is done to insure deposit of the check within the required time period. In addition, although not covered by the written system of internal accounting controls, BRC has procedures covering two other types of situations in which consolidation checks are found to have been completed incorrectly by credit patrons. First, if a person submits a mail-in check with the wrong year written in the date, a mistake commonly made at the beginning of a new year, the patron is asked via telephone to authorize BRC representatives to change the year to the correct one. Second, if a personal credit patron consolidation check is received with a numerical dollar amount different than the written dollar amount on the check, the patron is contacted and the following statement is typed by BRC representatives on the back of the check: "BRC guarantees the amount of this check for \$_____ (formal written amount)".

28. BRC does have a written policy, which was in effect during the period referenced herein, for the receipt and processing of mail-in payments for total or partial redemption and consolidation of counter checks or returned checks. Said written policy was submitted to the Commission and Division pursuant to N.J.S.A. 5:12-99 and is identified as Appendix-Section J of BRC's system of internal accounting

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controls. A copy of BRC's Appendix-Section J regarding "Mail In Payments" is attached hereto as Exhibit O.

29. N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26(e) provide, in pertinent part, that consolidation checks may not be accepted for the purpose of avoiding or delaying the deposit of counter checks within the time periods specified in N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). An issue exists as to whether, on the basis of the foregoing facts, this prohibition was violated by the cage's acceptance of Mr. Thompson's check number 764 in its altered form. The parties have stipulated and agreed to submit this issue to the Commission for determination on the basis of the facts stipulated herein.

30. Due to the acceptance of Mr. Thompson's check number 764 in its altered form as a valid consolidation check, the counter checks listed in paragraph 7 above, other than the two \$2,500.00 counter checks issued on January 5, 1985, were not deposited within the fourteen (14) banking day time period specified in N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). An issue exists as to whether these counter checks were validly consolidated or if BRC was required to deposit them within the said fourteen (14) banking day period pursuant to N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). The parties have stipulated and agreed to submit this issue, on the basis of the foregoing stipulated facts, to the Commission for determination.

31. Notwithstanding the outcome of the Commission's determination with regard to the foregoing issues, BRC has taken corrective action by adopting a written policy prohibiting the alteration of the written and numerical amounts of credit patron personal checks submitted for consolidation purposes. A copy of said written policy is attached hereto as Exhibit P. BRC has taken further corrective action by revising Appendix-Section J of its system of internal accounting controls and submitting the same to the Commission and Division. Appendix-Section J was revised following discussions with representatives of the Division in order to clarify mail-in payment procedures because the events in this case indicated that it was not clearly understood by BRC Credit Department employees that Appendix-Section J applied to them. A copy of revised Appendix-Section J is attached hereto as Exhibit Q. In addition, the parties stipulate that the conduct described in the foregoing stipulated facts was engaged in to effectuate the patron's intention to consolidate his entire debt and there is no prior Commission determination of N.J.A.C. 19:45-1.26(e) upon which to rely regarding the permissibility of altering a patron's check. Accordingly, it is stipulated and agreed between the parties that the plaintiff will recommend to the Commission that no penalty be assessed against BRC with regard to this conduct.

AS TO COUNT II

1. The stipulations set forth in paragraphs 1-31 above are incorporated herein by reference and made a part hereof.

2. N.J.A.C. 19:45-1.11(c)(9) provides, in pertinent part, that each casino licensee shall establish a cashier's cage which shall be responsible for the custody of patron checks and other documents and records normally associated with the operation of a cashier's cage and also for the approval, exchange, redemption and consolidation of patron checks received for the purposes of gaming.

3. N.J.A.C. 19:45-1.11(g) provides that the functions described in the said regulation 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.

4. N.J.A.C. 19:45-1.15(b)(1) provides that the function of general cage cashiers shall include the responsibility to receive checks from patrons for the purpose of consolidations.

5. On or about January 19, 1985, BRC's casino cage department received patron Joseph W. Thompson's check number 764 in the amount of \$8,000.00 which had been sent by Mr. Thompson by Federal Express to the attention of credit

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executive Jane Haverstick, for the purpose of storing the same until Mr. Thompson could be contacted regarding the stale date written on the check.

6. On or before January 22, 1985, BRC's casino cage department released Mr. Thompson's original check number 764 to credit executive Jane Haverstick by means of passing the same to her through a cage window opening on the credit area.

7. An issue exists as to whether the release by BRC's cage department of the original check number 764 to Ms. Haverstick subsequent to receipt of the check by the casino cage department for storage purposes constitutes a violation of N.J.A.C. 19:45-1.11(c)(9), 1.11(g) and 1.15(b)(1). The parties have agreed to submit this issue to the Commission for determination on the basis of the foregoing stipulated facts.

8. BRC has taken corrective action by revising Appendix-Section J of its system of internal accounting controls, pertaining to mail-in payment procedures, to insure that checks mailed in by patrons are initially processed and recorded only by Casino Income Control and not by cage employees. See Exhibit Q.

9. It is further stipulated between the parties that, in light of the fact that BRC has taken corrective action to prevent such occurrences in the future, the plaintiff has agreed to recommend to the Commission that BRC be assessed a fine of \$10,000.00 if liability is found by the Commission on Count II of the Division's Complaint.

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10. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission.

The undersigned consent to the form and entry of this stipulation of facts.

State of New Jersey,
Department of Law and Public
Safety, Division of Gaming
Enforcement

BY: Kevin F. O'Toole
Kevin F. O'Toole
Deputy Attorney General

DATED: 6/1/87

Boardwalk Regency Corporation

BY: David Arrajj
David Arrajj, Esquire
Horn, Kaplan, Goldberg, Gorny
& Daniels
Attorney for Respondents

DATED: 5/28/87

INDEX TO EXHIBITS

- Exhibit A - Boardwalk Regency Corporation's credit file for gaming patron Joseph W. Thompson.
- Exhibit B - Copies of fourteen (14) counter checks totalling \$18,000.00 issued to Joseph W. Thompson on January 4, 5, 6, and 7, 1985.
- Exhibit C - Boardwalk Regency Corporation's written procedure for depositing checks received from gaming patrons, Section 28 of internal control submission.
- Exhibit D - "Attention" Card dated January 15, 1985 prepared by credit executive Jane Haverstick.
- Exhibit E - "Hold Slip" regarding gaming patron Joseph W. Thompson's credit account prepared by credit executive Jan Schwartz on or about January 18, 1985.
- Exhibit F - "Attention" Card dated January 19, 1985 prepared by credit executive Jane Haverstick.
- Exhibit G - Cage Shift Managers Check List, dated January 21, 1985, with notation prepared by Casino Cage Shift Supervisor Nancy Nolan.
- Exhibit H - Cage Shift Managers Check List, dated January 22, 1985, with notation prepared by Casino Cage Shift Supervisor Claire Lodovico.
- Exhibit I - Copy of patron Joseph W. Thompson's personal check #764.
- Exhibit J - Certification of patron Joseph W. Thompson.
- Exhibit K - Caesars payment voucher form #432772 regarding patron Joseph W. Thompson's credit account.

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- Exhibit L - Caesars "Hold Slips" pertaining to patron Joseph W. Thompson's credit account.
- Exhibit M - Letter of Joseph W. Thompson along with copy of replacement check #102 and airline tickets received by Boardwalk Regency Corporation on or about April 2, 1985.
- Exhibit N - Boardwalk Regency Corporation's written procedure for redemption, consolidation or substitution of checks submitted by gaming patrons, Section 26 of internal control submission.
- Exhibit O - Boardwalk Regency Corporation's written procedure for mail-in payments, Appendix Section J of internal control submission.
- Exhibit O - Boardwalk Regency Corporation's recently adopted written policy prohibiting the alteration of the written and numerical amounts of credit patron personal checks submitted for consolidation purposes.
- Exhibit Q - Boardwalk Regency Corporation's revised Appendix Section J recently submitted to the Commission and the Division.

17-7-82

3/2/84

BANK INFORMATION

Exhibit 1

BANK #1
DATE: 7/8/82
SR: [Signature]
UC: 45554

TEL/NOC #615898 PER SINCE 5/79 MED/4 5000 CR GOOD BUS SINCE 4/77 MOD/5
CSA 15000 CR GOOD BUS SINCE 4/77 LO/5 CSA 15000 CR GOOD BUS SINCE 4/77
LO/5 CSA 15000 CR GOOD BUS SINCE 12/77 NOMINAL CSA SPOKE TO DAWN

BANK #1
DATE: 3-7-84
SR: [Signature]
UC: 45878-21

NCC/TEL...#615. 898 Pers. Op. 5-79 Md5 Av. \$20000 Gd. Bus. Op. 4-76
Nom. CSA PER: Debra Polix.

BANK #1
DATE: 1/4/89
SR: [Signature]
UC: 457942/1

NCC...#615898 Pers ckg OP.5/15/79 L-5 15000. Not good. Per: Lisa

BANK #
DATE:
SR:
UC:

BANK #
DATE:
SR:
UC:

BANK #
DATE:
SR:
UC:

FORM N.C. 100 (REV. 5/82)

DATE OF BIRTH 8/19/30		DATE OF BIRTH OF SPOUSE		CAESARS BOARDWALK REGENCY HOTEL-CASINO		DATA PROC. # 043212		CENTRAL CREDIT # 20556274	
NAME (LAST) THOMPSON		FIRST PLEASE PRINT JOSEPH		MIDDLE W.		BANK-1 (CHECKING ACCT. ONLY) NORTHWEST BANK & TRUST			
STREET ADDRESS OF RESIDENCE 5443 Queensloch		CITY HOUSTON,		STATE TX		ZIP CODE 77096		NO. YRS. ?	
EMPLOYMENT - NAME OF FIRM HOUSTON HEAT EXCHANGERS		TYPE OF BUSINESS ?		POSITION WITH FIRM OWNER		BANK-2 (CHECKING ACCT. ONLY)			
STREET ADDRESS OF FIRM P.O. Box 45876		CITY HOUSTON		STATE TX		ZIP CODE 77245		NO. YRS. ?	
DIRECT ALL CORRESPONDENCE TO: (PLEASE CHECK ONE) MAXIMUM CREDIT REQUESTED PER TRIP: \$15,000.						BANK-3 (CHECKING ACCT. ONLY)			
☒ BUSINESS ☐ RESIDENCE						STREET ADDRESS - BRANCH			
						CITY, STATE			
						BANK OFFICER			
						OFFICIAL POSITION			

I AM NOT A STATE OFFICER, EMPLOYEE MEMBER OF JUDICIARY OR LEGISLATURE OR AN OFFICER OF A MUNICIPALITY OR COUNTY IN NEW JERSEY IN WHICH CASINO GAMBLING IS AUTHORIZED.
I ACKNOWLEDGE AND AGREE TO NOTIFY CAESARS BOARDWALK REGENCY HOTEL/CASINO IF MY STATUS IN THIS RESPECT CHANGES. ANSWERS TO THE ABOVE QUESTIONS HAVE BEEN MADE BY ME FOR THE PURPOSE OF SECURING CREDIT AND I DECLARE THEM TO BE TRUE AND CORRECT. GIVE PERMISSION TO CAESARS BOARDWALK REGENCY HOTEL/CASINO TO OBTAIN INFORMATION REGARDING MY BANK ACCOUNTS. I WILL NOT HOLD THESE BANKS RESPONSIBLE FOR ANY INFORMATION RELEASED.

SIGNATURE: [Signature] SIGNATURE:

P-1-15
11-155 100

P-5 10
4-1-85 48

BANK NORTHWEST BK & TR		N 45400	
BRANCH 1716 MANGUM		2279034	
CITY HOUSTON	STATE TX	01/05/85	
PAY TO THE ORDER OF BRC		\$2,500	
*****TWO THOUSAND FIVE HUNDRED*****			
113003130	ABA NUMBER	INITIAL	SIGNATURE
615-898	ACCOUNT NUMBER	DATE	PATRON NAME
			THOMPSON, JOSEPH W.

BANK NORTHWEST BK & TR		N 45399	
BRANCH 1716 MANGUM		2279031	
CITY HOUSTON	STATE TX	01/05/85	
PAY TO THE ORDER OF BRC		\$2,500	
*****TWO THOUSAND FIVE HUNDRED*****			
113003130	ABA NUMBER	INITIAL	SIGNATURE
615-898	ACCOUNT NUMBER	DATE	PATRON NAME
			THOMPSON, JOSEPH W. 5

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 450613
3102871

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

PAID
INITIAL
SIGNATURE
DATE
THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 453943
2278975

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

PAID
INITIAL
SIGNATURE
DATE
THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 453944
2278976

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

PAID
INITIAL
SIGNATURE
DATE
THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 45061
3102873

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND*

DOLL

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 45809
23442

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND*

DOLL

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 45061
3102874

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND*

DOLL

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

PAID
STATE TX
DATE 01/07/85

N 452081
4123726

PAY TO THE ORDER OF BRC

\$2,000.00

*****TWO*THOUSAND*

DOLLARS

113003130
ABA NUMBER

615-898 0
ACCOUNT NUMBER

THOMPSON, JOSEPH W.
PATRON NAME

SIGNATURE

U.S. FUNDS

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX
DATE 01/06/85

N 453301
3103039

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND*

RS

113003130
ABA NUMBER

615-898 0
ACCOUNT NUMBER

THOMPSON, JOSEPH W.

PATRON NAME

SIGNATURE

DATE

U.S. FUNDS

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX
DATE 01/06/85

N 453297
3103035

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND*

DOLLARS

113003130
ABA NUMBER

615-898 0
ACCOUNT NUMBER

THOMPSON, JOSEPH W.

PATRON NAME

SIGNATURE

DATE

U.S. FUNDS

BANK	NORTHWEST BK & TR	N 450618	
BRANCH	1716 MANGUM	3102876	
CITY	HOUSTON	STATE TX	01/05/85
PAY TO THE ORDER OF BRC		\$1,000	
*****ONE*THOUSAND*			
113003130		U.S. FUN	
ABA NUMBER		SIGNATURE	
615-898 0		DATE	
ACCOUNT NUMBER		THOMPSON, JOSEPH W.	
		PATRON NAME	

BANK	NORTHWEST BK & TR	N 45336	
BRANCH	1716 MANGUM	3103107	
CITY	HOUSTON	STATE TX	01/07/85
PAY TO THE ORDER OF BRC		\$1,000	
*****ONE*THOUSAND*			
113003130		U.S. FUN	
ABA NUMBER		SIGNATURE	
615-898 0		DATE	
ACCOUNT NUMBER		THOMPSON, JOSEPH W.	
		PATRON NAME	

BANK	NORTHWEST BK & TR	N 45809	
BRANCH	1716 MANGUM	4123441	
CITY	HOUSTON	STATE TX	01/05/85
PAY TO THE ORDER OF BRC		\$1,000	
*****ONE*THOUSAND*			
113003130		U.S. FUN	
ABA NUMBER		SIGNATURE	
615-898 0		DATE	
ACCOUNT NUMBER		THOMPSON, JOSEPH W. 54	
		PATRON NAME	

SECTION 28 PROCEDURE FOR DEPOSITING CHECKS RECEIVED FROM
 GAMING PATRONS

(a) All Counter Checks and patron checks, unless redeemed or consolidated prior to the time requirements herein, will be deposited in the BRC's bank account in accordance with its normal business practice, but in no event later than:

1. Seven banking days after the date of the check for a check in an amount less than \$1,000;
2. Fourteen banking days after the date of the check for a check in an amount of at least \$1,000 but less than \$2,500; or
3. Ninety banking days after the date of the check for a check in an amount of \$2,500 or more.

(b) All checks received for consolidation will be deposited in BRC's bank account within:

1. Seven banking days after the date of the initial check for a consolidating check where the consolidating check is in an amount less than \$1,000;
2. Fourteen banking days after the date of the initial check for a consolidating check where consolidating check is in an amount of at least \$1,000 but less than \$2,500; or
3. Ninety banking days after the date of the initial check for a consolidating check where the consolidating check is in an amount of \$2,500 or more.

(c) All checks received as part of a redemption will be deposited in BRC's bank account within:

1. Seven banking days after the date of the initial check if the initial check is in an amount of less than \$1,000;

2. Fourteen banking days after the date of the initial check if the initial check is in an amount of at least \$1,000 but less than \$2,500; or

3. Ninety banking days after the date of the initial check if the initial check accepted is in an amount of \$2,500 or more.

(d) In the event of a series of consolidation or redemption transactions with a patron, the initial check will be the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions.

(e) Any check deposited into a bank will not be considered paid until a reasonable time has been allowed for such check to be paid by the bank. A "reasonable time" is based upon the Federal Reserve District or country the paying bank is located in, unless verification is made with the bank that the check has been paid. The time periods will be as follows:

- | | |
|---|---|
| 1. Federal Reserve District 03 | - 7 calendar days; |
| 2. Federal Reserve District 02 | - 10 calendar days; |
| 3. All other Federal Reserve
Districts and Canada | - 15 calendar days. |
| 4. All savings and loans, regardless
of Federal Reserve District | - 15 calendar days. |
| 5. Foreign (excluding Canada) | - indefinite until notification
is received that check is
paid. |

(f) All non-gaming checks will be deposited the first banking day following receipt.

CAESARS
ATLANTIC CITY HOTEL CASINO

ATTENTION

Special
Instructions

*Aut. mailing pk to
Consulate 8000 N. Ave.
Held p/ch until 2/16/85 - 30 days*

*Call cust 1/21
Rec'd P/ch - misdated*

Sig.

[Signature]

Lic. No.

1126-11

Date

1/15/85

Exhibit D

CASINOS.
HOTEL-CASINO-ATLANTIC CITY

HOLD

Max. Banking
Days

Max.
Date

1/24

- Cage Use Only -

Customer Name:

Joseph Thompson

DOB

Amount \$

8000

1. Hold till

1-23-85

Reason

Cust. sending ck. to cons. - Bill

Instructions

Date

Signature & Lic. #

[Signature]

2. Hold till

Reason

Instructions

Date

Signature & Lic. #

3. Hold till

Reason

Instructions

Date

Signature & Lic. #

FORM NJC 51081 (Rev. 11/83)

CASARS
ATLANTIC CITY HOTEL CASINO

Special
Instructions

Rec'd "ck" 1-19-85 #764
ATTENTION

Call post. Monday 1/21/85
Pck is outdated. Money
(8000)
must be received by 1/23/85
or unexpired date 8 @ 1000 Mks
will be deposited.

Sig.

Lic. No.

Date

[Signature] 1126-11 1/19/85

CAESARS

BOARDWALK REGENCY HOTEL CASINO

CAGE SHIFT MANAGERS CHECK LIST

DAY SHIFT

A. SPECIAL INSTRUCTIONS/IMPORTANT EVENTS:

B. SICK/TARDY CALLS:

Phil's sick

*see 1-20
649

C. MAINTENANCE CALLS:

D. SPECIAL DEPOSIT INSTRUCTIONS:

E. COMPUTER PROBLEMS/NOTES:

DAILY CHECK LIST:

- ☒ supervisor check lists copied
- ☒ foreign rates updated
- ☒ cameras checked for film
- ☒ film sent for processing
- ☒ cage/kitchen supplies checked/ordered
- ☒ marker deposit checked/authorized
- ☒ checks \$25,000.00 and over submitted for approval
- ☒ shredding pick up requested
- ☒ chips rotated
- ☒ chips inventoried
- ☒ currency rotated
- ☒ supervisor summary completed

MONTHLY CHECK LIST:

- ☐ chip reserve counted
- ☐ large chips/plaques broken down
- ☐ monthly variance written off
- ☐ monthly accountability lists sent to accounting

SIGNATURE: _____

DATE: _____

DAY

Put Lewis
aid, not
close in today
he would be
Toby

GINA, LC
We need

General Ledger Report (For
photo. We're using the
last good one. The ones in
the main bank are
I'll throw them
Please see

Yvonne, note in
your copy re: J. Thompson
Rancey

GINA PLEASE
CALL RUTH PRATT
AGENT R. J. Houghton
TO SEE IF THE
CASH GET THE IT
PAID IN RLC 12



BOARDWALK REGENCY HOTEL CASINO

CAGE SHIFT MANAGERS CHECK LIST

DAY SHIF

A. SPECIAL INSTRUCTIONS/IMPORTANT EVENTS:

B. SICK/TARDY CALLS:

C. MAINTENANCE CALLS:

D. SPECIAL DEPOSIT INSTRUCTIONS:

E. COMPUTER PROBLEMS/NOTES:

Ann Rando terminated
1-22-85
(not on access list)

DAILY CHECK LIST:

- ☒ supervisor check lists copied
- ☒ foreign rates updated
- ☒ cameras checked for film
- ☐ film sent for processing
- ☐ cage/kitchen supplies checked/ordered
- ☐ marker deposit checked/authorized
- ☐ checks \$25,000.00 and over submitted for approval
- ☐ shredding pick up requested
- ☐ chips rotated
- ☐ chips inventoried
- ☐ currency rotated
- ☐ supervisor summary completed

MONTHLY CHECK LIST:

- ☐ chip reserve counted
- ☐ large chips/plaques broken down
- ☐ monthly variance written off
- ☐ monthly accountability lists sent to accounting

SIGNATURE: [Signature]

DATE: 1/22/85

550

DAY

551

JOSEPH W. THOMPSON
P. O. BOX 45876 PH 713 437-7481
HOUSTON, TEXAS 77045

PR JMT 11/5/85 764
2/17 84 35-313/1130

PAY TO THE ORDER OF Caesars Boardwalk \$18000.00
Eighteen thousand DOLLARS

 northwest bank & trust
P. O. BOX 45876 HOUSTON, TEXAS 77045

MEMO Joseph W. Thompson

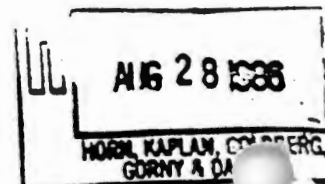
⑆113003130⑆ 615 898 8764

1-1814X2

Exhibit C

P-3

Nicholas Casiello, Jr., Esquire
HORN, KAPLAN, GOLDBERG, GORNY & DANIELS
1300 Atlantic Avenue
Suite 500
Atlantic City, New Jersey 08401
(609) 348-4515
Attorneys for Boardwalk Regency Corporation



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

Plaintiff

v.

BOARDWALK REGENCY
CORPORATION, t/a CAESARS
ATLANTIC CITY, and JANE
HAVERSTICK,

Respondents

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

AGENCY DOCKET NO. 85-376
OAL DOCKET NO. CCC-0518-86

CERTIFICATION

I, Joseph W. Thompson, of Houston, Texas, certify as follows:

1. At the request of the attorneys for Boardwalk Regency Corporation t/a Caesars Atlantic City, I reviewed the Division of Gaming Enforcement Complaint in the above-captioned matter.

2. I am the patron referred to in that complaint.

3. On or about January 15, 1985, I spoke with Caesars Credit Executive Jane Haverstick on the telephone.

4. In that telephone conversation, I advised Ms. Haverstick that I would mail her a check for \$8,000.00 to be used to consolidate \$8,000.00 in counter checks which had been issued to me by Caesars because they were coming due and would be deposited soon.

5. On or about January 18, 1985, I mailed to Ms. Haverstick by federal express a check in the amount of \$8,000.00 drawn on my bank account at the Northwest Bank and Trust, Houston, Texas.

6. A few days later, I received a telephone call from Ms. Haverstick. In that conversation, she advised me that I had misdated my check and I authorized her to change the date. She further advised that I had a total of \$18,000.00 in counter checks coming due which would be deposited shortly, rather than \$8,000.00. She further advised me that I would have to send a check for \$18,000.00 if I desired to consolidate all of my then outstanding counter checks.

7. I was rather upset with Ms. Haverstick during that telephone conversation because I thought she had given erroneous information in our first telephone conversation as to the amount of the check I had to send in in order to consolidate all of my then outstanding counter checks. In any event I specifically authorized Ms. Haverstick to change the amount of the \$8,000.00 check to \$18,000.00 so that all of my outstanding counter checks could be consolidated. After discussing the matter further with Ms. Haverstick, I also agreed to send her a new check for \$18,000.00 because of her concern that the banks would not accept my original check if it was altered.

8. Pursuant to my conversation with Ms. Haverstick, I eventually did send her a new check in the amount of \$18,000.00 to replace my original check so that there would be no question as to its acceptance by the banks.

9. At all times during this matter, it was my intent to consolidate all of my then outstanding markers with one check.

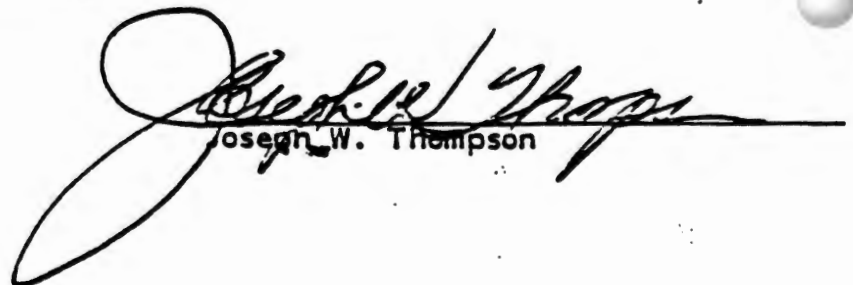
10. A month or two after my telephone conversation with Ms. Haverstick I recall having several telephone conversations with investigators for the State of New Jersey regarding the consolidation of my counter checks. I

do not recall specifically what I said in those telephone conversations nor did I really understand why they were telephoning me. I do recall that I did not desire to discuss my gaming activity, which I consider to be a private matter, with complete strangers over the telephone.

11. The events which form the basis of the complaint in this matter occurred over eighteen (18) months ago and my recollection of the details is somewhat hazy. However, this certification is accurate to the best of my knowledge and one thing I am certain of is that I did authorize Ms. Haverstick to change the amount of my original \$8,000.00 check to \$18,000.00.

12. I am providing this certification to be used in the hearing on this matter. I am not willing to come to Atlantic City to testify in person.

13. I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Joseph W. Thompson

DATED:

2C

CAESARS
HOTEL-CASINO ATLANTIC CITY

HOLD

Max. Banking
Days

Max.
Date

- Cage Use Only -

Customer Name: THOMPSON, JOSEPH W. DOB 8/19/30 Amount \$ 13,000

1. Hold till 3-5-85 Reason Cust. accumulation 60 days w/ P/ck

Instructions Dep. Cust. Concept 3/1/85 Date 1/28/85 Signature & Lic. [Signature]

2. Hold till 3-19-85 Reason

Instructions Date 3/1/85 Signature & Lic. [Signature]

3. Hold till Reason

Instructions Date Signature & Lic. #

FORM NJC 51081 (Rev. 11/83)

P-2 ID
4-1-85

CAESARS
HOTEL-CASINO ATLANTIC CITY

HOLD

Max. Banking
Days

Max.
Date

- Cage Use Only -

Customer Name: Thompson, Joseph W. DOB 8/19/30 Amount \$ 18,000

1. Hold till 3-25-85 Reason Cust. coming in to \$14 million.

Instructions Give to me before departing Date 3/18/85 Signature & Lic. [Signature]

2. Hold till 3/27/85 Reason Customer sending another check

Instructions per B. Seel Date 3/27/85 Signature & Lic. # [Signature]

3. Hold till Reason

Instructions Date Signature & Lic. #

FORM NJC 51081 (Rev. 11/83)

1
Lester Benlikurt
P.O. Box 389
Stratton City, Mo 64508

Mr. H. E. Long (Cashier) \$18,000 Marked
Here is all check for \$17,630
to cover \$18,000 less marking
less for tax (\$350) as usual.

Wesley W. Thompson
1443 Quince
Lawrence, MO 64501

His kind thanks to both in
selling these Mark

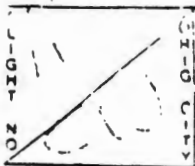
2000-1-14

JOSEPH W. THOMPSON P. O. BOX 45876 437-7481 HOUSTON, TEXAS 77245		102
		1/4 85 35-127/1130
PAY TO THE ORDER OF	<i>BANK</i>	\$ <i>17,620</i>
<i>SEVENTEEN THOUSAND SIX HUNDRED TWENTY</i>		DOLLARS
 BANK OF ALMEDA 713/433-5623 Member FDIC 13300 Alameda Road, Houston, Texas 77045		3-85
MEMO	<i>Joseph W. Thompson</i>	
⑆ 113001271⑆ ⑈ 200276⑈ 0102		

PEOPLE Express

FOR TRANSPORTATION ON PEOPLE EXPRESS AIRLINES

PASS
LOCAL



CUSTOMERS	\$ = \$	198
BAGGAGE	\$ = \$	12
ATC		
MISC.	\$ = \$	
NC	SC	
UNAM	RV	
TOTAL		= \$ 210

INTERNATIONAL SERVICES COVERED BY APPLICABLE TARIFFS. ALL OTHER SERVICES GOVERNED BY CONTRACT OF CARRIAGE HEREIN INCORPORATED BY REFERENCE. I ACKNOWLEDGE RECEIPT OF TICKET(S) AND OR COUPONS FOR RELATED CHARGES DESCRIBED HEREON. PAYMENT IN FULL TO BE MADE WHEN BILLED IN ACCORDANCE WITH STANDARD POLICY OF COMPANY ISSUING CARD AND AS REFLECTED IN APPLICABLE TARIFFS.

Signature of Cardholder X

DATE

STATE

CREDIT CARD IMPRINT

NOT FOR USE
AS TICKET

1 500 4102129109 5

ISSUED BY

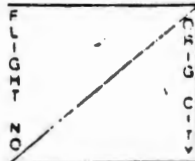
PEOPLE Express

FOR TRANSPORTATION ON PEOPLE EXPRESS AIRLINES

FLIGHT
PASS
LOCAL

RECEIPT

DATE OF ISSUE
14 JAN 85



CUSTOMERS	\$ = \$	150
BAGGAGE	\$ = \$	12
ATC		
MISC.	\$ = \$	
NC	SC	
UNAM	RV	
TOTAL		= \$ 170

CUSTOMER NAME

DOCUMENTS VERIFIED

INTERNATIONAL SERVICES COVERED BY APPLICABLE TARIFFS. ALL OTHER SERVICES GOVERNED BY CONTRACT OF CARRIAGE HEREIN INCORPORATED BY REFERENCE. I ACKNOWLEDGE RECEIPT OF TICKET(S) AND OR COUPONS FOR RELATED CHARGES DESCRIBED HEREON. PAYMENT IN FULL TO BE MADE WHEN BILLED IN ACCORDANCE WITH STANDARD POLICY OF COMPANY ISSUING CARD AND AS REFLECTED IN APPLICABLE TARIFFS.

Signature of Cardholder X

DATE

STATE

CREDIT CARD IMPRINT

NOT FOR USE
AS TICKET

1 500 4102139583 0

3713 803628 51009

12/84 THRU 12/85 80 AX

JOSEPH W THOMPSON

210 + 170 = \$ 380 TOTAL

SECTION 26 PROCEDURE FOR REDEMPTION, CONSOLIDATION OR
SUBSTITUTION OF CHECKS SUBMITTED BY GAMING PATRONS

(a) The drawer of a check may redeem the check by exchanging:

1. Cash or cash equivalent;
2. Gaming chips and plaques;
3. Any combination of another patron check, cash, cash equivalent, and/or gaming chips and plaques.

(b) The drawer of a check may consolidate some or all Counter Checks by exchanging another check in an amount equal to the total of Counter Checks being consolidated.

(c) Consolidations, total or partial redemptions or substitutions of checks may be made at a window bank of the casino cage. Additionally, total or partial redemptions may be made at BRC Branch Offices (see Appendix G), by wire transfer (see Appendix F) or by mail (see Appendix J). All consolidations may be made by mail (See Appendix J). Consolidation or redemptions of non-gaming checks are not allowed.

(d) BRC and Agents of BRC will not accept any check in redemption, consolidation or substitution of another check or checks for the purpose of avoiding or delaying the deposit of a check within the time period specified in Section 28 of this Submission.

(e) When a patron presents cash, cash equivalents, gaming chips or plaques and/or patron check for the redemption or consolidation of a Counter Check, the window bank cashier will prepare a Payment Voucher. The Payment Voucher is a multi-purpose, two-part form, at a minimum (original-window bank; duplicate-check bank) utilized to document an increase or decrease to the imprest balance of the window bank, and to document transactions between the window bank cashier and check bank cashier. The window bank cashier record the following information on the Payment Voucher:

1. Date and shift;
2. Window number;
3. Cashier's initials;
4. Patron name and date of birth;
5. Type of transaction and amount;
6. Time and date stamp.

(f) Any check accepted by the window bank cashier for consolidation, substitution or redemption will be immediately time and date stamped with a bank endorsement "for deposit only" and initialed by the cashier. If the check is for consolidation, the patron will be informed what date the check will be dated (the date will be the date of the earliest Counter Check being consolidated). This check along with all copies of the Payment Voucher will be forwarded to the check bank. If by chance the date is completed incorrectly, the check bank cashier will, on the upper right corner of the check, above the date, write "original date xx/xx/xx" which will be the date of the consolidation check.

(g) Any cash equivalent accepted for redemption will be immediately time and date stamped with a bank endorsement "for deposit only" and initialed by the window bank cashier. The cash equivalent along with all copies of the Payment Voucher will be forwarded to the check bank.

(h) The check bank cashier will upon receipt of a Payment Voucher and any related check, or cash equivalent will:

1. Initial the Payment Voucher;
2. Obtain the patron's Credit Application File from the Check Bucket, remove the original Counter Check and redemption copy;
3. Hand the original Payment Voucher and original Counter Check to the window bank cashier;

4. Record the Counter Check numbers being redeemed, consolidated or substituted onto the check or cash equivalent accepted.
5. Staple the redemption copy of the Counter Check to the check bank copy of the Payment Voucher.
6. Expeditiously post the transaction into the CRT terminal located in the check bank.
7. Manually post the patron's credit file.
8. The checks and cash equivalents accepted for redemption will be forwarded to the main bank to be included with the bank deposit. Checks accepted for consolidation will be returned to the patron file in the check bank.
9. The check bank copy of the Payment Voucher along with the redemption copy of the Counter Check(s) will be forwarded to the Accounting Drawer.

APPENDIX SECTION J - MAIL-IN PAYMENTS

(a) Total or partial redemption and consolidation of Counter Checks or returned checks will be accepted through the mail.

(b) All checks or cash equivalents received for total or partial redemption and consolidation will be initially received by Casino Income Control. A log will be maintained of all checks received and forwarded to the casino cage. All checks received will be time and date stamped with a restrictive "For Deposit Only" endorsement to BRC's bank account. The following information will be recorded in the log:

1. Date check received;
2. Patron's name;
3. Amount of check.

(c) Any check received that is post-dated will be logged in a post-dated check log and held in Casino Income Control until the date of the check, at which time it will be taken to the cage. Post-dated checks will be time and date stamped with the restrictive endorsement on the day they are taken to the cage.

(d) Casino Income Control will deliver the checks to the cage, where the check bank cashier or cage supervisor or above will compare the log against the actual checks received and initial the log, signifying receipt of the items.

(e) Any checks received not in compliance with this Submission will be returned to the patron.

(f) The check bank cashier will post to the patron's Credit Application Card and to the computer, and record the payment as a mail-in check or mail-in cash equivalent.

(g) All Counter Checks totally redeemed or consolidated will be stamped paid and either held in the paid Counter Check file or returned to the patron by mail.

(h) If the payment received is a partial redemption, a receipt will be prepared documenting the payment and attached to the Counter Check, thus reducing the amount owed. If the Counter Check is not fully paid prior to the required deposit date, the Counter Check will be deposited and the partial payment will be transferred to the Return Check Accountability as a credit balance.

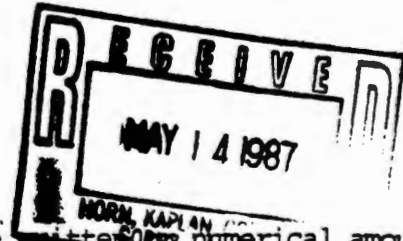
(i) Any check received for consolidation of Counter Checks will be handled in compliance with this Submission.

CAESARS

ATLANTIC CITY

MEMORANDUM

DATE: May 7, 1987
TO: All Cage and Credit Personnel
FROM: Michael J. Walsh *MJW*
SUBJECT: Patron Check Alterations



As you are aware, alterations to the ~~written~~ ^{numerical} amounts of any mail-in patron check is strictly prohibited by Company policy. Compliance to the fullest extent with this policy is required. This policy, however, does not refer to date notations placed on consolidation checks. Should you have any questions, please contact your Supervisor.

MJW/laj

Xc: Ed Sutor
Bob Reilert
Howard Bacharach
Jim McCarthy
Bob Siegel

bcc: David Arrajj

565

APPENDIX SECTION J - MAIL-IN PAYMENTS

(a) Total or partial redemption and consolidation of Counter Checks or returned checks will be accepted through the mail.

(b) All checks or cash equivalents received for total or partial redemption and consolidation of Counter Checks or returned checks will be initially received by the mail room and forwarded to Casino Income Control. Any checks mailed to the Cage will be forwarded to Casino Income Control or, if Casino Income Control is closed, the checks will be inserted through the mail slot located in the door to Casino Income Control. Any checks mailed to Credit Representatives will be placed in the Casino Income Control cabinet in the Credit Department. The Casino Income Control cabinet is a lockable cabinet located in the Credit Department. The key to the cabinet is maintained by Casino Income Control personnel. A log will be maintained by Casino Income Control of all checks received and forwarded to the Casino Cage. [A log will be maintained of all checks received and forwarded to the casino cage.] Checks placed into either the Casino Income Control cabinet or mail slot will remain there until Casino Income Control personnel remove the checks. All checks received will be time and date stamped with a restrictive "For Deposit Only" endorsement to BRC's bank account. The following information will be recorded in the log:

1. date check received;
2. patron's name;
3. amount of check[.] ;
4. signature of preparer.

(c) Any check received that is post-dated will be logged in a post-dated check log and held in Casino Income Control until the date of the check, at which time it will be taken to the Cage. Post-dated checks will be time and date stamped with the restrictive endorsement on the day they are received in Casino Income Control. [taken to the cage.]

(d) Casino Income Control will deliver the checks to the Cage, where the Check Bank Cashier or Cage Supervisor or above will compare the log against the actual checks received and sign [initial] the log, signifying receipt of the items.

(e) Any checks received not in compliance with this Submission will be returned to the patron.

(f) The Check Bank Cashier will post the payment to the patron's Credit Application Card and to the computer and record the payment as a mail-in check or mail-in cash equivalent.

(g) All Counter Checks totally redeemed or consolidated will be stamped paid and either held in the paid Counter Check file or returned to the patron by mail.

(h) If the payment received is a partial redemption, a receipt will be prepared documenting the payment and attached to the Counter Check, thus reducing the amount owed. If the Counter Check is not fully paid prior to the required deposit date, the Counter Check will be deposited and the partial payment will be transferred to the return check accountability as a credit balance.

(i) Any check received for consolidation of Counter Checks will be handled in compliance with this Submission.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-246
OAL DOCKET NO. CCC 526-87
LICENSE NO. 4630-21
ORDER NO. 87-48-4

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
KENNETH E. HINES, II, :
Respondent. :

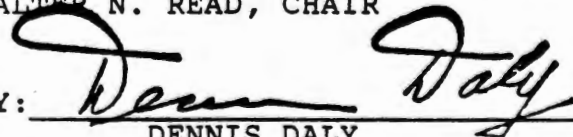
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 18th day of December 1987, 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 and made a part hereof.

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 526-87

AGENCY DKT. NO. 87-246

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

Petitioner,

v.

KENNETH E. HINES II,

Respondent.

Ralph L. Fusco, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Ronald A. Hendrickson, Esq., on behalf of respondent

Record Closed: October 6, 1987

Decided: November 6, 1987

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 held on October 6, 1987, after which the record closed.

The question presented is whether respondent can establish rehabilitation pursuant to N.J.S.A. 5:12-90h, in light of his guilty plea to a statutorily disqualifying offense, N.J.S.A. 5:12-86c.

Certain basic facts have either been stipulated or are undisputed. On or about April 29, 1985, respondent was arrested in Cherry Hill Township and was indicted on one count of possession of a controlled dangerous substance (CDS), cocaine, N.J.S.A. 24:21-20a; possession with intent to distribute, N.J.S.A. 24:21-19, and conspiracy, N.J.S.A. 24:21-24. On November 18, 1985, respondent pled guilty to the charge of possession with intent to distribute and the remaining charges were dismissed. He was sentenced to 3 years' probation, was ordered to perform 200 hours of community service, and was fined \$2,000.

Respondent testified that he is 31 years old, single, and a graduate of Stockton State College. He began using drugs some 10 years ago. The sequence of events which led to his arrest involved his meeting a woman the week before, with whom he used drugs. She then encouraged him to obtain cocaine for her friends, and he did so. He purchased one ounce of cocaine, valued at the time at about \$2,000, and met the girl and her friends at a prearranged location. In the course of the transfer, the police arrived. Respondent acknowledged that he expected to make a few hundred dollars on this transaction; however, he testified that he had never sold drugs for profit before. After his arrest, he reached bottom and decided to change his course. He voluntarily entered and completed a drug rehabilitation program, and attends Alcoholics Anonymous and Narcotics Anonymous meetings regularly. He now counsels fellow employees at the Sands who have drug and alcohol problems. He hasn't been involved in any substance abuse since his arrest. Respondent also testified that after his arrest, he turned to his religion. He became a regular parishioner in his church and teaches Sunday school.

Pastor Dennis R. Borg is an ordained Baptist minister and a licensed family therapist. He has been pastor of the Cherry Hill Alliance Church, which respondent now attends, for the last 17 years. Pastor Borg testified that respondent began coming to church after his arrest and appeared to be undergoing a sincere religious transformation. Respondent disclosed all of his past history to him and to the congregation and has since that time developed a very good reputation in the community. Pastor Borg testified that the church has placed respondent in a position of leadership, and permitted him to teach Sunday school, which he would not have allowed unless confident that respondent was free of drugs and alcohol. Pastor Borg believed that respondent was truly a different person than the one who originally came to him.

Thomas J. Esehak is an elder in the church and an ordained minister. He is respondent's prayer partner. A prayer partner is one who is available to another in good times and bad for help and support. He and respondent have met regularly on Monday nights for the last year and one-half to study and pray. He considers respondent one of his family.

Samuel S. Raffa has been employed at the Sands for the last four-and-one-half years as an employee assistance specialist and was before that director of personnel at Owens Illinois Company in Glassboro for 40 years. In his present position, he serves as liaison between management and labor. Respondent contacted him for the first time after his arrest, seeking help in finding a rehabilitation center. Mr. Raffa testified that he felt that respondent's efforts then were sincere. Since that time his trust has been vindicated. Over the last two years, respondent has been instrumental in counselling other Sands employees with drug and alcohol problems to obtain help. This has made his own job easier, because some employees associate him with management and are reluctant to approach him for fear of repercussions. Respondent has never missed a day's work and he considers him to be an outstanding employee.

A number of character letters, as well as articles and other materials, were placed in evidence reflecting upon respondent's good works in recent years. Among these is a letter from his probation officer to the effect that he has complied with all the conditions of his probation and that his attitude is positive. He was also chosen in 1986 to receive the distinguished merit citation of the South Jersey Chapter of the National Conference of Christians and Jews.

This is the substance of the record. As respondent acknowledged his wrongdoing, it was for him to establish rehabilitation. He has done so overwhelmingly. The crime which he committed appears to have arisen from his substance abuse. He has been involved in no subsequent violations of law and by the fully credible accounts of those who testified in his behalf, he has taken hold of his life. Respondent's efforts at work have made it easier for others with drug and alcohol problems to seek help. Finally, he has associated in a community of people who strongly support and assist him in his changed course.

Based on the foregoing, it is my conclusion that respondent has satisfied the rehabilitation criteria of the act, and it is **ORDERED** that he be permitted to retain his license. This matter 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 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.

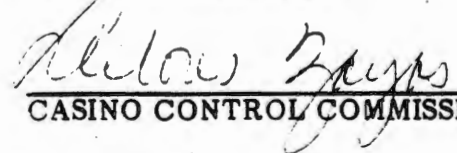
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE 11/6/87


SOLOMON A. METZGER, ALJ

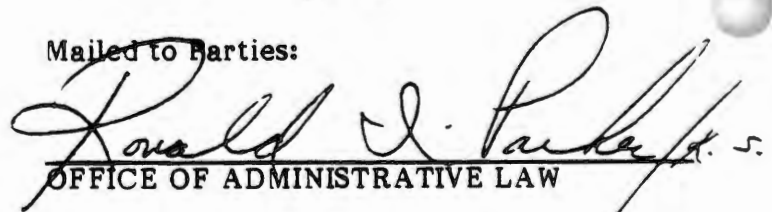
Receipt Acknowledged:

DATE November 9, 1987


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE NOV 12 1987


OFFICE OF ADMINISTRATIVE LAW

ml

WITNESSES

Kenneth E. Hines II, respondent
Pastor Dennis R. Borg
Thomas J. Esehak
Samuel S. Raffa

EXHIBITS

For petitioner:

P-1 Indictment No. I-1994-09-85
P-2 Judgment of Conviction

For respondent:

R-1 Contents list

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-61
OAL DOCKET NO. CCC 8922-86
APPLICATION NO. 67443-22
REGISTRATION NO. 30491-40
ORDER NO. 87-31-18

APPLICATION OF VIRGINIA C. HORNUNG
FOR A CASINO EMPLOYEE LICENSE

ORDER

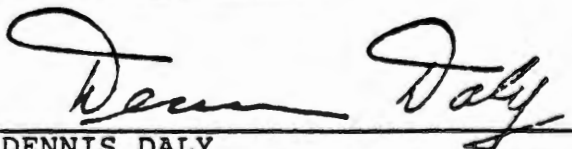
A hearing in the matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 12, 1987.

IT IS on this *9th* day of September 1987, 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 made a part hereof.

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 8922-86

AGENCY DKT. NO. 87-EA-61

VIRGINIA C. HORNUNG,

Petitioner,

v.

**DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**
Respondent.

Virginia C. Hornung, pro se

Barth F. Aaron, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: June 18, 1987

Decided: July 1, 1987

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

STATEMENT OF THE CASE

The petitioner, Virginia C. Hornung, 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 contentions that first, 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, and second, that the petitioner does not have the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for a license as a casino employee. By letter to the Commission, dated September 22, 1986, the Division objected to the application of the petitioner for licensure as a maintenance and cleaning person, asserting that the petitioner had committed acts which constitute "Theft by Deception (in excess of \$500)," which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89(b)2.¹ Based upon the report, the Commission notified the petitioner that there was a "substantial probability" that her application would be denied and that she had the right to a hearing. By application dated December 9, 1986, which was received by the Commission on December 10, 1986, the petitioner requested a hearing. On December 18, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on December 23, 1986, 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 on April 20, 1987, before Administrative Law Judge Stephen W. Thompson. The issue set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c.
- B. 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 in violation of N.J.S.A. 2C:20-4.
- 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) as incorporated within section 90b.

¹ The Division filed a subsequent letter on February 18, 1987 withdrawing its objection to petitioner's licensure and recommending the Commission grant petitioner's application for licensure.

- D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.
- E. Whether the petitioner has the requisite financial stability, integrity and responsibility for casino employee licensure pursuant to section 89b(1) as incorporated within section 90b.

A hearing was held on June 18, 1987, in the Municipal Courtroom, Borough Hall, Merchantville, New Jersey, after which the record closed.

THE FACTS

The petitioner is registered as a casino hotel employee, No. 30491-40. While employed in the hotel portion of Trump Castle in environmental service (maintenance and cleaning) she was told by her employer that all employees in environmental services needed to obtain a 22 license as they may be needed from time to time to clean in the casino area. The petitioner then applied for a casino employee license for a non-gaming casino related function. The Division is not challenging or objecting to the petitioner's casino hotel employee registration, but originally was objecting solely to the petitioner's licensure as a casino employee. The Division has subsequently reassessed its position, withdrawn its objection, and now recommends the Commission grant the petitioner's application for licensure.

The basis of the Division's original objection was that in 1983, the petitioner was working as a cook at the Milhar Corporation in Atlantic City. She was then "laid off" from her employment, and she made a claim for unemployment benefits with the Department of Labor on December 5, 1983. Her application for unemployment benefits was approved, and the petitioner began receiving unemployment benefits for the week ending December 11, 1983. She received benefits in the amount of \$158.00 per week for eleven weeks.

In late December 1983, the petitioner was rehired by the Milhar Corporation. She received unemployment benefits for the weeks ending January 1, 1984 through February 19, 1984, while being employed by the Milhar Corporation. The petitioner failed to notify her local unemployment office of her employment and as a result she received unemployment benefits to which she was not entitled in the amount of \$1442. R-4 & R-5).

On May 6, 1985, the Department of Labor notified the petitioner that it would be conducting a hearing on May 14, 1985, concerning the unemployment benefits she had received from December 26, 1983 and February 19, 1984, while the petitioner had been employed (R-7). The petitioner attended the hearing on May 14, 1985, and at that time admitted that she collected unemployment benefits between December 26, 1983 and February 19, 1984, while working for the Milhar Corporation (R-8). On July 12, 1985, the Department determined that the petitioner had received unemployment benefits in the amount of \$1,442.00, which she was not entitled to receive, and it imposed a fine of \$355.50 for a total claim of \$1,777.50 (R-3). The Department then filed a Certificate of Debt for \$1777.50 in the Superior Court of New Jersey on August 23, 1985, and a judgment was entered and docketed on November 15, 1985 (R-2). The petitioner satisfied this debt in full on February 9, 1987 (R-9 & R-10).

The petitioner testified that she became employed by the Milhar Corporation as a cook in 1978. At that time, she was able to work 50-60 hours per week. With the introduction of casino gaming, business began to dramatically decrease. In 1983, the petitioner was only able to work 20 hours per week at the Milhar Corporation. Due to the dramatic reduction in her working hours as business left the Milhar Corporation for the casinos, petitioner's income declined and she went into debt. In early December, 1983, the Milhar Corporation temporarily closed because of declining business and for vacations. At that time the petitioner was "laid off" from her job, and she applied to receive unemployment benefits. When the Milhar Corporation reopened at the end of December, the petitioner was rehired, but she continued to collect unemployment benefits as she was deeply in debt. She was behind in her rent and was about to be evicted. Her furniture was also about to be repossessed. She knew she should have told her local unemployment office of her reemployment, and she knew that her continued receipt of unemployment benefits was wrong.

The petitioner is a 42 year old, single person with no dependents. In August, 1985, she became employed at the Trump Castle in enviromental services. She was responsible for cleaning in the hotel portion of the Castle. All employees in enviromental services were told that they needed to obtain a 22 license because sometimes they would be assigned to clean in the casino area, not just in the hotel. Last week, however, the petitioner transferred to the grounds keeping section at the Castle. Her new

responsibility involves planting shrubs, flowers, mowing the lawn, etc. When she transferred positions, her supervisors recommended her and indicated she was a good worker.²

In 1983, the petitioner was 38 years old, and her bills had accumulated due to her decreased working hours. Since becoming employed at the Trump Castle, she has had a stable income and is making more money. She has made complete restitution to the Department of Labor, satisfied all of her old 1983 and 1984 debts, and is not past due on any outstanding loans or debts. She has not received any letters of lateness on accounts and no creditor has instituted legal proceedings against her or initiated repossession actions. She does not have any credit cards and has not had any checks returned for insufficient funds. She has not been in any trouble with the law and has never been prosecuted. She concluded that she knows what she did was wrong, indicated that she was sorry, and stated she would not do it again.

FINDINGS OF FACT

1. The petitioner received unemployment benefits for the weeks ending December 11, 1983 through February 19, 1984.
2. On or about December 26, 1984, the petitioner became reemployed by the Milhar Corporation.
3. Between December 26, 1983, and February 19, 1984, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of \$1,442.00 to which she was not entitled.
4. The Department of Labor obtained a judgment against the petitioner in the amount of \$1,777.50, reflecting the \$1,422.00 overpayment and a \$355.50 fine.

² The petitioner changed positions as her new position is higher paying one than her previous position.

5. On February 9, 1987, the petitioner made full restitution in the amount of \$1,777.50 thus satisfying the debt.
6. At the time of the false claim, the petitioner was 38 years of age, was working reduced hours and was deeply in debt.
7. The petitioner is now 42 years of age, has a stable income, has satisfied all of her debts and has regained control of her financial affairs.
8. The petitioner is remorseful and has not been involved in any other criminal conduct.
9. The petitioner is employed as a grounds keeper at the Trump Castle.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application ... a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

....

- 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; and

....

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 governmental 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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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.

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license

will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

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 or the offenses enumerated in this act as disqualification criteria; 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;
- (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between December 26, 1983 and February 19, 1984 inclusive while she was employed by the Milhar Corporation, 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 (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:111-2.³ 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 knowingly received unemployment benefits to which she was not entitled from the State 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.

³N.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 unprosecuted offense committed by the petitioner is a disqualifying offense under section 86c(1), pursuant to section 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1).⁴

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

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

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

⁴ Since the petitioner was never charged with or convicted of committing a crime, the first issue stated by Judge Thompson as to whether the petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c is not an issue in this case.

First, Ms. Hornung is a casino hotel registrant and is employed as a grounds keeper. As such, she does not have direct responsibilities for actual gaming activities but she does have potential contact with casino patrons. She was applying for a 22 nongaming license so she could have access to the casino floor in order to perform her duties in environmental services (cleaning). She has since changed positions but would like to receive her license as she might transfer to another job in the future which would require a 22 license, and she would like to keep her options open.

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 but not 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. Here, an applicant while employed outside the industry knowingly committed a theft of public monies to which she was not entitled. Although this factor tends to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an extremely vulnerable position by reason of her period of unemployment, her reduced working hours due to a drop in her employer's business as a result of a loss of business to the new casino industry, she was deeply in debt, behind in her rent, about to be evicted, and her furniture and car were about to be repossessed. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate substantially the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the end of December 1983 until mid-February in 1984, when it ceased.

Fifth, the petitioner was 38 years of age at the time of the offense. I do not believe that immaturity was a factor in this case. The petitioner states that such conduct would not occur again.

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 maintaining her apartment and her furniture. She needed money quickly in order to maintain her home.

Eighth, the petitioner has made substantial rehabilitative efforts. She has made restitution, paid all of her old debts, has a stable income, and has regained control of her financial affairs. The petitioner is presently employed in the casino industry and performs in a most credible manner. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct. Accordingly, there is little likelihood, if any, of a repetition. The petitioner has established her rehabilitation, and her control of her financial affairs.

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

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 payment of restitution is evidence of good character, honesty and integrity; however, while restitution is an essential element of rehabilitation, other aspects must also be considered. The misconduct did not involve her licensed employment, and the underlying circumstances mitigated substantially 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 two years, has made full restitution, paid all of her old debts, is current in her financial affairs, and has expressed remorse for her conduct. 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. Hornung 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.

(D) N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b

Section 89b(1) provides that applicants for a casino key employee license shall produce such information as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant. Section 90b provides that applicants for a casino employee license must meet the qualification criteria contained in section 89b. The Division originally questioned the financial stability, integrity and responsibility of the petitioner. As indicated above, the petitioner was experiencing financial difficulties in late 1983 and early 1984; however, as also indicated above, the petitioner now has a stable income, has regained control over her financial affairs, made full restitution, paid all of her old debts, and is current in her financial affairs.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, her financial stability, integrity and responsibility under section 89b(1) as incorporated in section 90b.

DISPOSITION

It is **ORDERED** that the application of Virginia C. Hornung for issuance of a casino employee license be **GRANTED**.

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

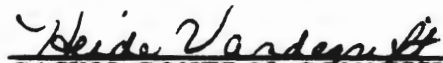
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1 July 1987
DATE

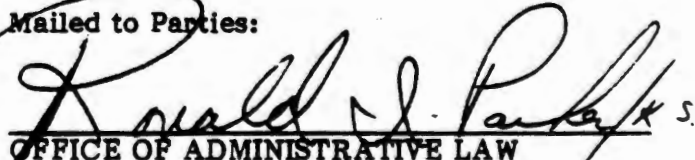

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7/6/87
DATE


CASINO CONTROL COMMISSION

7/7/87
DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For Petitioner:

None

For Respondent:

- R-1 Credit Bureau Associates Profile Sheet, dated June 16, 1986
- R-2 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated August 23, 1985 and entered November 15, 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 Disqualification Because of Willful Misrepresentation, re: Virginia C. Hornung, mailed July 12, 1985
- R-4 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record
- R-5 Schedule of Overpayments, dated December 5, 1983
- R-6 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Virginia C. Hornung as of January 24, 1985
- R-7 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated May 6, 1985
- R-8 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Record of Hearing, re: Virginia C. Hornung, dated May 14, 1985
- R-9 Letter, dated February 9, 1987, from the Division of Unemployment and Disability Insurance to petitioner indicating petitioner's debt had been fully satisfied.
- R-10 Division of Unemployment and Disability Insurance Payment Receipt No. A192330, dated February 9, 1987.

WITNESSES

For Petitioner:

Virginia C. Hornung, petitioner

For Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-229
OAL DOCKET NO. CCC 3151-86
REGISTRATION NO. 49785-40
ORDER NO. 87-31-20

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

Complainant, :

v. :

DOREEN C. HORSEY, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 12, 1987,

IT IS on this 14th day of August 1987, 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 and made a part hereof.

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 3151-86

AGENCY DKT. NO. 85-229

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

DOREEN C. HORSEY,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Leonard A. Cinaglia, Esq., for respondent

Record Closed: February 26, 1987

Decided: July 7, 1987

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 June 4, 1985, seeking revocation of the respondent's casino hotel employee registration, pursuant to sections 86c and 86g, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's indictment on October 31, 1984, for theft by deception (welfare fraud), in violation of N.J.S.A. 2C:20-4. The issues to be determined in this matter are as follows:

1. Whether the respondent has committed an offense which constitutes an automatic disqualifier from registration, within the meaning of section 86c(1) of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of section 86g of the Act, thereby requiring revocation of her registration, pursuant to sections 91b and 129 of the Act.
2. Whether the respondent, notwithstanding her commission of an otherwise automatically disqualifying offense, has affirmatively established her rehabilitation by clear and convincing evidence, within the meaning of section 91d of the Act.

PROCEDURAL HISTORY

The respondent requested a hearing on the revocation complaint filed by the Division of Gaming Enforcement. On May 9, 1986, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 15, 1986, and the matter was scheduled to be heard on August 25, 1986. The respondent failed to appear on the scheduled hearing date. By letter of August 25, 1986, counsel for the respondent entered his appearance and set forth good cause for the respondent's inability to appear at the scheduled hearing. The matter was then rescheduled to be heard on October 22, 1986. However, counsel for the petitioner reported an unavoidable conflict and the matter was then rescheduled for November 20, 1986.

An adjournment was granted from the November 20, 1986, hearing date because of the illness of counsel for the petitioner. The matter was then rescheduled for and heard on February 26, 1987, at the Brooklawn Municipal Building, Brooklawn, New Jersey. The record closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the Administrative Law Judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

FINDINGS OF FACT

The material facts in this matter are undisputed. The respondent is a 28 year old resident of Camden, New Jersey. She is the holder of Casino Hotel Employee Registration Number 49785-40, and she is presently employed in a housekeeping capacity at the Sands Hotel, Casino, and Country Club in Atlantic City, New Jersey. The respondent is the mother of an eight year old son and she is expecting another child.

The respondent's son was born on November 10, 1978 (Exhibit P-1). On October 12, 1978, when she was 20 years old, the respondent applied to the Camden County Board of Social Services for Aid to Families with Dependent Children (AFDC). The respondent was determined to be eligible for assistance, which was continued on the basis of three subsequent affidavits of the respondent for continuation of assistance dated October 16, 1981, April 14, 1982, and August 10, 1982 (Exhibit P-1).

It is undisputed that the respondent indicated on her affidavits for continued assistance that she was without income from any source. However, it is also undisputed that the respondent was actually employed by The Limited, a store in the Echelon Mall, Voorhees, New Jersey, from June 9, 1981, until October 6, 1982. This information was discovered when the New Jersey Division of Public Welfare conducted a wage match and the respondent's employment and wages were then verified by her employer. As a result of her failure to report her income from employment, the respondent received an overpayment of AFDC, food stamps, and Medicaid benefits from July 1981 through October 1982 in the amount of \$3,291.98.

On September 7, 1983, the respondent gave a written affidavit to the Board of Social Services in which she admitted her conduct and stated her willingness to pay back the assistance she received to which she was not entitled (Exhibit P-1). The respondent explained her failure to report income from employment as follows:

I just felt that my job was not secure enough to rely on I worked part-time two or three days a week or filled in for someone else.

Following disclosure of receipt of an overpayment due to unreported employment, the respondent remained on an active AFDC grant status. The Board of Social Services began recoupment of the overpayment at a rate of \$27.00 per month. The

respondent's grant was \$246.00 per month (Exhibit P-1). By May 31, 1984, the respondent was no longer receiving assistance and the balance of the overpayment remaining was \$3,075.98 (Exhibit P-1). On June 26, 1984, the respondent was asked by the Board of Social Services to sign a reimbursement agreement. The respondent testified at the hearing that she was not represented by counsel at the time and when she was told that she did not have to sign the reimbursement agreement, she declined to do so.

On October 31, 1984, the Camden County Grand Jury indicted the respondent on one count of theft of \$3,291.98 from the Camden County Board of Social Services by deception, contrary to N.J.S.A. 2C:20-4 (Exhibit P-2). On December 7, 1984, the respondent signed a reimbursement agreement whereby she promised to repay to the Camden County Board of Social Services the balance of her assistance overpayment of \$3,055.98 (Exhibit P-3). The balance was to be repaid at the rate of \$20.00 per month. By order entered January 2, 1985, proceedings on the respondent's indictment were postponed and she was released into the custody of the Camden County Pretrial Intervention Program (Exhibit P-4).

The conditions for the respondent's successful participation in the pretrial intervention program required that she report for counseling and supervision, that she make restitution at the rate of \$20.00 per month, and that she perform 100 hours community service. The respondent testified that her community service hours were satisfied by working 8 hours every Saturday cleaning at the YMCA or at the Ancora Psychiatric Hospital. Based upon her successful program participation, the respondent's program officer recommended that the indictment for theft by deception be dismissed. The order of dismissal of the indictment was entered on August 28, 1985 (Exhibit P-4).

Following her satisfactory completion of the Pretrial Intervention Program and the dismissal of the indictment against her, the respondent's agreement to reimburse the Board of Social Services for the assistance overpayment remained in effect. However, a repayment record from the Board of Social Services (Exhibit P-5) indicates that the respondent last made an installment payment on October 31, 1985. The respondent candidly acknowledged that she had stopped making repayments to the Board of Social Services and had not made any payments in 1986. According to the respondent, her State of New Jersey income tax refund was sent directly by the State to the Board of

Social Services. She learned this by calling the state agency. However, she never received any confirmation from the Board that they had received the check. Consequently, the respondent has been unable to determine the remaining balance which she owes to the Board.

The respondent testified that her attorney is attempting to ascertain from the Board of Social Services how much money she still owes. She was unable to predict when he would receive an answer. It was her sincere and credible testimony that she intends to pay her debt. However, she will not resume making payments until the Board has straightened out her account.

The respondent has been employed by the Sands Hotel, Casino and Country Club in Atlantic City since September 24, 1983. She works five days per week on the 10:00 a.m. to 6:00 p.m. shift. She commutes from Camden, New Jersey and her weekly transportation cost is approximately \$60.00. The respondent's mother provides babysitting service for the respondent's son at a cost of \$30.00 per week.

Letters of recommendation from Sands Guestroom Manager William A. Malamut and Housekeeping Supervisor Beverly Scull were admitted into evidence as Exhibits R-1 and R-2. These letters attest to the respondent's conscientious job performance and outstanding attitude. Her supervisors regard her as an exemplary employee.

All of the preceeding 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 registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86b of the Casino Control Act, the Commission may revoke the registration of any registrant who has been convicted of an offense specifically identified in the Casino Control Act as a disqualifying offense. Under section 86g of the Act, the registration may be revoked as the result of the registrant's commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the respondent was indicted for theft by deception, in violation of N.J.S.A. 2C:20-4. The respondent was admitted into and satisfactorily completed the Pretrial Intervention Program. The indictment was subsequently dismissed, and there was no conviction. However, the respondent has admitted the commission of the offense.

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq. which constitutes a crime of the second or third degree is a specifically identified disqualifier from licensure, pursuant to sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500.00 but less than \$75,000.00 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the respondent's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involved the amount of \$3,291.98, I **CONCLUDE** that the respondent has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the respondent's commission of theft by deception permits the revocation, suspension or limitation of her registration, pursuant to sections 86c, 91b, and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, the appropriate sanction is revocation of the credential, in the absence of a demonstration of rehabilitation, pursuant to section 91d of the Act, or waiver, pursuant to section 91e of the Act. See, State v. Wynette Harris, Dkt. No. 81-18, Commission Decision, June 29, 1983. Pursuant to section 91d of the Act, the respondent's casino hotel employee registration shall not be revoked on the basis of her commission of an offense enumerated in the Act as disqualification criteria, provided that she has affirmatively demonstrated her rehabilitation by clear and convincing evidence. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-91d shall be considered:

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

The respondent committed the offense of theft by deception when she received welfare benefits to which she was not entitled between July 1, 1981 and November 31, 1982. The respondent was 22 years old when this offense commenced and she was the mother of a child under 3 years of age. The earnings which she failed to disclose to the Board of Social Services arose from her part-time employment.

The respondent did not disclose her earnings because she did not feel her job was secure enough to rely on. She admitted her offense to the Board of Social Services and she subsequently signed a reimbursement agreement. She satisfactorily completed the terms of the Pretrial Intervention Program and the indictment against her was dismissed.

The respondent's receipt of benefits to which she was not entitled ended in November 1982. There is no evidence to establish that the respondent has committed any offenses since that time. For over three years, the respondent has been an exemplary employee in the housekeeping department of a licensed casino in Atlantic City. She made a partial repayment to the Board of Social Services by means of a recoupment of her assistance grant. When she was no longer eligible for an assistance grant, the respondent made payments pursuant to a reimbursement agreement. However, she stopped making payments when her income tax refund check was sent directly by the State of New Jersey

to the Board of Social Services and she was unable to ascertain her remaining balance from the Board. The respondent has every intention of paying the remainder of her debt and will resume doing so when she learns her balance.

The respondent is a sincere young woman who is not attempting to avoid her responsibility. Her efforts toward rehabilitation deserve recognition and encouragement. The fact that she has not yet completed her restitution to the Board of Social Services should not bar her from maintaining her hotel employee registration. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has committed a disqualifying offense under section 86c(1) of the Act, has established her rehabilitation by clear and convincing evidence, within the meaning of section 91d, so as to avoid revocation of registration, pursuant to sections 91b and 129 of the Act.

Although not specifically identified as an issue in this proceeding, it would be well to mention that section 91e of the Act permits the waiver of any disqualification criterion for a casino hotel employee consistent with the public policy of the Act and upon a finding that the interests of justice so require. I have concluded that the respondent has affirmatively demonstrated her rehabilitation. However, in the event that conclusion is not adopted by the Casino Control Commission, it is my recommendation that the undisputed facts in this matter support a conclusion that the interests of justice require the waiver of the criterion which would otherwise disqualify the respondent.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Doreen Horsey 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.

July 7, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

July 9, 1987
DATE

Receipt Acknowledged:

Alfred Lopez Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parley
OFFICE OF ADMINISTRATIVE LAW

JUL 10 1987
DATE

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INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Report of criminal investigation, warning and waiver of rights, affidavit, and summary report
- P-2 Indictment
- P-3 Reimbursement agreement
- P-4 Order of dismissal
- P-5 Overpayment and reimbursement history

For the Respondent:

- R-1 Reference letter
- R-2 Reference letter dated October 11, 1986

WITNESSES

For the Petitioner:

None

For the Respondent:

Doreen C. Horsey

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-85
LICENSE NO. 01105-11

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

Complainant, :

v. :

OPINION ON APPLICATION
FOR SUSPENSION

WILLARD C. "BUCKY" HOWARD :

Respondent. :

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chair
Carl Zeitz, Vice-Chair
W. David Waters, Commissioner
E. Kenneth Burdge, Commissioner
Valerie H. Armstrong, Commissioner

Appearances:

For Respondent:

G. Michael Brown, Esq.
Guy S. Michael, Esq.

For the Division of Gaming Enforcement:

Gary A. Ehrlich, Deputy Attorney General
Mitchell A. Schwefel, Deputy Attorney General

This matter concerns the application filed by the Division of Gaming Enforcement (Division) for suspension of the casino key employee license held by Willard C. "Bucky" Howard (respondent). At the time of the filing of the application for suspension (and the concomitant complaint for revocation) on September 28, 1987, Mr. Howard was employed as Senior Vice-President of Casino Operations for Trump's Castle Hotel and Casino (Trump's Castle). Effective October 1, 1987, Mr. Howard was placed on unpaid leave of absence from his position at Trump's Castle.

Initially, the Division's application was predicated upon the allegations of one Jerome Palma, a former casino key employee licensee and subordinate of Mr. Howard. Essentially Mr. Palma, whose credential was suspended by this Commission on April 15, 1987, admitted that he had accepted and shared with the respondent approximately \$100,000 in "kickbacks" from a now defunct airline which did business with the Tropicana Hotel and Casino between 1982 and 1984, when both Palma and the respondent were employed there. Palma further asserted that he and the respondent had split the proceeds of additional "kickbacks" received from a licensee named Peter Chan who had engaged in a variety of business relationships with Trump's Castle during the period Palma and Howard were employed there. Like Palma, Chan's credentials were suspended and his enterprise

prohibited from doing further business with any casino licensee by the Commission on October 21, 1987.

After the Division applied for suspension, an indictment was handed up from the State Grand Jury on October 5, 1987, charging Mr. Howard with one count of conspiracy, two counts of commercial bribery and two counts of misconduct by a corporate official, all disqualifying offenses enumerated in N.J.S.A. 5:12-86(c)(1), and all related to the incidents described by Palma. Thereafter, on October 8, 1987, the Division amended its pleadings to seek suspension solely grounded on the pending indictment. On the same date, the respondent filed a brief in response to the application for suspension in which he "conceded that the existence of the indictment...leaves this Commission with no choice but to suspend [Howard's] license." Respondent's brief at 5. The respondent also sought an expedited hearing, but further requested "that any decision regarding the complaint be deferred during the pendency of the criminal charges," citing section 86(d) of the Casino Control Act (Act). Ibid.

On October 16, 1987, the Division filed a response in which it objected to the respondent's request, characterizing it as "a disingenuous attempt to utilize the Commission's hearing procedures as a discovery device with

regard to Mr. Howard's pending indictment." Division reply at 2.

The matter was argued to the Commission on October 21, 1987. At the conclusion of the presentations of counsel, we resolved to deliberate on the question of suspension in closed session as permitted by N.J.S.A. 10:4-12b(9). We are now in a position to rule on both the application for suspension and the request for an expedited hearing.

In view of the pending indictment and the respondent's concession to the propriety of the relief sought by the Division, we hereby suspend his casino key employee license. N.J.S.A. 5:12-109.

We now turn to the respondent's request to defer the decision but to expedite the hearing. To the best of our recollection, this is the first time such a request has been made, although we have considered more than 700 applications for suspension since this Commission was created. Most but not all of those applications were predicated on pending criminal charges. In every instance where a request for deferral had been made, all administrative proceedings were deferred pending resolution of the criminal charges.

In this case, respondent presses his request for an expedited hearing on the amended complaint which, in addition to the indictment itself, asserts that the facts underlying the indictment merit the revocation of his

license. His request for deferral of the decision alone is premised upon section 86(d) which provides for the disqualification of an applicant for licensure on the basis of "pending charges...for any of the offenses enumerated in [section 86(c)]; provided, however, that at the request of the applicant..., the commission shall defer decision upon such application during the pendency of such charge."

N.J.S.A. 5:12-86(d), emphasis added.

Respondent asserts that in enacting section 86(d), the Legislature intended to draw a distinction between the "decision" and the "hearing." Thus, respondent argues that he is not required to forego an expedited hearing while the criminal charges are pending, notwithstanding his demand for deferral of a decision. We note that some confusion seems to exist as to whether, in respondent's view, the decision to be deferred is the initial decision of an administrative law judge, if the case is referred to the Office of Administrative Law (OAL), or only the final decision of the Commission. Depending on the answer to this question, further issues may arise under the Administrative Procedures Act (APA), N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1 et seq. In any event, it is not necessary to decide these questions since, even assuming solely for purposes of argument that deferral relates only to a "decision" of

either the Commission or the OAL, considerations of fairness, equity and efficient expenditure of the limited resources of both agencies militate a denial of respondent's request for an expedited hearing during the pendency of the indictment.

Having granted deferral of the decision as requested by the respondent the Commission can obtain no further guidance from section 86(d) on the disposition of this case. As interpreted by respondent and accepted for present purposes, section 86(d) is silent on the subject of hearing, expedited or otherwise. Moreover, the respondent has not cited any provision of the Act, nor are we aware of any, that requires the Commission to conduct a hearing while the underlying criminal charges remain pending. That the respondent is entitled to a hearing is, of course, not disputed. The mere filing of the complaint, not to mention the subsequent temporary suspension of his license guaranteed him that opportunity, conditioned only upon his request therefor. See N.J.S.A. 5:12-108(d), -109(e). The question is one of timing. The Act requires only that the Commission "determine the time and place of the hearing as soon as is reasonably practicable." N.J.S.A. 5:12-108(e).

The respondent advances three reasons for his request. First, proceeding to a hearing "will expeditiously develop the factual record on which this Commission must ultimately

make its determination." Respondent's brief at 8. Second, if the hearing is deferred and the respondent is subsequently acquitted of the criminal charges, he faces the possibility of continued delay during the hearing process. Ibid. at 9. Third, fairness dictates that the respondent be entitled to publicly rebut the Division's charges "as soon as any process permits." Ibid.

The Division asserts that a procedure that permits a hearing without a timely decision would contravene the APA, the UAPR and pertinent Commission regulations, all of which govern contested case proceedings under the Act. Further, the Division contends that the proposed procedure is contrary to pertinent case law and is, in short, without "legal foundation." Reply at 7. Moreover, the Division argues, the respondent's proposed procedure will not accomplish the salutary purpose he purportedly seeks, noting that if he is convicted the hearing will have been a "useless exercise" and a waste of resources. Ibid. Even if the respondent is acquitted, the Division contends that developments in the criminal trial might nevertheless require a reopening of the administrative proceedings. The Division also questions the efficacy of the respondent's timely rebuttal argument since his vindication will come, if at all, with the very Commission determination he has now caused to be deferred. Lastly, the Division suggests

that any delay following acquittal may be alleviated if the Commission were to grant the respondent's request to lift his suspension.

Because the Act does not directly answer the question, we must look elsewhere. Fortunately, the Supreme Court of New Jersey has ruled on the question in a case we find controlling. In Trap Rock Industries, Inc., v. Kohl, 59 N.J. 471 (1971), the commissioner of transportation temporarily suspended a government contractor from the list of responsible bidders permitted to do business with the state based upon the indictment of a major stockholder of the contractor. Among the questions considered by the Court was whether the contractor was entitled to a hearing before the transportation department on the charges underlying the indictment. The Court concluded that it would "not be appropriate" to require the agency to try the criminal charges noting that the evidence might not be available to it and, even if it were, an agency proceeding could infringe upon the right to a fair trial in the criminal case. 59 N.J. at 488. Thus the court sanctioned the procedures implemented by the commissioner, namely offering the contractors an opportunity to explain if it could why the public interest would not be disserved if it were allowed to contract with the state notwithstanding the indictment.

A similar procedure was followed here where the respondent was afforded the opportunity to be heard at the suspension proceeding. Aware, no doubt, of the sound policy reasons and legal considerations supporting the suspension of a casino key employee under indictment for such serious transgressions as he presently finds confronting him, respondent Howard conceded the inevitability of suspension.

In other cases where individuals have faced both administrative and criminal charges arising out of the same events, the courts have not found an absolute right to deferral of the administrative proceeding, but have, in some instances, directed the agencies to await the results of the criminal charges before proceeding with any disciplinary or revocation proceeding. For example, in Ott v. Board of Ed. of Hamilton Tp., 160 N.J. Super 333 (App. Div. 1978), the court found that a school teacher, temporarily suspended based on pending criminal charges, would be needlessly prejudiced if the disciplinary proceeding were permitted to continue during the pendency of the criminal charges because the teacher would have to choose between foregoing his defense therein or risking self incrimination. Delaying the administrative proceeding until the criminal charges were resolved was deemed an "equitable solution to an intolerable situation." 160 N.J. Super at 341.

While this Commission has at times rejected requests to delay its administrative proceedings merely because of actual or threatened criminal charges against a respondent party, see, e.g., In the Matter of Local 54, 203 N.J. Super 297, 338-39 (App. Div. 1985), ordinarily the existence of a suspension order will protect the regulatory system and the integrity of gaming until the criminal proceedings are concluded. No evidence to the contrary has been presented here. Compare Local 54, supra.

Moreover, Mr. Howard has not produced any clear indication that deferral of the hearing will cause him undue or irreparable injury. Both the benefits that the respondent predicts and the evils he hopes to avoid are at best speculative depending as they must upon the inherently uncertain outcome of the criminal case. Respondent's counsel exudes confidence that the defense will prevail, and we would expect nothing less of competent counsel at this stage of the proceedings. However, we cannot share that confidence to such an extent as to fashion our procedures accordingly. We simply cannot anticipate any particular result in the criminal proceedings, although we can certainly agree with the Division that if a conviction for a disqualifying offense occurs, all the efforts in the conduct of a separate, duplicative administrative hearing would have been futile. Moreover, as the respondent recognizes, even

an acquittal will not preclude the possibility of additional proceedings. N.J.S.A. 5:12-86(g). The law recognizes a proscription against piecemeal litigation. Absent some compelling demonstration of legal prejudice, we simply cannot countenance the cavalier expenditure of the resources of the OAL or the regulatory agencies, nor invite procedural abnormalities which, if they do not violate the provisions of the APA at least run counter to their spirit which favors an orderly, time-restricted process from prehearing to final decision. See N.J.S.A. 52:14B-10.

We do not exclude the possibility that some future respondent may present such a clear case for prejudice that we would endorse a procedure similar to that proffered by the respondent here. Suffice it to say that this respondent has not demonstrated sufficient prejudice. As we have noted above, the benefits, if any, of this proposed procedure are predicated upon speculation. Where possible we prefer to deal in certainties. Certainly the respondent is disqualified so long as the indictment remains pending against him. N.J.S.A. 5:12-86(d). Certainly his license will be revoked if the indictment results in his conviction for a statutory disqualifying offense. N.J.S.A. 5:12-89(d). Thus if we await the outcome of the criminal proceedings the respondent suffers no legal prejudice either during the

pendency of the indictment or in the event he is ultimately convicted of the offense.

Another certainty is that the indictment will be resolved one way or another at some point in the future. We note here that the possible results of the criminal proceedings are not limited to conviction or acquittal. For example, respondent might be convicted of a lesser offense than those charged, with the result that certain facts would be established but others would be the subject of additional hearings before the Commission. If, in any event, the result is favorable to the respondent he is entitled and encouraged to move to vacate the suspension promptly. Since the Division's suspension request was predicated solely upon the indictment, such a motion will perforce be granted. The Division will, however, be at liberty to present other grounds for a re-imposition of the suspension, including the evidence which was developed in the criminal trial. The Commission may or may not agree that sufficient probable cause exists at that point to warrant renewed suspension.

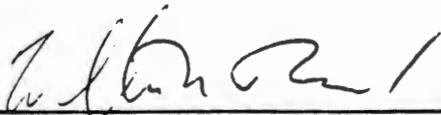
This will not put the respondent to any untoward burden. Indeed, the entire administrative process will presumably benefit because the record of the criminal proceedings will then be before us. It is reasonable to anticipate that any subsequent suspension proceedings that may be required and the ultimate hearing on the complaint

for revocation can only be expedited by virtue of the existence of the record of the criminal proceedings.

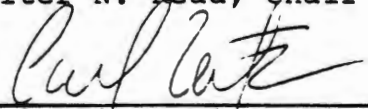
In sum, expediting the administrative hearing could not result in a favorable decision so long as the indictment is pending and, thus, could not sooner terminate the suspension. In contrast, the criminal trial may well obviate the need for such a hearing or greatly simplify it. Further, the instant suspension will be vacated on proof that the indictment is no longer pending and respondent will be entitled to contest any further suspension which may be sought by the Division. It is for these reasons that we deny the respondent's request for an expedited hearing. The better course is to await the disposition of the criminal charges against him.

We note that in future cases when deferral under section 86(d) is requested we are not bound to follow the practice outlined above. Individual circumstances may always be considered. However, where the Division has the opportunity to apply for a suspension under section 109, there will usually be no harm to the regulatory system by deferring the hearing process and, absent a compelling demonstration of prejudice to the respondent, the Commission

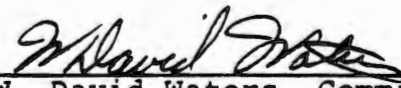
will defer all proceedings related to the alleged criminal episode until resolution of the pending criminal charges.



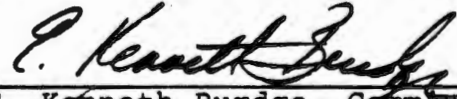
Walter N. Read, Chair



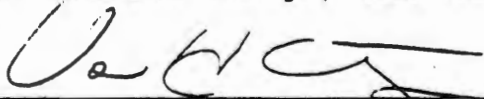
Carl Zeitz, Vice-Chair



W. David Waters, Commissioner



E. Kenneth Burdge, Commissioner



Valerie H. Armstrong, Commissioner

DATED: OCTOBER 28, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-194
OAL DOCKET NO. CCC 8023-86
REGISTRATION NO. 66010-40
ORDER NO. 87-35-6

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
:
v. : ORDER
JAMES R. HYDE, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

IT IS on this 22nd day of September 1987, 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 and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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

Petitioner,

v.

JAMES R. HYDE,

Respondent

INITIAL DECISION

OAL DKT. NO. CCC 8023-86

AGENCY DKT. NO. 87-194

**Nancy P. Scharff, Deputy Attorney General (W. Cary Edwards, Attorney
General of New Jersey, attorney) for petitioner**

**A. Harold Kokes, Esq., (Loveland, Garrett, Russell & Young, attorneys)
for respondent**

Record Closed: June 2, 1987

Decided: July 29, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on November 6, 1986, seeking to revoke the respondent's casino employee registration because he had been convicted of possession of a controlled dangerous substance with the intent to distribute same contrary to N.J.S.A. 24:21-19(a)(1) which may be a statutory disqualification from casino employee registration pursuant to N.J.S.A. 5:12-86c(3) and N.J.S.A. 5:12-91b. 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. and N.J.S.A. 52:14B-1 et seq. A pretrial conference was held in Atlantic City on January 8, 1987.

and the matter was heard on May 12, 1987 in the Pleasantville Municipal Court. The record closed on June 2, 1987 upon receipt of R17.

STATEMENT OF THE CASE

When James Hyde was 5 years old his parents permitted him a little beer at bedtime. When James Hyde was 9 years old he was a glue sniffer. When James Hyde was 27 years old he was sick, disoriented, a convicted burglar and a drug dealer. He has since become totally rehabilitated and is eligible to retain his casino employee registration. The facts of this case illustrate this remarkable transition.

DRUG ADDICTION

The respondent acknowledged a drug dependency of many years duration. His dependency was particularly onerous from approximately 1979 to sometime in 1984. It was during this period that he became a habitual user of methamphetamines, neglected his health, his personal appearance and was constantly on the lookout for a way to obtain drugs.

CONVICTIONS

On July 8, 1984, the respondent obtained drugs for an undercover agent in the hope of obtaining more drugs for himself. On August 13, 1984, the respondent was convicted of the crime of possession of a controlled dangerous substance with the intent to distribute it contrary to N.J.S.A. 24:21-19a(1). This crime is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3). The respondent was sentenced to jail and probation. The sentencing judge found more mitigating factors than aggravating factors however, and minimized the respondent's involvement (P-1)

I **FIND** that the respondent was convicted of a disqualifying offense pursuant to N.J.S.A. 5:12-86c(3) to wit: N.J.S.A. 24:21-19a(1).

On September 8, 1984, the respondent assisted a friend carry some things out of a building that the friend had burglarized. The respondent did so but became afraid. He was arrested outside the building waiting for his friend in his friend's car. He cooperated with the police.

On November 26, 1984, he was convicted of third degree burglary contrary to 2C:18-2 and fourth degree theft contrary to 2C:20-7 by his plea of guilty. Neither of these crimes is a statutory disqualifier.

Apparently the sentencing judge was convinced that the respondent's participation in the crime was minimal because he found a quantity of mitigating factors (P6).

DRUG REHABILITATION

As a result of the respondent's arrests, convictions, confinement and probation, he began a long and arduous rehabilitation from drug dependency. He made several false starts. It was not until July 24, 1985 that he was able to stop using drugs or alcohol in any form. In the intervening time between his incarceration on October 19, 1984 for 90 days and his anniversary date of July 24, 1985 (the date from which he has been continuously free of drugs and alcohol), the respondent completed Maryville, an in patient drug rehabilitation program of four weeks duration, counselling at Operation Junction which required giving urine, and attendance at Alcoholics Anonymous and Narcotics Anonymous. In fact, the respondent completed 90 and 90 (ninety meetings in 90 days, an initial requirement of the program) several times because he slipped up and took either a drink or a drug. He has since introduced others, including a sister, to these programs and is a sponsor. His drug counsellor, his probation officer and his coordinator are all convinced that the respondent is rehabilitated from drug abuse and I defer to their expert opinion.

WITNESSES TESTIMONY

The respondent produced the following witnesses on his behalf:

1. Larry Ross, the undercover officer who bought from the respondent on July 8, 1984 is still active in the Vice Squad and has neither heard of nor seen the respondent in the drug scene in Atlantic City since his arrest.
2. Nancy Rothkugel is sponsored by the respondent at Narcotics

Anonymous and Alcoholics Anonymous. She has known him 20 years and shared a home with him during their rehabilitation. She described his change from a drug abuser to a clean, happy person.

- 3. Peggy Evans is the respondent's best friend.** She described the change in his physical and mental condition since he has been drug free. He is now healthy, clean, neat and happy. When addicted he was dirty, emaciated and ill kempt.
- 4. Mary Evans, M.S.W., C.A.C. , detailed the respondent's battle to become drug free.** She says his sobriety is permanent.
- 5. Luis Carrasquillo was the respondent's probation officer.** He said he was a good probationer, with great motivation.
- 6. Anne Fox is chief of security at Resorts International, the respondent's employer.** She was aware of his prior life style and his convictions. She is amazed at the change in him. She reports that his fellow employees respect him and casino hotel patrons praise him. She urges that he retain his registration.
- 7. Welten A. James was formerly head concierge at Resorts International.** Because of the respondent's convictions he was wary about employing him and made a thorough investigation of his background. He decided to take a chance and he employed the respondent to be a doorman. He was never sorry. He received nothing but good reports about the respondent.
- 8. The respondent testified.** I closely observed the respondent during his testimony. He appears to be a solid citizen, honest and forthright. He is a fine example of how community resources such as Operation Junction, TASC and the court's probation system can be used to save lives.

LETTERS

In addition, the respondent submitted letters of recommendation from fellow employees, supervisors, former supervisors, fellow members of Narcotics

Anonymous and Alcoholics Anonymous, all of whom testify to his good character, honesty and integrity. Many describe the emmense change in the respondent since his arrest and conviction. He is variously described as a role model, a fine individual, a professional, a responsible, productive member of society.

STATUTORY REHABILITATION

A portion of the Casino Control Act, N.J.S.A. 5:12-91d permits persons convicted of statutory disqualifiers to avoid disqualification in the event they are rehabilitated. It requires consideration of eight factors.

- 91d (1) The registrant is a doorman.
- 91d (2) The offense was not serious. The respondent's conduct neither caused nor threatened serious harm, neither did the respondent contemplate that his conduct would cause or threaten serious harm (P-1).
- 91d(3) The circumstances of the offense were that the respondent provided drugs to an undercover agent in order to obtain drugs for himself.
- 91d(4) The offense occurred on July 8, 1984.
- 91d(5) The respondent was 27 years old when the offense occurred.
- 91d(6). This offense was the respondent's first arrest and conviction under the statute. He obviously shared drugs with others on numerous occasions.
- 91d(7) It would appear that the respondent was pre-conditioned to drug and alcohol abuse by parents who were unsophisticated about addiction.
- 91d(8) Evidence of rehabilitation. The burglary and theft convictions illustrate the severity of the respondent's drug problem. The letters and testimony however, affirmatively show that the respondent is rehabilitated, not only from drug dependency, but from his criminal convictions.

I **CONCLUDE** that the respondent has affirmatively proved he is rehabilitated pursuant to N.J.S.A. 5:12-91d.

ORDER OF DISPOSITION

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

29 July 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

8/3/87
DATE

Receipt Acknowledged:

M. Bonczyk
CASINO CONTROL COMMISSION

AUG 4 1987
DATE

Mailed to Parties:
Ronald L. Parks x. 5
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

None.

For the Respondent:

Larry Ross
Nancy A. Rothkugel
Peggy Evans
Mary Hunt
Luis Carrasquillo
Anne Fox
Welton A. James
James R. Hyde

EXHIBIT LIST

For the Petitioner:

P-1 Indictment 1051-7-84-A
P-2 Judgment of Conviction and Order for Commitment
P-3 Investigative Report (Wegner and Lane)
P-4 Arrest Report
P-5 Summons
P-6 Indictment 1414-10-84-B
P-7 Judgment of Conviction
P-8 Investigative Report (McKnight & Young)
P-9 Summons
P-10 Personal History Disclosure Form

For the Respondent:

R-1 Letter from H. Weishern
R-2 Letter from Jack Leisman
R-3 Letter from Jennifer Sweitzer
R-4 Letter from Peggy Evans
R-5 Letter from Mary Hunt
R-6 Letter from Jack Schihile
R-7 Letter from Patricia Dillon
R-8 Letter from Michael Laielli
R-9 Letter from Sylvia M. Harrison
R-10 Letter from Welton James
R-11 Spotlight Award
R-12 Spotlight Award
R-13 Spotlight Award
R-14 Letter from Paul Rumaker
R-15 Letter from Ed Olwell
R-16 Affidavit of Karin Agger
R-17 Union Employee Performance Evaluation dated April 30, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-422
OAL DOCKET NO. CCC 7841-86
(CCC 2749-86 ON REMAND)
REGISTRATION NO. 48157-40
ORDER NO. 87-42-6

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

Complainant, :

v. :

RHONDA M. JACKMAN, :

Respondent. :

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 New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 4, 1987,

IT IS on this 17th day of November 1987, ORDERED that the initial decision is modified as follows:

To include a reference to N.J.S.A. 5:12-86(g) in the ALJ's analysis of N.J.S.A. 5:12-86(c)(4) because the respondent was never convicted of a criminal offense.

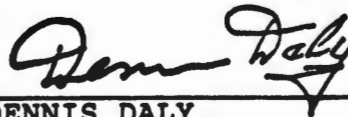
IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

ORDER NO. 87-42-6

IT IS FURTHER ORDERED that the Commission's order of January 17, 1985, suspending the casino hotel employee registration of Rhonda M. Jackman is vacated for good cause shown.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7841-86

AGENCY DKT. NO. 84-422

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

Petitioner,

v.

RHONDA M. JACKMAN,

Respondent.

Norma Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Jack Edward Granzow, Esq., for respondent

Record Closed: July 9, 1987

Decided: September 3, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division filed a complaint with the Casino Control Commission (Commission) on December 12, 1984 seeking to revoke the respondent's casino hotel employee registration because she was charged with theft during the course of her employment at the Sands Casino/Hotel. 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. The matter was pretried on June 5, 1986 and scheduled for plenary hearing on August 15, 1986. At that time the respondent abandoned her claim. She subsequently renewed her request for a hearing and on July 9, 1987 the matter was heard in Atlantic City.

FACTS

These facts are uncontested and I **FIND** as follows:

1. On September 25, 1984, the respondent was a front desk employee at the Sands Casino/Hotel.
2. A guest of the hotel had previously paid for his rooms in cash.
3. The guest played hard in the casino and as a result of his hard play the casino decided to reimburse him for his rooms.
4. The respondent stole \$440 of the room reimbursement by manipulating her computer to show that the guest had already received this refund when he had not.
5. Respondent shared the money with a co-worker to keep him quiet.
6. The respondent was discovered in her theft when the guest demanded his money and she was observed secreting the money in a trash can.
7. The respondent later admitted her theft and was terminated from employment.
8. The respondent received pretrial intervention and the criminal complaint was dismissed.

I **FIND** that the respondent committed the crime of theft in the fourth degree contrary to N.J.S.A. 2C:20-3 and 2C:20-2b(3).

REHABILITATION FACTORS

The respondent was assigned by P.T.I. to the Salvation Army where she completed 50 hours of community service. She completed a computer project for them.

The respondent sought a new career and after several false starts in business, became an office manager for a real estate marketing company. She stayed in this capacity for approximately one year, handling large amounts of money on a daily basis. In April 1986, the respondent became marketing secretary for the Ocean One Mall. She assists the marketing director with advertising, promotions, special events and all marketing functions. She has bookkeeping and check writing responsibility.

The respondent was recently the hostess for Atlantic City Magazine's Best of Atlantic City Awards Party. She was favorably described in the July 1987 magazine edition as the "irreplaceable Rhonda Jackman", page 14, R-6. The respondent paid the bills for this affair and spent only half the money budgeted.

The respondent does not know why she committed the theft. She "liked" the Sands Hotel; they were her first employer. She did not need the money. She did not know the guest from whom she stole the money. Under prompting from her attorney, she divulged that she saw other "girls" promoted over her who had less seniority. She felt some resentment. She had actually obtained another job because of this when this event occurred.

Respondent acknowledged that she was glad she was caught because the experience will prevent her from ever doing it again. She was 20 years old when this occurred. It is her first and only arrest.

DISPOSITION

The crime, theft from a casino patron, could not be more inimical to the casino control act unless it was compounded by an assault and resulting injury. Yet this respondent has done everything required by any definition of rehabilitation.

She admits her crime. She paid her penalty. She works in positions of trust. She justifies that trust. Her supervisors praise her work. She is recognized in the Atlantic City community as a valuable person.

I therefore **CONCLUDE** that the respondent has not committed an offense which renders her continued registration as a casino hotel employee inimical to the casino control act and to casino operations as defined at N.J.S.A. 5:12-86c(4).

I **ORDER** that the complaint filed here 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.

9/3/87
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

September 8, 1987
DATE

Receipt Acknowledged:

Ali Fawaz Zayas
CASINO CONTROL COMMISSION

September 9, 1987
DATE

Mailed to Parties:

Russell J. Parker
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

For petitioner:

William A. Malamut

Angelo J. Maimone

Richard LaSasso

For respondent:

Rhonda M. Jackman

EXHIBIT LIST

For petitioner:

P-1 Account folio for Mr. Patta

P-2 Paid-out slips

P-3 Withdrawn

P-4 Statement of Rhonda Jackman

P-5 Statement of Angelo Maimone

P-6 New Jersey State Police Arrest Report, Case No. J-020841071, dated October 25, 1984

P-7 New Jersey State Police Property Report

P-8 Property Loss Report, Case No. J-020841071

P-10 Order of Dismissal

P-11 Investigation Report of Richard LaSasso

For respondent:

R-1 Letter dated November 4, 1986 from Barbara Siracusa, Salvation Army

R-2 Document labeled Superior Court of New Jersey, Pretrial Intervention Program, signed by Barbara Siracusa, dated July 8, 1985

R-3 Letter dated May 15, 1983 from Andrea Cicchitti, Brigantine Inn

- R-4 Letter dated November 3, 1986 from Stephanie Watts
- R-5 Letter dated May 1, 1987 from Joan Boroff
- R-6 Atlantic City Magazine of July 1987
- R-7 Letter dated April 30, 1987 from Sylvia Lisbon

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-356
OAL DOCKET NO. CCC 2845-87
REGISTRATION NO. 54144-40
ORDER NO. 87-40-3

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
JOHN A. JAMISON, :
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 Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of October 21, 1987,

IT IS on this 16th day of November 1987, ORDERED that the initial decision is modified as follows:

- 1) The Commission finds that rehabilitation is properly considered after concluding that disqualification under N.J.S.A. 5:12-86(c)(1) has occurred. However, because rehabilitation factors are subsumed in the inimical analysis, they must be considered prior to a determination that disqualification under N.J.S.A. 5:12-86(c)(4) is warranted. State v. Donna Davis, 8 N.J.A.R. 301 (1985).

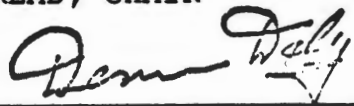
ORDER NO. 87-40-3

- 2) In view of the respondent's convictions for theft from the person and underage gambling, disqualification of the respondent pursuant to N.J.S.A. 5:12-86(g) is rejected as unnecessary.

IT IS FURTHER ORDERED that the casino hotel employee registration held by John A. Jamison is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2845-87

AGENCY DKT. NO. 87-356

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

Petitioner,

v.

JOHN A. JAMISON,

Respondent.

**Norma L. Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

John A. Jamison, respondent, pro se

Record Closed: August 28, 1987

Decided: September 4, 1987

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 John A. Jamison's casino hotel employee registration no. 54144-40, 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 contentions (1) that the respondent had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he is disqualified from registration, pursuant to section 91b; and (2) the respondent had committed criminal

offenses which rendered continued registration to be inimical to the policies of the Casino Control Act (Act), pursuant to sections 86g and 86c(4). 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. By complaint to the Commission, filed March 30, 1987, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of theft and underage gambling, which are disqualifying offenses under section 86 c(1), 86c(4), and 86g. Based upon the complaint, the Commission notified the respondent on April 1, 1987, 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 April 4, 1987, which was received by the Commission on April 9, 1987, the respondent requested a hearing. On April 14, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on April 30, 1987, 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 6, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- 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: 2C:20-3 in the third degree.
- B. 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 a violation of N.J.S.A. 2C:20-3.
- C. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on August 28, 1987, in the Municipal Courtroom, Ventnor City Hall, Ventnor, New Jersey, after which the record was closed.

At the hearing the Division requested that the alleged violation of N.J.S.A. 5:12-119 be added as a ground for the inimicality issue. As this alleged violation was stated in the complaint and was discussed at the prehearing conference, I allowed the Division to submit evidence regarding this charge.

THE FACTS

On September 12, 1986, the respondent, John A. Jamison, and an unknown black male accomplice approached Dorothy Bucior who was playing the slot machines on casino level 1, slot zone B in the Atlantis Casino Hotel. The two males stood on either side of Mrs. Bucior. The males then "crowded" Mrs. Bucior and bumped her. Mrs. Bucior saw and felt the respondent reach into her left jacket pocket and take her wallet. The respondent handed the wallet to his accomplice who then fled the area (P-1).

Security Officers Veronica Davis and J. Woody while on the escalator saw a black man run past them. The officers yelled stop, but the man kept going. The officers then heard Mrs. Bucior yell "Help me, help me, he took my wallet." The officers saw Mrs. Bucior grabbing at the respondent. The officers detained the respondent, and Mrs. Bucior stated to the respondent "You took my wallet. You went into my pocket and took my wallet, and you had another one with you." The officers radioed for assistance, and investigators from the Technical Services Unit responded.

The respondent and Mrs. Bucior were taken to the Technical Services Unit office. Mrs. Bucior identified the respondent as the man who had stolen her wallet. The respondent denied taking the wallet. He claimed that he left Convention Hall, where he had a temporary job, for the "Miss America" Pageant, and was followed by an unknown black male, he described as about 20 years old, medium height and weight. The respondent stated he entered the Atlantis Casino Hotel via the boardwalk entrance and went up the escalator to the level 1 casino floor. The unidentified black male continued to follow him. The respondent went to the level 1 cage and received change for a dollar, four quarters. He then went to slot zone B, and used two quarters in a slot machine. The respondent then walked around in slot zone B, on the level 1 floor with the unknown black male still following him. The respondent said, he returned to slot zone B, and used his last two quarters to play a slot machine. Shortly thereafter, the respondent claimed that he was grabbed by the victim, Mrs. Bucior, and she accused him of taking her wallet. The

respondent stated, that he thinks the unknown black male who followed him may have committed the crime. He further stated, he was on the level 1 casino floor a total of 10 minutes.

On September 12, 1986, the respondent was charged in Atlantic City Municipal Court with theft by unlawful taking, in violation of N.J.S.A. 2C:20-3 and underage gambling, in violation of N.J.S.A. 5:12-119. On October 28, 1986, the respondent pleaded guilty to both charges, was convicted, and was sentenced. On the theft charge, the respondent was sentenced to serve 30 days in the county jail which was suspended, he was ordered to pay \$100.00 fine, \$25.00 in court costs, and a \$30.00 Violent Crimes Compensation Board Penalty. On the underage gambling charge, the respondent was sentenced to pay \$25.00 fine, \$25.00 in court costs, and \$30.00 Violent Crimes Compensation Board Penalty (P-3).

The respondent denied stealing Mrs. Bucior's wallet. He stated that on September 12, 1986, he was working in Convention Hall. He took a break from 2 to 3 and decided to go to Ocean One. On the boardwalk, a black male approached the respondent and asked him where he had bought his gold chain and ring. The respondent answered "at Ocean One." The male then asked the respondent if he wanted to go into casinos and take pocketbooks. The respondent said no and departed. The black male followed the respondent so the respondent entered the Atlantis in order to get away from this man. The respondent got on the escalator and found himself on the casino floor. The respondent decided to play the slot machine in order to get away from the man. It was the respondent's first time in a casino. He got some change and played a slot machine. He was only 20 years of age at the time, but he did not think of his age; he just wanted to get away from the man.

The man followed him and said "I like your chain. Do you want to sell it?" The respondent said "no," and walked down to where Mrs. Bucior was standing. The other man looked at the respondent and then at Mrs. Bucior. The other man moved his jacket to cover his shoulder. The respondent knew what was going to happen, but he was paralyzed. The other man reached into Mrs. Bucior's pocket, took her wallet, and walked away. Mrs. Bucior followed him and said "you took my pocketbook." The other man denied taking the wallet and said that Spanish guy took it (referring to a Spanish man standing near Mrs. Bucior). The Spanish man said "you guys took it." Mrs. Bucior then approached the respondent, began screaming, and then the security guards arrived.

The respondent was 20 years of age at the time of the offense, and is presently 21 years of age. He has no other criminal record. He attended high school up to the eleventh grade when he was told he was going to be put back into the ninth grade. At that time he quit school and has not returned. He was raised by his mother and is the youngest of four brothers and four sisters.

From 1984 until 1986, the respondent worked at Bally's as a utility porter. He received several citations from Bally's for attendance (R-7, 8, 9 and 10) and a letter of recognition for responding to a flood (R-6). He was discharged from Bally's, however, for sleeping on the job. The respondent contends that he was sick. In August 1986, the respondent obtained employment at Harrah's as a dishwasher. The respondent quit after only five hours as he was the only person in the kitchen, and he was not getting any help. The respondent is not eligible for reemployment at Harrah's. The respondent then began collecting unemployment benefits. From February through April 1987, the respondent worked at Bradlees Department Store. In April 1987, the respondent worked briefly at the Trump Castle as a busperson in a restaurant. His supervisor became aware of the charges in this matter and told the respondent he might as well quit as his license [sic] registration was going to be suspended. The respondent terminated his employment and is not eligible for reemployment at the Trump Castle. On July 17, 1987, the respondent was accepted into the Atlantic County Supported Work Program (R-5); however, he remained in the program for only one month as he obtained employment at the Claridge as a bus stockperson in the Garden Room Restaurant.

The Division did attempt to refute the respondent's testimony concerning the circumstances underlying the incident through production of the police report, a live witness, and the record of conviction. It is therefore necessary in this case to assess the respondent's 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. 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 found his testimony to be incredulous. He denied his misconduct even after being convicted. I found it hard to believe that a person would approach a total stranger and ask him to go into a casino with him to steal pocketbooks. I also found it hard to believe that an innocent person who says he knew another person was about to steal a victims pocketbook

would be "paralyzed" and unable to warn the victim of the impending crime. Accordingly, I do not accept the respondent's testimony in most respects.

FINDINGS OF FACT

1. On September 12, 1986, the respondent was 20 years of age.
2. On September 12, 1986, the respondent gambled at the Atlantis Casino Hotel by putting quarters into a slot machine.
3. On September 12, 1986, the respondent stole a wallet containing \$15.00 to \$20.00 in cash from its owner, Dorothy Bucior.
4. On October 28, 1986, the respondent pleaded guilty to theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, and to underage gambling, in violation of N.J.S.A. 5:12-119. On the theft charge, the respondent was sentenced to serve 30 days in the county jail which was suspended, was ordered to pay \$100.00 fine, to pay \$25.00 court costs, and to pay a \$30.00 Violent Crimes Compensation Board Penalty. On the underage gambling charge, the respondent was sentenced to pay a \$25.00 fine, \$25.00 in court costs, and a \$30.00 Violent Crimes Compensation Board Penalty.
5. The respondent is currently 21 years of age, lives with his mother and siblings, and never completed high school.
6. The respondent works at the Garden Room of the Claridge as a bus person.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

...

- (4) any other offense 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 and provided, further however, that, any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be do disqualified if such applicant or person demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for disqualification pursuant to paragraph (1) of this section.

...

- 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; and

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." Section 129(1) 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 . . . registration." The Division contends that the respondent's criminal misconduct constitutes a disqualifying offense under sections 86c(1), 86c(4) and 86g and, therefore, he cannot continue to hold a registration.

(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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's taking of the victim's wallet constitutes a violation of N.J.S.A. 2C:20-3, which under the circumstances 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.

N.J.S.A. 2C:20-2 provides an pertinent part:

- b. Grading of theft offenses.

...

- (2) Theft constitutes a crime of the third degree if:

...

(d) It is from the person of the victim;

The Division established through the municipal court conviction that the respondent committed theft by unlawful taking of the wallet from the person of the victim, Mrs. Bucior. 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(2)d, 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 section 86c(1).

(B) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Section 86g provides that a person be disqualified from licensure because of the commission of any act 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 is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated

specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or 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 established that the respondent was convicted of theft by unlawful taking and underage gambling. The conviction for theft by unlawful taking is a listed disqualifier under section 86c(1). Although the respondent's conviction for underage gambling is not listed as a disqualifier under section 86c, such conduct when committed by a registrant raises serious concerns. Further, when the circumstances underlying the criminal misconduct occur within a licensed casino, the offenses take on a far greater significance. Here, the respondent admitted candidly that he gambled while underage and was convicted of committing a theft within a casino. Under these circumstances, this evidence renders continued registration to be inimical to the Act. The municipal court conviction along with the documentary evidence submitted by the Division, establishes the

charged misconduct. Although some of the charged misconduct is not an included disqualifier under section 86c(1), it is clear that the misconduct was serious in nature under the circumstances.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

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

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

First, Mr. Jamison is a casino hotel registrant and is employed as a bus stockperson in a restaurant. As such, he does not have direct responsibilities for actual gaming activities and has minimal contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking from the person of the victim, and a violation of N.J.S.A. 5:12-119, underage gambling. The forcible theft of a wallet from a person is an extremely serious offense. The fact that the theft occurred on a casino floor compounds the seriousness of the offense.

Third, the respondent and his accomplice knowingly conspired to enter a casino, look for an easy target, and steal that person's wallet. Such conduct cannot be condoned.

Fourth, the respondent's misconduct occurred on September 12, 1986; less than one year ago.

Fifth, the respondent was 20 years of age at the time of the offense. I do not believe that his age at the time of the offense was a contributing or mitigating factor in this case.

Sixth, the respondent's conduct was isolated in nature. He has not committed any other prior or subsequent violations of the criminal laws.

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

Eighth, the respondent has not been active in his community, never completed school, dropped out of the supported work program when he obtained employment in a casino while knowing these proceedings were pending, he has a poor work record, and provided no letters of recommendation. Accordingly, the respondent has not established his rehabilitation.

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

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino hotel registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee 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 corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring;

For the reasons previously expressed, it is clear that the respondent's criminal misconduct renders continued registration to be inimical to the policies of the Casino Control Act and that he no longer possesses the qualifications for registration pursuant to N.J.S.A. 5:12-86c(1), and N.J.S.A. 5:12-86c(4) by means of N.J.S.A. 5:12-86g. Accordingly, the respondent's registration must be revoked. I so **CONCLUDE**.

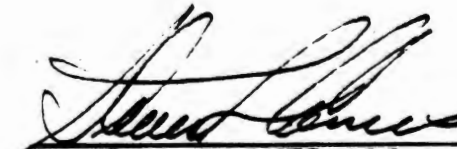
DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel registration of John A. Jamison be **GRANTED** and that registration no. 54144-40 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.

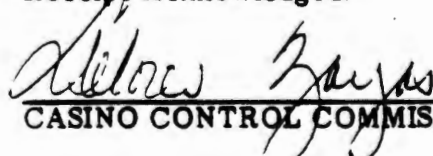
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

4 September 1987
DATE


STEVEN L. CARNES, ALJ

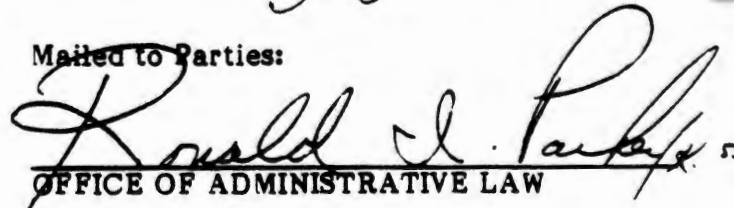
September 8, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

SEP 10 1987
DATE

Mailed to Parties:


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 New Jersey State Police Investigation Report, re: John A. Jamison, dated September 15, 1986
- P-2 New Jersey State Police Arrest Report, re: John A. Jamison, dated September 15, 1986
- P-3 Atlantic City Municipal Court Complaint and Court Action re: John A. Jamison, Docket No. C-01194786-01194886

For Respondent:

- R-1 Not in Evidence
- R-2 Not in Evidence
- R-3 Jury Duty certification for September 16, 1986
- R-4 Atlantic City Municipal Court receipt for paid fine
- R-5 Letter of Anthony C. Cappuccio, Director, Atlantic County Supported Work Program, dated July 23, 1987
- R-6 Letter of Congratulations from Don Ostrander, Manager Public Areas, Bally's Park Place Casino Hotel, dated July 14, 1987
- R-7 Bally's Perfect Attendance Award for December 1985
- R-8 Bally's Perfect Attendance Award for October-December 1984
- R-9 Bally's Perfect Attendance Award for January-March 1985
- R-10 Bally's Perfect Attendance Award for April-June 1985

WITNESSES

For the Petitioner:

Officer Veronica C. Davis, Security Officer, Atlantis Hotel Casino

For the Respondent:

John A. Jamison, Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-97
LICENSE NOS. 18396-21 (INACTIVE)
AND 18396-22
OAL DOCKET NO. CCC 266-87
ORDER NO. 87-27-6

APPLICATION OF WANDA L. JAMISON :
FOR RENEWAL OF HER : ORDER
CASINO EMPLOYEE LICENSE :

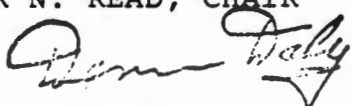
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 15, 1987,

IT IS on this 27th day of July 1987, ORDERED that the initial decision is modified as follows:

1. To find that the respondent's offense of third degree theft by deception in violation of N.J.S.A. 2C:20-4 is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and -86(g) since she was not convicted of the offense.

IT IS FURTHER ORDERED that the application of Wanda L. Jamison for renewal of her casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 266-87

AGENCY DKT. NO. 87-EA-97

WANDA L. JAMISON,

Petitioner,

v.

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

Respondent.

Owen N. Eisenberg, Esq., for the petitioner

Nancy Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: May 21, 1987

Decided: June 8, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Wanda L. Jamison, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (baccarat and roulette dealer and blackjack floor 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, 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 baccarat and roulette dealer and a blackjack floor person. By letter to the Commission, dated October 28, 1986, the Division objected to the application of the petitioner for licensure as a baccarat and roulette dealer and a blackjack floor person, asserting that the petitioner had been charged with Theft by Deception in excess of \$500, which is a disqualifying offense under section 86c(1) and section 86g, and that she had pleaded guilty to a downgraded charge of Theft in the fourth degree. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on December 15, 1986, that there was a "substantial probability" that her application would be denied and that she had the right to a hearing. By application dated January 6, 1987, which was received by the Commission on January 7, 1987, the petitioner requested a hearing. On January 12, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on January 14, 1987, 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 on March 12, 1987, before Administrative Law Judge Lillard E. Law. The issue 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 downgraded to a charge of Theft in the fourth degree in the criminal courts of the State. Pursuant to N.J.S.A. 5:12-86g, the Division alleges that her acts are tantamount to 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), per Section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h and/or 91d of the Casino Control Act.

A hearing was held on May 21, 1987, in the Municipal Courtroom, Borough Hall, Ventnor, New Jersey, after which the record closed.

THE FACTS

In November 1982, the petitioner was receiving unemployment benefits. On November 20, 1982, the petitioner became employed on a part-time basis as a change person at the Tropicana Hotel Casino. The employment was only for the holiday period, and the petitioner was released from her position on January 14, 1983. During this period, the respondent earned \$1,612.00 (P-2 and P-3). The petitioner failed to notify her local unemployment office of her employment and as a result she received unemployment benefits to which she was not entitled in the amount of \$1,305.00 (P-2).

On December 24, 1984, the Department of Labor notified the petitioner that it would be conducting a hearing on January 2, 1985, concerning the unemployment benefits she had received from November 20, 1982 through January 14, 1983, while the petitioner had been employed (R-4). The petitioner indicated that she never received R-4, which was mailed to her Madison Avenue address, because at that time she was living on Ocean Avenue, not Madison Avenue. As such, the petitioner did not attend the hearing. Since the petitioner did not attend the hearing, the Department of Labor made a determination in the case based on the record. On March 5, 1985, the Department determined that the petitioner had received unemployment benefits in the amount of \$1,305.00, which she was not entitled to receive, and it imposed a fine of \$326.25 for a total claim of \$1,631.25 (R-2). The Department then filed a Certificate of Debt for \$1,631.25 in the Superior Court of New Jersey on April 8, 1985, and a judgment was entered and docketed on April 9, 1985 (R-1).

On July 26, 1987, the petitioner was charged with Theft by Deception, in violation of N.J.S.A. 2C:20-4. On August 27, 1985, the petitioner pleaded guilty to the downgraded charge of Theft in the fourth degree. The petitioner was ordered to pay a \$100.00 fine, a \$25.00 Violent Crimes Compensation Board penalty, restitution in the amount of \$1,700.00 at a rate of \$50.00 per month, and she was placed on probation for 3 years (R-8).

In 1982, the petitioner was only 23 years of age and was the sole parent of one child. Her child had been placed in a State home by the Division of Youth and Family Services. The petitioner was told that in order for her to regain custody of her child, she had to get a job and find a more suitable place to live. The petitioner testified that she does not recall ever being told that she had to notify her local unemployment office if she

became employed. She further testified that she told a neighbor who worked at the unemployment office that she was employed, and the neighbor told her that she could continue receiving benefits up to a certain point. The petitioner testified that at that time, she did not know that what she was doing was wrong. In January, the petitioner's neighbor told the petitioner that she would have to stop receiving unemployment benefits.

Since 1982, the petitioner's life has changed dramatically. She is now married and has a home in Mizpah, New Jersey. She has also regained custody of her son, and she is providing a stable home for him. She is just completing her junior year at the Atlantic County Vocational School where she is studying to receive a mechanical engineering degree. She currently is maintaining a "B" average, and she is taking courses in refrigeration, electrical, plumbing, and boiler operations. She has been employed by the Golden Nugget for the last two and one-half years as an apprentice engineer specializing in refrigeration work. She attends church regularly and has been active in her neighborhood youth advocate program.

The petitioner stated that in 1982, she did not realize that what she was doing was wrong. She mistakenly understood from a neighbor who worked at the local unemployment office that she could continue to receive benefits up to a certain point after obtaining employment. Her only concern at the time was making enough money in order to find suitable housing quickly so she could regain custody of her son. She now realizes that her conduct was wrong. She is now 28 years old, expressed remorse over her actions, and is attempting to repay the debt. She has been making regular monthly payments of \$50.00 per month since December 1985, and she owed a balance of \$1,053.81 as of May 1, 1987 (P-6). The petitioner contests the balance owed, alleging that she began making payments in August 1985, not December 1985.

The Division's Investigation Report (R-7) indicates that the petitioner is past due in making payments on two credit card accounts. The petitioner has entered into a repayment agreement with both of these creditors whereby she is repaying them at a rate of \$5.00 per month. The petitioner is complying with this agreement and is current with her payments.

The petitioner submitted five letters from individuals as character references. Carolyn W. Greenidge, Supervisor of Elementary Services, Atlantic City Public Schools, wrote she has known the petitioner all of the petitioner's life. She wrote that the

petitioner's "commitment to the various activities in which she's been involved has been sincere. She is dedicated. She has excellent self-control. She has proved that she can work alone or with a group. She is extremely ambitious, competent, conscientious, tolerant and resourceful."

Alan V. Foster, Director of Engineering at the Golden Nugget, wrote that he has known the petitioner since she became an apprentice engineer on his staff in 1985. Mr Foster states that:

Wanda has never received a written warning. She has been a loyal, hard-working and honest employee and is making excellent progress in her apprenticeship program.

I am very pleased to have Wanda as part of my crew and look forward to promoting her to an "A" mechanic at the end of her apprenticeship program.

Peter J. Nash, Business Representative, International Union of Operating Engineers wrote that the petitioner is a dependable, conscientious person.

Bernice Izes, Family Service Specialist, and Jodi Patton, Supervising Family Service Specialist, Division of Youth and Family Services, wrote that:

[We] have served as social workers for Wanda Jamison and her son, Dwayne, since October 4, 1985 to the present. At that time, Dwayne was in foster care due to problems in the maternal/child relationship. Dwayne had previously been in foster care from July 2, 1982 until December 17, 1982, at which time his mother provided a home for him in Brigantine, New Jersey.

Dwayne was successfully returned to his mother on December 23, 1986, after several months of joint counseling as well as consistent visitation. Ms. Jamison has always maintained contact with this agency and cooperated toward the case goal of her son's return home.

During the entire period of my involvement, Wanda Jamison has been employed at the Golden Nugget in the engineering department. The paternal family does not provide support, nor is there any interest in regard to Dwayne.

Ms. Jamison married at the end of October 1986, and she and her husband purchased a home in Mizpah.

Dwayne was very happy to be reunited with his mother and step-father. The family appears to have stabilized, and it would be detrimental to Dwayne's emotional well-being if he were unable to continue to live with his mother.

Finally, Edward E. Jutrzenka, Jr., wrote the petitioner a letter of appreciation in 1978 for her involvement with the Neighborhood Improvement Program in Pleasantville.

The petitioner concluded that she is seeking to retain her license because she needs to have access to the casino floor in order to perform her job as an engineer, which includes tasks such as taking temperatures, adjusting louvers, and repairing air conditioning equipment. Regarding the type of license, the petitioner wants to pursue her career as an engineer not as a gaming dealer. As such she simply needs to retain access to the casino floor, and she does not intend to seek employment at this time as a casino dealer.

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 immaturity. I am also inclined to believe that it was the result of inexperience and the overriding difficulty in dealing with a problem of enormous proportions. At the time the petitioner obtained the job and failed to disclose this fact to her local unemployment office, she was in an extremely vulnerable situation. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner was receiving unemployment benefits in November and December 1982 and in January 1983.
2. On or about November 20, 1982, the petitioner was employed for the holiday season at the Tropicana Hotel Casino.
3. Between November 20, 1982, and January 14, 1983, when petitioner was released from her position, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of \$1,305.00 to which she was not entitled.
4. The Department of Labor obtained a judgment against the petitioner in the amount of \$1,631.25, reflecting the \$1,305.00 overpayment and a \$326.25 fine. The Department is also seeking an additional \$303.56 in interest.
5. Through May 1, 1987, the petitioner has made restitution in the amount of at least \$881.
6. The petitioner was charged with Theft by Deception in violation of N.J.S.A. 2C:20-4.
7. The petitioner pleaded guilty to the downgraded charge of Theft in the fourth degree and was sentenced to pay a \$100 fine, a \$25 Violent Crimes Compensation Board Penalty, and was placed on probation for three years. The petitioner has paid all her fines and penalties.
8. At the time of the false claim, the petitioner was 23 years of age and her son was in the care of the Division of Youth and Family Services.
9. The petitioner is currently 28 years of age, is married, owns a home, and has regained custody of her son.

10. The petitioner is completing her junior year at Atlantic County Vocational School where she is pursuing a degree in mechanical engineering.
11. The petitioner attends church regularly and has been active with youth groups in her neighborhood.
12. The petitioner is remorseful and has not been involved in any other criminal conduct.
13. The petitioner is employed as an apprentice engineer at the present time at the Golden Nugget.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application . . . a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

. . . .

- 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; and

....

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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 jurisdic-

tion; 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.

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance

personnel, and casino security employees whose employment duties require or authorize access to the casino.

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 or the offenses enumerated in this act as disqualification criteria; 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;
- (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between November 20, 1982 and January 14, 1983 inclusive while she was employed by the Tropicana, 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 (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,

¹N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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 State 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 respondent is a disqualifying offense under section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the applicant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Ms. Jamison is a casino hotel employee and is employed as an apprentice engineer. As such, she does not have direct responsibilities for actual gaming activities but she does have potential contact with casino patrons. She currently holds a 22 nongaming license, but she needs a 21 license so that she can have access to the casino floor in order to repair air conditioning equipment.

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. Here, a licensee employed in the industry knowingly committed a theft of public monies to which she was not entitled. Although this factor tends to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an extremely vulnerable position by reason of her period of unemployment prior to employment in the industry; she was the sole support for her family; she was the mother of one child; her son had been removed by DYFS and she could not regain custody of her child unless she obtained a suitable residence; and she had been hired for a temporary job for the holiday season which had the distinct possibility of lasting only eight weeks. In addition, she had been told by a neighbor who worked at the unemployment office that she could continue to receive benefits for some period of time. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate substantially the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the end of November 1982 until mid-January in 1983, when it ceased.

Fifth, the petitioner was 23 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 would not occur again. In addition, it is clear that the overwhelming nature of 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 taking care of her child. She needed to obtain suitable housing so she could regain custody of her son. Her family's security was her only concern. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. The petitioner is making restitution and has repaid just over half of the amount owed. She is attending school to advance from an apprentice engineer to an "A" mechanic. The petitioner is presently employed in the casino industry and performs in a most credible manner. She regularly attends church and is involved with the children of her community. Further, the petitioner has accepted and performed her parental responsibilities with distinction. 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. Jamison was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character,

honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

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 mitigated substantially 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 two and one-half years, has married, has cared for her family in a commendable manner, 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. Jamison is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

The petitioner has indicated that she does not intend to act as a baccarat and roulette dealer or a blackjack floor person, and she really does not need at this time a license for those purposes. She only needs a license which will allow her access to the casino floor so she can perform her job as an engineer, which includes such tasks as taking temperatures, adjusting louvers and repairing air conditioners. As such, she only needs a 21 nonexperiential, nongaming license so she can have access to the casino floor.

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 Wanda L. Jamison for issuance of a casino employee license be **GRANTED**.²

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.

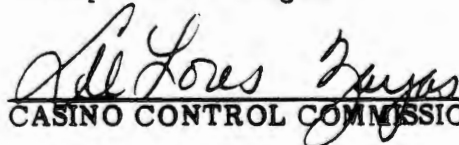
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8 June 1987
DATE


STEVEN L. CARNES, ALJ

June 9, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

JUN 11 1987
DATE

Mailed to Parties:

 * 5
OFFICE OF ADMINISTRATIVE LAW

ml/EE

²I recommend the Commission issue a 21 nonexperiential license rather than renewal of the experiential license which was originally requested.

DOCUMENTS IN EVIDENCE

Joint:

- J-1 Letter from Casino Control Commission, dated December 15, 1986, indicating there was a substantial possibility the petitioner's license renewal would be denied

For Respondent:

- R-1 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated April 9, 1985
- R-2 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 Disqualification Because of Willful Misrepresentation, re: Wanda L. Jamison, mailed March 5, 1985
- R-3 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record
- R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated December 24, 1984
- R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Wanda L. Jamison as of April 6, 1987
- R-6 Letter, dated May 5, 1987, from the Division of Unemployment and Disability Insurance to the Division of Gaming Enforcement indicating amount of restitution by petitioner
- R-7 Division of Gaming Enforcement Investigation Report, dated March 17, 1986, re: Wanda Lougene Jamison
- R-8 Complaint, dated July 26, 1985, summons, dated July 26, 1985, and court action and sentence imposed on August 27, 1985

For Petitioner:

- P-1 Letter of Carolyn W. Greenidge, Supervisor of Elementary Services, Atlantic City Public Schools, dated February 11, 1987
- P-2 Letter of Alan B. Foster, Director of Engineering, Golden Nugget, dated January 14, 1987
- P-3 Letter of Peter J. Nash, Business Representative, International Union of Operating Engineers, dated January 16, 1987

- P-4 Letter of Bernice Izes, Family Service Specialist, and Jodi Patton, Supervising Family Service Specialist, Department of Human Services, Division of Youth and Family Services, dated January 29, 1987
- P-5 Letter of Edward E. Jutrzenka, Jr., Neighborhood Improvement Program Administrator, City of Pleasantville, dated October 2, 1978

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-161
APPLICATION NO. 69441-21
OAL DOCKET NO. CCC 2475-87
ORDER NO. 87-37-5

APPLICATION OF DENISE OLIVIA JOHNSON
FOR A CASINO EMPLOYEE LICENSE

ORDER

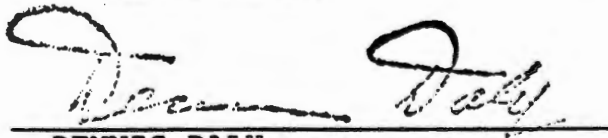
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 30, 1987,

IT IS on this 19th day of October 1987, 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 made a part hereof.

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 2475-87

AGENCY DKT. NO. 87-EA-161

DENISE OLIVIA JOHNSON,

Petitioner,

v.

DEPARTMENT OF LAW AND

PUBLIC SAFETY, DIVISION

OF GAMING ENFORCEMENT,

Respondent.

Gina Hertzig, Esq., for the petitioner (Tomar, Seliger, Simonoff, Adourian & O'Brien, attorneys)

Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 11, 1987

Decided: August 20, 1987

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

STATEMENT OF THE CASE

The petitioner, Denise Olivia Johnson, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), took no position regarding the issuance of the license but informed the Commission 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 issuance of a casino employee license so she could be employed as a craps dealer in the casino industry. By letter to the Commission, dated February 27, 1987, the Division took no position regarding the application of the petitioner for licensure as a craps dealer but informed the Commission that she had committed acts which constitutes theft by deception in excess of \$500, which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also questioned the petitioner's suitability for licensure pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on March 27, 1987, that there was a "substantial probability" that her application would be denied and that she had the right to a hearing. By application dated April 2, 1987, which was received by the Commission on April 6, 1987, the petitioner requested a hearing. On April 9, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on April 13, 1987, 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 Stephen W. Thompson on June 2, 1987. 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, despite the fact that such acts were not prosecuted in the criminal courts of the 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 August 11, 1987, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

A. Undisputed Facts

The petitioner and the respondent stipulated to the following facts:

1. Between April 1981 and November 1981, the petitioner collected an overpayment in her Aid to Families with Dependent Children (AFDC), Medicaid, and Food Stamp grant in the amount of \$2,140.99 due to the fact that she failed to report certain earned income.
2. The amount of the overpayment was in excess of \$500, and therefore, the petitioner's conduct was comparable to committing theft by deception, a crime of the third degree, in violation of N.J.S.A. 2C:20-4, which is 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.

As the parties knowingly, voluntarily, and intelligently entered into the above stipulation of fact after receiving advice of counsel and questioning by me, I accept the stipulation of fact and **FIND** the above as fact in this case.

B. Disputed Facts

In 1981, the petitioner was 20 years old. She was living in Stratford, New Jersey with her 6-month-old son and her son's father, Collin Johnson. Collin Johnson was not working at the time and had no income other than some occasional National Guard drill pay. At that time, the petitioner was receiving an AFDC grant in the amount of \$350 per month. The petitioner was not receiving and could not receive any assistance from her family as her brother was still in high school and her mother was living alone with her son and did not have the financial ability to assist the petitioner. The AFDC grant was insufficient to support herself and her child. As such, the petitioner accepted a part-time position with the Macke Company cleaning offices four to five hours per night, five days per week, from March 6, 1981 until June 26, 1981 (R-1, R-4, R-7 & R-9). The petitioner did not report this income to the Camden County Board of Social Services. On May 27, 1981, the petitioner completed a redetermination of eligibility application for her AFDC grant in which she indicated that she had no other income (R-5).

From June 29, 1981 until November 5, 1981, the petitioner accepted employment at the Claridge Hotel and Casino as a bus person in a restaurant. The petitioner also failed to report this income to the Camden County Board of Social Services (R-1, R-4 & R-8). On August 26, 1981, the petitioner completed another redetermination of eligibility application for her AFDC grant in which again she indicated that she had no other income (R-6).

In 1983, the Division of Public Welfare conducted an investigation which concluded that the petitioner failed to disclose her employment, thereby "causing an overpayment of assistance from 4/81 to 11/81" (R-1). The Camden County Board of Social Services received wage verifications from both the Macke Company and the Claridge substantiating the petitioner's employment (R-7 & R-8). R-7 indicates that the petitioner received gross earnings of \$1,214.53 while employed at the Macke Company, and R-8 indicates that the petitioner received \$1,909.05 while employed at the Claridge. Based on this unreported earned income, the Division of Public Welfare determined that the petitioner received an AFDC overpayment of \$1,387.00, a Medicaid overpayment of \$19.99, and a Food Stamp overpayment of \$734.00, for a total overpayment of \$2,140.99 (R-2 & R-3).

Based upon the Division of Public Welfare's investigation, the Camden Police Department filed a report with the Camden County Prosecutor's Office on May 31, 1983 (R-4). In July 1984, the grand jury of the State of New Jersey for the County of Camden issued an indictment no. I-2681-10-84 charging the petitioner with having committed theft by deception of \$2,140.99 from the Camden County Board of Social Services in violation of N.J.S.A. 2C:20-4 (R-12). The petitioner entered the Pretrial Intervention Program, performed 75 hours of community service, and agreed to pay restitution. The petitioner successfully completed the Pretrial Intervention Program and the indictment against her was dismissed on July 8, 1985 (R-12).

As part of the Pretrial Intervention Program agreement, the petitioner entered into a reimbursement agreement with the Camden County Board of Social Services (R-10). In the agreement the petitioner agreed to repay the \$2,140.99 at a rate of \$25.00 per month commencing on January 14, 1985. As of July 24, 1987, the petitioner has repaid \$573.41 and has a balance due of \$1,567.58 (R-11). The petitioner indicated that while she was occasionally late in making a payment, she always caught up with her payments and is current with her payments.

The petitioner admitted receiving the welfare overpayment and her failure to report her income. She was 20 years old at the time of the offense. She was unable to support her family on welfare alone as she took the part-time employment. The reason she failed to disclose her employment is that she thought if she worked at all that her welfare grant would be terminated. She did not know that she was allowed to work and any income earned up to a certain maximum would only reduce her grant not terminate it. She was only concerned with paying the bills for her son and maintaining a good home for him. During the summer of 1981, Collin left the home and the petitioner had to support herself and her son. Her welfare grant was reduced when Collin left the home, thus putting further financial constraints upon her. Even though she was working part-time, her position did not improve as her entire income from the Claridge was being eaten up by babysitter costs and bus transportation costs to Atlantic City.

In late 1981, the petitioner was able to get a full-time job in the industry as a housekeeper at the Tropicana. At that time, she terminated her welfare grant and has been gainfully employed and has not received welfare since that time. In 1984, the petitioner left the Tropicana as she was offered a better position as a buffet server at the Golden Nugget. She currently earns approximately \$13,000 per year. She is single and supports two small children: a son, age six, and a daughter, age four.

In 1986, the petitioner attended Casino Schools, Inc. in Atlantic City in order to learn to become a craps dealer. She received a \$1,000 loan from her credit union in order to attend this course. She attended school five hours per day after after working six hours at the Golden Nugget, while at the same time supporting her children. She successfully completed the 240-hour course of instruction in being a craps dealer. She entered this program in an attempt to better her life for herself and her children as craps dealers earn nearly twice the income that the petitioner currently receives.

The petitioner is currently 26 years old. She indicated that she knew she was required to report any income she earned and that she was wrong in not reporting the income. She states she made a mistake, and she is remorseful and regrets committing the offense.

Bessie Dooley, business agent for the Golden Nugget, Local 54, testified that the petitioner's coworkers speak well of her. The petitioner was the subject of two racial grievances which the petitioner handled extremely well.

Lynn Stabile, assistant manager of the Cornucopia Buffet, Golden Nugget, testified that she is the petitioner's immediate supervisor. She indicated that the petitioner is an excellent waitress who is "great with customers." Ms. Stabile regularly gets compliments from customers regarding the petitioner. The petitioner is a good employee, works well with her coworkers, and has not been a disciplinary problem.

Eric Smith, the petitioner's brother, testified regarding the petitioner's family situation in 1981, and how the petitioner has worked to better herself and care for her children since that time. Mr. Smith explained how the petitioner did not receive any financial support from her family in 1981, and how she has since worked and gone to school in order to better herself, make more money, and take care of her children. Mr. Smith indicated that the petitioner is hardworking and independent and regularly takes her children to church.

The petitioner submitted three letters as character references. Gerri Hunter, assistant manager, Housekeeping Department, Tropicana Hotel, wrote that she was the petitioner's supervisor from February 23, 1982 until May 25, 1984. Ms. Hunter wrote:

Within that period of time, Denise earned a reputation for being, not only a dependable and reliable employee, but a pleasant personality which generated enthusiasm in an otherwise hum-drum profession.

Before Denise decided to move on to another Department, she was being considered for a Supervisory position, due to her positive manner, and leadership qualities.

Denise reflected a growth within the Department and on many occasions was a role model for many of her peers.

Sharon L. Bonner, Cornucopia Buffet manager, Golden Nugget Hotel and Casino, wrote that the petitioner has been employed at the Golden Nugget from May 24, 1984 to the present. Ms. Bonner states:

During this time she has worked in the Cornucopia Buffet as a food server.

She is well liked by her co-workers and gets along well with the management team in the buffet.

I think her work record speaks for itself and know what ever she does professionally in the future, she will put her full efforts into it.

Benita Di Fabio, shop steward, Local 54, wrote:

I have worked with Denise Johnson for three years at Golden Nugget Casino Hotel in the Cornucopia Buffet. In those three years, I have found her to be a conscientious worker, not just with me personally, but I have witnessed her helping other co-workers as well. As her Shop Steward, she has always been very helpful to me by assisting me in organizing meetings and other union functions when called upon. Denise has always behaved in an appropriate manner, by aspiring to be accessible to both her employer and fellow employees.

Denise has never lost her temper or composure when under tremendous pressure from racial situations, where she has been harrassed.

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 immaturity. I am also inclined to believe that it was the result of inexperience and the overriding difficulty in dealing with a problem of enormous proportions. At the time the petitioner obtained the job and failed to disclose this fact to her local welfare board, she was in an extremely vulnerable situation. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. In 1981, the petitioner was 20 years old, had an infant son, was living with her son's father, Collin Johnson, and was receiving an AFDC grant, Medicaid and Food Stamp benefits.
2. From March 6, 1981 until June 26, 1981, the petitioner worked part-time as a cleaning person for the Macke Company. The petitioner did not report this employment to the Camden County Board of Social Services.
3. From June 29, 1981 until November 5, 1981, the petitioner was employed as a bus person at the Claridge. The petitioner did not report this employment to the Camden County Board of Social Services.
4. The petitioner and Collin Johnson separated during the summer of 1981, and the petitioner was the sole support for her son.
5. Based upon the petitioner's unreported income, she received an AFDC overpayment of \$1,387.00, a Medicaid overpayment of \$19.99, and a Food Stamp overpayment of \$734.00, for a total overpayment of \$2,140.99.
6. The petitioner was indicted for theft by deception in 1984. She entered the Pretrial Intervention Program, performed 75 hours of community service, and agreed to pay restitution. The petitioner successfully completed the Pretrial Intervention Program and the indictment against her was dismissed on July 8, 1985.
7. The petitioner repays her debt at a rate of \$25.00 per month. As of July 24, 1987, she had repaid \$573.41 and has a balance due of \$1,567.58.
8. The petitioner has been off welfare since 1981, and has been gainfully employed in the industry since that time.
9. The petitioner successfully completed a 240-hour course in craps at the Casino Schools, Inc.

10. The petitioner and her children attend church regularly.
11. The petitioner is 26 years old, is remorseful, and has not been involved in any other criminal conduct.
12. The petitioner is currently employed as a buffet server at the Golden Nugget.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

....

- 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; and

....

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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.

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.
- 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 or the offenses enumerated in this act as disqualification criteria; 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;
- (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of an overpayment of welfare benefits in excess of \$500 between April 1981 and November 1981 while she was employed, constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from 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.

In an analogous situation, 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).

¹N.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 an overpayment of welfare benefits to which he was not entitled from the Division of Public Welfare. 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 unprosecuted offense committed by the petitioner is a disqualifying offense under section 86c(1), pursuant to section 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86g and 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First Ms. Johnson is currently a casino hotel employee employed as a buffet server. She is applying for a casino license as a craps dealer. As such, she will have direct responsibilities for actual gaming activities. She will have, and currently does have, direct contact with casino patrons. She currently holds a 40 casino hotel employee registration.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception-third degree, over an eight-month period during which she was employed, part of which was 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. Here, the applicant, while partly employed outside the industry and partly inside the casino industry, knowingly committed a theft of public monies to which she was not entitled. Although this factor tends to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an extremely vulnerable position by reason of her period of unemployment even though she was receiving welfare benefits; she was the sole support for her family; she was the mother of one child; the father of her son did reside with the petitioner during part of the period in question; however, he was unemployed and the petitioner supported him also; and she did not realize that she could have worked part-time, reported her income, and still would have been eligible for a reduced grant. The petitioner was concerned only with providing food and a home for her infant son. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate substantially the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from April 1981 until November 1981, at which time it ceased.

Fifth, the petitioner was 20 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 that such conduct would not occur again. In addition, it is clear that the overwhelming nature of 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 taking care of her child. She needed to provide food and suitable housing for her son. Her family's security was her only concern. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. The petitioner is making restitution and has repaid one third of the amount owed. She attended school to learn how to be a craps dealer in order to advance her life. The petitioner is presently employed in the casino industry and performs in a most credible manner. She regularly attends church. Further, the petitioner has accepted and performed her parental responsibilities with distinction. 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. Johnson was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the

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

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 mitigated substantially 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 six years, has cared for her family in a commendable manner, 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. Johnson 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 Denise Olivia Johnson 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 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.

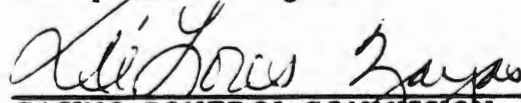
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

20 August 1987
DATE


STEVEN L. CARNES, ALJ

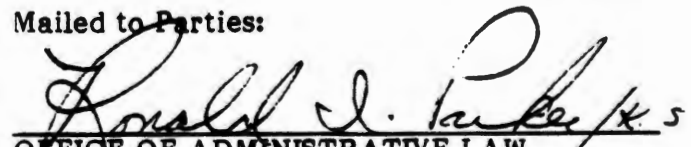
August 21, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

AUG 25 1987
DATE

Mailed to Parties:


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 Letter of Benita DiFabio, shop steward, dated August 10, 1987
- P-2 Letter of Sharon L. Bonner, Cornucopia Buffet Manager, Golden Nugget, dated August 9, 1987
- P-3 Letter of Gerri Hunter, Assistant Manager, Housekeeping Department, Tropicana Hotel, dated July 27, 1987
- P-4 Guidelines for Operation of Pretrial Intervention in New Jersey
- P-5 The New York Times "Opinion," dated Sunday, May 17, 1987

For Respondent:

- R-1 Division of Public Welfare, Summary Report re: Denise Johnson, dated May 26, 1983
- R-2 Division of Public Welfare Overpayment calculation re: Denise Johnson's grant from April 1981 through November 1981
- R-3 Division of Public Welfare, Summary Report re: Denise Johnson's overpayment, dated May 3, 1984
- R-4 Report of Criminal Investigation from the Camden Police Department to the Camden County Prosecutor re: Denise Johnson, dated May 31, 1983
- R-5 Recertification Application and Affidavit for AFDC, MA, CRA, IRP and Food Stamps, dated May 27, 1981
- R-6 Recertification application and Affidavit for AFDC, MA, CRA, IRP and Food Stamps, dated August 26, 1981
- R-7 Wage Verification from the Macke Company
- R-8 Wage Verification from the Claridge Limited
- R-9 Statement of the petitioner made to the Division of Public Welfare, dated November 23, 1981
- R-10 Reimbursement Agreement between the petitioner and the Camden County Board of Social Services, dated December 13, 1984
- R-11 Letter from Richard H. Bakley, Chief Investigator, Camden County Board of Social Services, to Nancy P. Scharff, Deputy Attorney General, Division of Gaming Enforcement, dated July 24, 1987, indicating petitioner's current balance owed

R-12 Superior Court of New Jersey, Law Division Camden County, Criminal Indictment No. I-2682-10-84, and Order of Dismissal after completion of Pretrial Intervention Program

R-13 Casino Control Commission letter to petitioner, dated March 27, 1987

WITNESSES

For Petitioner:

Denise Olivia Johnson, petitioner .

Bessie Dooley, Local 54, Business Agent for the Golden Nugget

Lynn Stabile, Assistant Manager, Cornucopia Buffet, Golden Nugget

Eric Smith, petitioner's brother

For Respondent:

Denise Olivia Johnson, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-121
APPLICATION NO. 61241-21
OAL DOCKET NO. CCC 672-87
ORDER NO. 87-30-4

APPLICATION OF WALTER O. JOHNSON:

FOR A CASINO EMPLOYEE LICENSE :

ORDER

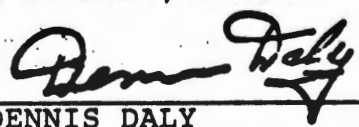
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 5, 1987,

IT IS on this 10th day of August 1987, ORDERED that the initial decision is modified to:

reject the ALJ's recommendation that the applicant's licensure be conditioned upon the execution of a repayment schedule with the Division of Unemployment and Disability Insurance of the New Jersey Department of Labor.

IT IS FURTHER ORDERED that the application of Walter O. Johnson for a casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 672-87

AGENCY DKT. NO. 87-EA-121

WALTER O. JOHNSON,

Petitioner,

v.

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

Respondent.

Walter O. Johnson, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: June 23, 1987

Decided: July 6, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Walter O. Johnson, 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 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 security guard at the Golden Nugget. By letter to the Commission, dated December 9, 1986, the Division objected to the application of the petitioner for licensure as a security employee, asserting that he had committed acts which constitutes theft by deception in excess of \$500, which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on January 13, 1987, that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated January 1987, which was received by the Commission on January 27, 1987, the petitioner requested a hearing. On January 30, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on February 3, 1987, 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 10, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner 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 by deception).
- B. 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 the State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4 (theft by deception).
- 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.

A hearing was held on June 23, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record closed.

THE FACTS

In 1950, the petitioner became employed at the Hunt Wesson Foods Canning Factory located in Cumberland County, New Jersey. The petitioner worked at that factory most of his adult life. In the late 1970's and early 1980's, the petitioner was employed as a production supervisor. He was responsible for keeping employee time records, manning, and product reliability. In the late 1970's, the factory began experiencing economic difficulties, and as such, its employees began working irregular schedules. The petitioner began receiving unemployment benefits on September 22, 1980, and continued receiving benefits through October 31, 1982 (R-9). Throughout this time period there were weeks when the petitioner would return to work at the factory and for which he would either receive reduced or no unemployment benefits depending on the amount of income he earned (R-9). Between November 3, 1980 and May 2, 1982, the petitioner either worked or received holiday pay for 16 various weeks which were not reported to the Division of Unemployment and Disability Insurance, and during which time the petitioner collected unemployment benefits (R-8). Five of these 16 weeks concerned holiday pay. Pursuant to the employment contract between the union and the factory, if an employee worked any day within 14 days after a holiday, the employee would receive holiday pay. The petitioner worked either one or two days within 14 days of 5 holidays, and therefore received holiday pay in 5 different weeks. This pay was not reported to the Division of Unemployment and Disability Insurance. The petitioner testified that he informed his local unemployment office that he received holiday pay and was told to bring in a slip. He further testified that his employer refused to give slips for holiday pay. As such, he never documented his receipt of the holiday pay with his unemployment office.

In 1982, the factory closed. The petitioner was several months short of receiving a pension, and as such, only received a lump sum severance pay. Since 1982, the petitioner has held various part-time jobs as a farm laborer or as an employee at a car wash.

On May 17, 1983, the Department of Labor notified the petitioner that it would be conducting a hearing on May 25, 1983, concerning the unemployment benefits he had received from November 3, 1980 through May 2, 1982, while the petitioner had been employed (R-3). The petitioner attended the hearing on May 25, 1983. On December 14, 1983, the Department of Labor determined that the petitioner had received unemployment benefits in the amount of \$1,757.00 to which he was not entitled, and it

imposed a fine of \$220.00 for a total claim of \$1,977.00 (R-8). The Department then filed a Certificate of Debt for \$1,977.00 in the Superior Court of New Jersey on February 16, 1984, and a judgment was entered and docketed on March 12, 1984 (R-1 & R-2).

The petitioner is a 49-year-old male who at the time of the alleged offense was 42 or 43 years old. The petitioner is married and has five children, two of whom are still residing with the petitioner. He is presently unemployed, but has an offer of employment as a security guard at the Golden Nugget if his license is approved by the Commission.

In 1956, the petitioner entered the Air Force. He was discharged with the issuance of a general discharge certificate after serving only 11 1/2 months. In 1966, the petitioner was arrested and pleaded guilty to larceny. The petitioner indicated that he was convicted of possession of stolen property. He stated that someone else stole the tire and then put it in his house. The petitioner did acknowledge that he subsequently discovered the tire and did know at the time that it had been stolen. In 1979, charges of assault with a deadly weapon were dismissed against the petitioner. The petitioner indicated that the charges were dismissed because, in fact, he was the victim and someone else pointed the weapon at him. In 1980, the petitioner was found not guilty of possession of stolen property. In 1982, charges of possession of stolen property were dismissed against the petitioner. He was accused of stealing a television, but the allegedly stolen television was never found.

With regards to his debts, the petitioner stated he reorganized under Chapter 13 in 1981. His debts were \$10,448.00, not \$15,102.00, as alleged by the Division. He stated that all of his debts have been satisfied with the exception of an alleged debt to Capitol Resources Corporation. The petitioner stated that he borrowed the money from Smith and Wellan. He assumed that Smith and Wellan sold the note to Capitol Resources, because he has never dealt with Capitol Resources. The petitioner indicated that he had repaid Smith and Wellan, so therefore, he no longer owes this debt.

The petitioner indicated he has proven his integrity since he has paid his debts. The petitioner has not, however, repaid the Department of Labor for the unemployment he wrongfully received. He indicated that he never saw the judgment or Certificate of Debt (R-1) nor knew of their existence until the Division of Gaming Enforcement forwarded a copy to him in its discovery package. He also testified that he never heard

from Unemployment after the hearing. He later, however, testified that Unemployment notified him of the debt in approximately 1985.

Since 1982, the petitioner has been involved in numerous community service activities. He has been active in his church, a youth little league manager, a youth softball manager, active in Blacks on South Side (an organization which tutors children, distributes food, etc.), and active in South Jersey Heatwaves (a ham radio club). Last summer, the South Jersey Heatwaves took underprivileged children camping. The petitioner has also assisted local police. He has been active in local crime prevention programs such as Crime Watch and has been active in Blacks Against Drugs. He stated taht he has helped police "set up" drug dealers in order to help get drugs out of his community. In 1984, the petitioner attended Cumberland County College in order to learn to become a security officer. He took courses in private security, law enforcement, and criminal justice. He completed the program (9 credit hours) and was awarded a certificate.

The petitioner submitted three letters from individuals as character references.

Reverend James H. Dunkins, pastor of the Shiloh Baptist Church wrote:

I've known Walt for about 15 years and I have seen him function in many capacities. Walt served as a member of the B.O.S.S. (Blacks on the South Side), board of directors in South Bridgeton. I was assistant director of the program at the time and Walt's service to his community was invaluable. During this period, Walt was certified in Neighborhood dispute resolution, he was president of South Jersey Heatwaves, a citizen band radio group formed to patrol their neighborhood, and also served as a liason [sic] for the Southside neighborhoods group to the City of Bridgeton.

I believe totally in Mr. Johnson's integrity and believe he is sincere in his actions.

Patrolman Ronnie D. Watford, Bridgeton Police Department, wrote:

I have known Mr. Johnson for the past ten (10) years, and have worked with him as an employee for the Hunt Wesson Foods Corp. I have also worked with Mr. Johnson on a supervisory level and he has always demonstrated leadership abilities and proved to be fair and honest in his decision making.

Mr. Johnson has shown concern for his community. He was instrumental in the organization of B.A.D. (Blacks Against Drugs). Mr. Johnson has also assisted in such programs for as Neighborhood Crime Watch, and feeding programs for the neighborhood children during the summer months. Mr. Johnson has aided me in the performance of my duties as Bridgeton Police Officer.

Mr. Johnson would be an asset as an employee. His leadership abilities, fairness, and honesty are qualities not found in every prospective employee. He would be beneficial to the Commission.

Finally, Albert B. Kelly, Executive Director of Cumberland Family Services, wrote:

I have known Walter Johnson for the past 12 years. During this time we were jointly involved in a number of community programs. These programs would included [sic] the B.O.S.S. Cultural Center, Bridgeton Dispute Court, Citizen crime watch, and the local Crime Prevention Program. Walt has always demonstrated community concern and involvement.

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. From my observations, 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, I am somewhat skeptical of the petitioner's testimony. I found several inconsistencies in his testimony and instances where his testimony was controverted by documentary evidence.

FINDINGS OF FACT

1. The petitioner began receiving unemployment benefits on September 22, 1980, and continued receiving benefits through October 31, 1982.
2. While receiving unemployment benefits, the petitioner would occasionally be recalled to work at Hunt Wesson Foods for periods of time ranging from single days to several weeks.

3. The petitioner usually reported these periods of work to his local unemployment office, and the petitioner's unemployment compensation benefits were either reduced or disallowed depending upon the petitioner's income.
4. The petitioner worked the following weeks during which he also received unemployment benefits to which he was not entitled:

<u>Week Ending</u>	<u>Hours Worked</u>	
a. November 9, 1980	8	(one day) (qualified for holiday pay)
b. January 11, 1981	80	
c. March 1, 1981	30.3	
d. March 8, 1981	35.1	
e. March 15, 1981	23.1	
f. November 8, 1981	8	(one day) (qualified for holiday pay)
g. November 29, 1981	16	(two days) (qualified for holiday pay)
h. December 13, 1981	30	
i. December 20, 1981	16.3	
j. December 27, 1981	16	(two days) (qualified for holiday pay)
k. January 3, 1982	16	(two days) (qualified for holiday pay)
l. January 24, 1982	24	
m. February 7, 1982	16	
n. February 21, 1982	23	
o. March 7, 1982	40	
p. May 2, 1982	50.2	

5. During the 16 weeks listed in 4 above, the petitioner failed to disclose his employment to his unemployment office, and he wrongfully received benefits in the amount of \$1,757.00 to which he was not entitled.
6. The Department of Labor obtained a judgment against the petitioner the amount of \$1,977.00, reflecting the \$1,757.00 overpayment and a \$220.00 fine.

7. The petitioner has made no restitution to the Department of Labor.

8. At the time of the false claim, the petitioner was either 42 or 43 years of age.
9. The petitioner is presently 49 years of age, is married, and has five children, two of whom still reside with the petitioner.
10. The petitioner received a general discharge certificate from the Air Force in 1957. In 1966, the petitioner was arrested and pleaded guilty to larceny. In 1979, the petitioner was arrested, but the charges of assault with a deadly weapon were later dismissed. In 1980, the petitioner was arrested but found not guilty of possession of stolen property (a .357 magnum revolver). In 1982, the petitioner was arrested for possession of stolen property, but the charges were later dismissed.
11. The petitioner has been involved in numerous civic organizations and has been involved in numerous community service projects. He has been active in his church, a youth little league manager, a youth softball manager, active in Blacks on South Side (an organization which tutors children, distributes food, etc.), and active in South Jersey Heatwaves (a ham radio club). Last summer, he took underprivileged children camping. He also has been active in Blacks Against Drugs. He has helped police "set up" drug dealers in order to help get drugs out of his community.
12. In 1984, the petitioner attended Cumberland County College in order to learn to become a security officer. He took courses in private security, law enforcement and criminal justice. He completed the program (9 credit hours) and was awarded a certificate.
13. The petitioner has not had stable employment since he left Hunt Wesson Foods. He has worked periodically and specifically as a farm laborer and has held various other odd jobs.
14. The petitioner is presently unemployed but has an offer of employment as a security guard should he become licensed by the Commission.

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, or any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

....

- 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; and

....

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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.

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.
- 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 or the offenses enumerated in this act as disqualification criteria; 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;
 - (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.

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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between November 9, 1980 and May 2, 1982, while he was employed by Hunt Wesson Foods, 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).

The Division established that the petitioner knowingly received unemployment benefits to which he was not entitled from the State 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.

¹N.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 unprosecuted offense committed by the petitioner is a disqualifying offense under section 86c(1), pursuant to section 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86g and 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Johnson is not presently employed in the casino industry. He has been offered a position as a security guard should he become licensed. As such, he does not have, nor will he have, direct responsibilities for actual gaming activities but he will have potential contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, for 16 weeks over a one and one-half year period during which he was sporadically employed but not 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. Here, an applicant while employed outside the industry knowingly committed a theft of public monies to which he was not entitled. This factor tends to enhance the seriousness of the offense. The petitioner did not allege any underlying circumstances which might mitigate substantially the seriousness of his offense.

Fourth, the petitioner's misconduct occurred sporadically from November 1980 until the beginning of May 1982, when it ceased.

Fifth, the petitioner was either 42 or 43 years of age at the time of the offense. I do not believe that immaturity was a factor in this case.

Sixth, the petitioner's misconduct was not isolated in nature. He has several criminal arrests, but only one conviction.

Seventh, there were no underlying social conditions which may have contributed to the offense. The petitioner worked other weeks which he did in fact report to his unemployment office.

Eighth, the petitioner has made substantial rehabilitative efforts. He has been active in numerous civic organizations and has participated in numerous community projects. He has been active in crime prevention programs. He also has attended some training in order to become a security guard.

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. Johnson was required to establish, by clear and convincing evidence, his reputation for

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

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. There were no underlying circumstances which mitigated substantially the seriousness of the misconduct, but the misconduct did not involve any licensed employment. In addition, the petitioner has not fully accepted responsibility for his misconduct, has not expressed any remorse, and has not made any restitution. Since 1982, however, he 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. I question whether the petitioner is a suitable candidate to be a security guard; however, the statute, in section 90h, appears to mandate licensure if the applicant has affirmatively demonstrated his rehabilitation. Since he has established rehabilitation since 1982, by operation of statute, the petitioner has earned the privilege of licensure. Despite the fact that he has not made restitution, an examination of the whole person clearly and convincingly establishes that Mr. Johnson is a person of good character, honesty and integrity, and is 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 Walter O. Johnson for the issuance of a casino employee license be **GRANTED**.²

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 July 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7/7/87
DATE

Heide Vandegrift
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 9 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

²I recommend the Commission condition licensure upon the petitioner executing a repayment schedule with the Department of Labor.

DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 Letter of Reverend James A. Dunkins, pastor Shiloh Baptist Church, undated
- P-2 Letter of Patrolman Ronnie D. Watford, Bridgeton Police Department, dated June 20, 1987
- P-3 Letter of Albert B. Kelly, Executive Director, Cumberland Family Services, undated

For Respondent:

- R-1 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated February 16, 1984
- R-2 Superior Court of New Jersey, Judgment Docket Record, dated March 12, 1984
- R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated May 17, 1983
- R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance - letter regarding balance owed, dated June 13, 1986
- R-5 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record, dated April 20, 1983
- R-6 Record of Hearing, dated May 25, 1983
- R-7 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record, dated January 31, 1983
- R-8 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 Disqualification Because of Willful Misrepresentation, re: Walter O. Johnson, mailed December 14, 1983
- R-9 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Walter O. Johnson, as of March 19, 1983
- R-10 Casino Control Commission Personal History Disclosure Form, re: Walter O. Johnson, dated April 2, 1985
- R-11 City of Bridgeton Police Report, re: Petitioner's arrest of January 21, 1980

WITNESSES

For Petitioner:

Walter O. Johnson, petitioner

For Respondent:

Walter O. Johnson, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-366
OAL DOCKET NO. CCC 2909-87
REGISTRATION NO. 32430-40
ORDER NO. 87-42-9

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

Complainant, :

v. :

WILLIAM J. JOHNSON, :

Respondent. :

ORDER

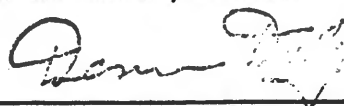
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 4, 1987,

IT IS on this 10th day of November 1987, 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 and made a part hereof.

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 2909-87

AGENCY DKT. NO. 87-366

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

Petitioner,

v.

WILLIAM J. JOHNSON,
Respondent.

**R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Gary Mangel, Esq., for the respondent

Record Closed: September 14, 1987

Decided: September 18, 1987

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 William J. Johnson's casino hotel employee registration no. 32430-40, 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(4). The respondent contended that his actions were not inimical to the policies of the Act and were not of sufficient degree to warrant revocation of his registration.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission. By complaint to the Commission, filed April 3, 1987, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of riot, which is a disqualifying offense under section 86c(4). Based upon the complaint, the Commission notified the respondent on April 10, 1987, 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 April 16, 1987, which was received by the Commission on April 20, 1987, the respondent requested a hearing. On April 27, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 1, 1987, 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 Solomon A. Metzger on July 21, 1987. The issue set forth at the prehearing conference to be resolved at the hearing was:

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)4 because he was convicted of a violation of N.J.S.A. 2C:33-1a.

A hearing was held on September 14, 1987, in the Municipal Courtroom, Ventnor City Hall, Ventnor, New Jersey, after which the record was closed.

THE FACTS

The respondent, William J. Johnson, is a member of Local 54 of the Hotel and Restaurant Employees and Bartenders International Union, and in 1986, he was employed at the Sands Hotel and Casino. In September 1986, Local 54 went on strike at the casinos in Atlantic City. On September 16, 1986, the respondent participated in the strike activities of his union. He, along with approximately 300 to 400 other employees of the

Sands who were members of Local 54, picketed outside the main entrance of the Sands. The strike effort was an organized effort; however, the respondent was not an organizer of the strike.

The respondent had never previously been a member of a union and had no prior knowledge of strike activity. He thought it was his duty as a union member to participate in the picketing at the Sands. The respondent "signed in" with the union representatives, was issued a sign to wear on the front and back of his person, and he joined the 300 to 400 other picketers walking in a large circle in front of the Sands. The respondent was not given any formal instructions from any union official as to what he should do.

While respondent was walking in the circle, a man in a suit jacket ran up and ripped the strike sign from the person walking immediately in front of the respondent. The respondent shoved the intruder back with his open hand as the respondent did not know him, and the respondent asked, "What the hell are you doing?" The individual had been pushed back approximately four feet by the respondent. The intruder pulled out a badge and said, "State Police officer." The respondent kept walking in the circle, and the State Police officer drove off in a car. The respondent indicated that he did not know who the officer was when the officer ripped the strike sign from the picketer in front of the respondent. The respondent thought the officer was a troublemaker trying to start a fight with the union, and the respondent pushed him away just to get him out of the way.

On November 25, 1986, the respondent was indicted in the Superior Court of New Jersey, Law Division-Criminal, Atlantic County, and was charged with aggravated assault, in violation of N.J.S.A. 2C:12-1b(5); terroristic threats, in violation of N.J.S.A. 2C:12-3a, and riot, in violation of N.J.S.A. 2C:33-1a (P-1).¹ On January 5, 1987, the respondent entered a plea of not guilty to the indictment. On January 20, 1987, pursuant to a plea bargain offered by the prosecutor, the respondent retracted his plea of not guilty and entered a plea of guilty to the charge of riot. The charges of aggravated assault and terroristic threats were dismissed. The respondent was sentenced to one year probation, to perform 50 hours of community service, to pay a \$250.00 fine, and to pay a \$30.00 Violent Crimes Compensation Board penalty (P-2). The respondent has paid all fines and penalties and has completed his community service; as such, his probation has been terminated early for good conduct and improvement (R-1).

716 ¹I note that the respondent was indicted for allegedly committing these offenses on August 16, 1986, when the strike activity occurred on September 16, 1986.

The respondent is 30 years of age and was 29 years of age at the time of the offense. He is married with four natural children and one stepdaughter. He is employed as a banquet steward at Caesar's and is the sole support for his family. The respondent attended high school in Brooklyn, New York, but he quit school in the eleventh grade as his mother was sick, and he was needed to take care of his sister. He has lived in Atlantic City for the last 11 years.

The respondent submitted several documents and letters in support of his good character. The first document is an employee evaluation performed by the respondent's supervisor at Caesar's (R-2). The evaluation rates the respondent's job performance as generally excellent and states, "Bill assumes a significant amount of responsibility on his own initiative. He has an excellent understanding of most all aspects related to stewarding. Bill is an asset to the department." The respondent also submitted a three-page petition signed by coworkers who indicate their support for the respondent (R-3).

Edgar K. Corson, pastry chef, Caesar's Hotel and Casino, wrote in a letter, dated July 20, 1987:

Mr. Johnson is employed in the Stewarding Dept. here at Caesars Hotel/Casino. Although stewarding positions are sometimes looked upon as being un-desireable [sic] or menial Mr. Johnson undertakes his tasks and often the tasks of others with the greatest professionalism and enthusiasm.

I have found the services of Mr. Johnson to be indispensible [sic] during the execution of banquet functions and special events here at the hotel.

I have also found Mr. Johnson to be extremely trustworthy and of very high personal, professional and moral character. He is very much a key to sucessful [sic] operation within the stewarding department. His presence would be very sorely missed in the event of his departure. [R-4]

James Trotter, chef, Caesar's Hotel and Casino, wrote:

Bill Johnson works directly for me as a Banquet Steward. I have [found] him to be among the best in the crew. He is a diligent worker with great enthusiasm and initiative. I find him to be of most invaluable support to the success of my operation. Bill is an exceptional employee and has my best recommendations. [R-5]

Charles Belanger, assistant shift supervisor, Caesar's Hotel and Casino, wrote on July 20, 1987, that the respondent has not missed a day of work and "an overall summary would indicate that he is a dependable and conscientious worker" (R-6).

Paul Tsuiouras, sous chef, and Aidan B. Waite, executive sous chef, Caesar's Hotel and Casino, submitted a joint letter indicating that they found the respondent to be a dependable, conscientious, and hardworking employee. They concluded, "Overall he does excellent work" (R-7).

Although the Division did not attempt to refute the respondent'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 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 appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, expressing remorse, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. The respondent, as a member of Local 54, was picketing outside the Sands Hotel and Casino on September 16, 1986, as part of an organized strike.
2. While the respondent was peaceably and orderly walking in a large circle with 300 to 400 other picketers, a man in a jacket ran up and ripped the strike sign from the picketer immediately in front of the respondent.
3. The respondent shoved the intruder back in order to prevent a fight, and the intruder then identified himself as a State Police officer.
4. The respondent continued walking in the circle and the State Police officer departed the area.

5. On January 20, 1987, pursuant to a plea bargain, the respondent entered a plea of guilty to the charge of riot, in violation of N.J.S.A. 2C:33-1a.
6. The respondent was sentenced to one year probation, to perform 50 hours of community service, to pay a \$250.00 fine, and to pay a \$30.00 Violent Crimes Compensation Board penalty (P-2). The respondent has paid all fines and penalties and has completed his community service; as such, his probation has been terminated early for good conduct and improvement.
7. The respondent is 30 years of age and was 29 years of age at the time of the offense.
8. The respondent is married with four natural children and one step-daughter.
9. The respondent is employed as a banquet steward at Caesar's and is the sole support for his family.
10. The respondent attended high school in Brooklyn, New York, but he quit school in the eleventh grade as his mother was sick, and he was needed to take care of his sister.
11. The respondent has lived in Atlantic City for the last 11 years.

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 under New Jersey law at the time of application a violation of any of the following provisions of law:

...

- (4) any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; 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 and provided, further however, that, any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant or person demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for disqualification pursuant to paragraph (1) of this section.

...

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." Section 129(1) 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 . . . registration." The Division contends that the respondent's criminal misconduct constitutes a disqualifying offense under section 86c(4) and, therefore, he cannot continue to hold a registration.

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 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 established that the respondent was convicted of riot. Although the respondent's conviction for riot is not listed as a disqualifier under section 86c, such conduct, when committed by a registrant, raises serious concerns. Further, when the circumstances underlying the criminal misconduct occur in front of a licensed casino, the offense takes on a far greater significance. Normally, a conviction for riot in front of a licensed casino would render continued registration to be inimical to the Act. The court conviction along with the documentary evidence submitted by the Division, establishes the charged misconduct; however, the circumstances surrounding the offense substantially mitigate the seriousness of the offense.

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] [footnote omitted]

The eight specific criteria enumerated in 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 registrant's position;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;

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

First, Mr. Johnson is a casino hotel registrant and is employed as a banquet steward in a restaurant. As such, he does not have direct responsibilities for actual gaming activities and has minimal, if any, contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:33-1a, riot. The normal conception of riot is an extremely serious offense. The fact that the riot occurred in front of a licensed casino compounds the seriousness of the offense.

Third, the circumstances surrounding the offense substantially mitigate the seriousness of the offense. The respondent was peaceably and lawfully participating in an organized strike action. An unidentified man ran up and ripped the strike sign that was being carried by the picketer walking immediately in front of the respondent. The respondent, thinking the intruder was trying to cause trouble and responding in order to prevent a fight, pushed the intruder back. The respondent then resumed his peaceful and orderly picketing. The respondent did not, yell, fight, throw objects, vandalize or otherwise act in what normally would be considered riotous conduct.

Fourth, the respondent's misconduct occurred on September 16, 1986, approximately one year ago.

Fifth, the respondent was 29 years of age at the time of the offense. I do not believe that his age at the time of the offense was a contributing or mitigating factor in this case.

Sixth, the respondent's conduct was isolated in nature. He has not committed any other prior or subsequent violations of the criminal laws. He has only one prior traffic violation, which occurred approximately six years ago.

Seventh, this was the first strike activity in which the respondent participated, and he was not given any instructions by his union on proper strike conduct.

Eighth, the respondent is a family man who is the sole support for his wife and five children. He never completed high school as he had to leave school in order to assist his sick mother in caring for his sister. He has lived in Atlantic City for 11 years. He paid all his fines, performed his community service, and was released from probation early for his good conduct. He has performed well in the industry for several years and he enjoys his job. The respondent indicated remorse about his conduct and the incident and indicated that he has learned his lesson and will not participate in such conduct or actions in the future.

"Riot" is defined in N.J.S.A. 2C:33-1a as:

A person is guilty of riot if he participates with four or more others in a course of disorderly conduct as defined in section 2C:33-2a.

"Disorderly conduct" is defined in N.J.S.A. 2C:33-2a as:

- a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
 - (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or
 - (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

The respondent was with 4 or more people; in fact, he was with 300 to 400 people. However, 4 or more people were not engaging in a course of disorderly conduct; only the respondent shoved the intruder. At best, the respondent committed simple

assault, pursuant to N.J.S.A. 2C:12-1, which in this case would be either a disorderly persons or petty disorderly persons offense.²

The Division argues that the respondent's conduct is inimical to the policies of the Act as it violates the policies of the Act, specifically the hospitality and tourism policies of the Act set forth in Section 1b, paragraphs 1 to 5. The Division further argues that when such conduct occurs at a licensed casino, the conduct undermines the goals of the Act. The Division stresses that the person could have been a patron and such conduct is detrimental to the hospitality and tourism provisions of the Act. If the respondent had just shoved a patron, that would be one issue. However, if a patron ran up to a peaceful picketer who was lawfully exercising his federally protected right to lawful strike activity and ripped the strike sign from the picket, then the patron's action would be unlawful and he would be the aggressor. Under such circumstances, if the respondent pushed back the aggressive patron in order to prevent a fight from ensuing, then the respondent might have an affirmative defense in any action for assault or riot arising from his conduct.

When considering the respondent's conduct as taken in context and the overall nature of his character, I do not find that a single push of a person interfering with a peaceful and lawful strike activity is 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 registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE**.

²I note that the State Trooper was not acting within the performance of his duties while in uniform or exhibiting evidence of his authority. Therefore, the crime could not be classified as aggravated assault. N.J.S.A. 2C:12-1(b).

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.

18 September 1987
DATE


STEVEN L. CARNES, ALJ

September 22, 1987
DATE

Receipt Acknowledged:


CASINO CONTROL COMMISSION

SEP 23 1987
DATE

Mailed to Parties:


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

Joint Exhibits

J-1 Letter from the Casino Control Commission, dated April 10, 1987

For the Petitioner

P-1 Indictment No. 86-11-2370D, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, in State v. William J. Johnson

P-2 Judgment of Conviction in State v. William J. Johnson, dated January 23, 1987

For the Respondent

R-1 Application for Order Granting Termination of Probation (undated)

R-2 Employee Evaluation, dated March 19, 1987

R-3 Signed petition in support of respondent

R-4 Letter of Edgar K. Corson, Pastry Chef, Caesar's Hotel and Casino, dated July 20, 1987

R-5 Letter of James Trotter, Chef, Caesar's Hotel and Casino

R-6 Memorandum of Charles Belanger, Assistant Shift Supervisor, Caesar's Hotel and Casino, dated July 20, 1987

R-7 Joint letter of Paul Tsuiouras, Sous Chef, and Aidan B. Waite, Executive Sous Chef, Caesar's Hotel and Casino, dated July 19, 1987

WITNESSES

For the Petitioner

William J. Johnson, respondent

For the Respondent

William J. Johnson, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-15
OAL DOCKET NO. CCC 4638-86
REGISTRATION NO. 50708-40

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

Complainant,

v.

RONALD J. JONES,

Respondent.

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 New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 3, 1987,

IT IS on this 8th day of July 1987, ORDERED that the initial decision is rejected for the following reasons:

- (1) The initial decision fails to include consideration of whether the respondent had demonstrated that, pursuant to N.J.S.A. 5:12-86(c)(4), his federal drug distribution conviction on March 9, 1972, more than ten years ago, should not be an automatically disqualifying event. The Commission expressly rules that, in this case involving a casino hotel employee registration, the criteria to be considered upon determining whether the respondent's 1972 conviction for an offense equivalent to a violation of N.J.S.A. 24:21-19a(1), is disqualifying, are the rehabilitation provisions of N.J.S.A. 5:12-91(d). Considering the rehabilitation factors present in this case, including those

enumerated at p. 4 of the initial decision which are incorporated herein, the Commission finds that this respondent has demonstrated that the conviction, which is more than ten years old, should not result in disqualification.

- (2) The Commission adopts the ALJ's findings at p. 2 of the initial decision concerning the respondent's criminal record. However, the Commission corrects the factual assertion that "[The respondent] testified that he had been incarcerated in New Jersey state prison for drug offenses which were in addition to his federal conviction." We find no basis in the transcript of the proceedings at the OAL for this statement, therefore it is eliminated.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Ronald J. Jones is dismissed based on the reasons stated herein.

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 4638-86

AGENCY DKT. NO. 86-15

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

Petitioner,

v.

RONALD JONES,
Respondent.

Norma Plenty, Deputy Attorney General appearing for petitioner, (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Ronald Jones, respondent, pro se

Record Closed: March 2, 1987

Decided: April 8, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission on January 6, 1986 seeking revocation of the respondent's casino hotel employee registration on the grounds that he had been convicted of a statutory disqualifier as described in Section 86 of the Casino Control Act. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing conference on October 20, 1986 and the hearing was on January 30, 1987, in the Longport Municipal Court. The record remained open for 30 additional days in order to receive documents from both parties.

OPERATIVE CONVICTION

The conviction relied upon by the Division as a statutory disqualifier pursuant to N.J.S.A. 5:12-86 is a federal conviction entered in the United States District Court for the District of New Jersey on March 9, 1972 for distribution of heroin. (P-2). The equivalent New Jersey Statute is N.J.S.A. 24:21-19(a)1.

I **FIND** that the respondent has been convicted of a crime enumerated in N.J.S.A. 5:12-86-c(3).

ADDITIONAL CONVICTIONS

The Division alleges, by way of a rap sheet (R-1), which the respondent says is accurate, that the respondent has acquired numerous other convictions in his adult life.

I **FIND** that the respondent has the following additional convictions:

<u>DATE</u>	<u>CRIME OR OFFENSE</u>
2) January 22, 1957	Larceny 121 UCMJ 1951
3) January 27, 1959	False pretense and forgery
4) July 20, 1960	Larceny of auto
5) July 19, 1962	False pretense
6) November 14, 1962	Threat with a razor
7) October 23, 1963	Molesting & interfering
8) July 10, 1964	Shoplifting
9) September 26, 1964	Sale of narcotics
10) December 20, 1964	Breaking, entering, larceny
11) February 20, 1965	False pretenses

Other arrests appear on the respondent's rap sheet but, without dispositions or other information, I cannot determine if a conviction was obtained. It is nevertheless certain that the respondent has additional criminal convictions other than those listed above. He testified that he had been incarcerated in New Jersey State Prison for drug offenses which were in addition to his federal conviction.

The Division also proved that the respondent was convicted in 1980 for the unlawful use of a credit card (P-5), I so **FIND**.

CRIMINAL ACTS NOT RESULTING IN CONVICTIONS

On April 20, 1983, the respondent was charged with a theft which occurred in July or August of 1979 to wit: the theft of a \$500 vacuum cleaner from the respondent's employer. The respondent was found not guilty of this charge (P-7). Nevertheless the respondent now admits that he committed the act complained of and I **FIND** that the respondent committed a fourth degree theft in 1979 (N.J.S.A. 2C:20-2b, grading of theft offenses).

I **CONCLUDE** that the respondent's casino hotel employee registration should be revoked based on his conviction for a disqualifying offense pursuant to N.J.S.A. 5:12-86c and 91b unless his registration is saved from revocation by his rehabilitation pursuant to N.J.S.A. 5:12-91d.

REHABILITATION

If the respondent is rehabilitated, his rehabilitation did not begin with his arrest and incarceration for the operative conviction on March 9, 1972 because he has subsequent convictions. Indeed, he has admitted that for most of his adult life he was a heroin addict. He is now 49 and has been drug free only in the last 7 or 8 years (R-1).

The respondent's 1983 arrest was for an incident that occurred in 1979. His last conviction (1980) was also for an event that occurred in 1979. Since 1979 was also the date he undertook drug therapy at the Institute for Human Development, it would appear that the respondent's rehabilitation began in 1980.

The respondent testified at length to his life of crime and to his subsequent life as a straight person. He listed his occupations, his accomplishments, his hopes. Based on his testimony and the exhibits received from both the respondent and the Division, I make the following **FINDINGS OF FACT** pursuant to the rehabilitation statute, N.J.S.A. 5:12-91d.

1. The respondent wants to be a steward in the employees uniform room.
2. The operative conviction was for middle level drug sales. The respondent, from time to time, had as many as three street dealers selling heroin for him. He was targeted by the F.B.I.
3. The respondent committed his crime for two reasons. He had a \$150 per day heroin habit and he" started making money."
4. This offense occurred in 1971.
5. The registrant was approximately 33 years old in 1971.
6. This offense was the culmination of many years of street trafficking in narcotics. The respondent was a career criminal.
7. This pro se respondent did not elucidate any contributing social conditions.
8. The respondent can show good conduct in the community only from 1980. His conduct in prison was good. In 1975, for instance, he completed courses in Transactional Analysis and Group Dynamics, Auto Air Conditioning, Basic Barbering and Auto Tune-Up. Persons who have recently employed the respondent report him to be reliable, trustworthy and dependable (Di Re); easy to get along with, willing and trustworthy with large sums of money (Parker); responsible, dependable and honest (Smith). His parole officer however, says he is only "marginal" and cites his failure to report regularly, and technical infractions of the parole rules as the reason.

In addition, the respondent is a friendly, calm and intelligent man who appears to have finally made an adjustment to the straight life.

CONCLUSION

It would be extraordinary to find a career criminal who was rehabilitated. The respondent has many indicia of rehabilitation. Eight years without committing a crime is one such indication. Eight years without illegal drug use is another. The respondent's supervisors speak well of him. The fact, however, that he is still on parole and is only "marginal" according to his parole officer requires a finding that the respondent is not yet rehabilitated.

I therefore **CONCLUDE** that the respondent has not met his burden of affirmatively showing that he is rehabilitated.

I **ORDER** that the respondent's casino hotel employee registration be **REVOKED**.

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

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

April 8, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

April 10, 1987
DATE

Nicholas Gays
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1987
DATE
bc

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

EXHIBIT LIST

- P-1 FBI rap sheet
- P-2 US District Court, Judgment of Commitment, Criminal No. 736-71
- P-3 Township of Hamilton police investigation report and report of Investigator Ronald Frost, October 22, 1979
- P-4 Hamilton Township Municipal Court Complaint, October 21, 1979
- P-5 Proceedings Atlantic County Superior Court, February 1980
- P-6 Pleasantville Police department investigation report consisting of two pages
- P-7 Pleasantville Municipal court complaint, S-147297

- R-1 Letter from the Institute for Human Development
- R-2 Letter from the laborers' union - April 11, 1985
- R-3 Letter from Ronald Jones February 27, 1987
- R-4 Di Re letter, February 9, 1987
- R-5 Parker letter, February 24, 1987
- R-6 Smith letter, February 25, 1987
- R-7 T/A Certificate, Transactional Analysis Program - 1975
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-33
AND 86-190
APPLICATION NO. 61607-21
REGISTRATION NO. 58644-40
OAL DOCKET NOS. CCC 4063-86
AND 6033-86 (CONSOLIDATED)
ORDER NO. 87-33-9

APPLICATION OF MICHAEL H. KARR
FOR A CASINO EMPLOYEE LICENSE

ORDER

AND

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

Complainant,

v.

MICHAEL H. KARR

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 September 2, 1987,

IT IS on this *2nd* day of November 1987, 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 made a part hereof.

ORDER NO. 87-33-9

IT IT FURTHER ORDERED that the complaint is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 4063-86 &
CCC 6033-86 (CONSOLIDATED)
AGENCY DKT. NOS. 86-190 &
87-EA-33

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

MICHAEL H. KARR,

Respondent.

Michael Vukcevich, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Lorraine Gormley, Esq., for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed: December 8, 1986

Decided: July 16, 1987

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 May 16, 1986, seeking revocation of the respondent's casino hotel employee registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon his 1985 convictions in Pennsylvania for theft by receiving stolen property (automobile), comparable to N.J.S.A. 2C:20-7, and possession of a controlled dangerous substance with intent to deliver, comparable to N.J.S.A. 24:21-19a(1). This matter also concerns the respondent's

application for licensure as a casino employee, permitting him to work in a licensed casino as a craps dealer. By letter report to the Casino Control Commission, dated July 24, 1986, the Division of Gaming Enforcement objected to the licensure of the respondent. These are the issues to be resolved:

1. Should the respondent's casino hotel employee registration be revoked and his application for a casino employee license be denied as a result of his alleged 1985 convictions in Pennsylvania of offenses comparable to N.J.S.A. 2C:20-7 and N.J.S.A. 24:21-19a(1), which are statutory disqualifiers under section 86c of the act.
2. Does the respondent possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b.
3. Has the respondent, if convicted of otherwise disqualifying offenses, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.
4. Should any disqualification criterion for the respondent's casino hotel employee registration be waived, within the meaning of section 91e of the act, and is revocation an appropriate sanction under sections 129 and 130 of the act.

PROCEDURAL HISTORY

On June 9, 1986, the respondent filed with the Casino Control Commission his notice of defense and request for a hearing on the complaint of the Division of Gaming Enforcement. On June 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 13, 1986, at which time the matter was set down for hearing on October 17, 1986.

By letter to the Casino Control Commission, dated July 24, 1986, the Division interposed its objection to the application of the respondent for a casino employee license. On September 11, 1986, the Commission transmitted the matter of the respondent's pending application for licensure as a casino employee to the Office of Administrative Law to be consolidated with the violation proceeding for purposes of a hearing. At the request of counsel for the Division of Gaming Enforcement, the matter was adjourned prior to the October 17, 1986, hearing date because of the unavailability of

a witness. The hearing was then rescheduled for November 14, 1986, but was adjourned from that date at the request of counsel for the respondent, when she learned that she would be unavailable.

The hearing was subsequently rescheduled for and held on December 8, 1986. The record closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

FINDINGS OF FACT

The material facts in this matter are undisputed. The respondent, who is 32 years old, resides with his common law wife and five children in Ventnor, New Jersey. He holds casino hotel employee registration No. 58644-40, and he has been employed since March 11, 1985, in the Transportation Department of the Tropicana Hotel and Casino in Atlantic City, New Jersey. First hired as a valet parker, the respondent was promoted to the position of Supervisor of Transportation on November 1, 1986.

The respondent and his common law wife, Diane Arrasmith, have been together for over ten years. In 1984, they and their five children resided in Whitmarsh Township in Montgomery County, Pennsylvania. Early on the morning of February 2, 1984, a Whitmarsh police officer observed the respondent entering and operating an automobile which the police officer had determined was a stolen rental vehicle.

The respondent was stopped and searched by police officer Guy Anhorn. The search revealed that the respondent had in his possession an automatic pistol, a small amount of marijuana, stolen credit cards, stolen checks, and a forged high school diploma. The respondent was then placed under arrest. A subsequent search of his home resulted in the seizure of additional drugs and drug paraphernalia (See Exhibits P-1 and P-8). Thereafter, the District Attorney of Montgomery County entered the following charges against the respondent by bills of information: theft by receiving stolen property (auto), comparable to N.J.S.A. 2C:20-7; two counts of theft by receiving stolen property (check), comparable to N.J.S.A. 2C:20-7; theft by receiving stolen property (credit cards), also comparable to N.J.S.A. 2C:20-7; unlawful possession of a concealed firearm without a permit, comparable to N.J.S.A. 2C:39-2; possession of a small amount of marijuana, possession of a controlled dangerous substance and possession of a controlled dangerous

substance with intent to deliver, comparable to N.J.S.A. 24:21-20a(4) and N.J.S.A. 24:21-19a(1); unlawful possession of an altered driver's license, comparable to N.J.S.A. 2C:21-1; and two counts of forgery, comparable to N.J.S.A. 2C:21-4 (Exhibit P-4).

On February 21, 1984, the respondent was arrested by the Plymouth Township Police Department and was charged with passing a bad check, comparable to N.J.S.A. 2C:20-5; forgery, comparable to N.J.S.A. 2C:21-1; and theft by deception and receiving stolen property, comparable to N.J.S.A. 2C:20-4 and N.J.S.A. 2C:20-7 (Exhibit P-10). Bills of information for these offenses were subsequently entered by the District Attorney of Montgomery County (Exhibit P-7).

On February 6, 1985, the respondent entered a plea of guilty in the Court of Common Pleas, Montgomery County, to the charge of passing a bad check, comparable to N.J.S.A. 2C:21-5. The prosecution of the remaining bills of information arising from his arrest on February 21, 1984, was dismissed upon motion of the district attorney (Exhibit P-6). On the same date, the respondent entered a plea of guilty to some of the charges arising from his arrest on February 2, 1984. The respondent pled guilty to receiving stolen property (auto), comparable to N.J.S.A. 2C:20-7; unlawful possession of a firearm, comparable to N.J.S.A. 2C:39-2; and possession of a controlled dangerous substance with intent to deliver, comparable to N.J.S.A. 24:21-19a(1), and the remaining bills of information were dismissed upon the motion of the district attorney (Exhibit P-3).

The respondent was sentenced on February 13, 1985. He received two years probation and was ordered to make restitution of \$398 on the charge of issuing a bad check. He was also ordered to satisfactorily complete an out patient drug treatment program (Exhibit P-5). On the remaining charges, the respondent was ordered to serve a consecutive term of probation of five years and was ordered to make restitution and pay fines and costs (Exhibit P-2). Because the respondent had moved to the Atlantic City area by the time of sentencing, the sentencing judge ordered that the respondent's probation be served under the supervision of the Atlantic County Probation Office. The total term of probation to be served which commenced in February 1985 was reduced from seven years to five years because the respondent resides in New Jersey.

Testifying on his own behalf, the respondent candidly and sincerely explained his involvement in criminal activities. Both he and his wife were addicted to methamphetamine. In fact, the respondent had injected the drug on a daily basis since the

age of 17. In February 1984, the respondent and his wife were unemployed and her welfare benefits had been terminated. The family's only source of income was derived from the respondent buying and selling methamphetamine. In this way, the respondent and his wife were able to support their addictions.

The respondent testified that his truck needed a replacement engine so he was driving a rental car which he rented using a stolen credit card. The card had been given to him as payment for some drugs he had sold. At the time of his arrest on February 2, 1984, he was driving the rental vehicle on his way to use another stolen credit card to purchase diesel fuel to heat his home. The respondent acknowledged that he had stolen credit cards and checks in his possession at the time of his arrest. In addition, he was carrying a hand gun which he brought to the arresting officer's attention when he was going to be searched. The respondent was familiar with the report authored by the arresting officer (Exhibit P-8). Except for minor details, the respondent agreed that the report was accurate.

The respondent also explained his arrest on February 21, 1984. He had been given stolen payroll checks and a driver's license in the name of Robert A. Green by another drug addict. The respondent used the check to pay a debt to Michael Tierney. When the check was returned to Mr. Tierney by his bank, he determined that it had been stolen and he reported it to the Plymouth Township Police. The respondent did not dispute the police report concerning this incident (Exhibit P-10).

In an entirely credible manner, the respondent described his successful efforts to overcome his drug addiction. It was necessary for him and his wife to put their children in temporary foster care through the Montgomery County Office of Children and Youth Services so that he and she could both go into drug rehabilitation programs. While his wife went to Eagleville, the respondent went to the Valley Forge Detoxification Center for eight days. He then spent 30 days at Cadenzia House in West Chester Pennsylvania. After 30 days in that program, the respondent became a resident at the Institute for Human Development in Atlantic City.

The respondent was a resident at the institute from July 1, 1984, through March 20, 1985. There he learned that it was necessary to remove himself from the people and places associated with his prior drug use. While a resident, the respondent was

exposed to meetings of Alcoholics Anonymous and Narcotics Anonymous and he participated in individual and group counseling sessions (Exhibit R-2).

The respondent left the institute in March 1985 when he was hired by the Tropicana Hotel and Casino. The respondent was reunited with his wife and their two oldest children were returned to them seven to eight months later.

In April 1986, the respondent and his family moved to a larger apartment in Ventnor, New Jersey. The Montgomery County Office of Children and Youth Services completed a home study and determined that the respondent's home was a safe and stable environment for the children and that the parents were capable. The three younger children were then returned to the respondent. A letter from Frances Wright, supervisor in the Office of Children and Youth Services, was admitted into evidence as Exhibit R-4. Noting that the respondent had successfully completed a rehabilitation program and had always cooperated with her office in working for the best interest of his children, Ms. Wright stated:

At the judicial review the court and the guardian-ad-litem congratulated the parents on the successful effort they made to change their lives in order to be responsible parents.

While participating in the rehabilitation program, the respondent attended classes for approximately five weeks which allowed him to earn a high school diploma (Exhibit R-10). The respondent also attended and successfully completed 240 hours of instruction in craps, receiving his certification from the Casino Career Institute on June 20, 1985 (Exhibit R-11 and R-12).

Since his promotion to the position of Supervisor of Transportation at the Tropicana on November 1, 1986, the respondent has directly supervised 30 employees. He is in charge of operating his shift at the parking garage and Tropicana Director of Human Resources Louis P. McFadden characterized the respondent as having been a fully satisfactory employee for the entire tenure of his employment. Mr. McFadden testified at the hearing that he and the Director of Transportation recommended the respondent for his promotion. He feels the respondent is a person who can relate to people and who will make a good supervisor. Mr. McFadden has found the respondent to be honest and he noted that he would not have recommended the respondent for his promotion if it had been otherwise.

The respondent is scheduled to remain on probation until 1990. He testified that he is current on making his monthly payment toward his fine to Montgomery Township, Pennsylvania. He also reports monthly to his probation officer in Atlantic City. The respondent knows that he must stay out of trouble and he testified credibly that he has committed himself to his changed status. He has learned how to support himself without stealing and he is no longer an addict. The respondent noted with pride that he now has his own department store credit card and that he obtained a loan from his bank to buy a car. He sincerely reported that while people used to cross the street to avoid him, they now go out of their way to greet them.

Atlantic County Probation Officer Luis Carrasquillo testified that he supervises the respondent's probation. In his opinion, the respondent has become a changed person during the course of his probation. He believes the respondent has been reliable in their dealings and he has no reason to believe that the respondent has not been truthful. They have met regularly since April 1986 and they have also talked on the telephone. Mr. Carrasquillo hopes to observe further positive changes in the respondent during the three years remaining on his probation.

It was the testimony of the respondent that he has no present intention to seek a gaming position in a licensed casino, even though he successfully completed a craps course. He does not need a casino employee license for his present position. The respondent is prepared to forego his casino employee license and to seek advancement in his present non-gaming area of employment.

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

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c, the Casino Control Commission shall deny licensure to any applicant who

is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of certain enumerated statutes.

Pursuant to section 1b(8) of the Casino Control Act, participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Sections 91b and 129 of the act authorize the revocation of the registration of any registrant who is disqualified on the basis of his conviction of any offense which is specifically listed under section 86c of the act.

On February 6, 1985, the respondent was convicted of certain offenses in Pennsylvania upon his plea of guilty. Among the offenses to which the respondent entered a guilty plea were theft by receiving stolen property (automobile), comparable to N.J.S.A. 2C:20-7, and possession of a controlled dangerous substance with intent to deliver, comparable to N.J.S.A. 24:21-19a(1). These offenses are specifically enumerated as disqualifiers under subsections 86c(1) and (3) of the act. Therefore, I **CONCLUDE** that the respondent is subject to denial of his application for a casino employee license and revocation of his casino hotel employee registration on the basis of his conviction of disqualifying offenses.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, the appropriate sanction is revocation of the credential, in the absence of a demonstration of rehabilitation, pursuant to section 91d of the act, or waiver, pursuant to section 91e of the act. See, State v. Wynette Harris, Dkt. No. 81-18, Commission decision, June 29, 1983. Pursuant to section 91d of the act, the respondent's casino hotel employee registration should not be revoked on the basis of his conviction of offenses enumerated in the act as disqualification criteria, 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 the otherwise disqualifying conviction, 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. 5:12-91d (the language of section 90h is almost identical) shall be considered:

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

The respondent is now 32 years old. His convictions resulted from criminal activity occurring in January and February 1984. However, the criminal conduct was directly related to a serious drug problem which the respondent experienced beginning at the age of 17. His last drug use occurred in 1984 and he has participated in several drug rehabilitation programs.

The respondent has faithfully adhered to the requirements of his probationary sentence. In addition to regularly meeting with his probation officer, he makes monthly payments towards his fine and costs. Not only has he obtained gainful employment in a licensed casino, his work performance and attitude have resulted in a promotion which entails the responsibility of supervising other employees.

The respondent is now providing support for himself and his family in a lawful manner. His involvement with drugs ended three years ago and he has had no further problems with the criminal justice system. His status as a responsible wage earner has resulted in a stable economic environment for his family. In addition to the reuniting of his family and his successful employment, the respondent has taken further steps toward

his rehabilitation by obtaining a high school diploma and completing a training course necessary for obtaining a casino employee license.

The respondent must demonstrate his rehabilitation by clear and convincing evidence. Notwithstanding that he had not yet completed his lengthy term of probation, I am convinced that the respondent has turned his life around and is a changed man. Given his remarkable efforts as described above, I expect that the respondent will complete his term of probation without incident. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has been convicted of disqualifying offenses under sections 86c(1) and (3) of the Casino Control Act, has established his rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91d of the act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the respondent has sustained his burden of establishing by clear and convincing evidence that he presently 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.

Section 91e of the Act permits the waiver of any disqualification criterion for a casino hotel employee consistent with the public policy of the act and upon a finding that the interests of justice so require. Since I have concluded that the respondent has affirmatively demonstrated his rehabilitation, he has overcome what would otherwise be his disqualification resulting from conviction of certain enumerated offenses. However, in the event that my conclusion that the respondent is rehabilitated is not adopted by the Casino Control Commission, it is my recommendation that the undisputed facts in this matter support a conclusion that the interests of justice require the waiver of the criterion which would otherwise disqualify the respondent from continuing to hold his casino hotel employee registration.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Michael H. Karr be **DISMISSED**. It is further **ORDERED** that the application of Michael H. Karr for a casino employee license 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 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 July 16, 1987

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE July 17, 1987

Alfred J. Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE JUL 21 1987

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Inventory of Seized Property
- P-2 Sentence and Order
- P-3 Dismissal of Charges
- P-4 Bills of Information
- P-5 Sentence and Order
- P-6 Dismissal of Charges
- P-7 Bills of Information
- P-8 Police Reports and Complaint
- P-9 Police Incident Report
- P-10 Police Report and Complaint
- P-11 Police Report
- P-12 Division of Gaming Enforcement Investigative Summary Report

For the respondent:

- R-1 Resume
- R-2 Letter dated June 24, 1986
- R-3 Letter dated June 4, 1986
- R-4 Letter dated June 3, 1986
- R-5 Personal History Disclosure Form
- R-6 Letter dated June 17, 1986
- R-7 Letter dated June 25, 1986
- R-8 Letter dated July 1, 1986
- R-9 Letter dated August 17, 1986
- R-10 High School Diploma
- R-11 Craps Course Certificate
- R-12 Letter dated June 20, 1985
- R-13 Undated Letter

WITNESSES

For the petitioner:

None

For the respondent

Michael H. Karr

Luis Carrasquillo

Louis P. McFadden

Diane Arrasmith

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-M-2
ORDER NO. 86-36-19-A

QUALIFICATION OF PETER R. KELLOGG

AMENDED
FINAL ORDER

The Casino Control Commission (Commission) having determined at its public meeting of September 5, 1984, (See Resolution No. 84-642) that Spear, Leeds and Kellogg (SLK) and Jersey Investment Partners (JIP) were entities required by N.J.S.A. 5:12-85(c), (d) and (e) to qualify in connection with the casino license applications of The Claridge at Park Place, Incorporated (CPP) and Del E. Webb New Jersey, Inc. (DEWNJ) by virtue of JIP's ownership of over 5% of the common stock of Del E. Webb Corporation (DEWC); and having further determined that Peter R. Kellogg was a natural person required to be qualified by virtue of his position as chief executive officer of SLK and general partner of JIP; and the Division of Gaming Enforcement (Division) having filed a letter report concerning the qualifications of Peter R. Kellogg dated September 5, 1985; and hearings in the matter of the qualification of Peter R. Kellogg having been held in the Office of Administrative Law; and an initial decision having been filed by Administrative Law Judge Jeff

S. Masin; and JIP having sold all of its DEWC stock; and JIP and SLK having expressed interest in acquiring DEWC stock in the future; and the Commission having considered the entire record of this proceeding at its public meeting of September 10, 1986;

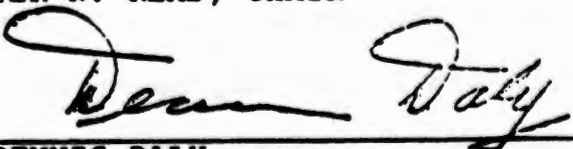
IT IS on this 26th day of August 1987, ORDERED that the question of the qualification Peter R. Kellogg is hereby considered a request for a declaratory ruling with respect to the issues raised in the letter report of the Division; and

IT IS FURTHER ORDERED that, the initial decision is adopted; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-89, Peter R. Kellogg would be qualified, based on the record presented, to the standards, other than residency, required for a casino key employee license, as required by N.J.S.A. 5:12-85(c), -85(d), -85(e)-89 and -94(b) substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

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. 85-M-3
ORDER NO. 86-36-19-B

QUALIFICATION OF SPEAR, LEEDS AND
KELLOGG/JERSEY INVESTMENT PARTNERS

AMENDED
FINAL ORDER

The Casino Control Commission (Commission) having determined at its public meeting of September 5, 1984, (See Resolution No. 84-642) that Spear, Leeds and Kellogg (SLK) and Jersey Investment Partners (JIP) were entities required by N.J.S.A. 5:12-85(c), (d) and (e) to qualify in connection with the casino license applications of The Claridge at Park Place, Incorporated (CPP) and Del E. Webb New Jersey, Inc. (DEWNJ) by virtue of JIP's ownership of over 5% of the common stock of Del E. Webb Corporation (DEWC); and having further determined that the 27 general partners of SLK and the two general partners of JIP were natural persons required to be qualified; and the Division of Gaming Enforcement (Division) having filed a letter report concerning the qualifications of SLK and JIP dated June 17, 1985; and hearings in the matter of the qualification of SLK and JIP having been held in the Office of Administrative Law; and an initial decision having been filed by Administrative Law Judge Jeff S. Masin; and JIP having sold

all of its DEWC stock; and JIP and SLK having expressed interest in acquiring DEWC stock in the future; and the Commission having considered the entire record of this proceeding at its public meeting of September 10, 1986;

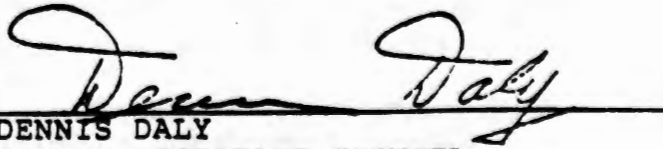
IT IS on this 26th day of August 1987, ORDERED that the question of the qualification of SLK and JIP is hereby considered a request for a declaratory ruling with respect to the issues raised in the letter report of the Division; and

IT IS FURTHER ORDERED that, the initial decision is adopted; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-89, SLK and JIP and each of the 27 general partners of SLK and the two general partners of JIP would be qualified, based on the record presented, to the standards, other than residency, required for a casino key employee license, as required by N.J.S.A. 5:12-85(c), -85(d), -85(e), -89 and -94(b) substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

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 5814-85 &
5815-85 (CONSOLIDATED)
AGENCY DKT. NOS. 85-M-2 &
85-M-3

PETER R. KELLOGG,
Petitioner,

v.

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

and

SPEAR, LEEDS AND KELLOGG:
JERSEY INVESTMENT PARTNERS,
Petitioners,

v.

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

Clive S. Cummis, Esq., and Kenneth F. Oettle, Esq., for petitioners (Sills, Beck, Cummis, Zuckerman, Radin, Tischman & Epstein, attorneys)

Ralph Fusco, Deputy Attorney General, for respondents (W. Cary Edward, Attorney General of New Jersey, attorney)

Record Closed: June 16, 1986

Decided: July 18, 1986

BEFORE JEFF S. MASIN, ALJ:

Spear, Leeds and Kellogg, a limited New York Partnership registered with the Securities and Exchange Commission (SEC) as a broker/dealer of securities, and Peter R. Kellogg, a general partner in Spear, Leeds and Kellogg (SLK), seek to be qualified pursuant to the Casino Control Act, N.J.S.A. 5:12-86-1 et seq. Section 85 of the Act requires that any corporation which applies for a casino license must provide to the Commission information concerning the organization, financial structure and nature of any businesses operated by the corporation as well as information concerning directors, principal employees, holding, intermediary and subsidiary companies, etc. Section 85(c) and (d) provide that no corporation "shall be eligible to hold a casino license" unless various designated officers, directors, holders of beneficial interests or stock ownership and others with an ability to control the corporation or elect the majority of the board of directors individually qualify for approval as a casino key employee pursuant to the qualifications standards for key employees set forth in section 89.

On September 24, 1984, the Claridge at Park Place, Inc. and Del Webb New Jersey Corp., licensees of the Commission, agreed with the Director of the Division of Gaming Enforcement (Division) to temporarily waive the qualifications of Spear, Leeds and Kellogg and a group of its general partners, known as Jersey Investment Partners (JIP), as entity/shareholders. SLK and JIP held approximately 9 percent of the stock of Del E. Webb Corp. (DEWC), a publicly traded holding company of the licensees. According to a report issued by the Division to the Commission on June 17, 1985, between September 24, 1984 and June 17, 1985 SLK and JIP bought and sold various quantities of Del E. Webb Corp. stock and held approximately 3 percent of the outstanding stock of the company as of the June 17, 1985 hearing.

In addition to the temporary waiver granted SLK and JIP, the Commission also temporarily waived the qualifications of 26 general partners of SLK and JIP.

In its letter of June 17, 1985 to the Commission, the Division reviewed a number of matters of potential significance in determining whether SLK and JIP could qualify as casino key employees. After considering a number of incidents involving SLK which will be described in detail below, the Division determined that it had:

Not discerned any information that would preclude a finding of JIP's suitability as an entity qualifier of the licensees.

In addition, the Division also found:

No significant adverse information has been developed which would cause the Division to object to the qualifications of SLK or JIP.

By letter of June 12, 1985, the Division reported to the Commission on its investigation of Peter R. Kellogg. Mr. Kellogg, as noted, is a general partner in SLK. SLK is the sole limited partner of JIP and holds a 99 percent interest in JIP. Mr. Kellogg held a .5 percent interest in JIP at the time of the June 12, 1985 letter. The Division letter reviewed Mr. Kellogg's qualifications, including a number of incidents in his past, and determined that there was nothing which would serve to disqualify him as a key employee.

Despite the Division's favorable findings, the Commission determined to forward the applications of SLK, JIP and Kellogg to the Office of Administrative Law (OAL) for a hearing so that all necessary information concerning their qualifications could be developed and considered. The matter was received at the Office of Administrative Law on September 16, 1985. A prehearing conference was held on October 30, 1985 and a prehearing order was issued on November 6, 1985. The matter was heard before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Newark on May 29 and 30 and June 2 and 3, 1986. Thereafter, transcripts of the hearing were received, with the last set of transcripts arriving on June 16, 1986. At that time the record closed.¹

GENERAL CONCLUSIONS

The detailed evidence concerning the various matters of interest raised by the Division in its letters to the Commission will be considered below. However, as a general

¹Since the time of the Division's letters to the Commission, SLK, and JIP, disposed of all of its stock in Del E. Webb Corp. As such, they, and Kellogg, no longer have any immediate reason for qualifying as part of the overall qualification of the licensees. However, during the prehearing conference, the parties indicated that they may be interested in acquiring stock in the casino industry in the near future at a level which it would require it to qualify and therefore it wished to continue with the proceedings in order to clear up any questions concerning the matters raised in the Division's letters.

conclusion, after having carefully considered all of the evidence, including that concerning the questioned incidents, as well as the testimony of Mr. Kellogg and the character witnesses presented on his behalf and on behalf of SLK, I CONCLUDE that SLK, JIP and Peter R. Kellogg are all qualified for licensure as casino key employees under the terms of Section 89 and therefore meet the qualifying standards set forth in section 85. A detailed analysis of the reasoning behind this conclusion will be set forth following a description of the evidence.

THE ISSUES

The prehearing order established that as to each qualifier the hearing would determine their suitability for approval as a casino key employee pursuant to sections 85(c) and (d) and section 89 of the Act. With respect to SLK and JIP, the Division's letter had referred to several specific "matters of concern" which can best be described in short form as (1) the "LIFO" stock transaction of 1977; (2) the "First Options" matter; and (3) the "Bull and Bear" matter of 1977 through 1979.

With respect to Mr. Kellogg, in addition to his involvement with SLK in the above matters, the letter to the Commission addressed (1) the 1976 presidential election wagering matter and (2) a 1977 federal grand jury investigation dealing with discount brokerage and possible antitrust violations.

BACKGROUND

In order to understand the issues of significance in this hearing, it is necessary to have some general background concerning the business of Spear, Leeds and Kellogg, the formation of Jersey Investment Partners (JIP) and of Peter R. Kellogg.

Spear, Leeds and Kellogg is a limited New York partnership which has approximately 26 general partners. SLK serves as a specialist broker on the New York Stock Exchange. The company was founded over 50 years ago. Peter Kellogg's father, although not initially a founder of the firm, became associated with the company approximately 50 years ago. Peter Kellogg has been a partner in SLK for approximately 18 years and now has the status as a senior partner, functioning as the Chief Executive Officer. According to Mr. Kellogg, in 1970 the company had a five million dollar capital and 45 employees and ranked 480th among securities firms. The company now has 1,200 employees, a 250 million dollar capital and is within the top 20 largest capitalized firms.

In addition, it handles the second largest amount of trades on the New York Stock Exchange, after Merrill Lynch. SLK is the 100 percent owner of First Options of Chicago, a "market maker clearing firm" located in four cities and Troister, Singer, a large wholesale over-the-counter firm located in Jersey City.

SLK's role on the New York Stock Exchange is that of a specialist. Mr. Kellogg defined a specialist as:

Charged with making an orderly market in a group of assigned stocks and buys and sells those securities out of its own inventory to make an orderly market, acts as a principal in those trades and acts as traffic cop to the extent that he brings buyers and sellers together.

Another witness, George Brunelle, an attorney with an extensive background of employment with the New York Stock Exchange, described a specialist as having both an affirmative and a negative responsibility towards the market, as set forth in Rule 104 and 104.14 of the New York Stock Exchange Rules. As will be noted below, the exact role of a specialist is a controversial one and the definition of what a specialist is permitted to do led in large part to one of the incidents for which SLK's conduct is questioned in this hearing. However, it is sufficient for purposes of background to note that Mr. Brunelle described the affirmative responsibility as being for the specialist to participate in the market and buy and sell on its own behalf for purposes of offsetting temporary disparities of demand for those stocks assigned to the specialists. Where there is an imbalance of purchasers and sellers, it is the role of the specialist to prevent wide variations in bids and to keep such variations as low as possible. If there is an imbalance of sellers, the specialist buys; if there is an imbalance of buyers, the specialist sells. The specialist's offers to sell and bids to buy set a range for the potential buyers and sellers. As an example, Brunelle described a situation where the highest bid for a particular stock might be a 10 and 1/8 and lowest offer to sell might be 15. It would be the role of the specialist to bid closer to the offer in order to create the market and keep disparities and variations as low as possible.

The negative responsibility which may be imposed on a specialist (it is necessary to keep in mind that this is controversial) was described by Brunelle as an illusive one. According to Brunelle's interpretation of the negative responsibility, the specialist is only to participate in the market when necessary to maintain an orderly

market and for no other reasons. Therefore, if the specialist acts on its own behalf rather than for the sole purpose of maintaining an orderly market in those circumstances where such trading is necessary to maintain such a market, the specialist may be violating its negative responsibility.

JIP

Jersey Investment Partners is a group formed in May 1984 by SLK for the sole purpose of holding the stock owned by SLK in the Del E. Webb Corp. JIP is comprised of two general partners, Mr. Kellogg and a Mr. Silverman, and one limited partner, SLK, which owns 99 percent of the stock. JIP has no other assets or business affairs other than holding the DEWC stock.

PETER R. KELLOGG

Peter R. Kellogg, the senior partner of Spear, Leeds and Kellogg and in effect its Chief Executive Officer, is 43 years old and has been a resident of New Jersey throughout his life. He has resided in Short Hills for the past 20 years. He joined Spear, Leeds, where his father had worked for many years, 18 years ago. Before that he was employed at Stern, Frank, Myer and Fox, a brokerage firm in California, and served as their person on the New York Stock Exchange floor. When he joined Spear, Leeds he acted as the floor specialist, located at a post on the floor where brokers would come to him to effectuate transactions. A clerk was located behind Kellogg and took down the bids and transactions. Kellogg retained the position as the floor specialist from 1968 through 1980 and then went "upstairs" to run the firm.

In addition to his business activities, Mr. Kellogg is on the board of the Berkshire School, Overlook Hospital, the Hurricane Island Outward Bound and National Outward Bound organizations and has been a member of the State Investment Council advising the Governor of New Jersey on the investment of state funds. He described his public service as a "family tradition" flowing from his father, who served as chairman of the Port Authority of New York.

With the above background, it is possible to turn to the specific matters in question concerning SLK. As to these, they deal with rather intricate matters of securities law. Although the recitation of the evidence herein will attempt to describe in

detail what occurred as to each incident, after considering the testimony, it appears that each of the incidents can be described in a rather simplified manner.

THE "LIFO" TRANSACTIONS

The first incident to be dealt with is the so-called "LIFO" matter. In short, this involved the purchase by SLK of stock in three companies assigned to it in its specialist role and shortly thereafter the sale of the stock. The purpose of the transactions, as frankly admitted by Mr. Kellogg, was to increase the capitalization of SLK by taking advantage of tax laws and the Last-In-First-Out (LIFO) accounting procedure. As a result of the transactions, a proceeding was brought against SLK by the Stock Exchange which claimed that SLK had violated the negative responsibility imposed on a specialist not to deal in the market except in order to maintain an orderly market. The general contention was that SLK had not been required to perform these transactions in order to maintain the market as there were no problems at the time with the stocks that SLK bought and sold. The Exchange proceeding revolved around the controversial question of the so-called negative responsibility of a specialist and the interpretation of Rule 104 and 104.14 of the Rules of the New York Stock Exchange.

Rule 104 reads:

No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

Rule 104.14 states that:

A member acting as a specialist may not effect transactions for the purpose of adjusting a LIFO inventory in a stock in which he is so acting except as a part of a course of dealings reasonably necessary to assist in the maintenance of a fair and orderly market.

A description of the specifics of the incident in question can be drawn from the decision rendered on February 19, 1980 by Chief Hearing Officer John J. Mulcahy, Jr.,

speaking for the Exchange hearing panel. That body had considered a Stipulation and Consent to Penalty entered into between the Exchange's Market Surveillance and Evaluation Department and SLK. As stated in both the hearing panel decision and the stipulation itself, the settlement was entered into solely for the purpose of settling the disciplinary proceeding and without any admission or denial of guilt by SLK. However, SLK consented to findings by the hearing panel that it had violated Exchange Rule 104, in that it effected transactions in three of its specialty stocks "which were not reasonably necessary to enable it to maintain a fair and orderly market or to act as an odd-lot dealer in these securities." The transactions involved occurred in May 1977. On May 23, 1977, just prior to the close of trading, Spear, Leeds bought 26,700 shares of stock in a company for which it acted as a specialist. The purchase price for this stock was thirty and three-quarters. On May 24, 1977, at 10:47 a.m. (computer time), SLK sold back the 26,700 shares at thirty and five-eighths.

A second group of 76,000 shares in a second company was purchased by SLK on May 23, 1977. On May 24, at 10:17 a.m., SLK sold back the 76,000 shares at fifty-one and a half.

On May 25, 1977, at 3:31 p.m., Spear, Leeds bought 71,300 shares of a third stock in which it acted as a specialist. The price was forty-seven and three-eighths. Spear, Leeds' fiscal year ended on May 31, 1977 and therefore this trade was consummated on a "cash" basis in order for the transaction to settle before the end of Spear, Leeds' fiscal year. The previous trades noted had been accomplished through "the regular way," which is unspecified in the panel's decision. Spear, Leeds sold this 71,300 on May 25, at 3:50 p.m., for forty-six and three-quarters.

As a result of the three transactions, Spear, Leeds lost \$22,337.50. However, Mr. Kellogg testified that because of these transactions the company increased its capital by four million dollars since it was able to delay taxes through the LIFO method.

The Exchange hearing panel decision approving the settlement and consent order reflects that the Market Surveillance and Evaluation Department investigation of the three transactions "disclosed no harm to the public, or fraudulent or manipulative conduct by Spear, Leeds. However, the decision does find the transactions to have violated the negative responsibility of Rule 104 because they were not reasonably necessary to maintain a fair and orderly market.

As a result of the Stipulation and Consent to Penalty, SLK consented to the imposition of a censure and a fine of \$25,000.

George Brunelle, an attorney licensed in New York and New Jersey and now employed with a private firm in New York but previously an employee of the Stock Exchange, testified concerning the LIFO incident. Mr. Brunelle was the individual in charge of the counselling and prosecuting functions of the Exchange's Enforcement Unit at the time that the LIFO incident was prosecuted. He was responsible for all disciplinary proceedings against brokers and specialists.

Mr. Brunelle, after outlining the affirmative and negative responsibilities previously explained above, indicated that in 1979 the question of the continuing viability of the negative responsibility was such that a test case was sought. SLK was the company against which the case was brought in an attempt to get specialists to limit their activities to those immediately beneficial to the market. Brunelle conceded that the action was controversial and that many individuals within the Exchange felt that the rule was anachronistic. Indeed, there was some concern that the rule might be in conflict with Securities and Exchange Commission (SEC) regulations requiring an "equal market."

Mr. Brunelle further explained that at the time the prosecution was brought there was a difference of opinion within the Exchange staff itself, with one school taking a "long view" that it was beneficial for specialists to be able to trade in a manner such as SLK had in order to allow them to increase their capital which provided them with a greater ability to participate in correcting imbalanced market situations with greater amounts of money and leverage necessary to buy stock. On the other hand, some of the staff took the "short view" which was the view expressed by the negative obligation of Rule 104, that if the transaction was not "immediately beneficial" to the market it was forbidden.

Despite the differences of opinion within the Exchange, the charge was brought. SLK argued that the negative responsibility was an antiquated conception of a specialist's role and requested that the charge be withdrawn. This was not done. However, because the staff was concerned that its chances of prevailing at a full hearing before a panel made up of fellow members of the Exchange were slim and could have resulted in an opinion that Rule 104's negative obligation should be repealed, the staff agreed to the resolution of the dispute through the Stipulation and Consent to Penalty.

Mr. Brunelle reviewed the possible penalties which could be imposed upon a specialist for violations of market rules and concluded that the \$25,000 penalty and censure imposed on SLK for the LIFO incident was a relatively modest penalty. Penalties could have ranged up to \$100,000 per transaction; in this case, a total of \$600,000. In addition, penalties available for violations included expulsion from the market, taking away the right of a specialist to deal in specific stocks, suspensions, and revocations of the franchise to be an exclusive dealer, that is a specialist. In this case, because there was no evidence that the trades disrupted the marketplace or hurt the public and because the transactions created "hardly a ripple" in the market, the penalty imposed in this settlement was not severe.

Mr. Brunelle explained that following the Spear, Leeds case other specialists continued to use LIFO transactions for tax purposes and there have been no other LIFO prosecutions either during the period while he still remained at the exchange up til February 1984 or thereafter. Brunelle now represents several specialist units and is familiar with the activities of the market. He described the 1980 prosecution of Spear, Leeds as a "philosophical test case" brought against SLK because it was the largest specialist unit on the market. Now that the regulatory climate has changed, there appears to be no inclination to pursue negative obligation actions. The growth of over-the-counter and third counter markets, as well as other regional markets where specialists operate which do not have either an affirmative or negative requirement such as Rule 104, has convinced the Exchange that specialists are better able to compete if they are not held to the 104 negative obligation.

Peter Kellogg testified that he was involved in the decision to buy and sell the stocks involved in the LIFO incident in order to establish the firms inventory prior to the end of its fiscal year. It would have been his responsibility to have spoken to a trader at Merrill Lynch who would have effected the trades. The purpose of the transaction was to show a tax reserve on the books, an increase in capitalization. The accumulation of a substantial LIFO account provided a cushion, much like a loan lost reserve, and effectuated a tax saving for the company.

DISCUSSION

A review of the evidence concerning the so-called LIFO incident reveals that the activities engaged in by SLK in 1977 which resulted in the charge being brought

against it by the Market Surveillance and Evaluation Department in 1980 were, at worst, of an arguably improper nature. As explained quite clearly and convincingly by Mr. Brunelle, the individual who at the time was in charge of the very unit which prosecuted the case against SLK, the question of what the exact responsibilities and obligations of a specialist on the New York Stock Exchange were and whether Rules 104 and 104.14 were still appropriate rules to impose on specialists was quite controversial not only within the industry, but even within the very prosecuting unit which brought the charge. Mr. Brunelle candidly described the action brought against SLK as a "philosophical test case" which was directed against this specialist because it was the largest on the market. The fact that the action was brought and that SLK chose to agree to a settlement rather than to litigate the matter through the Exchange hearing process in an attempt to entirely vindicate its position does not, in and of itself, indicate any wrongdoing by SLK. In fact, the stipulation and hearing panel's decision expressly indicate that SLK did not admit or deny wrongdoing.

It seems quite clear that since the 1979-80 prosecution of SLK, the stock market has, either because of changing winds in the regulatory climate or because of the realization that indeed market conditions both in New York and across the country have changed so significantly, not chosen to attempt any enforcement of the negative obligation of Rule 104, at least not in an incident involving LIFO trading for tax purposes. Since, according to Mr. Brunelle, a gentlemen of distinguished background and obviously quite knowledgeable about the activities of specialists on the market, these sort of transactions have continued, the acquiescence shown by the market does seem to indicate that although SLK did pay a penalty and suffer a censure as a result of its prosecution, ultimately the philosophical position which it took may have won the day.

Given the above considerations, I can find nothing about the LIFO incident and Spear, Leeds' prosecution by the Stock Exchange for its activities in 1977 which in the slightest should affect the suitability of either SLK or Mr. Kellogg as qualifiers. There is nothing about this incident which indicates that SLK flaunted regulatory concerns, acted in a dishonest, manipulative, or damaging way, or that any of the activities engaged in disregarded public policy. Therefore, with respect to the LIFO incident, I CONCLUDE that it has no adverse affect upon the qualifications of SLK or Kellogg.

FIRST OPTIONS OF CHICAGO, INC.

The second incident involves the activities of First Options of Chicago, Inc., a wholly owned subsidiary of SLK. First Options of Chicago is a member of the Chicago Board Options Exchange, a national securities exchange registered with the Securities and Exchange Commission. According to testimony received from Mary Louise Bender, Vice President of Financial Compliance for the Exchange, the Chicago Board Options Exchange is a private organization which provides a market place for the trading of put and call options, which are registered securities. A put and call option is a right:

To purchase a security or a foreign currency or treasury bonds, whatever the underlying instrument might be, at a specified price for a limited period of time. And for that right, a purchaser of an option pays a premium which permits him to exercise his right any time from the date that he purchases the option until its expiration.

First Options of Chicago is a market maker on the Chicago Board, which is the equivalent of a specialist on the New York Stock Exchange. One of its functions is to clear transactions for other firms. It also engages in trading for itself. Mrs. Bender described the clearing function as:

Very similar to providing service to a public customer. A market maker generally is not well capitalized, cannot provide clearing functions for himself. He needs a bank relationship, if you will, with a member organization that is a member of various stock and option clearing corporations. First Options processes transactions for clearance, provides confirmation of market makers, trades to them each day, summarizes their trading activity on a monthly basis, essentially provides record-keeping facilities for them and also finances as a bank might do.

Clearing can be defined as both the processing of transactions and the banking function, that is making cash available to the market maker.

First Options' difficulties, as relevant to this proceeding, arose following the suspension of a member of the Exchange, Larry Duban. First Options had cleared transactions for Mr. Duban prior to his suspension. It continued to perform this function for him after his suspension and the difficulty that arose had to do with the credit

extended to him after his suspension and a failure to impose the appropriate margin requirements upon him pursuant to appropriate rules of the SEC and the regulations of the Federal Reserve System.

In addition to the charges dealing with Mr. Duban, it was further alleged that First Options had permitted market makers who did not meet minimum equity requirements imposed upon them by the relevant regulations to trade on the floor and continue to act as market makers when their accounts did not contain the required amount of funds. This failure led to an additional charge of a failure to correctly supervise personnel who should have been monitoring the accounts of these market makers.

Regulation T of the Federal Reserve Board governs the amount of credit that may be extended on a securities position, including broker/dealer option positions. The level of credit which may be extended to an individual or an entity varies depending on the entity's function. Public customers have higher requirements concerning the amount of credit that may be extended to them than professional traders on the floor. The purpose of the regulation is to limit the amount of credit and prohibit undue leverage. Market makers can be extended credit to the complete value of a securities position while the amount of credit which may be extended to a public customer is "significantly" lower. Market makers are permitted a greater amount of credit because they provide vital functions on the floor of the Exchange, engaging in two-sided market making on a continuous basis in all options for which they are responsible. Other brokers/dealers who are not market makers are not permitted the same level of credit.

Rule 240.15c3-1 is a rule of the SEC which, according to Mrs. Bender, standardizes requirements for broker/dealers with respect to capital. Market makers, who are broker/dealers, are governed by the Rule, but where a clearing firm such as First Options carries market makers positions acting as a clearing firm, the market maker is exempt from the capital requirements of the Rule. The clearing firm, such as First Options, "may meet the capital requirements for them except to the extent the market maker must maintain a positive equity in his account." The clearing firm is required by the regulation not to extend improper credit to a market maker and where a market maker's position will be in a deficit status the clearing firm is required to liquidate positions in the market maker's account in order not to create such a deficit.

A letter prepared by Mrs. Bender, then supervisor of the Department of Financial Compliance, dated November 5, 1982, was submitted to Mr. Jim Porter, Chairman of First Options. This letter, PJ-3, outlines the Department's probable cause belief that the company had violated SEC Rule 15c3-1c(2)(x), Regulation T, section 220.4(g)(4), or (g)(6), .4(g)(8) and .8 and Rules of the Exchange, 4.1, 4.2 and 12.1. Exchange rule 4.1 provides that:

No member shall engage in acts or practices inconsistent with just and equitable principles of trade. . . .

Rule 4.2 requires that members not engage in conduct violative of the Securities Exchange Act of 1934, amendments, rules and regulations thereunder, the constitution and rules of the Exchange and other applicable rules. It also requires that members supervise persons associated with the member so as to assure compliance with such statutes, regulations and rules.

Exchange Rule 12.1 provides that member organizations may not effect transactions or carry out accounts for a customer without proper and adequate margin in accordance with Regulation T.

On December 21, 1982, Chairman Porter responded to Mrs. Bender's letter. His letter, PJ-8 in evidence, explains the company's position with respect to the allegations made by the Department of Financial Compliance. In essence, the company admitted that it had violated the various rules and regulations. As a result of the allegations and an examination of its operations, the company had taken steps to expand and improve the expertise of its staff with respect to the margin requirements. It hired several persons formerly employed by the Exchange who were to be responsible for supervising compliance with these rules. In addition, as a mitigating factor, the letter explained that the company lacked experience in performing clearing services for a suspended market maker and thus confusion had existed on the part of employees as to the nature of the company's responsibilities and the applicable law with respect to the treatment of such a suspended market maker under both Rule 15c3-1 and Regulation T.

Mr. Porter noted that new procedures had been put in place to more effectively deal with the problem of deficit accounts, including modification of software programs to provide for daily reports which would permit a closer examination of the status of such accounts.

Mrs. Bender explained that following negotiations a Letter of Consent was entered into by the Business Conduct Committee of the Exchange and First Options in which the company admitted the violations contained in the November 5 letter. A sanction, consisting of a censure and a \$15,000 fine, was imposed. This settlement was approved by the Exchange. According to Mrs. Bender, the \$15,000 penalty was a substantial fine for this type of violation. The primary difficulty as seen from the Exchange's point of view was the conduct of First Options in connection with the suspended member. However, despite the substantiality of the fine, in the witness' opinion there was no harm to the public nor was there any reason to believe that the violations were willful.

During the investigation, First Options was fully cooperative and supplied prompt responses to requests for information. The company generally handles its operations very well. It is active in assisting the Exchange staff with recommendations for necessary SEC rules and generally asks for permission with respect to matters for which questions arise rather than seeking forgiveness after taking actions which run afoul of applicable regulations.

Mrs. Bender was unaware of any further problems for First Options in connection with the type of violations which occurred in 1981.

William Fitzgerald, Senior Vice President of First Options in charge of all trading floors, options, equities and futures, testified concerning the above disciplinary matter. At the time he was Vice President and his duties included risk management, which involved insuring sufficient capital from customers and monitoring accounts to assure that market activities would not take traders' positions into a deficit status.

Mr. Fitzgerald explained that First Options had grown to almost double its previous size within six months to a year prior to the time that the violations occurred. The monitoring of margin was done by hand and there was very little computer support. The market was quite active with respect to mergers, tenders and other activities which

added substantially to the duties required with respect to margin and risk functions. In addition, the witness explained the lack of understanding concerning the requirements imposed with respect to the margin for a suspended member of the Exchange, particularly with respect to the positions held at the time of the suspension. Mr. Fitzgerald detailed the significant automation of the monitoring function as well as the addition of experienced personnel to take charge of those operations. In summarizing the difficulties which occurred in 1981, Fitzgerald noted that "its just a mammoth increase verses what we had, and . . . mammoth growth and essentially caught us with our pants down, and we essentially caught up." There have been no reoccurrences of the problem since that time.

Mr. Fitzgerald was questioned as to the role of SLK and Mr. Kellogg in connection with the 1981 matters. According to the witness, neither Mr. Kellogg nor anyone at the SLK headquarters in New York would have had anything to do with these matters, as they were handled in-house in Chicago.

DISCUSSION

The above recitation of the facts and circumstances surrounding the 1981 problems which First Options of Chicago had with respect to its Chicago Board Options Exchange business does not in any way indicate that either SLK or Mr. Kellogg is not qualified for licensure as a casino key employee and therefore able to meet the qualification requirements. Although First Options is a wholly owned subsidiary of SLK and therefore SLK has ultimate responsibility for its actions, there is no indication whatsoever that anyone directly associated with SLK had anything to do with the decisions or the daily operations which resulted in the problems concerning Duban and the margin requirements in Chicago. While First Options' activities rightly subjected it to discipline by the Exchange, as Mrs. Bender testified, and as the evidence here would support, there is no evidence that any of the activities were harmful to the public, willful, manipulative, or anything other than business mistakes occurring in the normal course of business concerning detailed regulations in an active and changing market. While the company certainly can be criticized for not having been careful enough or not having made certain that it was knowledgeable enough about the regulations, nothing about this incident in any way reflects on the good character, honesty and integrity, the general business acumen, or any of the other qualifying characteristics which must be established

by the applicants. Therefore, with respect to the Chicago Board Options matters, they in no way require a finding that the applicants are unqualified.

BULL AND BEAR, INC.

The third area of concern deals with the involvement of Spear, Leeds with Bull and Bear, Inc., an investment company. This involvement, which became the focus of an investigation conducted by the Securities and Exchange Commission, arose during 1976. Bull and Bear was advised by Bull and Bear Management Corporation (Advisor), whose principals were Basset S. Winmill and Robert D. Anderson, respectively Chairman and President and each a director of the investment fund, Bull and Bear, Inc. (the Fund), since 1974.

In connection with its investigation, the SEC issued an Order for Public Proceedings and Notice of Hearing on July 28, 1981. This document was issued pursuant to section 15(b)4 of the Securities Exchange Act of 1934 and section 9b of the Investment Company Act of 1940. The Order and Notice alleges that between May 1977 and October 1979 SLK, at the direction of Bull and Bear Management Corporation, executed brokerage transactions on behalf of the fund. From December 1976 until October 1979, SLK, which as noted was executing transactions for the fund, also provided financial assistance to the advisor and its principals, Winmill and Anderson, while also providing free office space and other services to the advisor between October 1976 and May 1978 and owning 5 percent of the outstanding voting shares of the fund from December 1976 to October 1979.

The facts of the relationship between SLK, Bull and Bear Management Corporation, Winmill, Anderson and Bull and Bear, Inc. are more fully set forth in a Section 21(a) report, issued under the Securities Exchange Act of 1934. The purpose of such a document is to allow the Commission, in its discretion, to publish information gathered during an investigation which it deems appropriate and necessary to fulfill its responsibilities under the Act.

The Report advises that in 1976 Winmill met with a partner in SLK to discuss the capitalization of the Fund and the Advisor. The Fund had been registered as an investment company since May 1974, but did not have the necessary \$100,000 net worth to

"go effective." In addition, Winmill and Anderson needed \$50,000 to meet the expenses expected to be incurred as the Fund started up.

SLK was offered the opportunity to purchase \$100,000 of Fund shares, purchase outstanding shares of the Advisor for \$25,000 and act as the Fund's primary broker on its portfolio transactions. SLK agreed to purchase Fund shares and act as principal broker. It lent Mr. Anderson \$25,000 in order to enable him to purchase an interest in the Advisor in December 1976. It did so because it did not believe that it was permitted to receive the Fund's brokerage if it had an equity interest in the Advisor.

In December 1976, SLK purchased 6,800 of the Fund shares for \$102,000, which gave the Fund its minimum net worth requirements. The Fund went public May 24, 1977 and thereafter until October 1979, when the staff of the SEC began its investigation, the Advisor directed the majority of the Fund's brokerage to SLK. In addition, beginning in early 1976 Winmill and Anderson moved into office space at SLK's principal office in New York for which they were not charged rent, nor were they charged for xeroxing and quotron facilities.² On May 1, 1978, the Advisor commenced to pay SLK \$500 for office rent.

In November 1977, Winmill and Anderson, who were seeking to purchase advisory contracts of two additional investment companies, requested that SLK guarantee a \$300,000 bank loan. SLK guaranteed the loan and in return received one-third of the non-voting stock in a new company created solely for the purpose of acquiring the investment companies.

During the present hearing, petitioner presented as a witness Martin E. Lybecker, Esq., a partner in the law firm of Drinker, Biddle and Reath in Washington, D.C., who formerly served as associate director of the Division of Investment Management for the SEC. Mr. Lybecker testified as an expert witness with respect to the proceedings involving SLK and the Securities Act of 1933 and the Investment Advisors Act of 1940. At the time of the investigation of SLK's involvement with Bull and Bear, Mr. Lybecker, while an employee of the SEC, was not directly involved in the investigation nor would he have been involved in making recommendations with respect to its disposition.

²A quotron is a cathode ray device which is used for seeing stock market quotations and persons making markets in the particular stocks being viewed.

The allegations against SLK, as described by Lybecker, largely centered on a failure of disclosure with respect to the relationship between SLK and the advisor and principals thereof. The specific allegations of the Order and Notice were that SLK had:

Willfully aided and abetted the advisors willful violations of section 17a of the Securities Act of 1933 . . . in that, SLK, in the offer or sale of securities of the Fund directly or indirectly, employed devices . . . which operated as a fraud or deceit upon purchasers of shares of the Fund and obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning the relationship between SLK and the Advisor. As part of this conduct, SLK willfully aided and abetted the Advisor's failure to disclose the financial arrangements between SLK, the Advisor, Winmill and Anderson, the provisions of the services and office space to the Advisor and the true basis upon which the brokerage rate paid by the fund to SLK was determined.

The Order also contended that the same actions of SLK constituted willful violations of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as violating sections 206(1) and (2) of the Advisor's Act and section 17(e)(1) of the Investment Company Act.

The charges against SLK were resolved in an Offer of Settlement which was accepted by the SEC as being in the public interest on November 18, 1981. In this document, which states that it is "submitted solely for the purpose of settlement," SLK consented "solely for the purpose of this proceeding" and "without admitting or denying the allegations in the Order for Proceedings or the findings below" to findings that it had willfully aided and abetted willful violations by a registered investment advisor of section 206 of the Advisor's Act in that it had engaged in certain financial and other relationships with the advisor and its principals:

Without insuring or taking steps reasonably designed to insure that the Fund and its disinterested directors were apprised of the existence and extent of the relationships, to enable the directors properly to evaluate:

- (a) The bases upon which the Advisor directed the Fund's brokerage; and
- (b) The appropriate disclosures to be made to the Fund's shareholders; and

consented to the entry of an order of the Commission censuring SLK.

Mr. Lybecker testified that the actions of SLK in connection with the advisor and its principals were legal and no illegality would have occurred on the part of SLK had the Fund's prospectus fully disclosed the relationship. While some disclosures were made, others were not, such as when and how much financial assistance had been given to the principals of the Advisor and what guarantees and loans existed with directors of the Fund. Mr. Lybecker opined that Spear, Leeds should have made sure that the Advisor gave the directors of the Fund all of the facts concerning the relationship and should have made sure that the Advisor reported back to SLK with copies of the minutes demonstrating the disclosures.

Mr. Lybecker pointed out that the report of the investigation of the matter with the Bull and Bear Management Corporation, Winmill and Anderson, issued by the SEC concluded that there was no assertion that the Fund had not received "best price and execution on the portfolio transactions executed by SLK."

The witness concluded that it would have been extremely difficult for the SEC to prove that:

Someone on the periphery of an investment company's business has responsibility for verifying and approving language in the prospectus which exclusively speaks on behalf of the fund. The degree of proof necessary to establish that one aided and abetted the primary violator in failing to disclose information in the prospectus would have been very high.

The violation which Spear, Leeds ultimately agreed to consent to, that is failing to take steps "reasonably designed to insure" appraisal of the relationships, was far more likely to have been proven. The penalty imposed, a censure, reflected the nature of the offense in that it was, after withdrawal, the "most likely prospect by way of penalty." Penalties above this level could be as severe as exclusion from the securities industry for a period of time, being forced to decline a line of business, being forced to be employed in the securities industry only with supervision, etc.

On cross-examination, Mr. Lybecker was questioned concerning the knowledge which a brokerage house such as SLK would have concerning the provisions of the various pieces of legislation and rules of federal agencies which SLK violated. He explained that

most brokerage houses through the early 1970's did not have arrangements with affiliated investment companies and as such would not have had occasion to run across such provisions as section 17(e) of the 1940 Investment Company Act.

DISCUSSION

The above facts, as developed through the documents generated by the SEC and the testimony of the expert witness, point to a situation where SLK, perhaps through some lack of knowledge of the laws governing investment companies and the relationships involved therein, placed itself in a position of aiding Winmill and Anderson in their attempt to get the Fund off the ground and created relationships with the Advisor and its principals such as to obtain business and assets for SLK without taking steps necessary under the law to assure that those holding shares of the Fund knew of the relationships and the ties between the Advisor, the principals and the brokerage house handling many of the transactions for the Fund. There is no allegation that this was done in any nefarious scheme aimed at cheating anyone. Mr. Lybecker, who has an eminently qualified background in securities regulation, testified clearly that had disclosure taken place everything would have been legal and SLK would have been in no trouble. It is true, of course, that had disclosure occurred SLK might have lost business because the Fund might have chosen to direct its transactions to other brokers because of SLK's intimate relationship with the Advisor. However, when considered in the context of a determination as to whether SLK can meet the requirements for licensure of a casino key employee and thus meet the qualifications required pursuant to section 85 there is nothing about this incident which detracts in any significant way whatsoever from the suitability of the applicant. Of course, it would be best if companies such as SLK, engage in complex and highly regulated industries, never became involved in anything even remotely close to a violation of regulatory legislation or policy. However, for companies as large as SLK, involved in the type of financial dealings seen here, and governed by the many interlocking forms of regulation which affect them, it is not surprising to find that on occasion a highly respected, well run and perfectly legitimate company will run afoul of the regulations. In determining whether such should affect the ability of such a company to qualify under the Act, the Commission must look to the nature of the events, the circumstances surrounding them, the implications which arise from them as to the motivations of the company and its principals, any indications of attempts at criminality or connection with organized crime, and other indicia that would raise doubts as to whether the company's involvement in the casino industry would be beneficial to the

public. The type of incident involved in connection with the Bull and Bear matter does not appear to raise such concerns. Just as with the First Options of Chicago and LIFO matters, the company, or its subsidiary, paid the penalty deemed appropriate by the applicable regulatory agency or private exchange, be it censure or financial penalty, and where needed corrected its operations to avoid future violations.

I CONCLUDE that the facts and circumstances involved in the Bull and Bear incident in no way serve as a significant detriment to the ability of the applicant to meet the standards of a casino key employee and thus qualify under section 85.

THE QUALIFICATIONS OF PETER KELLOGG

Two incidents which specifically involve Peter Kellogg have been questioned by the Division. The first of these involves Mr. Kellogg's gambling activities in connection with the 1976 presidential election. More specifically, the gambling involved occurred on the floor of the New York Stock Exchange where Mr. Kellogg was serving as the specialist on the floor for SLK.

Testimony concerning the betting incident was presented by Mr. Kellogg and George Brunelle. Brunelle described the circumstances under which the election betting became a concern for the stock market. Sometime in 1977, information was obtained by a New York newspaper concerning sports betting occurring on the floor of the Exchange. An investigation ensued, conducted by the staff of the Exchange which was concerned about the negative publicity generated by the newspaper articles. During the course of the investigation, Mr. Kellogg's name came up as being one who had been involved in some betting. The investigation determined, and Kellogg confirmed in his testimony, that for approximately two weeks before the 1976 presidential election Kellogg took bets from approximately 25 individuals totalling approximately \$10,000 while at his post on the floor of the Exchange. According to Kellogg, the bets were taken from friends and associates with whom he dealt on a daily basis during his stock market activities. Mr. Kellogg described himself as one of the few Democrats on the floor of the Exchange and since he was known to have an interest in politics, he was approached by some Republicans to see whether he wished to wager on the outcome of the election. Kellogg did so, taking some bets on President Ford and some on Jimmy Carter. The bets ranged from approximately \$100 to approximately \$1,000. The odds were set by Kellogg, who changed the odds as he felt appropriate. As far as Mr. Kellogg knew at the time he was doing nothing improper

or illegal as the only Exchange "policy" concerning betting that he was aware was that betting on the course of the market was forbidden.

Mr. Kellogg made approximately six to eight hundred dollars as a result of the election bets. The bets were made on the basis of trust, although they may have been written down by Kellogg's floor clerk. Mr. Kellogg conceded that a day or so before the election he got "caught up in it" and it became "a little much."

According to Mr. Brunelle, the investigation by the Exchange of betting on the Exchange floor resulted in charges being brought against several individuals with whom settlements were ultimately negotiated. Mr. Kellogg declined to enter into any settlement. As a result, a hearing was conducted on a charge which was placed against him alleging that he had engaged in conduct "detrimental to the interest and welfare of the Exchange. . . ." On November 23, 1977, the Chief Hearing Officer issued a report for the hearing panel, Decision 77-89, PJ-10 in evidence. This Decision concluded, by majority vote, that Mr. Kellogg, who is referred to in the report as "X," was "not guilty." The Panel determined that the betting had been on a single event over a limited period of time and that the membership had not been recently notified that betting was not permitted or was considered an act detrimental to the interest and welfare of the Exchange. In addition, since sports betting had existed on the floor of the Exchange for a "considerable period of time" and had not been the subject of any condemnatory action on the part of "members in position of authority on the floor" and since Kellogg had not been told to discontinue his activity during the approximately two weeks in which he was taking bets, the matter had been, in essence, condoned by the Exchange. There was a dissent by one panel member who concluded that the acts were detrimental merely because they were of a gambling nature.

Mr. Kellogg recalled making no statements to the police or being contacted by them concerning this matter. He was not certain whether he had declared the winnings as income on his 1976 tax return. He did recall that the odds at some point might have been such that they were 5-6 pickum, resulting that a loser on a 5-6 bet would have to pay \$120, thus guaranteeing a \$20 profit, or vigourish. However, this type of bet only occurred on the last day of the election.

Kellogg has never engaged in betting on the floor of the Exchange in this fashion since the 1976 incident. He conceded that he might have made an isolated bet on

the America's Cup or on a Super Bowl game, but he had no specific recollection with respect to these and was never involved in any kind of betting to the scope and extent which the 1976 election incident involved. He avoids this conduct because it could lead to bad publicity and is "not a good idea."

Mr. Brunelle testified that his investigation concerning Kellogg's betting, as well as sports betting in general, found no evidence of any organized crime involvement or any evidence that individuals from off the floor of the Exchange had been involved to any significant degree in the betting. The election betting appeared to be limited to Kellogg's friends and associates on the floor of the Exchange. Brunelle examined New York gambling laws at the time of the investigation and determined that there appeared to be no violation of section 225 of the New York Penal Law.

DISCUSSION

Consideration of whether the 1976 election betting incident in any way affects the ability of Peter Kellogg to qualify for licensure as a casino key employee and therefore meet the qualification standards of section 85 must first involve a recognition that the incident, limited in nature as it is, occurred ten years ago and that there is no evidence that any such incident has reoccurred since that time. Given the limited nature of the incident and the length of time since its occurrence, it is highly doubtful that it could be considered to in any way besmirch the good character, honesty and integrity of Mr. Kellogg or imply in any way that his licensure would be inimical to the policies of the Casino Control Act or the interests of the casino industry. The type of gambling involved here, on one specific event over which Mr. Kellogg obviously had no ability to control the outcome, and amongst friends is, no doubt, a frequent kind of gambling which presumably occurs in many settings, including many offices. The nature of the persons involved in this betting, who were described by witnesses as a "group of millionaires" or otherwise well-heeled persons, may have resulted in a significant amount of money being involved, however, the amount of money does not necessarily affect the quality of the situation.

Despite the above comments, it is appropriate to consider whether Mr. Kellogg's conduct constituted a violation of law. Clearly, if he was merely placing a bet, or engaging in very limited one-on-one wagering with friends, it would be very difficult if not impossible to consider his activity illegal under the New Jersey or New York law. However, in this situation the evidence is that Kellogg, after being approached

by others who knew of his interests in politics and his Democratic loyalties, began to take bets from as many as 25 individuals and changed the odds as he did so.

The Act provides in section 86c that an individual convicted of gambling offenses in any jurisdiction which would constitute crimes of the third and fourth degrees under New Jersey law at the time of application, N.J.S.A. 2C:37-1, shall be denied a casino license. In addition, section 86g provides that the Commission shall deny a license to an individual who committed an act which would constitute any offense under subsection 86c of the Act, even if such conduct had not been prosecuted.

Mr. Kellogg's gambling activity occurred in the State of New York and therefore no violation of New Jersey law was involved. Under the applicable New York statute, Article 225 of the Penal Law, Mr. Kellogg's conduct might perhaps be characterized as that of a bookmaker.³ Bookmaking is defined as:

Advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events.

The key consideration, as recognized by the Division in its June 12, 1985 letter to the Commission, was whether Mr. Kellogg conducted his activity "as a business" or whether it was indeed "a casual or personal fashion." Certainly, as was pointed out by counsel during the hearing, Mr. Kellogg did not take bets because he was attempting to obtain a profit from which to live. The Division's letter, as well as comments during the hearing, indicate clearly that Mr. Kellogg is a man of considerable means who was actively engaged in a full-time business at the time of the gambling incident and was in fact conducting that business during the very time that he was accepting the bets. Secondly, whether the betting involved a scheme or method of guaranteeing profits (one indication of a business operation) is questionable, because although Mr. Kellogg testified that some bets were taken which might have guaranteed a profit on the individual bets, there are no details available as to the odds for each bet, the exact amount of monies bet

³A violation of New York law, committed by an applicant for casino licensure, might indicate that the licensing of the applicant would be inimical, even if the conduct would not have been a crime or offense in New Jersey. The willingness of an individual to act contrary to the criminal laws of another jurisdiction may reflect upon one's good character, honesty and integrity and suitability for licensure, even though the person would have been subject to no sanction for engaging in the same conduct in this state.

at each set of odds, or other details which would allow a determination of whether the entire betting scenario was geared to guarantee a profit. Obviously, Mr. Kellogg was not seeking to lose money, however, the "guarantee" that might establish that he was conducting a "business of gambling" is lacking. From the circumstances, it is fair to say that had Mr. Kellogg been prosecuted under New York law obtaining a conviction might have been extremely difficult. The legal definition of bookmaking may well not apply to the activities engaged in by Kellogg.

An examination of New Jersey law under N.J.S.A. 2C:37-1 et seq. indicates that the definition of bookmaking is quite similar to the New York scheme. Bookmaking is defined as:

Advancing gambling activity by unlawfully accepting bets from members of the public upon the outcome of future contingent events as a business.

Again, a determination of whether the activity constituted "a business" would be required. The same difficulties in determining this issue would have occurred had the activity occurred in New Jersey. It does not believe it at all likely that Kellogg could have been found to be a "bookmaker" under this definition.

N.J.S.A. 2C:37-2 delineates three grades of gambling offenses: (1) promoting gambling in the third degree, (2) promoting gambling in the fourth degree and (3) a disorderly person's offense of promoting gambling. In order to be guilty of the third or fourth degree crime, one must "engage in bookmaking." Obviously, if Mr. Kellogg could not be considered a bookmaker, he would not be subject to conviction of either the third or fourth degree offense. A conviction for the disorderly person's offense of promoting gambling would not constitute an automatic disqualification from licensure under the Casino Control Act. Promoting gambling is defined as:

Knowingly:

- (1) Accepts or receives money or other property, pursuant to an agreement or understanding with any person whereby he participates in the proceeds of gambling activities; or
- (2) Engages in conduct which materially aids any form of gambling activity. . . . [N.J.S.A. 2C:37-3(a).]

One who is merely a "player" is exempt from the promoting gambling offense. A player is defined as:

... A person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not thereby render material assistance to the establishment, conduct or operation of such game if he performs, without fee or remuneration, acts directed toward the arrangement or facilitation of the game. ... A person who engages in "bookmaking" as defined in this section is not a "player". [N.J.S.A. 2C:37-1(c).]

It is quite possible that Mr. Kellogg's activities could be considered that of a player. The type of betting involved here had the aura of a "social game of chance" and the participants, including Kellogg, appeared to have been involved on "equal terms." The fact that Kellogg changed the odds does not really affect this conclusion. Again, whether a profit was in any way guaranteed is uncertain.

From an examination of the total circumstances surrounding the 1976 betting incident, including an examination of both New Jersey and New York law, I **CONCLUDE** that it is not clear that Mr. Kellogg's activities would have constituted violations of either State's laws. Therefore, it cannot be said that he engaged in conduct which would have constituted an automatic disqualifying offense, pursuant to N.J.S.A. 5:12-86c. Further, nothing about this incident indicates that Mr. Kellogg's licensure would be inimical under section 86c4. The incident involved an isolated instance of gambling on a specific event occurring within a short time. There is no evidence that the conduct has been repeated. Under such circumstances, where no clear violation of law occurred, and where the matter does not involve a matter of morals, there can be no finding of inimicality.

THE 1977 FEDERAL GRAND JURY INVESTIGATION

The final area for consideration concerning Mr. Kellogg dealt with a 1977 federal grand jury investigation which concerned a specialist firm known as Kingsley, Boye and Southwood (KBS). KBS had entered the retail brokerage business in 1966 following the deregulation of commission rates. KBS provided discount brokerage service.

783 The concept of discount brokerage, now apparently accepted within the industry, was at

that time new and was frowned upon by the so-called "upstairs" brokerage firms, that is those that deal with the public on a national level. The investigation focused on whether there was a conspiracy amongst Wall Street firms and individuals to damage the business of KBS.

The Division's June 12, 1985 letter to the Commission provided many details concerning the factual background of this grand jury investigation. However, during the hearing, the only testimony concerning the matter was that of Mr. Kellogg. He testified that he did appear in front of the grand jury, but could not recall for certain whether he had been offered immunity. According to Kellogg, KBS' advertising at the time seemed somewhat "offensive," particularly toward Merrill Lynch. This advertising exacerbated the distaste of portions of the industry toward KBS. Mr. Kellogg was friendly with the principals of KBS and spoke to them, advising that he himself liked the concept of discount brokerage but that since both KBS and SLK were customers of Merrill Lynch the nature of the advertising was inappropriate.

According to Kellogg, as confirmed by the Division's letter, no indictments or other charges arose from the grand jury investigation. There was no discipline of anyone by the SEC or the New York Stock Exchange.

As noted, no further testimony concerning the grand jury investigation was offered. In view of the lack of any significant evidence, and the fact that the grand jury took no action against Mr. Kellogg, SLK, or anyone else, it does not appear that this matter involves anything which could possibly affect the qualifications of Kellogg for licensure.

CHARACTER TESTIMONY

In addition to the evidence noted above as to each of the five areas of concern, Mr. Kellogg presented the testimony of two character witnesses. Walter T. Frank, of Ho Ho Kus, a partner in Walter M. Frank & Company, a Wall Street brokerage firm, testified that he has been in the securities industry for 49 years, serving on the Board of Governors of the New York Stock Exchange from 1959 to 1967, three years of which he served as Vice Chairman and two years as Chairman of the Exchange. From 1972 to 1978, Frank was a member of the Board of Directors, which sets policy for the Exchange, negotiates rules, regulations and deals with legislative matters involving

Congress. In addition, the Board of Directors receives appeals on disciplinary matters. Mr. Frank has been acquainted with Spear, Leeds and Kellogg and knows both the company and Peter Kellogg individually. He has known the Kellogg family for many years and has known Peter Kellogg since he was a boy. He is aware of the reputation of both the firm and Mr. Kellogg individually for honesty and integrity and described that reputation as excellent. In addition, his own opinion is that he has a high regard for both and is very happy to do business with them and finds their honesty beyond question. He described Peter Kellogg as a "progressive, forward looking individual."

Mr. Frank was questioned as to whether Mr. Kellogg's betting activities on the floor of the Exchange would change his opinion concerning Mr. Kellogg and he testified that, while the conduct was "unwise," it would not have any affect on his overall opinion of Mr. Kellogg.

William T. Cahill, Governor of New Jersey from 1969 through 1973 and now a partner of the law firm of Cahill, Wilinski and Cahill of Haddonfield, also testified as a character witness for Mr. Kellogg. He has known Kellogg for approximately seven years as both men have served as members of the Board of Directors of City Federal Savings and Loan. Governor Cahill also knew Peter Kellogg's father, who served as a member of the Port Authority and a fellow director of City Federal Savings and Loan.

Governor Cahill expressed his personal opinion that Peter Kellogg had an excellent reputation for honesty and integrity and was an "outstanding young man."

CONCLUSIONS

A full consideration of all of the testimony and evidence concerning the areas of concern raised in the Division of Gaming Enforcement's letters of recommendation to the Casino Control Commission satisfies this judge that both Spear, Leeds and Kellogg, and Peter Kellogg individually, possess the requisite qualifications for licensure as casino key employees and therefore fulfill the qualification requirements of section 85 of the Act.⁴ Nothing about any of the matters of concern significantly affect the ability of either the firm or the individual applicant to demonstrate that they have the requisite

⁴JIP also qualifies, but in reality its position depends on the acceptability of SLK and Kellogg.

good character, honesty and integrity, the requisite business ability, the requisite financial stability, integrity and responsibility demanded by section 89. While the record demonstrates that SLK or its subsidiaries have on occasion run afoul of some detail of the complex regulatory scheme governing its industry, none of these problems, some more and some less significant, appear to have arisen in any circumstances which would call into question the integrity of the firm, the character of its operation, or anything that would be of serious moment to the Commission. It is unrealistic to expect any company as large as SLK, with as significant a share of the business of the stock market and other exchanges, to be free of all regulatory violations. Indeed, the evidence is that for a firm as large and as busy as this one is, its volume of regulatory violations is quite small.

With respect to Peter Kellogg, while he has, in the past, engaged in at least one incident that can be described as unwise and foolish, that matter, which was neither criminal nor reprehensible in nature, occurred many years ago and stands as no bar to his involvement in the casino industry.

For the reasons expressed, I **FIND** that both SLK and Peter Kellogg are qualified for licensure as casino key employees and therefore, pursuant to section 85 of the Act there is no bar to their involvement in the casino industry at the present time.

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

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

July 18, 1986
DATE

July 21, 1986
DATE

JUL 23 1986
DATE

ml

Jeff Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Alonso Rojas
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parker / s
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioner:

- PJ-1 Rules 104 and 104.14 of the New York Stock Exchange
- PJ-2a New York Stock, Inc., Exchange Hearing Panel Decision 79-44, February 19, 1980
- PJ-2b New York Stock Exchange, Inc., Market Surveillance and Evaluation Department - Stipulation and Consent To Penalty
- PJ-3 Letter of November 5, 1982
- PJ-4 Rules 4.1 and 4.2 of the Chicago Board Options Exchange
- PJ-5 Rule 12.1 of the Chicago Board Options Exchange
- PJ-6 Regulation 240.15c3-1
- PJ-7 Regulation T of the Federal Reserve Board
- PJ-8 Letter of December 21, 1982
- PJ-9 Letter of Consent
- PJ-10 Exchange Hearing Panel Decision 77-89
- PJ-11 Resume of Martin Lybecker, Esq.
- PJ-12 Statement of Facts
- PJ-13 Order for Public Proceedings
- PJ-14 Report of Investigation
- PJ-15 Offer of Settlement
- PJ-16 Findings and Order Imposing Remedial Sanction
- PJ-17 Section 17 of Securities Act of 1933
- PJ-18 Section 10 of Securities Exchange Act of 1934
- PJ-19 Section 10b5 of regulations for the Securities Exchange of 1934
- PJ-20 Section 206 of Investment Advisors Act of 1940
- PJ-21 Section 17 of Investment Company Act of 1940

On behalf of respondent:

R-1 Not in Evidence - Memorandum

R-2 Diagram

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-68
LICENSE NO. 6061-21
OAL DOCKET NO. CCC 7922-86
ORDER NO. 87-44-10

RENEWAL APPLICATION OF KATHLEEN D. KELSO
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 18, 1987,

IT IS on this 7th day of December, 1987, 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 and made a part hereof.

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 7922-86

AGENCY DKT. NO. 87-EA-68

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

Petitioner,

v.

**KATHLEEN KELSO,
Respondent.**

**Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Mark Vasser, Esq., for respondent (Vasser, Spitalnick, Bloom, Mazin &
Stein, attorneys)**

Record Closed: July 20, 1987

Decided: October 2, 1987

BEFORE EDGAR R. HOLMES ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on September 22, 1986, objecting to the renewal of the respondent's casino employee gaming license on the grounds that she committed an unprosecuted criminal offense when she collected unemployment compensation benefits in excess of \$500. while employed at the Tropicana Casino in parts of 1981 and 1982, i.e., a violation of N.J.S.A. 2C:20-4 in the third degree. The

basis of the objection is that such an offense constitutes a statutory disqualifier from casino employee licensure pursuant to N.J.S.A. 5:12-86c,g, and 90e. This also raises the issue of rehabilitation pursuant to N.J.S.A. 5:12-90h, and whether or not the respondent possesses the requisite good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2) and 90b. 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. The matter was conferenced on February 10, 1987 and a plenary hearing was conducted on May 14, 1987 in Longport Boro and continued to and completed on July 20, 1987 in Buena Vista Township.

DISQUALIFICATION FACTS

The facts are not disputed. I **FIND** that the respondent knowingly received unemployment insurance benefits in excess of \$500. during part of 1981 and 1982 while employed at the Tropicana Hotel Casino knowing that she was not entitled to the same, resulting in a judgment for the repayment of benefits and fines in the amount of \$2,448.00. This was not prosecuted criminally.

I **CONCLUDE** pursuant to N.J.S.A. 5:12-86g that this conduct is equivalent to the offense of theft by deception contrary to N.J.S.A. 2C:20-4 which is a statutory disqualification from casino employee licensure pursuant to N.J.S.A. 5:12-86c and 90e.

REHABILITATION FACTS

The Casino Control Act (Act) requires licensure despite a finding of disqualification if the applicant can affirmatively show rehabilitation pursuant to N.J.S.A. 5:12-90h. The Act requires additional fact finding in the following areas:

1. The respondent is a dealer with close casino patron contract.
2. The offense is not serious; no one was injured by the respondent's conduct. She has since made the State whole by repayment. However, any theft by deception is an anathema to the casino industry.
3. The circumstance under which the offense occurred are unexplained.
4. The offense occurred in late 1981 and early 1982.

5. The respondent was 23 years old when the offense was completed.
6. The offense occurred over several months in 1981 and 1982 but has not been repeated.
7. No unusual social conditions are alleged to have contributed to the offense.
8. The respondent has made the State whole by satisfying the judgment against her. In addition, persons who have had the respondent under their supervision describe the respondent as "professional" (R-3), "gracious and excellent" (R-4), "trustworthy and dependable" (R-5), "honest" (R-6), "honest, reliable, mature and conscientious" (R-7), "conscientious and honest" (R-8) "dependable, hard working and honest", testimony of Donna K. Talley.

Based on the good reputation the respondent now enjoys, the fact that she has made restitution, the length of time that has passed since the offense occurred, and her young age at the time of the offense, I am satisfied that the respondent is rehabilitated.

I **CONCLUDE** that the respondent has affirmatively shown her rehabilitation pursuant to N.J.S.A. 5:12-90h.

GOOD CHARACTER, HONESTY AND INTEGRITY

The Act requires that licensed gaming employees possess a reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b2 and 90b. Of course, they must also actually possess these characteristics, otherwise the intention of the Act would be frustrated.

In mitigation of her conduct which occasioned this action, the respondent testified that, at the time she received unemployment benefits to which she was not entitled, she had medical bills and hospital bills to pay and needed the money. Cross examination and further investigation revealed that the respondent accumulated medical bills in 1983 and not at the time the offense occurred in 1981 and 1982.

The Division alleges that this offer of mitigation was untrue and that therefore the respondent has not shown her good character, honesty and integrity by clear and convincing evidence.

It is possible that the respondent is confused as to the date and times that things occurred. We all experience little lapses on dates, events, facts and conversations.

This situation is different however. The respondent asserts that there was a causal connection between two events; her medical bills were the cause of her collecting unemployment benefits. In addition, I noted that the respondent minimized the amount of time she illegally collected unemployment benefits. The documents in evidence show she collected benefits to which she was not entitled from November 5, 1981 to February 18, 1982, a period of 16 weeks. She testified that she collected for "a month or six weeks."

In addition, she testified that she only learned how much was due and owing a "year or two" ago when she learned a judgment had been docketed against her.

Finally, she claims she did not pay off the judgment on demand, but was waiting to pay it off when she recovered money for a pending law suit arising indirectly (by way of a malpractice claim) out of the medical problems she experienced and alleged were the cause of her unemployment insurance benefits overpayment. All of this indicates to me that, with regard to this one incident, the respondent has been careless of the truth.

Does this adversely affect her good character, honesty and integrity? There were representations on the record that the underlying medical incident was traumatic both physically and emotionally. It appears that she instituted a malpractice claim over a botched abortion. Her attorney represented that she suffered psychological damage as a result. It was obvious to me that she did not want to testify about this aspect of her life. It was obvious to me that she was in pain and confusion.

I am satisfied that this incident and the respondent's failure to adequately explain it, in and of itself, does not adversely affect the respondent's good

character, honesty and integrity which has otherwise been satisfactorily established and of which I am clearly convinced.

Finally, the Division raises the issue that this respondent's claim that she would not have committed the offense if she had known it would have repercussions on her license somehow affects her good character, because the response is couched in terms of self interest rather than in terms of right or wrong.

This is a question of philosophy and not of law.

I **CONCLUDE** that the respondent has clearly and convincingly established here reputation for good character, honesty and integrity.

ORDER OF DISPOSITION

I **ORDER** that the letter of objection filed by the Division 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.

October 2, 1987

DATE

Edgar R. Holmes

EDGAR R. HOLMES, ALJ

October 6, 1987

DATE

Receipt Acknowledged:

Nelores Zayas

CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald W. Parker

OFFICE OF ADMINISTRATIVE LAW

OCT 7 1987

DATE

dho

WITNESSES

For the Petitioner:

Kathleen Kelso

For the Respondent:

Kathleen Kelso
Donna K. Talley

EXHIBITS

For the Petitioner:

- P-1 Letter
- P-2 Certificate of Debt
- P-3 Determination and Demand for Refund of Employment Benefits and other documents

For the Respondent:

- R-1 Cashier's check carbon
- R-2 Request to enter docketed judgment
- R-3 to
- R-8 Letters

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-119
OAL DOCKET NO. CCC 673-87
APPLICATION NO. 64223-21
ORDER NO. 87-30-5

APPLICATION OF DONALD T. KEOWN
FOR A CASINO EMPLOYEE LICENSE

:
:
: ORDER
:

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission) by the administrative law judge; and the Commission having considered the entire record at its public meeting of August 5, 1987,

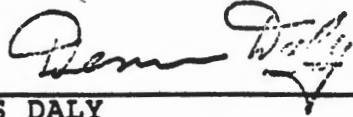
IT IS on this 13th day of August 1987, ORDERED that the initial decision is modified as follows:

The initial decision should be corrected at page five to read that the applicant's criminal conviction disqualifies him pursuant to N.J.S.A. 5:12-86(c)(1), rather than N.J.S.A. 5:12-86(c)(2).

Second, the issue of whether the applicant possesses the requisite good character, honesty and integrity for licensure as a casino employee pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b), was identified as an issue in the prehearing conference order and at the outset of the decision, but no findings or conclusions were made with respect to it. Relying on the significant overlap between the elements required to demonstrate rehabilitation and good character (see Application of Paul Goldberg for a Casino Employee License, Docket No. 87-EA-5 (May 1987)), we find that based on the rehabilitation evidence identified in the record by the administrative law judge, the applicant has clearly and convincingly demonstrated the good character, honesty and integrity required of a casino employee.

IT IS FURTHER ORDERED that the casino employee license of Donald T. Keown is granted substantially for the reasons stated in the initial decision, as modified, which is incorporated by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

JUN 07 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 673-87

AGENCY DKT. NO. 87-EA-119

DONALD T. KEOWN,

Petitioner,

v.

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

Donald T. Keown, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: June 19, 1987

Decided: June 30, 1987

BEFORE JEFF S. MASIN, ALJ:

Donald T. Keown applied to the Casino Control Commission ("Commission") for licensure as a casino employee in a gaming-related-non-experiential position. On December 4, 1986, the Division of Gaming Enforcement ("Division") recommended to the Commission that Mr. Keown's application be denied. Thereafter, Mr. Keown requested a hearing on the proposed denial, and on February 3, 1987, the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Lillard E. Law, ALJ, on April 6, 1987, and a prehearing order was issued by Judge Law on April 8, 1987. The matter was heard at plenary hearing before Jeff S. Masin, ALJ, on June 19, 1987, at the Ventnor Municipal Court. The record closed following the hearing.

THE ISSUES

The Division's December 4, 1986 letter and the prehearing order establish the issues for consideration as whether the applicant was ever convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86 or an analogous offense and whether he 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). In addition, assuming the conviction, the further issue for consideration is whether Mr. Keown can demonstrate rehabilitation as provided by Section 90h of the Casino Control Act ("Act").

EVIDENCE

The prehearing order notes that the parties stipulate that Mr. Keown was charged with violating 18 U.S.C. § 1920, improper receipt of Federal Workers' Compensation Benefits in the amount of \$87,000. Mr. Keown was charged in an Information with specifically having on or about April 10, 1982, knowingly made or caused to be made in connection with a claim for compensation under Subchapter I of Chapter 81 of Title 5 of the United States Code a false statement. The false statement is specified as having been to the effect that he was not employed during the previous 12 months prior to April 10, 1982 during which time he received workers' compensation benefits when, in fact, he had been employed on a full-time basis as a production manager for Peter F. Frasse and Company, Inc. According to the stipulation, Mr. Keown was convicted on his plea of guilty to the Information and placed on five years probation.

Mr. Keown testified that he is now a resident of Brigantine, having lived there part time since 1969. His other residence during the time prior to the past three years was in Plymouth Meeting, Pennsylvania. He is employed by Frasse Bassett, Inc., formerly Peter F. Frasse, Inc., as a purchasing manager. He has been continually employed at that company (except for periods to be mentioned below) since 1964. The business is a steel service center, located in King of Prussia.

Beginning in 1968 Mr. Keown also worked for the United States Postal Service. He was originally hired as a temporary distribution clerk sorting mail. He became a full-time clerk within a few months thereafter and continued his full-time employment at Frasse. He worked nights and weekends for the Postal Service at the Main Post Office at 30th and Market Streets in Philadelphia.

In early 1974, Mr. Keown was injured while working for the Post Office. He filed for workers' compensation benefits and applied for Injured On Duty (IOD) benefits. He had broken his foot in an incident in which a large number of mail carts fell on him. He continued to have back problems after his foot healed and these back problems remained as an ongoing problem. He was referred to numerous doctors and hospitalized on several occasions. He missed quite a bit of work at Frasse and did not return to the Postal Service. A year after his injury he was called into the Postal Service Personnel Department and was told that he was separated from active postal employment and would be going on disability retirement. He signed some forms. He provided the names of all of his doctors to the personnel department and thereafter assumed that doctors received forms to fill out, although he never saw them. According to his best recollection, approximately every year or so he was given a form to give to his doctor to fill out regarding the status of his disability. He never discussed with his doctors whether he was working or not.

Mr. Keown's application for IOD benefits was processed by the union. He received his first check about six months after his injury and three or four months later received a monthly check, beginning early 1975. He assumed that these were for compensation for his not being able to work, although at the time he said no one knew whether his injury was going to be permanent.

The witness could not recall ever filling out a form which specifically asked if he was working. The question that he recalls was whether he returned to duty in the Post Office, which he had not. He also couldn't recall a question asking whether he had worked in the past 12 months.

In 1983, Mr. Keown was visited by a postal inspector and a representative of the Department of Labor who came to Frasse and interviewed him about his job. Ultimately he was with in the federal information. Although he did not really think he was guilty of anything, he pled guilty because his lawyer told him that it would cost a great deal of money to go to trial and he was not sure whether he was guilty or not.

Mr. Keown was not ordered to make restitution. He has made no voluntary payment. He recalled that the check which he received from the disability benefits ran between \$500 and a \$1,000 a month. His best estimate of his earnings in 1982 or 1983 at Frasse-Bassett was \$18,000 to \$20,000.

The applicant is 56 years old. He has a wife who is seriously ill with cancer and a severely retarded son. He suffered a heart attack in 1984.

Paul C. Michenor, a United States Probation Officer for the Eastern District of Pennsylvania, testified at the hearing with the express authorization of Honorable John B. Hannum, Judge of the United States District Court of the Eastern District of Pennsylvania, for whom Mr. Michenor works. According to Michenor, Mr. Keown has been his charge as a probationer since February 28, 1984. Michenor did the pre-sentence report prior to Judge Hannum's sentencing of Keown. According to the witness, at the time of sentencing Judge Hannum expressed his opinion that Mr. Keown's actions were an act of omission rather than of commission in that the question which he failed to properly answer was whether he had received any compensation during the past 12 months and on each of the forms which he filed he gave no answer one way or the other. Michenor could not recall specifically how many forms were involved. According to Michenor, had the question been properly answered, Mr. Keown's entitlement to benefits would have turned on how much money he made rather than on the fact that he was working. As it was, because the money which he received from Frasse was greater than that which he received from compensation, Keown would not have been entitled to receive any benefits. It was the amounts of earnings, rather than the fact of work at Frasse, that disqualified Keown.

Mr. Michenor anticipates that he will be recommending early termination of Keown's probation status. The probation is now scheduled to end in 1989, however, an application to terminate is expected shortly.

DISCUSSION

The record reflects that Mr. Keown was convicted of a fraud charge involving the receipt of Federal Workers Compensation Benefits obtained by means of a false statement, or perhaps more specifically, a failure to reply to a question concerning compensation which failure left a false impression on the part of those charged with determining Keown's entitlement to benefits and which impression lead to the payment of

\$83,799 which would not have otherwise been paid. The type of action involved is such as to make the federal charge clearly analogous to N.J.A.C. 2C:20-4.¹

In light of Keown's conviction for an offense which by its nature constitutes a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c(2), it is necessary to consider whether he has rehabilitated himself from the the adverse affects of such conviction. The record reflects Mr. Keown to have continued his employment at Frasse since the time of his conviction and to have served his probationary period without any adverse incidents. His probation officer spoke quite favorably of him and indicated that while clearly he had committed at least a technical violation of the criminal law, Mr. Keown was a hard-working individual who was attempting to deal with several severe medical and emotional crises which have bedeviled his family. In addition, the respondent has suffered his own medical trauma in the recent past.

That Mr. Keown's conduct in connection with receipt of the workers compensation benefits was less than it should have been is beyond dispute. While he apparently never actually stated in writing that he was not receiving compensation during the period in question, at the same time his conduct did leave open to misinterpretation the question of whether he had earnings. He could and should have been more careful in the way in which he filled out the forms. One may choose to view his conduct cynically as that of one who was hoping that by not saying anything he would not be caught. On the other hand, since neither side ever produced the documents and there is uncertainty as to how many such documents Keown filed, there is at least some question as to how frequently and under what circumstances the papers were prepared and the misinformation provided. On the whole, regardless of the circumstances, it can fairly be said that Keown was properly punished for his actions.

With respect to the issue of rehabilitation, I **FIND** that Mr. Keown is a sincere, hardworking individual who has apparently run afoul of the law only in connection with this workers' compensation matter. At the time he committed the offense he was a mature adult who should have known better. However, given the nature of the violation, and the fact that it did not include violence or injury except to the admittedly important

¹ The information only charges an offense relating to one date, April 10, 1982. Presumably the reference to \$87,000 (actually \$83,799) refers to a total amount of benefits paid, not an amount paid after and as a result of Mr. Keown's false statement of April, 1982. The Division did not produce any of the forms involved and, therefore, we cannot be sure how frequently the forms were filed.

public fisc, and given the other indications that Mr. Keown is otherwise a solid citizen, I **FIND** that he has rehabilitated himself from the unfortunate criminal episode and that he is not likely to ever again commit any similar offense. Given the nature of his family's difficulties and the full-time employment in which he is engaged, as well as his own health problems, I **FIND** that he has conducted himself in a completely admirable and respectable fashion since the time of his conviction. Although his probation has not formally ended, there is every reason to believe that it will end shortly. I **FIND** no reason why he should not be considered to have rehabilitated himself from the adverse affects of the criminal episode and I so **CONCLUDE**. In light of this finding, I **CONCLUDE** Mr. Keown can and should receive his license as a casino employee, with a position designated as gaming related—non-experiential. It is so **ORDERED**.

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

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

DATE

June 30, 1987

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

July 1, 1987

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 1 1987

OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

On behalf of Respondent:

R-1 INFORMATION NO. 84-00007

R-2 United States District Court Judgment on Probation/Commitment Order,
dated February 28, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-6
LICENSE NO. 44382-21
OAL DOCKET NO. CCC 525-87
ORDER NO. 87-37-19

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

Complainant, :

v. :

HENRY LANDSMAN, :

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 the Division of Gaming Enforcement (Division) having filed exceptions to the initial decision; and the respondent having filed a reply; and the Commission having considered the entire record of these proceedings at its public meetings of September 23 and September 30, 1987,

IT IS on this 9th day of November 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The respondent's conduct in contacting a representative of the Harrah's at Trump Plaza Hotel and Casino (Trump Plaza) on behalf of a junket patron to arrange for the redemption of outstanding counter checks by having a \$60,000 cash payment picked up in the New York office of a third person, accompanying Trump Plaza personnel to

ORDER NO. 87-37-19

this office and signing a "Customer Payment Receipt" on behalf of the patron violated N.J.A.C. 19:45-1.26(d);

2. The respondent's conduct in bringing the funds of six junket patrons to the casino cage at Trump Plaza to redeem six outstanding undeposited counter checks violated N.J.A.C. 19:45-1.15(b); N.J.A.C. 19:45-1.26(a) and (d) and N.J.S.A. 5:12-101(c); and

3. The respondent's conduct in transporting the funds of a junket patron to the casino cage in payment of a counter check which had been previously deposited and returned violated N.J.S.A. 5:12-102(1)(1).

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$2,000 for violating N.J.S.A. 5:12-102(1)(1); and

IT IS FURTHER ORDERED that a copy of this order be placed in the permanent file of the respondent Henry Landsman to serve as a letter of reprimand for his violations of N.J.A.C. 19:45-1.15(b), N.J.A.C. 19:45-1.26(a) and (d) and N.J.S.A. 5:12-101(c).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DAILY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-6
LICENSE NO. 44382-21
OAL DOCKET NO. CCC 525-87
ORDER NO. 87-36-24

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

Complainant, :

v. :

HENRY LANDSMAN, :

Respondent. :

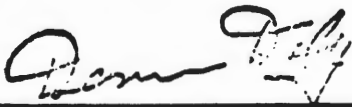
ORDER

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 a motion to expand the record having been filed with the Commission by the Division of Gaming Enforcement; and the Commission having considered this motion at its public meeting of September 23, 1987,

IT IS on this 9th day of November 1987, ORDERED that the motion to expand the record is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

AUG 18 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 525-87

AGENCY DKT. NO. 87-6

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

Petitioner,

v.

**HENRY LANDSMAN,
Respondent.**

**Barth F. Aaron, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Guy S. Michael, Esq., on behalf of respondent (Brown & Michael, attorneys)

Record Closed: July 28, 1987

Decided: August 10, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a Complaint filed by petitioner with the Casino Control Commission alleging that respondent violated the terms of his junket representative and junket enterprise licenses and seeking penalties therefore 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.

Petitioner's Complaint is set forth in two counts. The first count specifies seven incidents; the first incident in chronological order involves off-site redemption activity allegedly in violation of N.J.A.C. 19:45-1.26(d), the remaining six incidents involve tendering patron payments at the casino cage for the purpose of redeeming patron markers allegedly in violation of N.J.A.C. 19:45-1.15(b)(1)(i), N.J.A.C. 19:45-1.26(a) and (d), and N.J.S.A. 5:12-101(c).¹ The second count alleges that respondent engaged in collection efforts upon a returned check in violation of N.J.S.A. 5:12-102 (1)(1).

The procedural history and facts with respect to the entire matter have been stipulated. Respondent is a New York resident who currently holds a junket representative license and is director, president, and secretary of Junket Enterprise Travel Productions, Ltd., which holds a junket enterprise license. Apart from the within Complaint, for which license revocation is not sought, petitioner is aware of no other derogatory information about respondent or Travel Productions, Ltd.

On July 10, 1986, petitioner filed the Complaint in the instant matter alleging certain statutory and regulatory violations. On August 6, 1986, respondent filed an Answer and Third Party Complaint denying all allegations of violation and, in turn, alleging that any violations were the result of conduct of Harrah's Associates, (Harrah's), the then casino licensee. On or about August 28, 1986, Harrah's moved to dismiss the third party complaint and on December 16, 1986, the Casino Control Commission granted Harrah's motion.

On May 7, 1987, respondent filed a Motion to Dismiss the Complaint. That motion is pending at the present time and will be decided as part of the within recommendation on the basis of this record.

During the time period relevant to this Complaint, respondent, through Travel Productions, Ltd., provided casino marketing services to Harrah's at Trump Plaza Casino Hotel, later Trump Plaza. He worked exclusively with that casino. His responsibilities involved recruiting patrons and arranging for various services for them. Prior to his employment in connection with casinos in Atlantic City, respondent had been

¹ Petitioner's complaint does not distinguish between the seven incidents; however, its brief and the stipulated facts make clear that the first incident relates to off-site redemption, while the latter six involve tendering patron payments at the cage.

engaged in junket activity in other jurisdictions including Nevada and the Caribbean. In those jurisdictions he had been permitted to and had legally and routinely engaged in the collection of outstanding gaming debts owed by his junket clients.

Count 1. At a time on or around September 1984 respondent became aware that a client of his, Miles Bass, was indebted to Harrah's for gaming debts in a certain amount. This indebtedness arose from counter checks which had not yet been deposited for collection. Bass asked respondent to do him a favor and arrange to receive payment for Bass's indebtedness from an individual named Marty Alvo, who had also been respondent's client for many years. In response to Bass's request, respondent contacted Michael Scott Prohaska, who was at that time employed as special casino program supervisor by Harrah's. Respondent regularly contacted Prohaska as his liaison with the casino. In this instance, respondent asked Prohaska to arrange for the proper people to receive Bass's payment. Prohaska then advised respondent that casino representatives would be sent to New York to Marty Alvo in order to receive the Bass payment. In particular, Prohaska advised respondent that a representative of the collection department, Leonard Witkowski, would be sent along with a representative of the Security Department, Chester "Bubba" Andrews. Prohaska told respondent that a limousine carrying Witkowski and Andrews as passengers would be sent to New York for this purpose. When advised of this, respondent asked Prohaska if it would be possible for the limousine to pick him up as well since he was otherwise coming to Atlantic City and needed a ride. At the same time, respondent offered to direct Witkowski and Andrews to Alvo's office because he was familiar with the location of that office. Prohaska agreed to respondent's request.

The limousine carrying Witkowski and Andrews picked respondent up at his office and then proceeded to Alvo's office. Alvo made a cash payment to Witkowski and Andrews at his office. Respondent was present in the room but did not touch the money. The money was counted by either Witkowski or Andrews or both. A receipt was signed by Leonard Witkowski and respondent for current markers of Miles Bass in the amount of \$60,000.00 in cash. The receipt was dated September 7, 1984. Witkowski, Andrews and respondent then proceeded from New York to Atlantic City. Respondent did not again participate in any way in connection with the receipt of payment from Alvo for Bass. After the party arrived in Atlantic City, the money was taken by Prohaska and Andrews to the casino cage.

On or about November 30, 1984, respondent was contacted by Barry Weinberg and David Cohen. These men were patrons of Harrah's and respondent's customers. Weinberg and Cohen told respondent that they had outstanding counter checks with Harrah's, which had not yet been deposited but which were coming due and, in fact, they did have such counter checks. They wanted to make the payment but were not able to get to Atlantic City to do it themselves. They asked respondent if he would bring the money to the casino for them. Respondent accommodated their request. When respondent arrived at the casino he brought the money to the casino cage at which time representatives at the cage accepted the money from him and provided him a receipt for it.

On or about February 2, 1985, respondent accommodated a request made by Phillip Mercaldi, a patron of Harrah's and customer of respondent, which was identical to the request made by Weinberg and Cohen. Respondent received money from Mercaldi, which he transmitted to the casino. The cage representative, again, accepted the money and provided a receipt to respondent. Respondent has no independent recollection of this transaction.

On or about February 2, 1985, respondent accommodated an identical request made by Samuel Buxbaum, a patron of Harrah's and a customer of respondent, by receiving funds from Buxbaum and transmitting them to the casino cage in redemption of outstanding counter checks. Again, a casino cage representative received the funds and provided a receipt to respondent. Respondent has no independent recollection of this transaction.

On or about March 1, 1985, respondent accommodated an identical request of Marshall Feingold and Irvin Greenberg by receiving funds from them and transmitting them to Harrah's in redemption of outstanding counter checks. Again, the monies transmitted by respondent were accepted by a representative of the casino cage and receipts were provided to respondent. Respondent has no independent recollection of this transaction.

In the course of each of the transactions outlined above, respondent did not tender payment of any of his own funds but only of those funds of and for casino patrons whose outstanding counter checks had not yet been deposited for collection. In no

instance were paid counter checks given to respondent. At no time during the course of any of these transactions did respondent believe that any of his conduct was prohibited by the Act or regulations. He believed that his actions were in keeping with proper casino policy and this belief was reinforced by the cooperation of the representatives of the casino licensee in the course of each transaction. At no time was he advised by any casino licensee representative that he was or may have been in violation of any existing statute or regulation when he transmitted patron funds from the patron to the cage in redemption of outstanding markers.

Respondent alleges that he ceased engaging in any transaction of the kind outlined above when advised that it was improper. He would testify that he received this advice from State Police Sergeant William Kisby on the casino floor. At the time Sergeant Kisby so advised respondent, he additionally requested that respondent proceed to transmit a patron's check to the casino cage as respondent had otherwise intended but which, after being advised of its impropriety, respondent had represented he would not do. Sergeant Kisby then secreted himself and covertly observed as respondent tendered the payment to the casino cage.

Count 2. On or about February 9, 1985, respondent accommodated a request from Louis Vitanza and carried a check made out by Mr. Vitanza to Harrah's and tendered it to the casino cage. A representative of the casino cage accepted the funds and provided respondent with a receipt. The receipt indicates that the payment was made in satisfaction of a counter check that had previously been deposited and returned. Respondent was unaware of the status of the Vitanza counter check when he transmitted Vitanza's payment to the casino cage. In fact, throughout the entire course of the transactions which form the basis of this Complaint, respondent was unaware of the distinction between a redemption and a collection. Similarly, as in the transactions outlined in Count 1 above, respondent was unaware that any of the actions he took with respect to the Vitanza payment were or may have been in violation of any existing statutory or regulatory provision; respondent believed his conduct to be in conformity with established casino policy and he had this belief reinforced by the cooperation of the casino in the course of the transaction.

At no time during the course of any of the transactions in the first or second count of the Complaint did respondent receive any funds or fees or payments in consideration for his having transmitted patron funds to the casino for the patron.

This is the substance of the record. Each of the allegations in petitioner's first count relies upon one or more of the following sections. N.J.A.C. 19:45-1.15(b)(1) provides:

General cashiers shall operate with individual imprest inventories of cash and such cashiers' functions shall be, but not limited to, the following:

- i. Receive cash, cash equivalents, checks, gaming chips and plaques from patrons for check consolidations, total or partial redemptions or substitutions; . . . [emphasis added]

N.J.A.C. 19:45-1.26(a) provides:

The drawer of a Counter Check may redeem it by exchanging cash, cash equivalents, gaming chips, plaques, or any combination of another check, cash, cash equivalents, gaming chips, or plaques. [emphasis added]

N.J.A.C. 19:45-1.26(d) provides in pertinent part:

All consolidations, total or partial redemptions or substitutions of checks by gaming patrons shall made at the general cashiers' cage.... [emphasis added]

N.J.S.A. 5:12-101(c) provides:

[T]he 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. [emphasis added]

The first incident is alleged to violate N.J.A.C. 19:45-1.26(d) as it prohibits off-site redemptions. I believe that respondent's connection to this transaction was remote, and effectively removes him from responsibility. Respondent was contacted by his client and asked to facilitate payment with the casino. He in turn telephoned Mr. Prohaska and informed him of the method by which the client wished to make payment. Mr. Prohaska agreed on behalf of Harrah's and made the necessary arrangements. He sent a car and representatives from Atlantic City to New York, and they handled the transaction. Respondent was unnecessary to this business and according

to the stipulation was only present because he wanted a ride to Atlantic City. At no time did respondent understand anything that he did to be a violation, and he never handled any of the money. He did sign a receipt as Mr. Bass's representative; it would be reaching however, to use this as a basis for culpability. If Harrah's and its employees could not be joined as parties, then I cannot see how respondent is in violation.

Moreover, counsel provided a copy of the Commission's recent decision in In the Matter of the Petition of Adamar of New Jersey Inc., Requesting a Declaratory Ruling Concerning the Off-Site Acceptance of Payments of Non-returned Counter Checks, Etc., Casino Control Commission, PRN 365501 (Nov. 26, 1986), which casts some doubt on whether the transaction was a violation at all at the time it occurred. Adamar was a request for declaratory ruling on the whole question of off-site redemption and collection. In a long and careful opinion, the Commission set forth the reasons for its policy conclusion that off-site redemption is improper. However, it is clear from the opinion that despite the plain language of N.J.A.C. 19:45-1.26(d), the practice has gone on in the industry with at least some level of sanction. The decision opens with the following statement:

This matter comes before the Commission as a declaratory ruling filed by Adamar. . . and joined by 9 of the 10 operating casinos. It seeks to resolve the major legal and policy issues raised by casino licensees engaging in collection practices at branch offices and "in the field," a term that the casino industry has developed to mean other unspecified locations, including a patron's home or place of business, for receipt of payment on outstanding and returned counter checks. . .

Respondent's limited role in the matter aside, the entire incident must be assessed in light of what was known in September 1984, not in the regulatory climate after Adamar.

The second aspect of count 1 involves the six transactions at the cage. Petitioner argues from the sections cited above and most particularly from the words underlined, that only the patron/drawer of the counter check may redeem it at the cage; a junket representative, may not do so. The reading is strained. The provisions cited address themselves to matters other than the exclusivity of patron redemption of counter checks at the cage. Each provision focuses on the redemption transaction and on how and where it is to be accomplished; not on who may physically offer the payment. Of course logically the person offering the payment would most often be the patron/drawer, and this

implicit understanding of the redemption procedure seems more than anything else to account for the language used. Nothing however appears to prohibit others, specifically for our purposes junket representatives, from acting as messengers for this purpose. Had the legislature or the drafters of these regulations sought such a limitation, they could have said so in clear language. As a failure of compliance may give rise to penalties, such clarity is required. ELEC v. Hunterdon County Democratic Committee, 178 N.J. Super. 233 (App. Div. 1981). Where for example the Act prohibits collection efforts by junket representatives, it makes it plain. See, N.J.S.A. 5:12-102(1)(1). Thus, these six transactions do not seem to violate any of the sections relied upon.

The Commission's decision in Adamar with respect to off-site redemption activities is instructive here as well. That case traces the development of policy on the point. No similar history has been provided with respect to who, if anyone, other than the patron may pay at the cage.

Petitioner points out generally with respect to the first count that the Commission has recently been involved in evaluating the relationship of the junket enterprise/representative as intermediary between casino and client. It has determined that the junket representative/enterprise is an agent of the casino and thus does not represent the interests of the client with the casino. It argues from this that any effort to redeem markers for a patron is a conflict of interest. While this may be so, the analysis is so fresh that counsel had yet to obtain the Commission's opinion when they briefed the matter. Respondent's conduct in 1984 cannot be measured against a standard only now forming in 1987.

As to the second count, petitioner relies upon N.J.S.A. 5:12-102(1)(1) which 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 . . .

Collection efforts clearly violate this section. The question here is whether this is what respondent was doing. The stipulated facts are that he had no idea that Mr. Vitanza's checks had been returned by banks; he was simply delivering payment to the casino cage as he had done for other clients. In order to "engage in efforts to collect upon

checks," respondent would have to know that a check had been returned and would have to intend to engage in collection efforts. That is not the case here.

To the extent that petitioner argues as well that the sections cited in Count 1 are applicable because the transaction was conducted by someone other than the patron/drawer of the check, they are without merit for the same reasons set forth above.

While I have attributed a strained reading to petitioner of the sections relied upon in both counts of its complaint, even assuming a technical infraction at one or more points, I would impose no penalty. N.J.S.A. 5:12-130(g). Respondent had been in the junket business elsewhere where the conduct complained of here is permitted. Moreover, he acted with the assistance of casino employees, none of whom has been taken to task for these incidents. When he was told that the conduct was inappropriate, he stopped. There is nothing in his behavior which appears worthy of punishment.

Based on the foregoing, it is my conclusion that the regulatory scheme does not support petitioner's charges. It is **ORDERED** that the complaint be **DISMISSED** in its entirety.

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 8/10/87

DATE 8/11/87

DATE AUG 13 1987

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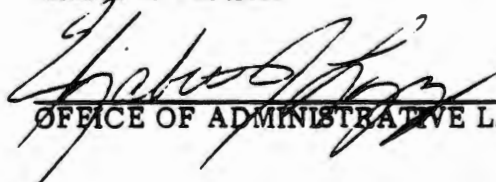
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:



CASINO CONTROL COMMISSION

Mailed to Parties:



OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-112
LICENSE NO. 13617-21
OAL DOCKET NO. CCC 00668-87
ORDER NO. 87-47-13

APPLICATION OF MITCHELL L. LEITZ

FOR RENEWAL OF HIS

ORDER

CASINO EMPLOYEE LICENSE

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 9, 1987,

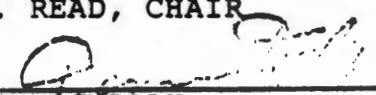
IT IS on this 16th day of December, ORDERED that the initial decision is adopted; and

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 made a part hereof.

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.

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 668-87

AGENCY DKT. NO. 87-EA-112

MITCHELL L. LEITZ,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

Respondent.

Mitchell L. Leitz, petitioner, pro se

Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 28, 1987

Decided: October 13, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Mitchell L. Leitz, petitioner, applied to the Casino Control Commission (Commission) for renewal of his casino employee license (blackjack dealer and craps floorperson) no. 13617-21, pursuant to N.J.S.A. 5:12-90. Although the Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, took no position on the application, it identified certain conduct by the petitioner, which raised issue concerning his qualifications for continued licensure. More specifically, at issue are

whether the petitioner's continued licensure is inimical to the policies of the Casino Control Act (Act), under section 86c(4) by means of section 86g, by reason of his alleged violation of N.J.S.A. 5:12-113a, swindling and cheating, and whether the petitioner now possesses the requisite good character, honesty and integrity, under section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

Mr. Leitz filed a renewal application for 1984 with the Commission. By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated November 25, 1986, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By submission of Form E dated January 16, 1987, Mr. Leitz requested a hearing. On February 3, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 2, 1987, before Administrative Law Judge Stephen W. Thompson. The matter was heard before the undersigned on July 13, 1987. The record closed on August 28, 1987, upon receipt of confirmation from the Division that it had no objection to the inclusion in the record of post-hearing submissions from the petitioner.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Leitz is 26 years of age. For the past year he has resided in Smithville, and for the previous six years resided in Brigantine.

The petitioner is a 1978 graduate of Monroe Township High School, Middlesex County, New Jersey. He attended Middlesex County College for two semesters.

In April 1980, the petitioner earned a certificate of successful completion of a craps dealer course from East Coast Gaming School.

On June 11, 1980, the Commission issued the petitioner casino employee license no. 13617-21 (blackjack dealer and craps floorperson). This license was renewed in 1981.

From June through December 1980, the petitioner was employed by Resorts International Hotel, Inc., as a craps dealer. There were no difficulties with this employment.

From December 1980 until August 1983, the petitioner was employed by Harrah's Marina Hotel and Casino (Harrah's). He commenced employment as a dealer, and in June 1981 was promoted to boxperson. He occasionally worked as a floorperson. The petitioner earned a salary of approximately \$40,000 per year in 1983. The petitioner incurred one three-day suspension for the violation of a table regulation, which was described as not serious.

In approximately August 1982, Gary Wain, the floorperson for the petitioner's game, introduced the petitioner to Robert Notaro. The petitioner learned that Notaro was a bookmaker who accepted bets on various sporting activities. This was the petitioner's first exposure to a bookmaker. The petitioner began to place bets by telephone with Notaro. The petitioner knew that other employees were also placing bets with Notaro.

Initially, the petitioner was able to cover his losses. However, Notaro began to extend credit to the petitioner as his losses grew. The petitioner testified that he incurred a maximum loss of \$4,000 on one weekend.

As of April 1983, the petitioner was unable to pay Notaro. An arrangement was made whereby the petitioner would pay Notaro \$100 per week, and the petitioner continued to make additional bets.

Ultimately, Notaro demanded payment. When the petitioner was unable to satisfy the demand, Notaro made reference to the casino games on which the petitioner worked. The petitioner testified that he thought about what Notaro might do if the petitioner were unable to pay. Wain devised a method by which monies would be paid to Notaro from the casino games. A player would appear to place a bet on the table

and mumble something, after which the petitioner and Wain would pay off the false bet. In May 1983, the petitioner agreed to participate in the scam. At that time he had no knowledge of any other employees participating in such activities.

The petitioner testified that eventually other casino employees learned that Notaro was the petitioner's and Wain's bookmaker and that he was winning at their table. The scam continued, and upon the recommendation of Wain, James Camarata appeared at the table instead of Notaro.

In July 1983, the petitioner stopped betting with Notaro. Instead, the petitioner bet legally on horse races at the track.

At this time, the petitioner was no longer in debt to Notaro. The petitioner had satisfied this obligation with the proceeds of a loan from his father. However, the petitioner still had heavy credit card debt which was due, in part, to the petitioner's earlier gambling losses. Accordingly, the petitioner continued to participate in the scam and was paid a percentage of the winnings by Notaro, which the petitioner used to reduce his personal debt. Although the petitioner did not socialize with Notaro, he introduced his coworkers to Notaro.

On August 18, 1983, while the petitioner was employed as a boxman, he was observed directing payment to Camarata despite the absence of a proper bet. The petitioner denied any misconduct to the casino manager. Nevertheless, the petitioner resigned from this employment in lieu of disciplinary action (J-1). Wain also resigned at this time.

The following day, the petitioner was interviewed by two representatives of the Division, including Detective Sergeant First Class John Medolla, who was assigned to the special investigations unit of the Division. Again, the petitioner denied any misconduct.

The petitioner and Wain sought the advice of an attorney. Thereafter, they approached the Division of Criminal Justice and agreed to provide information concerning their activities with Notaro. Ultimately, the petitioner admitted having placed bets with an illegal bookmaking operation and participating in a cheating scam at the craps tables.

On September 30, 1983, the petitioner entered into a contract with the Division of Criminal Justice (J-2). In part, the petitioner agreed to provide details of the operations of the scam and other similar scams, as well as identifying the participants in those scams, and agreed to participate in consensual tape recordings of Notaro and other dealers (J-2). On February 28, 1984, the petitioner testified before a state grand jury, which led to the indictment of 12 persons and the convictions of Notaro, Camarata and others. The petitioner continued to provide information to the Division of Criminal Justice for a period of approximately six months. Det. Medolla testified that the petitioner's information was highly reliable and that the petitioner cooperated fully. Accordingly, the Division of Criminal Justice agreed not to prosecute the petitioner (J-2). However, there was no agreement concerning the petitioner's casino employee license, although the petitioner and Det. Medolla believed that the agreement covered this license.

From October 21, 1983 to March 6, 1984, the petitioner was employed as a craps dealer by Adamar of New Jersey, Inc., t/a Tropicana Hotel and Casino. He had no difficulties during this employment. The petitioner left this employment because of pressure from supervisors and coemployees in response to newspaper reports of the described incident.

From July 11, 1984 to the present, the petitioner has been employed by Boardwalk Regency Corporation, t/a Caesar's Atlantic City Hotel Casino (Caesar's), as a craps dealer. He has had no problems during this employment and has earned excellent evaluations (P-2). His current salary is approximately \$25,000 per year.

The petitioner has informed his fiancée and family of the extent of this cooperation with the Division of Criminal Justice. However, he has not so advised his friends.

The petitioner has not gambled with a bookmaker during the past four years. However, he has bet legally on horse races at the track, but has not wagered money he does not have. The petitioner currently has some personal debt, but it is not extensive.

The petitioner is engaged to be married shortly following the subject hearing.

The petitioner's plans for the future include a family and continued employment in the casino industry in New Jersey.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's participation in the scam, his rehabilitative efforts, and his reputation for good conduct, honesty and integrity.

The petitioner described the circumstances underlying his participation in the scam. He was 22 years of age at the time and attributed his participation, in part, to immaturity. The petitioner believes that he was influenced by Wain, who is five years his senior. Once involved in the scam, the petitioner was in over his head. He also characterized his conduct as a mistake.

His testimony was corroborated by Det. Medolla, who observed the petitioner to be immature, and accordingly, vulnerable to the criminal element by reason of his inexperience. The detective was also of the opinion that the older Wain was able to mislead the petitioner. Further, Notaro was able to set up the petitioner for participation in this scam.

The petitioner also described his rehabilitative efforts. He acknowledged his misconduct and identified his loss of promotional opportunities, probably to the position of pit boss, and lost earnings. The petitioner now has different friends from those with whom he previously associated. Also, the petitioner testified that his involvement in the criminal activity was simply not worth the result.

Although the Division did not offer any evidence to refute the petitioner's proofs, it is necessary to assess his credibility prior to making findings of fact. The petitioner's position in this matter must be recognized. As the applicant for renewal of a casino employee license, and as an employee in the industry, he has a direct interest in

the outcome and a bias in these proceedings. Nevertheless, his testimony concerning his actions was fully consistent with the documentary evidence and was corroborated by the testimony of Det. Medolla. Further, his testimony consisted substantially of candid and revealing admissions of his prior misconduct. It was clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and his acknowledged misconduct, the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable, and fully persuasive. He acknowledged fully the extent of his wrongdoing and accepted responsibility therefor. In the final analysis, I have every reason to accept his testimony in full.

Det. Medolla also testified as a character witness for the petitioner. In addition to describing the circumstances which led to the petitioner's participation in this scheme and the extent of the petitioner's full cooperation with the investigation, the detective testified to the petitioner's conduct over the past four years. The witness has observed the petitioner's recognition of his misconduct, his attempts to rectify it to the best of his abilities, and his expressions of embarrassment and remorse. The witness was of the opinion that the petitioner has matured and is now a sincere person. The petitioner has new friends and now recognizes the value of his employment. The witness opined that the petitioner's continued employment in the industry over the past four years is amazing, given the negative reactions from newspaper accounts of the investigation. The witness has also observed that the petitioner is an excellent dealer. Essentially, the detective is of the opinion that the petitioner is rehabilitated.

In addition, the petitioner offered letters on his behalf. Michael D. Ferretta, a certified public accountant and a former supervisor of the petitioner, who has known the petitioner for three years, stated that the petitioner is an excellent employee, relates well to his coworkers and is an honest person (P-1). Joseph Frone who is a supervisor at Caesar's and has known and supervised the petitioner for the past three years, characterized the petitioner as an excellent dealer and as a person of honesty and integrity (P-3). Last, Aluren Carbonara, a coworker who has known the petitioner for the past three years, is of the opinion that the petitioner is reliable, competent, and personable to customers and fellow employees (P-4).

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

1. The petitioner's explanation of the circumstances underlying his involvement in the scam was believable and persuasive, and is adopted fully as a finding of fact.
2. The petitioner's explanation of his rehabilitation was believable and persuasive, and is adopted fully as a finding of fact.
3. There is little likelihood, if any, that the petitioner will repeat his prior misconduct.
4. Petitioner's friends, supervisors and coworkers are of the opinion that he is a person of good character, honesty and integrity.
5. Mr. Leitz was a credible witness, and his testimony was candid, was consistent with the documentary evidence as well as the testimony of others, and was fully persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that a person be disqualified from licensure because of the commission of any act 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 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 association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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, 31 (App. Div. 1985), cert. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means "adverse to the policy of the Act in gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities. The Division contends that the petitioner's conduct constitutes a violation of N.J.S.A. 5:12-113a, swindling and cheating.

The evidence of the petitioner's misconduct, including his description thereof, establishes a violation of the charged offense. Further, it is abundantly clear that the petitioner's voluntary gambling and participation in a cheating scam, committed by a licensee during the performance of his employment duties and with a full understanding that his actions might negatively affect his employment in the casino industry, establish that this offense is inimical to the policies of the Act. However, the inimicality of the offense must include consideration of the circumstances underlying the incident and the petitioner's subsequent conduct, i.e., his rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Casino Control Commission decision, December 27, 1985).

Mr. Leitz holds a casino employee license and was employed as a box person. As such, he had direct responsibilities for actual gaming activities and had substantial contact with casino patrons. The petitioner's position was especially significant to the actual as well as the perceived integrity of the casino industry in this State. In this capacity, the petitioner placed substantial, illegal bets with a known bookmaker on sporting activities. He was also aware that coworkers were similarly involved with this bookmaker. In addition, the petitioner gambled at such a sufficiently high level that he became indebted to this bookmaker and, accordingly, he became vulnerable to further illegal activities. More specifically, the petitioner became involved in a cheating scam at his table in concert with a coworker, which diverted monies to the bookmaker and his cohorts. This misconduct occurred over a one-year period immediately preceding August 1983. Under these circumstances, the petitioner's misconduct was extraordinarily serious. In fact, there is little misconduct which could more seriously impair the integrity of casino gaming in this State.

The petitioner's testimony, which was corroborated by the detective, establishes that the misconduct was due, in part, to immaturity and inexperience. Nevertheless, the petitioner permitted himself to become vulnerable to the influences of corrupt persons, to which he ultimately succumbed.

Despite this misconduct, the petitioner has made substantial rehabilitative efforts. He acknowledged his misconduct, albeit in the face of imminent prosecution. Further, the petitioner, at great personal risk, cooperated fully and participated in investigative efforts, which led to the cessation of the scam and the successful

prosecution of the leaders. The petitioner has also earned a positive employment record over the past four years. He has pursued employment in the industry at a substantially lower level and salary. Further, he has expressed remorse for and has no intention of repeating his misconduct. Accordingly, there is little likelihood, if any, of a repetition thereof. In addition, the petitioner appears to have matured and to have placed his personal life on an even keel.

The petitioner has, against overwhelming odds, established a very positive record of rehabilitative efforts; however, he has not now established sufficiently his rehabilitation for continued licensure. On balance, the extraordinary seriousness of his misconduct and the direct relationship that his misconduct bears upon the actual and perceived integrity of the casino industry still far outweigh his encouraging rehabilitation. Further, the petitioner's positive rehabilitative efforts are the direct result of his luck and his smart decision to work with law enforcement authorities before prosecution. However, his rehabilitative efforts do not justify the additional reward of continued licensure. The petitioner's misconduct is of the most serious imaginable with respect to the integrity of the industry. It suggests that there was a serious flaw in his character, which can only be overcome by a lengthy period of rehabilitation.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued licensure of the petitioner would inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Leitz was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event,

when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, at 2.

The petitioner's inability to establish sufficient rehabilitation to overcome the extraordinary seriousness of his misconduct precludes his ability to establish that he continues to possess the degree of good character, honesty and integrity required to maintain licensure. It would be wrong to permit the petitioner, who was one of the primary participants, to retain his license while those who were, by varying degrees, less culpable, lost their licenses. Nevertheless, the petitioner should be encouraged to continue his rehabilitation, which can be established by the test of additional time.

I CONCLUDE that the petitioner has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

ORDER OF DISPOSITION

It is ORDERED that the application of Mitchell L. Leitz for renewal of his casino employee license be DENIED; and it is further ORDERED that license no. 13617-21 be RESCINDED.

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 13, 1987
DATE

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

Receipt Acknowledged:

10/13/87
DATE

Heide Vandenberg
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 16 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Letter to Walter N. Read, Chairman, from Joanne C. Ciancimino, Deputy Attorney General, November 25, 1986 (4 pages)
- J-2 Letter to John L. Kase, Esq., from T. Barry Goas, Deputy Attorney General, September 30, 1983 (3 pages)
- P-1 Letter from Michael D. Ferretta, July 9, 1987
- P-2 Boardwalk Regency Corporation - Dealer Performance Review Employee Profile, Mitchell Leitz — November 6, 1984; August 15, 1985; July 22, 1986 (6 pages)
- P-3 Letter from Josepn Frone, July 23, 1987
- P-4 Letter from Lauren Carbonara

WITNESS LIST

For the petitioner:

Mitchell L. Leitz

John Modella

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-158
OAL DOCKET NO. CCC 3316-84
LICENSE NO. 2022-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
JERRY C. LEUNG, :
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 September 12, 1984,

IT IS on this 10th day of July 1987, ORDERED that the initial decision is modified as follows:

- (1) The respondent's October 3, 1983, conviction for theft of property valued at less than \$200, in violation of N.J.S.A. 2C:20-3, which involved his acceptance of \$25 worth of chips from a craps dealer while gambling in violation of N.J.S.A. 5:12-100(n), constitutes an inimical offense requiring disqualification pursuant to N.J.S.A. 5:12-86(c)(4).

- (2) The portion of the initial decision recommending that the calculation of the five-year bar runs from November 19, 1982, the date the Commission suspended the respondent's casino employee license, is rejected as inconsistent with N.J.A.C. 19:41-8.8, which requires that the prohibition run from the date of denial or revocation.

IT IS FURTHER ORDERED that the casino employee license held by Jerry C. Leung is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3316-84

AGENCY DKT. NO. 82-158

**STATE DIVISION OF
GAMING ENFORCEMENT,**

Petitioner,

v.

JERRY C. LEUNG,

Respondent.

APPEARANCES:

William Mountford, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Peter L. Bruso, Esq., on behalf of respondent (Tort, Jacobs, Todd & Bruso, attorneys)

Record Closed: June 7, 1984

Decided: July 13, 1984

BEFORE SOLOMON A. METZGER, ALJ:

This matter concerns 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. The Commission entered an immediate suspension order on November 17, 1982, upon petitioner's motion. On March 10, 1984, respondent filed a motion to vacate the suspension which the Commission denied. The matter was then transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The facts are undisputed. Respondent is 24 years old. He grew up in New York City and attended Queens College for two years. Thereafter, in 1979, he worked as a bank teller for six months and then as an electrician's apprentice. In 1980, he became employed at the Golden Nugget as a Craps Dealer. His annual salary was \$23,000. After a year, he obtained a job at the Tropicana as a Box Person. There he earned \$34,000 a year.

On October 7, 1982, respondent was arrested while in the Sands Hotel and Casino and charged with conspiracy, in violation of N.J.S.A. 2C:5-2, and cheating at the game of craps, in violation of N.J.S.A. 5:12-113. On October 3, 1983, he pled guilty to the downgraded charge of theft under \$200 in violation of N.J.S.A. 2C:20-3, a disorderly persons offense. In the process of committing this offense respondent was also gambling, which is prohibited for persons in his position, N.J.S.A. 5:12-100n.

The question presented in light of these facts is whether respondent retains the qualities of good character, honesty and integrity required for continued licensure, N.J.S.A. 5:12-129(1). This is connected to the question of whether he can establish rehabilitation pursuant to N.J.S.A. 5:12-90h.

Respondent testified that the positions which he held in the casinos were stressful and he needed an outlet. He found that outlet in gambling. While he was reluctant initially to start down this road as he knew it to be a violation of the Act, many of his fellow dealers gambled, and eventually it became a common form of entertainment for him. He testified that prior to coming to Atlantic City he had never gambled. In the course of two years he lost \$20,000 to \$30,000. On the evening in question, he was at the Sands to pay off a debt. While he was waiting, he went to a table at which an associate, Lance D. Cantell, was dealing craps. Mr. Cantell in effect gave him \$25 in chips for which he did not pay. Respondent acknowledged that he had done this once before through Mr. Cantell.

After leaving the casinos, he worked for a time as a waiter and is currently employed by an airline at Kennedy Airport in New York City.

Respondent believes that he is now more mature and has learned his lesson. If given a second chance, he would prove himself an able and trustworthy employee.

This is the substance of the record. Respondent's license is conditioned upon his continued qualification under the criteria of the Act. He must be able to show by clear and convincing evidence that he is a person of good character, honesty and integrity. If these traits are in doubt, his license must be denied. In re: Boardwalk Regency Casino Application, 180 N.J. Super. 324, 339 (App. Div. 1981), mod. in part, 90 N.J. 361 (1982). Respondent was a credible and forthcoming witness. I can appreciate that as a young man with new found financial success he was unable to cope in this highly charged atmosphere. Nevertheless, he seeks to be returned to the very games which caused his problem and this makes his burden particularly onerous. Other than coming forward to acknowledge his wrongdoing, there is little in the record which affirmatively establishes his rehabilitation.

Based on the foregoing, it is my **CONCLUSION** that revocation for the five-year period set forth in N.J.A.C. 19:41-8.8(a) is appropriate. As respondent has been suspended since November 17, 1982, the period from that date until final agency action on the revocation should serve as a credit, and respondent should be permitted to reapply for licensure at that earlier time. It is so **ORDERED**.

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

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

7/13/84
DATE

Solomon A. Metzger
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

July 16, 1984
DATE

Theresa D. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

JUL 18 1984
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

APPENDIX

EXHIBITS MARKED INTO EVIDENCE:

P-1 N.J. State Police Report

P-2 Sands Hotel & Casino Incident Report

P-3 Statement of Lance Cantell

P-4 Record of Conviction, Atlantic City Municipal Court

WITNESS

Jerry C. Leung, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-105
87-170
OAL DOCKET NO. CCC 08998-86
LICENSE NO. 43554-21
APPLICATION NO. 01735-70
VENDOR I.D. NO. 16183
ORDER NO. 87-45-20

APPLICATION OF STEVEN	:	
LIEBMAN TOURS, INC.,	:	
FOR A JUNKET ENTERPRISE LICENSE	:	
	:	<u>ORDER</u>
AND	:	
STATE OF NEW JERSEY	:	
DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
STEVEN LIEBMAN	:	

A hearing in these matters 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 25, 1987,

IT IS on this 7th day of December 1987, ORDERED
that the initial decision is affirmed; and

ORDER NO. 87-45-20

IT IS FURTHER ORDERED that the application of Steven Liebman Tours, Inc., for a junket enterprise license is granted substantially for the reasons stated in the initial decision; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement for the revocation of the casino employee license of Steven Liebman is dismissed.

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 8998-86

AGENCY DKT. NOS. 87-170; 87-EA-105

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

Petitioner,

v.

STEPHEN LIEBMAN,

Respondent

and;

**APPLICATION OF STEVEN
LIEBMAN TOURS, INC.**

**Anthony V. D'Elia, Deputy Attorney General, for petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

**Donald G. Targan, Esq., for respondent (Targan, Higbee and Faia,
attorneys)**

Record Closed: August 11, 1987

Decided: October 16, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The petitioner, Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint and a letter with the Casino Control Commission (Commission) dated October 20, 1986, seeking revocation of

respondent's employee license no. 43554-21 as a junket representative to Resorts International Casino/Hotel; and, objecting the the issuance of a license as a junket enterprise to respondent, Stephen Liebman, on behalf of Stephen Liebman Tours, Inc. under application no. 1735-70.

PROCEDURAL ASPECTS

Subsequent to the Division having filed its complaint and letter with the Commission on October 20, 1986, 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 16, 1987, at which, among other things, the issues to be resolved were set forth and hearing dates established. The hearing was conducted on August 10 and 11, 1987 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record was considered closed on August 11, 1987. Extensions were applied for and granted for the execution of this initial decision.

THE BASIS FOR THE DIVISION'S COMPLAINT

The Division, in its complaint and opposition letters, asserts, among other things, that respondent associates with an individual by the name of Salvatore D'Aquila who has been identified by the Connecticut State Police Organized Crime Strike Force as an associate of the Patriarca crime family, a major La Cosa Nostra crime family located in the northeastern United States. The Division alleges that in respondent's sworn investigative interview on April 11, 1986, respondent testified that he only knows Mr. D'Aquila as a "good" junket customer and that Mr. D'Aquila is neither a personal friend nor do they have any type of business relationship outside of respondent's junket business. Based upon its investigation, the Division alleges that there is a closer Liebman-D'Aquila relationship than reported by respondent. Therefore, it alleges, respondent provided the Division with untrue and/or misleading information.

The Division further asserts that on April 28, 1985, a Division investigator discovered a note pad in a Resorts hotel room registered to respondent which, it alleges, contained the betting lines on certain sporting events.

Grounded upon this and other investigative information, the Division seeks to revoke respondent's junket representative license and to prevent respondent from acquiring a junket enterprise license for respondent's corporation.

ISSUES TO BE DETERMINED

Pursuant to the prehearing order dated March 17, 1987, the following have been identified as the issues for determination by this administrative tribunal:

1. Whether, based upon the Division's allegations, respondent possesses the requisite good character, honesty and integrity for continued casino employee licensure as a junket representative and/or for licensure as a junket enterprise, pursuant to N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90(b)?
2. Whether respondent is disqualified to hold a junket representative license and/or a junket enterprise license where it is alleged that respondent supplied the Division with information which is untrue or misleading as to a material fact, in violation of N.J.S.A. 5:12-86b?
3. Whether respondent's continued licensure as a junket representative and/or licensure as a junket enterprise is inimical to the policies of the Casino Control Act by virtue of his alleged association with an alleged career offender, pursuant to N.J.S.A. 5:12-86f?

BURDEN OF PROOF

The Division has the affirmative burden to produce evidence and the burden to establish, by the preponderance of the credible evidence standard, the elements of inimicality and that respondent failed to disclose and/or supplied misleading information as to material facts.

Respondent has the burden of affirmatively establishing proof of his good character, honesty and integrity by clear and convincing evidence.

WITHDRAWAL OF D'AQUILA ISSUES

On the second day of hearing, August 11, 1987, the Division withdrew, for lack of any evidence, all issues with regard to the alleged Liebman-D'Aquila association. Consequently, the inimicality issue and the issue of respondent's good character, honesty and integrity as it related to the D'Aquila relationship were found to be moot. (TR. August 11, 1987, pp. 4-8). Therefore, this tribunal finds no necessity to consider the proffered testimony and documentation with respect to those issues.

The only remaining issue for consideration is respondent's good character, honesty and integrity as it relates to the alleged betting line incident.

UNCONTESTED AND BACKGROUND FACTS

Respondent is 46 years of age and resides in West Hartford, Connecticut with his wife and two teen aged sons, Bruce 17 years and Todd 14 years of age. Respondent was active in athletics while in high school, having participated in varsity baseball, basketball and was captain of the varsity golf team in his senior year. After high school, respondent attended and graduated from the University of Connecticut where he majored in finance and insurance in its School of Business Administration. While at the university, respondent participated on its varsity golf team and won the New England Intercollegiate Golf Championship in 1963.

During his senior year and after graduation from Connecticut University, respondent was employed in sales and training sales personnel for Indianapolis Life Insurance Company. Respondent was in the insurance industry for approximately two years when he changed his occupation and became involved in the travel and junket business. Respondent became a casino representative, licensed by the State of Nevada, and worked for various casinos between 1965 and 1980. These included: Caesar's Palace from 1965- 1967; Aladdin Hotel in 1967 and 1968; the Flamingo for one year which was then acquired by the Hilton Hotel chain along with the International Casino Hotel. Respondent worked for the Las Vegas Hilton until about 1978, at which time he moved to the Tropicana Hotel. Respondent worked for the Las Vegas Tropicana until approximately 1980. In or about 1980, respondent was duly licensed by the New Jersey Casino Control Commission as a junket representative and commenced with the Golden Nugget in Atlantic City where he remained for approximately a year and one half. Thereafter, he worked for the

Claridge for a very short period and then moved to Resorts International Casino Hotel in 1982 where he has remained to the present time.

Respondent, who maintains a business office in West Hartford, Connecticut, explained the duties of a junket representative asserting that it was more than just providing transportation for client gamblers. He likened his duties as those of a service where it was necessary to make special arrangements for hotel rooms, dinners, tickets to special events and other legitimate needs of the customer. Once a customer is rated¹ by the casino respondent represented, respondent is obliged to acquire complementary (comps) services for the customer commensurate with the customer's level of play. In the event respondent neglects or fails to provide a customer with the services the customer demands or believes he/she is entitled, the customer will transfer his/her business to another casino.

Respondent conducts, on average, between 10 and 15 junket trips per month from Connecticut to Atlantic City. On the vast majority of such trips, respondent remains over night in a hotel room supplied by Resorts. Respondent is also provided with a hospitality room by Resorts for his junket customers. Respondent allows and permits his junket customers to use his hotel telephone to make local and long distance calls without question.

Subsequent to his graduation from college, respondent has maintained a continuing interest in competitive sports events both as a participant and an observant. He coached in the West Hartford Little League from 1978 to 1984 where both of his sons were selected for the all star baseball team when they were each 12

1 It was explained that the rating system was from 1 to 5, 1 being the highest and representing approximately \$20,000 or more in gambling activity by the customer. Numbers more than one (1) is a decreasing amount.

years of age. Respondent has encouraged his sons to engage in athletics where the younger one is now involved in tennis and the elder is an avid golfer, as his father. Respondent and his older son Bruce, 17 years of age, were the winners of the State of Connecticut Father-Son golf championship in 1986. Respondent has season tickets for the National Hockey League team in Hartford; season tickets for the Boston Celtics basketball games played in Hartford as well as attending some games in Boston, Massachusetts; attends Boston Red Sox baseball games at Fenway Park in Boston; and occasionally attends New Jersey Giants football games at Giants Stadium, Rutherford, New Jersey. Respondent contends he is an avid sports fan.

It is uncontested that on April 28, 1985, the Division's Senior Agent Carl Chiaventone, Agent Charles Korostynski and State police Detective Annemarie Deangelo visited respondent in room 950 of Resorts International Hotel for the purpose of a routine compliance inspection and investigation. While in the hotel room registered to respondent, Senior Agent Chiaventone observed, among other things, a newspaper on one of the two beds in the room and a Resorts International note pad on a night stand next to the telephone between the two beds. The note pad had inked notations on it which Senior Agent Chiaventone characterized as sports (betting) lines (P-1). The inked notations on the note pad are as follows:

TB	2	1½	
BIR	6½	6	
HOU	10	10	
CELT	6½	6½	
MIL	3	3½	
DEN	7½	7½	
HOU	5	5½	(P-1)

CONTESTED FACTS

Senior Agent Chiaventone testified that upon his discovery of Resorts International note pad he asked respondent about the sports line which appeared thereon. Chiaventone asserted that respondent stated that it was a hobby. Chiaventone did not pursue the matter any further at that time.

Respondent denies he told Senior Agent Chiaventone that sports lines were his hobby. Rather, respondent asserted that April 28, 1985 was a Sunday, where he would be situated in the hotel room for the entire day, and he checked the Sunday newspapers sports sections to determine which event he would watch on television that afternoon. The newspapers had published the point-spread of the various professional games to be televised that day. The published point-spread included games to be played by the then United States Football League (USFL) and the American Basketball Association (ABA). Notwithstanding that the Boston Celtics basketball team was a favorite of respondent, he had noted on P-1 the published point-spreads of the Sunday games to compare and determine which of the events would be the most competitive and interesting to watch. He contends that he did not place the point-spreads on the note pad (P-1) for the purpose of placing an illegal wager on a game or games. Respondent asserts that he has never placed an illegal bet with a bookmaker nor has he called in any illegal wagers to a bookmaker for anyone.

FINDINGS OF FACT

Having carefully considered the entire record in this matter and having given fair weight thereto, and having observed the witnesses as they testified before me and assessed their credibility, I FIND the following facts:

Those facts set forth hereinbefore as uncontested and background facts are hereby adopted, by reference, as FINDINGS OF FACTS.

Senior Agent Chiaventone testified, credibly, that he observed and discovered P-1 while performing a routine investigation of respondent's junket business. Senior Agent Chiaventone characterized the writing on the note pad P-1 as sport lines for the purpose of making illegal wagers on professional sporting events.

Respondent testified, credibly, that he is an avid sports fan and that the purpose of P-1 was for his use in determining which professional sports event would be the most competitive and, therefore, the best event to watch on television, Sunday afternoon, April 28, 1985. Respondent testified, credibly, that he had never

placed a bet or wager with an illegal bookmaker for himself or for anyone else. Rains v. Rains, 127 N.J. Eq. 328 (E. & A. 1940); State v. Salimone, 19 N.J. Super., 600 (App. Div. 1952), cert. den. 10 N.J. 316 (1952); In re Perrone, 5 N.J. 514 (1950).

The Division produced no evidence to demonstrate or infer that respondent had placed bets with a bookmaker or that he had engaged in any illegal activity while performing as a junket representative for casinos in Las Vegas and/or Atlantic City.

DISCUSSION AND CONCLUSIONS

Respondent is presently a licensed junket representative employed by Resorts International Casino/Hotel, Atlantic City, New Jersey. N.J.S.A. 5:12-29.2. Respondent seeks to maintain and continue licensure under his junket representative license as well as acquire a license for a junket enterprise under a corporate entity; Stephen Liebman Tours, Inc. N.J.S.A. 5:12-29.1; N.J.S.A. 5:12-102c.

Pursuant to N.J.S.A. 5:12-1b(8), 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 license." Section 129(1) of the Act provides for revocation of or other sanction 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 alleged in its complaint and opposition letter to the Commission that respondent associates with Salvatore D'Aquila, a career criminal offender, and that respondent made representations to it which were false and provided information which was untrue or misleading as to a material fact when respondent testified during a sworn investigation interview that D'Aquila was simply a good junket customer; that D'Aquila was not a personal friend; nor did respondent have any type of business relationship with D'Aquila. Based upon those, and other allegations, the Division contends that respondent lacks the good character, honesty and integrity for licensure and that respondent's continued licensure is inimical to the policies of the Act.

At the hearing, the Division determined that it had no evidence to support its charges of a Liebman-D'Aquila relationship other than the one reported by respondent at the sworn investigation interview held on April 11, 1986. Consequently, the Division withdrew its charge and the concomitant issues of respondent's good character, honesty and integrity and inimicality.

Having carefully reviewed the entire record with regard to these issues, I **FIND** and **CONCLUDE** that the Division's action to withdraw is warranted in view of the total lack of evidence on the record to support its charges.

The only remaining issue for determination by this administrative tribunal is whether respondent possesses the requisite good character, honesty and integrity grounded upon the Division's allegation that respondent made representations which were false, untrue or misleading, with the intent to deceive the Division with respect to respondent's denial of placing bets with illegal bookmakers. First, the Division offered no evidence that respondent had ever engaged in placing wagers with illegal bookmakers. Second, respondent's explanation as to why and how the document P-1 was produced was entirely credible; having nothing to do with illegal bookmaking. Third, respondent proffered an array of letters attesting to his good reputation including, but not limited to; a United States District Court Judge (R-11), Connecticut legislators (R-12,22), business lenders (R-14,23,24), attorneys (R-15,17,18,19) and a religious leader (R-25). All of these individuals (R-10 through R-25) were laudatory in their praise of respondent's demeanor, love of family, contribution to the community and a trusted and respected friend.

I **CONCLUDE**, therefore, that respondent Stephen Liebman has established, by clear and convincing evidence, his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2). In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979); In re Boardwalk Regency Casino License Application; 180 N.J. Super. 324 (App. Div. 1981).

ORDER

Accordingly, it is hereby **ORDERED** that the complaint and opposition letter proffered by the Division against respondent's application and continued licensure as a junket enterprise and junket representative be and is hereby **DISMISSED**.

It is further **ORDERED** that the respondent's application for a junket enterprise license be immediately processed and **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.

16 October 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

October 20, 1987
DATE

Receipt Acknowledged:

Nieves Lopez
CASINO CONTROL COMMISSION

OCT 21 1987
DATE

Mailed to Parties:

Ronald L. Parke
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Senior Agent Carl Chiaventone
Detective Timothy D. Collins, New Jersey State Police
Detective Michael Penyak, New Jersey State Police
Detective Carl Deprovio, Connecticut State Police
Stephen Liebman

For the Respondent:

Stephen Liebman

EXHIBIT LIST

For the Petitioner:

- P-1 Resorts - note pad
- P-2 Room Folios - April 1984 - April 1985

For the Respondent:

- R-1 New York Post - (Identification only)
- R-2 List from Resorts International - Junket (I.D. only) Trips by Liebman April 28, 1984 through April 28, 1985
- R-3 Customer Action Report - Sal D'Aquila (I.D. only)
- R-4 Telephone calls to D'Aquila from Resorts (I.D. only) by Liebman
- R-5 1982 Liebman Trip Manifest
- R-6 1983 Liebman Trip Manifest
- R-7 1984 Liebman Trip Manifest
- R-8 1985 Liebman Trip Manifest
- R-9 Resorts International Casino Hotel Junket Program - (Manifests)
- R-10 Letter from Alan Buchholz, Sands Hotel/Casino
- R-11 Letter from Joseph Blumenfeld, United States District Judge
- R-12 Letter from William P. Candelori, Ph.D.
- R-13 Letter from E. Michael Ellovich, Psy. D.
- R-14 Letter from Jon Gougel
- R-15 Letter from Stephen H. Goldberg, Esq.
- R-16 Letter from Irving Haber
- R-17 Letter from Jack M. Krulewitz, Esq.
- R-18 Letter from Coleman B. Levy, Esq.
- R-19 Letter from Marc Levine, Esq.
- R-20 Letter from Frank Romeo
- R-21 Letter from Donald E. Rowe
- R-22 Letter from Joe Raia, State of Connecticut House of Representatives
- R-23 Letter from Robert Simons

- R-24 Letter from Ben Sisti
- R-25 Letter from Dr. Harold S. Silver, Senior Rabbi

JOINT EXHIBITS

- J-1 Sworn Investigative Interview of Stephen Liebman, April 11, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-412
OAL DOCKET NO. CCC 1569-86
LICENSE NO. 60151-21
ORDER NO. 87-35-9

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
TOMVALERIE LONGSTREET, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

IT IS on this 14 day of October 1987, ORDERED that the initial decision is adopted;

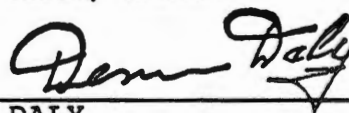
IT IS FURTHER ORDERED that the casino employee license held by Tomvalerie Longstreet is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

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
WALTER N. READ, CHAIR

BY: _____

A handwritten signature in cursive script, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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

Petitioner,

v.

**TOMVALERIE LONGSTREET,
Respondent**

INITIAL DECISION

OAL DKT. NO. CCC 1569-86

AGENCY DKT. NO. 85-412

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards,
Attorney General of New Jersey, attorney) for petitioner
TomValerie Longstreet, respondent pro se**

Record Closed: May 20, 1987

Decided: July 29, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint on October 4, 1985 with the Casino Control Commission (Commission), seeking to revoke the respondent's casino employee license because she was charged with a violation of N.J.S.A. 5:12-113, the cheating and swindling statute.

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. and N.J.S.A. 52:14B-1 et seq. There was a prehearing conference on April 18, 1986 and the matter was listed for plenary hearing May 5, 1986. At that time the parties convened in the Atlantic County Civil Courthouse. It appeared that the underlying criminal complaint had not yet been disposed of and accordingly the matter was continued on the inactive list pursuant to N.J.S.A. 5:12-

86d. The matter was rescheduled for Monday, April 20, 1987. The record was continued open for 30 days in order to give the respondent an opportunity to provide letters of recommendation. None were submitted.

STATEMENT OF THE CASE AND ISSUES RAISED

The respondent was a blackjack dealer at Bally's Park Place Casino. It is alleged that she was observed helping patrons beat the house by unfairly peeking at the cards and only dealing cards to them that would help. In addition it was alleged, she did not collect losing bets. This raised the good character issue pursuant to N.J.S.A. 5:12-90(b) and the inimicality issue pursuant to N.J.S.A. 5:12-86c(4).

DOCUMENTARY AND TESTIMONIAL EVIDENCE PRESENTED BY THE DIVISION

The respondent pled guilty to the disorderly persons offense of violating N.J.S.A. 5:12-113b on January 16, 1987 in the Municipal Court of Atlantic City. The summons to which she pled alleged that the offense occurred on August 21, 1985.

In addition, the respondent admitted to Detective D. Willshire on August 21, 1985 that she violated the statute. Her exact words were "My mother is in the hospital and I asked a floorperson if I could go home. When I went on break, the pit boss said he talked to Izzy and there was no one to take me off the game and I got to stay". She identified Izzy as the casino shift manager. She went on to state, "I asked Ron in scheduling and he said there was no one to take me off the game. I don't know what happened, I got mad and just started fucking up. Sometimes I did it on purpose and sometimes it was a mistake." As to the persons who benefited from her conduct she said "I don't know them people, I just got mad and did it".

Detective Willshire's investigation revealed, and he is entirely satisfied that, the respondent did not participate in any proceeds and was motivated solely by her anger at her supervisors for not permitting her to leave her job when her mother was hospitalized.

SURVEILLANCE TAPE

The surveillance tape by itself was not persuasive evidence to this non player observer that the respondent violated the statute. However, when viewed in the context of her voluntary plea of guilty to the offense and her confession, it tends to support the charge. Especially the charge of ..."pushing a losing [sic] bet..." which appears in the summons. The surveillance tape (P2) at 20:57:02 to 20:57:49 clearly shows the respondent failing to collect a losing bet when she had blackjack.

FINDING OF FACT

I **FIND** that the respondent violated N.J.S.A. 5:12-113 because she won or attempted to win money for another by trick or by fraud in connection with casino gaming.

INIMICALITY

Any conviction for swindling and cheating by a casino employee undermines the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations no matter whether the motive is personal gain or, as in this case, personal animus. But rehabilitation is a factor which may be considered in assessing inimicality pursuant to N.J.S.A. 5:12-86c(4).

The respondent is a blackjack dealer, a position in which the regulatory system reposes a great deal of confidence and trust.

The offense was serious because it undermined confidence in the gaming industry and the integrity of the game.

The offense occurred in these circumstances: the Casino management apparently denied a legitimate request for time off by the respondent. Her reaction, however, in committing this offense was out of all proportion. Had the stakes been higher it would have been criminal.

The offense occurred on August 21, 1985.

The respondent was 20 years old when the offense was committed.

This offense was an isolated incident.

There is no evidence that any social condition contributed to this offense.

The respondent is a college student of average interests and abilities. She has failed to provide any letters of recommendation from supervisors despite being given an opportunity to do so. In addition, as will appear hereafter, she has not established by clear and convincing evidence that she has the requisite good character, honesty and integrity for casino employee licensure.

Therefore I CONCLUDE that the respondent's continued licensure would be inimical to the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4).

GOOD CHARACTER, HONESTY AND INTEGRITY

From the circumstances of this offense alone one cannot conclude that it adversely affects the respondent's good character, honesty and integrity.

It was an isolated act. The casino's policy failed to accommodate a legitimate request made by the respondent.

Nevertheless, the respondent refuses to take responsibility for what she has done. She blames her guilty plea on incompetent counsel. She came just short of describing Willshire as a liar. I found him to be a credible fact witness and an honest man despite the fact that he was unable to convince me of his reasons for concluding that the respondent was "peeking at cards" on the surveillance tape.

In addition, it appears from her own testimony and from her demeanor, that she knew she was under a temporary ORDER of the Commission precluding her from casino employment pending a final decision in this matter. Nevertheless, she was employed at a casino as a change person by the time of this hearing. She became quite angry and hostile to the Deputy when he pointed this out to her and she stalked out of the hearing room. I attribute her failure to provide the requested letters of recommendation to her anger at the regulatory scheme and her inability to comply with it.

I therefore **FIND** that she does not have the requisite good character, honesty and integrity for casino employee licensure.

I **ORDER** that the license 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 29, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Aug. 4, 1987
DATE

Receipt Acknowledged:

Victor Lopez
CASINO CONTROL COMMISSION

AUG 5 1987
DATE

Mailed to Parties:

Ronald J. Park
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

**Detective Daryl Willshire
Tom Valerie Longstreet**

For the Respondent:

Tom Valerie Longstreet

EXHIBITS

For the Petitioner:

**P-1 Complaint
P-2 Videotape EV 85-346**

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-69
OAL DOCKET NO. CCC 6329-86
LICENSE NO. 29331-21
ORDER NO. 87-32-12

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

Complainant, : ORDER

v. :

HAL LUBARSKY, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and an initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 19, 1987,

IT IS on this 4th day of September 1987, ORDERED that the initial decision is rejected for the following reason:

Upon review of the videotape admitted into evidence (P1), the Commission finds that the assistance lent by the respondent to his mother during the course of a blackjack game, and his subsequent actions at a roulette table, violated N.J.S.A. 5:12-100(n).

ORDER NO. 87-32-12

IT IS FURTHER ORDERED that Hal Lubarsky pay a civil penalty in the amount of \$300, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Hal Lubarsky's casino employee license is suspended for five working days to be effective as follows: September 4, 8, 9, 10, and 11, 1987; and

IT IS FURTHER ORDERED that during this period of suspension Hal Lubarsky shall not be entitled to receive any form of compensation or remuneration from any casino licensee.

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 6329-86

AGENCY DKT. NO. 87-89

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

HAL LUBARSKY,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Hal Lubarsky, respondent, pro se

Record Closed: December 9, 1986

Decided: July 16, 1987

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 August 27, 1986, seeking sanctions against the respondent's casino employee license. The issue to be determined in this matter is whether the respondent gambled in a casino while licensed and while employed in another casino, contrary to section 100n of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

On September 10, 1986, the Casino Control Commission received the respondent's request for a hearing concerning the Division's complaint. On September 25, 1986, 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 October 24, 1986. The hearing in this matter was conducted by the undersigned on December 9, 1986, and the record closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The respondent is a resident of Brigantine, New Jersey, and he holds casino employee license No. 29331-21, issued by the Casino Control Commission on July 8, 1981. At all times relevant to this proceeding, the respondent has been employed as a dealer by the Trump's Castle Hotel and Casino in Atlantic City, New Jersey.

On the afternoon of July 13, 1986, the respondent met his mother at the Trump Plaza Casino where she was a regular customer under the name of Bernice Gordon. Ms. Gordon received complimentary guest room accommodations and other complimentary services from the Trump Plaza. The respondent and his mother proceeded to a blackjack table in pit 8.

Jennifer Sylvia was pit boss for pit 8 on that day. She testified at the hearing that she observed the respondent and his mother. She was informed by a floor person that the respondent was overheard to say he was a dealer at Trump's Castle. According to Ms. Sylvia, she was not concerned at the time because the respondent was not playing at blackjack. After positioning herself near the table where the respondent was sitting with his mother, Ms. Sylvia heard the respondent state that he was good at counting cards. At that point, Ms. Sylvia called to alert the casino surveillance unit. A videotape of the respondent's subsequent actions was admitted into evidence as Exhibit P-1.

Ms. Sylvia testified that she had previously observed the videotape of the incident and that it accurately comported with her observations of what occurred. According to the witness, she observed the respondent place two bets. He took gaming chips from his mother's pile of chips and placed a wager. After the hand was dealt, he returned chips to his mother's pile. The videotape was played at the hearing and Ms. Sylvia identified those moments where the respondent reached out and placed some of his mother's chips on the table and then picked some up and put them back in his mother's pile. According to Ms. Sylvia, it is permissible for a player to alter a bet before a hand is dealt, or even withdraw it altogether. In her opinion, the respondent was so altering his mother's bet.

Ms. Sylvia estimated that the respondent and his mother remained at the blackjack table in pit 8 for approximately one-half hour. When she had alerted the surveillance unit, she had stated that she suspected the presence of a card counter and a dealer gambling. However, it was the testimony of Ms. Sylvia that it was determined that there was no card counting going on.

Testifying on his own behalf, the respondent stated that his mother is a regular customer of the Trump Plaza Hotel and Casino. On July 13, 1986, she was on her first trip to the casino following her recuperation after a heart attack and open heart surgery. A notarized letter from the respondent's mother which corroborated this situation was admitted into evidence as Exhibit R-2.

His mother's physical condition led to his involvement in the incident which is the subject of the proceeding. The respondent explained that the blackjack dealer in pit 8 was dealing too fast for his mother to keep up. According to the respondent, he complained to the dealer by stating that he was also a dealer and that even he was unable to count the cards. However, the dealer was antagonistic and instead of slowing down, she actually dealt the cards faster.

Because his mother was unable to keep up with the dealer, she asked for the respondent's assistance. According to the respondent, his mother said that he should move her chips for her when she said to, because he could do it more quickly than she could. The respondent testified with great sincerity that he made none of the wagering decisions and simply followed his mother's instructions. The only reason he became involved in the play was because his mother could not keep up.

The respondent's testimony was straightforward, candid, and entirely believable. He stated that he well knows that he is not permitted to gamble in licensed casinos in Atlantic City. He offered evidence of a 1986 trip to Nevada (Exhibit R-3) to establish that he understood that he had to go elsewhere to gamble. While emphatically denying that he had been gambling on July 13, 1986, the respondent also revealed that he suffers from retinitis pigmentosa. Consequently, dealing cards is one of the few jobs he is able to do. It is fair to infer from the respondent's testimony that he would not readily jeopardize his employment as a dealer by unlawfully gambling in a casino in New Jersey.

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

CONCLUSIONS OF LAW

By its complaint, the Division of Gaming Enforcement seeks judgment that the respondent's conduct on July 13, 1986, was in violation of section 100n of the Casino Control Act (N.J.S.A. 5:12-1 et seq), which provides:

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

I have found as fact that the respondent provided some physical assistance to his mother in pursuit of wagering in a blackjack game at the Trump Plaza Casino on July 13, 1986. The respondent's involvement was minimal. He simply followed the instructions of his mother, moving some gaming chips at her request. This was necessary in the opinion of the respondent because his mother was not able to physically keep up with the speed of the blackjack dealer. The respondent did not make any of the wagering decisions himself. He assisted his mother in the play of only a few hands of blackjack, and there is no evidence in the record to indicate that he had any personal stake in the outcome of any wager. Based upon the foregoing discussion and findings of fact, I **CONCLUDE** that the respondent has not wagered at any game in any casino in this state, within the meaning of section 100n of the Casino Control Act. Therefore, I further **CONCLUDE** that the respondent has not committed a violation of N.J.S.A. 5:12-100n.

ORDER OF DISPOSITION

Accordingly, it is ORDERED that the complaint filed by the Division of Gaming Enforcement against Hal Lubarsky 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.

DATE July 16, 1987

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE July 17, 1987

Michael S. Zappo
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE July 21, 1987

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

For the petitioner:

P-1 July 13, 1986 Videotape

For the respondent:

R-1 New Jersey State Police Operations Report

R-2 Notarized Letter, dated December 6, 1986

R-3 Airline Passenger Coupon

WITNESSES

For the petitioner:

Jennifer Sylvia

For the respondent:

Hal Lubarsky

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-76
OAL DOCKET NO. CCC 07103-86
LICENSE NO. 48092-21
ORDER NO. 87-45-15

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

Complainant, :

v. :

ORDER

BRENDA J. LUCCA, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 25, 1987,

IT IS on this *17th* day of December 1987, ORDERED that the initial decision is modified as follows:

1. To find that the preponderance of the evidence indicates that the respondent's offense of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-20a(1) took place outside of the licensed casino in which she was employed and that, although the use of drugs admittedly impaired her job performance, this impairment was not caused by intoxication during the course of the respondent's duties;

ORDER NO. 87-45-15

2. To reject the ALJ's finding that the respondent's offense of possession of CDS was inimical at the time it was committed; and
3. To reject the ALJ's recommendation that a written reprimand be issued "in order to have the respondent's employment record accurately reflect a violation of the Act." (Init. dec. at 14). The Commission has consistently found in the past that it is not this Commission's function to impose sanctions for criminal behavior but rather to determine the effect such conduct has upon the individual's qualifications for licensure. Since the Commission concurs with the ALJ's finding that the respondent is not disqualified, the respondent's criminal conduct has no regulatory effect and a letter of reprimand is not warranted.

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 7103-86

AGENCY DKT. NO. 86-76

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

Petitioner,

v.

BRENDA J. LUCCA,
Respondent.

Ellen N. Hersh, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Ernest DeStefano, Esq., for the respondent (DeMarco and DeStefano, attorneys;
Frank J. Raso, Esq., at the prehearing conference (Raso and Cappuccio))

Record Closed: September 1, 1987

Decided: October 16, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Brenda J. Lucca, respondent and the holder of casino employee license no. 48092-21, had committed criminal misconduct which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) by means of section 86g, which would establish that the respondent no longer possesses the requisite good character, honesty and integrity

required by section 90b, which incorporates section 89b(2) by reference, for which the Division seeks revocation of the respondent's license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 7, 1986. The Commission notified the respondent of the pending action and of her right to a hearing. The respondent requested a hearing. On October 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on December 10, 1986. The matter was heard on June 22, 1987, and the record closed on September 1, 1987, upon receipt of the respondent's posthearing submission.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Lucca is 25 years of age. She resides in Hammonton with her mother, father and brother. Her brother is employed as a box person at a casino in Atlantic City. The respondent is a high school graduate.

Currently, the respondent holds casino hotel employee registration no. 13963-4 and casino employee license no. 48092-21. Only her casino employee license is the subject of this proceeding.

For the past three years the respondent has been employed as a craps dealer at Trump Plaza Hotel/Casino.

On September 14, 1985, the respondent was arrested by the Hammonton Police Department and was charged with a violation of N.J.S.A. 2C:20-11, shoplifting, a disorderly persons offense (P-7 and P-8). The respondent was arrested when she left a

Jamesway Department Store with a pair of earrings valued at \$6.00 (P-8). On September 17, 1985, the respondent pled guilty to the charge in the Municipal Court of the Town of Hammonton, and was sentenced to a fine of \$100 and \$25 costs, which were paid (P-8). The respondent appeared without counsel. The circumstances underlying this incident were in dispute and will be discussed, infra.

On November 12, 1985, the respondent was arrested by the New Jersey State Police following a motor vehicle stop for speeding on the Atlantic City Expressway, and was charged with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - cocaine, N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance prescription legend drugs, and of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance - marijuana under 25 grams (P-1 through P-5). During the motor vehicle stop, the officer observed what he believed to be marijuana, arrested the respondent and, during a search discovered the remaining substances which were the subject of the charges. A laboratory analysis revealed that the respondent was in possession of 0.67 grams of cocaine (P-9). The remaining substances were not analyzed.

On January 2, 1986, the respondent was indicted by an Atlantic County grand jury for a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - cocaine (P-1 and P-6). The remaining charges were dropped.

The respondent was accepted into the Pretrial Intervention Program (PTI). Between April and May 1986, she successfully completed 40 hours of community service in the mini-lab department at Kessler Memorial Hospital in Hammonton (R-1). In addition, the respondent successfully passed three urinalysis drug screens on March 31, May 3 and June 3, 1986 (R-2). Accordingly, she was released from PTI six months early. On August 1, 1986, the indictment was dismissed.

The respondent has not pursued promotional opportunities available to her in her current employment by reason of this action.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying Ms. Lucca's involvement in the incidents of September 14, 1985 and November 12, 1985, her rehabilitation, and her reputation for good character, honesty and integrity.

The respondent testified that she had used marijuana with her boyfriend prior to the incident at the Jamesway Store. They quarreled and she left to go shopping. She selected the earrings and began to wait in a long line for a cashier. She had sufficient money with her to pay for the earrings. While she waited in line, the respondent became upset upon reflection on the quarrel and abruptly left the store without thinking about her actions. She was stopped by an undercover officer. The respondent did not chose to be represented by counsel because she knew that she was wrong and was humiliated. Although she advised her boyfriend of the incident, she was too embarrassed to tell anyone else. Further, because she had no prior criminal record, the respondent believed that her guilty plea would end the matter and that it would not affect her license.

At the time of the incident the respondent's parents had filed for a divorce. The respondent's father had a serious drinking problem, which had a negative impact upon the family.

Prior to discussing the next incident, it is important to note the respondent's background concerning drug use. The respondent testified that she first used marijuana in August 1985, which was given to her by her boyfriend. The respondent occasionally used marijuana with her boyfriend on a recreational basis. She never used marijuana at work. The respondent first used cocaine in September 1985 on her boyfriend's birthday. Prior to her arrest on November 12, 1985, the respondent used cocaine eight to ten times always on her days off from work, which was always provided by her boyfriend or a close friend. Although the respondent now believes that her boyfriend had a progressing addiction, she was unaware of that at that time.

The day preceding her arrest on November 12, 1985, the respondent had an argument with her boyfriend. She then went out for the evening with a girl friend, apparently to a bar in the Atlantic City area. The respondent and her girlfriend were somewhat intoxicated when they began to speak with an unknown male. The male gave

them a plastic bag, which they believed contained cocaine. The respondent and her girlfriend went outside and used some cocaine. Apparently, the respondent's girlfriend placed the bag containing some cocaine in the respondent's pocket book. However, they became frightened of the prospect of being arrested, so they did not return to the bar. The respondent went to her boyfriend's residence and fell asleep. She awoke at 10:20 a.m. She was scheduled to begin work at 12:00 noon, and should have left for Atlantic City at approximately 10:45 a.m. The respondent went home to clean up and left late for Atlantic City. When the respondent approached a toll plaza she looked into her glove compartment on her console for money to pay the tolls. She observed a small bag of marijuana, which had been placed there by her boyfriend. The respondent feared that the marijuana might be found when she parked in Atlantic City (she left her keys in the car), so she placed the marijuana in her purse. Shortly thereafter, the respondent was stopped for speeding. The officer observed the marijuana when she opened her pocketbook. The respondent admitted possession of the marijuana and testified that she advised the officer it belonged to her boyfriend. At that time the respondent was unaware that the cocaine was also in her pocketbook. She consented to the search because she did not believe she had anything to hide. The bottle of prescription drugs found in an aspirin bottle were muscle relaxants, which had been prescribed for the respondent as a result of injuries incurred during an automobile accident. The respondent advised the officer that the cocaine was not hers and that it had been given to her by another person. The respondent also explained the presence of the prescription drugs.

Trooper William Addis of the New Jersey State Police, described the incident of November 12, 1985, in a manner which was substantially similar to that given by the respondent. The respondent was polite and cooperative during the arrest.

The respondent also described her rehabilitation from drug use. She has not used any drugs since November 12, 1985 and would not use drugs today. Her drug use centered entirely around her relationship with her boyfriend, which has been terminated. The respondent acknowledged that her drug use had a negative impact upon her performance at work. More specifically, she was put on low minimum tables, reported late for work and often left early. The respondent perceived that her performance was deteriorating. The respondent testified that the use of the drugs gave her a false sense that doing her work was easier. Nevertheless, the respondent stated that she never used drugs in a casino. The respondent acknowledged that she did not stop using drugs sooner

because she did not believe that her use was excessive and she was lackadaisical about it. At no time did the respondent ever purchase any drugs. The respondent's arrest on November 12, 1985, and the ensuing criminal proceedings, caused her to review her prior drug use. She has broken up with her boyfriend. Also, she does not associate with her former friends. The one exception is the girlfriend who she accompanied on November 12, 1985. Nevertheless, the respondent testified that her girlfriend is now drug-free and is the mother of a young child. The respondent realized that her drug use had a substantial negative affect upon her work performance and life and desired to modify her behavior in order to be fully aware of and responsible for her actions. The respondent contacted a representative of New Routes, a drug rehabilitation center in Mt. Holly. Following a one-hour counseling session, the respondent was advised not to enroll, because she had no drug dependency. The respondent recognized that all of her drug encounters had bad endings and realized that she had placed at risk her employment, which she considers a good job. The respondent stated that prior to her drug use she was happier, but then believed that she had serious problems. The respondent believes she will not return to drug use because of her recognition of its negative effect upon her and because of the many good experiences she has had since she has stopped. Also, the respondent's work performance has improved significantly since she had not used drugs, and she has been placed back on high action tables. Her performance has earned compliments from her supervisors. She now realizes that she is better able to deal with the stresses of her employment when she is drug-free. The respondent has not committed any further criminal misconduct.

The respondent also testified that the situation at home has improved substantially, because her father no longer uses alcohol. Although the respondent confided in her mother concerning her problems, she did not tell her father because of fear of his reaction.

The respondent testified that she is now more mature, recognizes the seriousness of her misconduct, is embarrassed by her misconduct and believes that further drug use would impair her goals for the future. More specifically, the respondent wants to be married and have a family. She fears that any drug use would have a damaging effect upon any children.

Although the Division did not offer any evidence to refute the respondent's proofs, it is necessary to assess the credibility of the respondent prior to making findings of fact.

The respondent's position in this matter must be recognized. As the respondent and as a holder of a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. Nevertheless, her testimony concerning the various issues contained substantial candid admissions against interest, including conduct beyond that known to the Division, and was consistent with the documentary evidence. It was clear both during the hearing and during the review of the record that from my observations of the respondent's demeanor, the plausibility of her testimony, the consistency between her explanations of her conduct and the documentary evidence, and her acknowledged misconduct, the respondent testified truthfully. The respondent's testimony was candid, consistent, believable and persuasive in all respects. She acknowledged fully the extent of her wrongdoing and accepted full responsibility therefor. In the final analysis, her testimony was completely persuasive.

Frank J. Raso, an attorney-at-law of the State of New Jersey and attorney for the respondent concerning an automobile accident in which she was involved, testified on her behalf. The witness recounted his contact with the respondent over the past three years. Initially, he had no reason to believe that she was involved with drugs. Later, the witness was of the opinion that the respondent was predisposed to use drugs. This opinion was based upon his contacts with the respondent concerning his representation of her and subsequent communications with the respondent, wherein she admitted use of drugs. Mr. Raso is now of the opinion that the respondent is not currently using drugs. This opinion is based upon his personal observations of the respondent, her appearance, her actions, the friends with whom she associates, the embarrassment she exhibits when she discusses her prior behavior, and her acknowledgement of her past mistakes. It should be noted that Mr. Raso initially represented the respondent in this matter. However, he withdrew from representation by reason of his belief that he could better help the respondent as a witness than as her attorney.

In addition to Mr. Raso's testimony, the respondent offered several letters and affidavits on her behalf. Thelma Tomasello, director of volunteer services at Kessler Memorial Hospital, who supervised the respondent's community service under PTI, complimented the respondent's performance of her assigned duties (R-1). Vincent Walker, probation officer, and the respondent's pretrial intervention counselor, recommended dismissal of the charges upon successful completion of the pretrial intervention program (R-2). Susan Engler, a box person at the Trump Casino and the respondent's supervisor for the past two and one-half years, stated that the respondent conducts herself with a

professional attitude, works well with her fellow employees and is a responsible and trustworthy person (R-3). James Biech, a box person employed by Trump Casino, who has worked with the respondent for the past three years, stated that the respondent is one of the best crap dealers, has become one of the most diligent workers, and has an excellent reputation for honesty and sincerity (R-4). James Heisler, employed at Trump Casino and the respondent's supervisor for the past two and one-half years, stated that during the past year the respondent has performed her duties in a professional, sincere and trustworthy manner (R-5). William Shillingford, an employee of Trump Casino and the respondent's supervisor for the past two and one-half years, stated that the respondent has an excellent attitude, is a good employee, and is honest and trustworthy (R-7). Last, Harold Scriber, a New Jersey state trooper and a friend of the respondent for the past three years, stated that the respondent enjoys her employment in the casino industry and has been rehabilitated from her prior drug use (R-8).

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

1. Ms. Lucca was a credible witness and her testimony was candid, consistent with the testimony of others and the documentary evidence, and was completely persuasive.
2. The respondent's explanation of the circumstances underlying her involvement in the shoplifting incident of September 14, 1985 was believable and persuasive, and is adopted fully as a finding of fact.
3. The respondent's explanation of the circumstances which led her to use drugs was believable and persuasive, and is adopted fully as a finding of fact.
4. The respondent's explanation of the circumstances underlying her involvement in the incident of November 12, 1985 is believable and persuasive, and is adopted fully as a finding of fact.
5. The respondent ceased using illegal drugs on or about November 12, 1985.

6. There is little likelihood, if any, that the respondent will repeat her prior misconduct or drug use.
7. Close friends and employment supervisors of the respondent are of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) 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 renders continued licensure to be inimical to the policies of the Act under section 86c(4), and therefore, she cannot continue to hold a license.

(A) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that a person be disqualified from licensure because of the commission of any act 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 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 association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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, 331 (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's conduct constitutes a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance-cocaine, and also cited the respondent's conviction for a violation of N.J.S.A. 2C:20-11, shoplifting.

The evidence of the respondent's misconduct, including her admissions, establish a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - cocaine. Although this offense is not a listed disqualifier under section 86c(3), it is serious because of its drug-related nature. Further, the fact that the respondent was apparently under the influence of illegal drugs during the performance of her licensed duties in a casino, which, by her own admission, impaired her job performance, enhances the seriousness of the misconduct. Accordingly, this misconduct is inimical to the policies of the Act. The shoplifting offense contributes minimally to the inimicality of continued licensure.

However, the inimicality of the misconduct must include consideration of the circumstances underlying the incidents and the respondent's subsequent conduct, i.e., her rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301, Casino Control Commission (December 27, 1985).

Ms. Lucca holds a casino employee license and has been employed as a craps dealer for the past three years. As such, she has direct responsibilities for actual gaming activities and has substantial contact with casino patrons. Such a position is directly related to the actual as well as the perceived integrity of the casino industry in this State. The circumstances underlying both incidents involve the respondent's drug use. It was readily apparent that the respondent's then boyfriend contributed substantially to her use of drugs. Also, the respondent was 22 years of age at the time of these incidents. Although these factors do not excuse the respondent's misconduct, for which she has fully accepted responsibility, they do mitigate to a significant degree the seriousness thereof. In addition, the respondent has made substantial rehabilitative efforts. She sought professional counseling, has acknowledged fully her misconduct and accepted responsibility therefor, and has satisfied fully the terms and conditions of the PTI program. Further, she has not been involved with illegal drug activities since her arrest in November 1985. Also, the respondent has reestablished a positive employment record within the casino industry. It was well established that the respondent is a responsible, reliable and trustworthy person. The respondent has also redefined her priorities and goals, and has modified her lifestyle in order to achieve these goals. Although the respondent cannot eliminate her past record, there is nothing more she could have done to establish her rehabilitation. I am persuaded that the respondent's rehabilitative efforts reflect a sincere, positive and substantial alteration of her behavior and are sufficient to overcome her prior misconduct.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that continued licensure of the respondent at this time would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Lucca was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

Ms. Lucca's burden in this matter was enhanced because her misconduct occurred while she held a casino employee license. Nevertheless, the respondent has accepted responsibility for her misconduct and has managed to redirect her life in a positive manner. Significantly, she has eliminated the factors which contributed to her prior drug use. The respondent is now a responsible and mature adult and it appears that there is little likelihood, if any, that she will repeat her prior drug abuse. The respondent presents no risk to the public nor to the integrity of the gaming industry in this state. She has earned the privilege of continued licensure.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . .

Although the respondent's prior misconduct may not now render continued licensure to be inimical, it is clear that such misconduct, especially the drug-related events, was inimical at a time proximate to the specific incidents and before the respondent had the opportunity to rehabilitate herself and, as such, constitutes a violation of the Act. Given the respondent's rehabilitation, her misconduct was not irreparable. Also, with the exception of the charged incidents, the respondent's employment history within the casino industry is positive. Nevertheless, in order to ensure that the respondent recognizes her misconduct and that she will not repeat it in the future, and in order to enhance "the public confidence and trust in the efficacy and integrity of the

regulatory process," N.J.S.A. 5:12-1b(6), and in order to have the respondent's employment record accurately reflect a violation of the Act, the imposition of a penalty is warranted. An appropriate penalty would be a written reprimand.

I **CONCLUDE** that a written reprimand should be issued to the respondent.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against casino employee license no. 48092-21 held by Brenda J. Lucca be **GRANTED**, and that a written reprimand be issued.

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 16, 1987
DATE

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

October 16, 1987
DATE

Receipt Acknowledged:

Delores Zayas
CASINO CONTROL COMMISSION

OCT 21 1987
DATE

Mailed to Parties:

Ronald E. Parker
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Division of Gaming Enforcement - Supplementary Summary Report, January 17, 1986 (2 pages)
- P-2 New Jersey State Police - Investigation Report, November 13, 1985 (2 pages)
- P-3 New Jersey State Police - Arrest Report, November 12, 1985
- P-4 State of New Jersey v. Brenda J. Lucca, Hamilton Township Municipal Court, Atlantic County, Dkt. No. C-926-85, Complaint
- P-5 State of New Jersey v. Brenda J. Lucca, Hamilton Township Municipal Court, Atlantic County, Dkt. No. C-927-85, Complaint, November 12, 1985
- P-6 State of New Jersey v. Brenda J. Lucca, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Dkt. No. 86-01-0020-D, Indictment, filed on January 2, 1986 (2 pages)
- P-7 Hammonton Police Department - Arrest Report, September 14, 1985
- P-8 State of New Jersey v. Brenda J. Lucca, Town of Hammonton Municipal Court, Atlantic County, Dkt. No. C-R123, September 14, 1985, and Disposition, September 17, 1985
- P-9 State of New Jersey, Department of Law and Public Safety, Division of State Police, Special and Technical Services Section - Request for Examination of Evidence, November 13, 1985; Laboratory Report, December 9, 1985 (2 pages)

- R-1 Letter from Thelma Tomasello, October 30, 1986
- R-2 Letter from Vincent Walker, with attachments (5 pages)
- R-3 Affidavit of Susan Engler, March 27, 1987 (2 pages)
- R-4 Affidavit of James Biech, March 26, 1987 (2 pages)
- R-5 Affidavit of James Heisler, March 25, 1987 (2 pages)
- R-6 Affidavit of Brenda J. Lucca, March 30, 1987 (4 pages)
- R-7 Affidavit of William Shillingford, March 26, 1987 (2 pages)
- R-8 Affidavit of Harold Scriber, August 24, 1987 (3 pages)

WITNESS LIST

For the petitioner:

William Addis

For the respondent:

Brenda J. Lucca

Frank J. Raso

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-EA-106; 87-EA-106(a)
OAL DOCKET NO. CCC 267-87
APPLICATION NOS. 48018-21; 1188-70
ORDER NO. 87-31-21

APPLICATION OF LOUIS MAGNANO
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)

AND

ORDER

APPLICATION OF BLUE BIRD COACH
LINES, INC., FOR A JUNKET
ENTERPRISE LICENSE

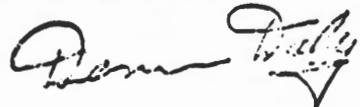
A hearing having held before the Office of
Administrative Law; and an initial decision having been
filed with the New Jersey Casino Control Commission
(Commission) by the administrative law judge (ALJ); and the
Commission having considered the entire record at its public
meeting of August 12, 1987,

IT IS on this 14th day of August 1987, ORDERED that the
initial decision is adopted; and

IT IS FURTHER ORDERED that the casino employee license
application of Louis Magnano and the junket enterprise
license application of Blue Bird Coach Lines, Inc., are

granted 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
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 267-87

AGENCY DKT. NO. 87-EA-106;

87-EA-106(a)

**LOUIS MAGNANO AND BLUE BIRD
COACH LINES, INC.,**

Petitioners,

v.

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

Respondent.

Louis Magnano, pro se, and Louis Magnano, President, on behalf of petitioner Magnano and Blue Bird Coach Lines, Inc., appearing pursuant to N.J.A.C. 1:1-3.12(a)5

Anthony D'Elia, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: June 19, 1987

Decided: July 14, 1987

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

Petitioners Louis Magnano and Blue Bird Coach Lines, Inc., seek licensure as a junket representative and junket enterprise respectively. Mr. Magnano is the president of Blue Bird Coach Lines, Inc., which is a close corporation. On October 8, 1986, the Division of Gaming Enforcement ("Division") filed a letter with the Casino Control Commission in which it set forth information concerning the applicants as well as additional applicants Joseph Keller and David John, each of whom had applied to be a

junket representative. The letter noted the facts and circumstances concerning a matter in which Blue Bird Coach Lines, Inc. had been involved in a questionable incident involving several buses which had been sent to Canada for use by a Canadian subsidiary of Blue Bird and questioned whether this incident, and Mr. Magnano's actions in connection therewith, might require denial of the applications for licensure. The Division specifically objected to Mr. Magnano's individual application based on his alleged failure to respond appropriately to the actions of one Stephen Sellberg, an employee of Blue Bird Coach Lines, Inc., who had been involved in tampering with government documents in connection with the registration of the buses. The Division expressed no objection to Mr. Keller and Mr. John's individual license applications.¹

The applicants Magnano and Blue Bird requested a hearing on the proposed denial and the matter was forwarded 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 Edgar R. Holmes, A.L.J. on March 5, 1987 and a prehearing order was issued on March 9. A hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on June 19, 1987. The record closed on that date.

ISSUES

The primary issues for consideration in this proceeding are whether the applicants Blue Bird and Magnano possess the requisite good character, honesty and integrity required for casino licensure. In addition, the prehearing order notes questions concerning the relationship of Mr. Sellberg to the petitioners and whether it is necessary for him to qualify pursuant to the qualification standards for a casino employee. As will be noted below, at the hearing testimony from Mr. Magnano identified the specific position of Mr. Sellberg with respect to the proposed junket operation and the deputy attorney general, on behalf of the Division, indicated that based upon the facts as he understood them from the hearing, it did not appear that Mr. Sellberg need qualify.

¹The Division's letter, amended by agreement of the parties, has been admitted as a stipulation of the factual data set forth therein.

EVIDENCE

Louis Magnano testified in support of his and the corporation's applications. Mr. Magnano is 55 years old and has been president of Blue Bird Coach Lines, Inc. for approximately 25 years. His father Joseph founded the company before 1920 as a taxicab business. In the early 1940's, the company began to operate a bus service. When local bus services began to falter in the early 50's, Louis, Jr., who had come out of the service and was working for the company, began to get into the charter bus business, buying the company's first charter in 1958. Thereafter, the company continued to expand and is now one of the ten largest charter tour services in the United States, operating throughout western New York, southwestern Pennsylvania, and parts of Ohio, with tours running all over the United States. It also runs limited regular route service and is involved in real estate development in the Olean area. The company presently has over 500 employees. It has offices located in Syracuse, Rochester, Buffalo, Cleveland, Erie, Jamestown, New York, and Grove City, Pennsylvania.

In 1980, the company's attorney advised Mr. Magnano of a foundering bus company in Niagara Falls, Ontario, Canada. Blue Bird became involved in managing that company and eventually bought it. It is out of this operation that the problem involving the tampering with bus records arose.

According to Mr. Magnano, Mr. Sellberg was employed by his company about six years ago. Sellberg had worked for Trailways in Oregon as a controller and then worked with a computer company which was involved in bus company operations. Sellberg had occasion to deal with Blue Bird through this computer company and eventually Magnano hired him as a controller for Blue Bird. Mr. Sellberg is a well-respected businessman, heavily involved in local organizations, church work, and known in the community for his integrity and honesty. However, it came to Magnano's attention through a friend in the bus sales business that Canadian Customs authorities were asking questions concerning a number of buses which had been purchased by Blue Bird from Houseman Bus Sales Company in 1983. Although the Division letter refers to ten buses as being involved, Magnano testified that there were actually only nine. These buses were 13 or 14 years old at the time of their purchase. According to Magnano, because of a quirk in Canadian law which provided that only buses of either the current year or at least 15 years old could be imported into Canada for use therein, Sellberg took it upon himself to change the dates on the registrations for the vehicles [which were titled in Pennsylvania]

to make it appear that they had been manufactured in 1969 and were thus 15 years old. The buses were transferred to Ontario Limited, the Canadian corporation taken over by Blue Bird, for use in Canada. According to Magnano certain decals on the vehicles were not removed and thus competitors, or for that matter Customs had they looked, could easily detect that the buses were not 15 years old. This led to a competitor providing information to the Canadian Customs authorities who began an investigation.

According to Magnano, Sellberg was solely responsible for making the change in documentation to effectuate the importation of the buses into Canada. Magnano was unaware of what occurred, did not authorize it, and would not have done so had he been aware of what Sellberg intended to do. When he found out what Sellberg did he spoke to him about it, reprimanded him for what he did, and immediately removed the buses from Canada and corrected the registrations to show their actual year of manufacture. Sellberg was permitted to remain with the company, becoming more involved in the accounting end and no longer serving as controller. However, Magnano candidly admitted that with respect to company operations, including the real estate development end of the business, Sellberg is his right-hand man and has substantial responsibilities. Despite this, Magnano maintained that Sellberg will have no involvement whatsoever with the proposed junket operations of Blue Bird, which will be managed and operated solely by Magnano, Keller and John. Sellberg will have no contact or authority with respect to any of the accounts into which money from the Blue Bird junket operations will be placed. He never had a right to sign checks or authorize payment of monies and will certainly have no such rights with respect to any accounts involving junket money.

Magnano described Sellberg as approximately 36 to 37 years old, very intelligent, and with good business judgment. He has a family with young children. His current responsibilities have little to do with Blue Bird Coach Lines, Inc.

When Mr. Magnano spoke to Sellberg about his wrongdoing in connection with the buses, Sellberg was apologetic and sorry for what he did. Magnano impressed upon him the necessity of protecting the good reputation of the company. Despite Sellberg's wrongdoing, Magnano could not see terminating him as he felt that he was entitled to a second chance. He has had no further problems with any of Mr. Sellberg's business operations. Sellberg is no longer responsible for filings with administrative bodies, a function now performed by Mr. Keller.

According to Magnano, no criminal or civil charges have ever been brought against his company as a result of Mr. Sellberg's misdeed. Magnano is unaware of any pending investigations with respect to this or any other matter in Canada. The deputy attorney general represented that in his contacts with Canadian authorities he was advised that Customs information is confidential and he was therefore unable to learn of anything with respect to any such matters which might be under investigation or pending.

Mr. Magnano is a member of the Board of Directors of the Olean Chamber of Commerce and is a member of the Board of the American Bus Association, and vice president of the New York State Bus Association. He is also chairman of the annual Italian festival and a director of the Exchange Bank. He served for six years on the Olean City Council and has been a member of the Urban Renewal Agency and the Parking Authority. He is also a member of the Knights of Columbus, the Elks and the Moose.

DISCUSSION

The Division of Gaming Enforcement questions whether Mr. Sellberg's actions in connection with the buses reflect negatively against the qualifications of Blue Bird Coach Lines, Inc. for licensure as a junket enterprise and whether Mr. Magnano's actions in response to Sellberg's misdeed indicate that he lacks the qualifications for licensure as a junket representative because his response to Sellberg seems perhaps to have been less than severe or to have imposed too light a penalty on Sellberg for his wrongdoing. Because Sellberg still retains a valued position in Magnano's operations, the Division contends that Magnano's good character, honesty and integrity is in question.

Having considered the testimony of Mr. Magnano and the facts as set forth both in the testimony and in the stipulated statement of facts contained in the October 8, 1986 letter, as amended, I do not find any indication that the actions of Mr. Magnano himself with respect to the bus transfer and the tampering of records indicates in the slightest that Mr. Magnano knew or condoned Sellberg's actions before they occurred. I **FIND** that Mr. Sellberg acted solely on his own, apparently out of a desire to enhance the position of the company in connection with competition in Canada and because Sellberg apparently did not appreciate, although he certainly should have, the seriousness of changing the records to reflect that the buses were two years older than they in fact were. While, as Mr. Magnano pointed out, making the buses appear to be two years older might have diminished their value in terms of their purported age, by "aging them" the

buses became eligible for importation into Canada which permitted Blue Bird's affiliate to become competitive, whereas without the buses perhaps it would not have been able to operate. Certainly changing the age of these buses gave Blue Bird's affiliate, and thus Blue Bird, a potential economic advantage which might well outweigh the "disadvantage" of appearing to have buses that were 15 rather than 13 or 14 years old. Thus while Sellberg's actions, which were obviously intended to benefit his company, might be understandable on the strictly economic level, they were clearly illegal and should not have occurred.

With respect to the question of whether Mr. Magnano dealt improperly with Sellberg in such a manner as to indicate that perhaps there is something wrong with Magnano's attitude toward regulatory violations and thus some impairment of his good character, honesty and integrity, I cannot agree with the Division's interpretation of the situation. While clearly Mr. Sellberg could have been fired for his improprieties, and while such a decision on Magnano's part could not have been criticized, the fact that he felt that Sellberg had made a mistake but was basically a capable, honest individual who, with proper guidance, could learn from his mistakes and be a valuable asset to the company, does not indicate that Magnano was either too soft on Sellberg or that the continued employment of Sellberg in some way implies a defect in Magnano's character. On the contrary, it appears that upon learning of the incident Magnano took steps to correct the documentation, reprimanded his employee, changed his duties (albeit continuing to employ Sellberg in a very responsible position) and warned Sellberg of the seriousness of what he had done and the threat which it posed to the reputation of the company. While no one can be certain of the future, it would appear that Magnano took reasonable steps to assure that Sellberg will never again do anything improper in connection with the operations of the business. The fact that he chose to retain this individual in the employ of the company does not mean that either the company or Magnano is tainted to the point where their licensure would be inappropriate because it would pose any threat to the casino industry.

Based on the testimony concerning the Sellberg incident, and having given due and careful consideration to the testimony concerning the nature of the business, including the historical data presented by Mr. Magnano with respect to the growth of the company over the years, and having considered Mr. Magnano's testimony, including his demeanor and the sincerity and forthrightness of his testimony, I **CONCLUDE** that both Blue Bird Coach Lines, Inc. and Louis Magnano possess good character, honesty and

integrity which has been proven in each case by clear and convincing evidence as required by the Act. Nothing in the evidence presents any significant adverse implications which should prevent licensure of this operation or of its representative. For the reasons expressed, I **CONCLUDE** that Blue Bird Coach Lines, Inc. should be licensed as a junket enterprise and that Louis Magnano should be licensed as a casino junket representative. 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 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

DATE

DATE

ml

JEFF S. MASIN, ALJ

Receipt Acknowledged:

CASINO CONTROL COMMISSION

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioners:

- P-1 Letter of April 20, 1987 from Marine Midland Bank, NA
- P-2 Letter of April 17, 1987 from Norstar Bank
- P-3 Letter of April 17, 1987 from The Exchange National Bank
- P-4 Photocopy of newspaper article, Re: Joe Magnano
- P-5 Newspaper article, "Blue Bird Founder Inducted into ABA Hall of Honor"
- P-6 Newspaper article from Olean Times Herald, October 24, 1985
- P-7 Editorial, "West State's New Plaza" from Olean Time Herald, March 27, 1986
- P-8 Olean Times Herald article, "Blue Bird Square: It's a Go'," March 5, 1987
- P-9 Olean Times Herald editorial, April 2, 1987, "Green Light for Blue Bird Square"
- P-10 Newspaper article from Olean Times Herald, "Groundbreaking Marks Start of Blue Bird Square Construction"
- P-11 Newspaper article, " 'Confidence' and 'Commitment' "
- P-12 Magazine, "Blue Bird yesterday, today, tommorrow . . . - Special Issue Published By Motorcoach Age," October 1983
- P-13 Business First - The Business Newspaper of Buffalo and western New York, week of October 6, 1986 (article entitled "Blue Bird delivers 4 million travelers a year," pages 19-21)

Joint Exhibits:

- J-1 Amended Letter of July 7, 1987, containing Stipulations of Fact

APPLICATION OF ANDREW A. MARCUCCI
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 2, 1987,

IT IS on this 2nd day of October 1987 ORDERED that the initial decision is modified to include a reference to N.J.S.A. 5:12-90(b) in connection with the ALJ's finding that the respondent lacked the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) since a casino employee license is involved.

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

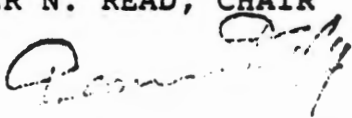
IT IS FURTHER ORDERED that Andrew A. Marcucci is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the

ORDER NO. 87-33-3

Casino Control Act except pursuant to the provisions of
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. NO. CCC 1168-87

AGENCY DKT. NO. 87-EA-92

ANDREW A. MARCUCCI,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT.

Andrew A. Marcucci, petitioner, pro se

**Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: July 7, 1987

Decided: July 29, 1987

BEFORE JEFF S. MASIN, ALJ:

Andrew A. Marcucci filed an application with the Casino Control Commission ("Commission") seeking licensure as a casino employee with a position designation as casino teller. On October 28, 1986, the Division of Gaming Enforcement ("Division") filed a letter with the Commission objecting to Marcucci's licensure. Mr. Marcucci requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held on May 1, 1987 and a prehearing order was issued on May 6, 1987 by Honorable Jeff S. Masin, ALJ. A hearing was held before Judge Masin at the Office of Administrative Law in the Atlantic County Court House on July 7, 1987. The record closed on that date.

ISSUES

The prehearing order set forth the issues for consideration at the hearing..
These were:

- A. Has the applicant engaged in conduct which, while not prosecuted, constituted theft by deception, N.J.S.A. 2C:20-4, which offense would constitute a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1)? The Division will proceed in an attempt to prove the commission of the disqualifying offense pursuant to N.J.S.A. 5:12-86g.
- B. Does the applicant have the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2)?
- C. If the applicant did commit a disqualifying offense, has he successfully rehabilitated himself under the criteria established by N.J.S.A. 5:12-90h?

EVIDENCE

The Division contends that Mr. Marcucci received unemployment benefits to which he was not entitled because he was working at the time. It is this incident which the Division views as a disqualifying event because the receipt of such benefits while the recipient was working would, in the Division's view, be equivalent to a theft by deception in that the amount involved was over \$500. Rita Kazmierski, an agent for the Division, testified that she did the investigation of Mr. Marcucci's background for his license application and determined through an interview with him, as well as an examination of records from the Division of Unemployment, that Marcucci did obtain over \$500 in unemployment benefits while he was working in 1984. An examination of the records introduced at the hearing established that the Department of Labor, Division of Unemployment & Disability Insurance, filed an INITIAL DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT OR DISABILITY BENEFITS AND IMPOSITION OF

PENALTY AND DISQUALIFICATION BECAUSE OF WILLFUL MISREPRESENTATION against Mr. Marcucci on July 22, 1985. In this document, P-2 in Evidence, the Division charged that Marcucci was employed at RSL Woodworking Products Company at a time when he received unemployment benefits, specifically for the weeks ending May 14, 21 and 28 and June 4, 1984 during which time he received \$158 for each of the four weeks, totaling \$632, none of which he was entitled to receive because of his earnings. For the weeks in question, Marcucci received pay of \$138, \$243, \$221 and \$118 respectively.. When a penalty was included with the overpayments, the total amount of money owed to the Division was \$790. A Certificate of Debt, in the amount of \$790, was docketed in the records of the Superior Court, P-1 in Evidence, on or about August 23, 1985.

Mr. Marcucci was interviewed by the Division representatives and signed a statement on November 28, 1984 in which he said that he started working at RSL sometime in May 1984. Records from the company confirmed the employment and wages paid and a Claimant Ledger from the Department of Labor confirmed the payment of unemployment benefits for the weeks in question. Finally, a statement from the Division as of May 18, 1987 indicated that the total sum due the agency at that time was \$924.30, consisting of the principle of \$632, a penalty of \$158 and interest of \$134.30. No payment had been made against the debt at that time.

Mr. Marcucci testified that he did in fact receive unemployment benefits for at least two weeks during which time he was working for RSL. Although he could not be certain about the four weeks claimed by the Division, he did not contest that he knowingly received unemployment benefits while working for the first two weeks of his employment. He also conceded that he knew that he was not permitted to receive such benefits. He explained his action by indicating that at the time "the money would come in handy" and "he just didn't care" because he was in some debt. He was aware of his obligation to the Division of Unemployment. Although he did not remember having received a notice to come to a hearing with the Division, he might have received the notice and merely put it aside without reading it, a habit which he frequently follows with mail which does not appear to be something which he cares to know about.

With respect to his failure to make any repayment of his obligation, Marcucci said at first that he wasn't making much money and could not make any payments. He then indicated that although he has been working two jobs on a more or less full time basis for the past several years and his wife has been steadily employed on a full time basis he

did not make any payments because the extra employment gave him some extra money and he "got spoiled" and "wanted to live a better life" and thus said "to heck with the obligations".

Mr. Marcucci is 43 years old and has been married for 23 years. He has two children and has lived in Cardiff for twelve years. He has a ninth grade education. He is currently employed on a full time basis with the Atlantic City Medical Center as an environmental science worker (housekeeping) earning \$6.11 per hour. He also has recently become employed with 7-11 working some evenings and weekends. His employment history shows that he has been generally steadily employed, often working at least two jobs.

Finally, Mr. Marcucci admitted that when he went to the unemployment office just following his employment with RSL, he was required to fill out a form which requested the names of those places where he had gone seeking employment. He listed RSL, but with respect to the question which asked whether he had been working or earned any money, he put down that he had not.

DISCUSSION

The record in this case establishes that Mr. Marcucci admittedly obtained unemployment benefits during a time when he was employed and further establishes that he did so knowing that he was receiving monies which he was not entitled to and should not have been receiving. While Marcucci did not agree that this activity occurred over a four week period, the records so reflect and there is nothing about them that indicates that they were incorrect. He received benefits from unemployment paid for the weeks ending May 14, 21 and 28 and June 4, 1984 and for each of those weeks he was paid by RSL, which first employed him for a payroll period which ended May 11 and continued to pay him on a weekly basis throughout the four weeks during which he continued to receive unemployment. I **FIND** that there is no question that Mr. Marcucci well knew that he was engaging in illegal activity when he obtained unemployment benefits for those four weeks. Further, the conduct in which he engaged, which involved the receipt of over \$600 in benefits obtained fraudently, clearly constituted theft by deception in that he advised the unemployment authorities that he was not employed and not receiving wages during that period. I **FIND** that Mr. Marcucci's conduct, had it been prosecuted, would have permitted a conviction for theft by deception, N.J.S.A. 2C:20-4.

In light of the finding of a disqualifying criminal activity, it is necessary to consider whether Mr. Marcucci has rehabilitated himself. On the basis of the record before me, I cannot make such a finding. This is so because although admittedly the petitioner has maintained a stable home life since the incident and has managed to keep himself employed, working industriously at several jobs usually at the same time, his attitude and cavalier treatment with respect to his obligations to the State of New Jersey demonstrate that Marcucci is far more concerned with his material well being than with repaying the debt which he incurred as a result of his deceitful and fraudulent receipt of public funds. While it is certainly understandable that someone working as hard as this petitioner for the relatively low sums involved would be quite anxious to hold on to whatever he could so that he could improve his family's life style, one cannot overlook that given the nature of the manner in which he obtained monies to which he was not entitled and the debt flowing therefrom, Mr. Marcucci should have a far greater appreciation of the need for repaying his obligations. These moneys are not merely a debt accumulated in the course of some purchase of some item for he and his family but are in fact obligations arising from conduct for which he should be somewhat ashamed. Apparently, even when he had the potential for making small payments to the state on this debt, Marcucci chose to ignore his obligations and responsibilities and say, in his own words, "to heck with the obligations." Given this attitude and conduct, it is impossible to conclude that Mr. Marcucci has rehabilitated himself from the adverse effects of his disqualifying conduct.

In respect to the issue of good character, honesty and integrity, which is a prerequisite which must be established by a casino license applicant by clear and convincing evidence, I cannot find that Mr. Marcucci has met his burden. His attitude toward his obligations and responsibilities, coupled with the nature of his conduct which created those responsibilities and which occurred only a few years ago, demonstrates a lack of integrity and character which is clear and convincing in itself. Although one can understand that individuals occasionally get involved in improper receipt of public monies in circumstances such as unemployment, one finds it far more difficult to understand the kind of contemptuous neglect of obligations which Marcucci displayed. Under the circumstances, I FIND that he does not have the necessary good character, honesty and integrity.

For the reasons stated, I FIND that Mr. Marcucci's application for licensure as a casino employee should 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 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

July 29, 1987

DATE

July 31, 1987

DATE

AUG 3 1987

JEFF MASIN, ALJ

Receipt Acknowledged:

CASINO CONTROL COMMISSION

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

ij

EVIDENCE LIST:

ON BEHALF OF RESPONDENT:

- P-1 Certificate of Debt
- P-2 DETERMINATION AND DEMAND FOR A REFUND OF UNEMPLOYMENT OR
DISABILITY BENEFITS AND IMPOSITION OF PENALTY AND
DISQUALIFICATION BECAUSE OF WILLFUL MISREPRESENTATION
- P-6 New Jersey Department of Labor, Division of UI-DI Claimant Ledger
- P-7 Notice of Hearing, dated April 8, 1985
- P-8 Letter of May 18, 1987 from Joan Rowland, Supervisor Crossmatch Unit

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-430
OAL DOCKET NO. CCC 4064-86
ORDER NO. 87-35-12

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,

Complainant,

v.

ORDER

MARINA ASSOCIATES, T/A HARRAH'S
MARINA HOTEL/CASINO,

Respondent.

An initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission) incorporating the parties' stipulation of facts; and exceptions to the initial decision having been filed by both parties; and the Commission having considered the entire record including the parties' oral presentations at the public meeting of September 9, 1987, and having resolved at the public meeting of September 16, 1987, to adopt the initial decision; and

IT IS ON THIS 28th day of December 1987 ORDERED that Marina Associates, t/a Harrah's Marina Hotel/Casino, pay a civil penalty of \$30,000, for engaging in deceptive and misleading advertising pursuant to N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.2(e) now (c), and, as incorporated by

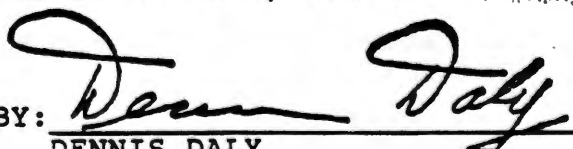
ORDER NO. 87-35-12

reference, N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-9.2(a)(9),
for the reasons stated in the initial decision which is
incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4064-86

AGENCY DKT. NO. 84-430

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

MARINA ASSOCIATES,

Respondent.

Katherine A. Smith, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Nicholas Casiello, Jr., Esq., for respondent (Horn, Kaplan, Goldberg, Gorny and Daniels, attorneys)

Record Closed: November 12, 1986

Decided: July 24, 1987

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 December 21, 1984, alleging that the respondent casino licensee has engaged in a deceptive and misleading advertising campaign, in violation of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e), N.J.A.C. 56:8-2, and N.J.A.C. 13:45A-9.2(a)(9). The issues are as follows: SA

1. Has the respondent engaged in a deceptive and misleading advertising campaign, within the meaning of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e), N.J.A.C. 56:8-2 and N.J.A.C. 13:45A-9.2(a)(9), and if so, what monetary penalty would be appropriate, within the meaning of sections 129 and 130 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Can the respondent have violated N.J.S.A. 5:12-70o, which directs the Casino Control Commission to include within its regulations specific provisions governing the advertisement of casino licensees.
3. Do the charges in the Division's complaint create a chilling effect upon the dissemination of truthful and informative advertising representations, in violation of the respondent's rights under the First Amendment to the United States Constitution.

PROCEDURAL HISTORY

The Division's complaint was filed with the Casino Control Commission on December 21, 1984. On or about January 18, 1985, the respondent filed with the Commission its answer and request for a hearing. An amended answer was filed with the Commission on April 16, 1985.

The parties participated in a prehearing conference on April 18, 1985, in the office of the Casino Control Commission, Lawrenceville, New Jersey. Commissioner Joel R. Jacobson presided and he entered the first prehearing conference order on June 27, 1985. On May 13, 1986, the parties agreed to a joint stipulation of facts, which was filed with the Casino Control Commission on June 10, 1986. On June 20, 1986, 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 the undersigned on August 13, 1986. At that time the issues to be resolved were identified and the matter was scheduled to be heard on October 16, 1986.

On October 15, 1986, the parties participated in a telephone conference with the undersigned and it was determined at that time that the matter would be decided on the basis of a joint stipulation of facts and additional documentary evidence which would be admitted by stipulation. The parties were provided an opportunity to submit written legal arguments and replies. The final submission of the parties was received on November 12, 1986, and the record closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

FINDINGS OF FACT

The essential facts in this case are undisputed. Many of these facts were established by stipulation, jointly submitted by the parties, as follows:

1. In September of 1984, Marina commenced the "Best Slots in the World" advertising campaign.
2. The advertisement in conjunction with this campaign depicted nine coin stacks, one for each operating casino, exclusive of Trump Plaza, and set forth the claim that Marina had the best slots in town based upon a comparison of the money paid as slot win by the eight other casino hotels. Under each coin stack the figures for the slot payouts for each casino hotel are set forth in descending order.
3. In order to publicize this message Marina placed the aforementioned advertisement in the following media on the following dates:
 - a. On a billboard on Route 30 in Absecon, N.J. from September 1 to October 31, 1984. (See Exhibit A)
 - b. Post cards were mailed to 25,000 of Marina's customers. (See Exhibit B)
 - c. A full page advertisement appeared in Atlantic City Magazine in September and October of 1984. (See Exhibit C)
 - d. A full page advertisement also appeared in Philadelphia Magazine in September and October of 1984. (See Exhibit C)
 - e. An advertisement appeared in the Whoot Newspaper on October 4, 11 and 18, of 1984. (See Exhibit D)
 - f. An advertisement was also placed in the Gambling Times for the month of October 1984. (See Exhibit E)
4. The slot machines at the Marina paid out more during the first six months of 1984 than the slot machines at the eight other casinos according to information derived from the Casino Revenues and Estimated Tax on Gross Revenues Forms filed by each casino.
5. The aforementioned advertisements are no longer disseminated by Marina.

The billboard on Route 30 in Absecon carried the following message (Exhibit A):

Best Slots in Town. Harrah's Marina is Number One in Slot Payouts. First Six Months of 1984.

The post cards which were mailed to the 25,000 of Marina's customers (Exhibit B) showed the aforementioned nine coin stacks on the front of the card with the statement "Best Slots in the World." The back of the post card carried the following message:

Dear Harrah's Player:

In the first six months of 1984, the slot machines at Harrah's Marina paid out more than \$435,000,000.

No matter what you hear, the fact is that our slot machines paid out more than any other Atlantic City casino, for that matter more than any casino in the world.

We'd like to thank you for your patronage. Harrah's has the friendliest slots and the nicest customers, too.

The magazine and newspaper advertisements identified above carried similar messages. Each advertisement mentioned that the Harrah's Marina paid out more than \$435,000,000 from its slot machines in the first six months of 1984 and that this was more than was paid out by any other Atlantic City casino during the same period. Each of the advertisements also showed nine coin stacks, one for each of the operating casinos. The Casino Revenues and Estimated Tax on Gross Revenues Forms filed by each casino for the first six months of 1984 were admitted into evidence as Exhibits Da-1 through Da-9. These forms reveal that the substantive claim of the respondent that its slot machines paid out more than \$435,000,000 during the first six months of 1984 is true. These forms also reveal the truth of the respondent's claim that its slot machines paid out more during the same time period than was paid out by the slot machines of any of the other eight casinos.

The Casino Revenues Forms reveal further information about slot machines which is not found in the respondent's advertisements. The Atlantic City casinos do not each have the same number of slot machines. During the first six months of 1984, the respondent had more slot machines in operation on its casino floor than did the Sands, the

Claridge, Atlantis, and Golden Nugget. The respondent also had more slot machines in operation during March, April and May of 1984 then did Caesar's Boardwalk Regency (Exhibits Da-1 through Da-9).

As noted previously, the advertisements used in conjunction with the respondent's "Best Slots in the World" advertising campaign depicted nine coin stacks, one for each of the Atlantic City casinos operating in January through June 1984. In essence, the coin stacks are a vertical bar graph, with the six month slot machine payout figure for each casino stated on its respective coin stack. The stacks increase in size from left to right, with the tallest stack on the far right representing the six month slot machine payout for the respondent.

Significantly, the coin stacks displayed in the respondent's advertisements are not scaled in proportion to the slot machine payout figures stated on each stack. For example, the slot machines at the Claridge Casino paid out approximately 50% of the amount paid from the respondent's slot machines during the first six months of 1984. However, the post card advertisement mailed by the respondent (Exhibit B) depicts a coin stack for Claridge which is less than one-half inch tall while the coin stack for Harrah's Marina is well over 3 and one-half inches tall. In addition, there are only five coins visible in the Claridge coin stack while there are over 70 coins visible in the coin stack for Harrah's Marina. Similarly, the advertisement in the Gambling Times Magazine (Exhibit E) shows a coin stack for Harrah's Marina which has ten times as many coins visible as the stack for the Claridge casino, even though the slot machines at Harrah's Marina paid out only approximately twice the amount paid out by the Claridge slot machines.

The respondent has submitted a variety of charts and graphs, taken from newspapers and periodicals, which have been admitted into evidence by stipulation as Exhibits R-2 through R-5. For the most part, these graphs involve large numbers and none of them utilizes zero as a starting point for measurement. However, they differ substantially from the graphic format utilized by the respondent in its advertising campaign. Exhibits R-2 through R-5 are graphs pertaining to economic and financial information. They are not graphs pertaining to commercial advertising of a product or service. In addition, unlike the coin stacks depicted by the respondent's advertisements, the financial and economic information set forth in the submitted graphs is measured with specific incremental gradations, permitting proportional comparisons of data.

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

DISCUSSION AND CONCLUSIONS OF LAW

The first issue to be determined in this matter is whether the respondent engaged in a deceptive and misleading advertising campaign. Pursuant to section 70o of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), the Casino Control Commission shall include within its regulations provisions:

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

Pursuant to the statutory mandate, the Commission adopted N.J.A.C. 19:51-1.2(c), which provides:

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

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

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

Adopted pursuant to the Consumer Fraud Act, N.J.A.C. 13:45A-9.2(a), as amended, provides in part:

Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

....

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

....

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

....

The purpose of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., was to prevent deception, fraud or falsity, whether by acts of commission or omission, in connection with the sale and advertisement of merchandise and real estate. Fenwick v. Kay American Jeep, Inc., 72 N.J. 372, 376 (1977). In construing the act, the New Jersey Supreme Court stated:

The capacity to mislead is the prime ingredient of deception or an unconscionable commercial practice. Intent is not an essential element. Since consumer protection is the ultimate goal, the standards of conduct established by the act and implementing regulations must be met regardless of intent except when the act specifically provides otherwise. Kay, at 378.

In determining whether advertisements violated section 70o of the Casino Control Act and regulations adopted thereunder, the Casino Control Commission set forth the following standard in State v. Boardwalk Regency Coporation, Dkt. No. 83-70, Commission Opinion, April 24, 1985, at page 14:

... the standard to be applied is whether the advertising has the capacity to mislead or possesses the likelihood of deception. By its nature, this decision requires a determination that relies heavily on inferences and pragmatic judgment. The statute and regulatory provisions are aimed at the overall tenor of an advertisement and whether the advertisement read as a whole has the capacity or likelihood to deceive.

In the foregoing opinion, the Commission expressly noted Aronberg v. F.T.C., 132 F.2nd 165 (7th Cir. 1942), which stated at page 167:

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

In this case, the respondent's advertisements accurately stated that \$435,000,000 was paid out from its slot machines during the first six months of 1984. The advertisements also accurately stated that this was more money than was paid out by any of its competitors' slot machines during the same time period. To illustrate this information, the respondent's advertisements depicted stacks of coins representing each of the casinos, in the manner of a bar graph.

What is not presented in any manner in any of the respondent's advertisements under consideration is that during the period of January through June 1984, several of the casinos had substantially fewer slot machines than did the respondent. Some of the respondent's competitors had more slot machines. The respondent's failure to advise the public in its advertisements that the comparison of payouts from each of the casinos is not based upon the same number of slot machines in each casino is critical because this omission gives rise to the capacity to mislead. It should be noted that the capacity to mislead may be inherent in this type of advertising because a casino licensee is not permitted to advertise the number of slot machines in a casino, pursuant to section 70o of the act and N.J.A.C. 19:51-1.3(a).

There is another manner in which the respondent's advertisements have the capacity to mislead and possess the likelihood of deception. The graphic depiction of the coin stacks purports to represent a fair comparison of payouts among the competing casinos. However, the respective coin stacks obscure rather than illuminate the actual difference between the respondent's payout and the payout of each of its competitors during the first six months of 1984. The coin stacks displayed in the advertisements are not scaled in proportion to the actual slot machine payout figures stated on each stack and would have it appear to the consumer that, for example, the respondent's slot machines paid out ten times as much as was paid by the Claridge slot machines, when actually the respondent paid out only twice as much.

The respondent contends that its advertisements was designed to appeal to slot machine players. It asserts that its advertisements were not misleading because the

average slot machine player knows that the number of slot machines, the denominations of slot machines and the percentage payouts of slot machines varies from casino to casino. However, the evidence in the record does not establish what is known by the average slot machine player.

The evidence in the record does establish that the respondent's advertisements omitted material information concerning the number of slot machines at each casino. In the absence of this qualifying information, the comparison of payout figures presented in the advertisements is misleading. The advertisements are also misleading on their face because the nonproportional graphic depiction of the coin stacks distorts the actual amount of slot machine payouts which the advertisements purport to compare. Therefore, I **CONCLUDE** that the respondent has engaged in a deceptive and misleading advertising campaign, within the meaning of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(c), N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-9.2(a)5 and 9.

The respondent argues that it cannot be found to have violated N.J.S.A. 5:12-70o, since that section of the Casino Control Act only requires that the Commission promulgate regulations and does not prohibit a licensee from doing anything. According to the respondent, section 70 requires the Commission to promulgate regulations governing various procedures or activities, without establishing what the standards or procedures should be. Thus, a licensee could only violate the regulations promulgated under section 70, and could not violate section 70 itself.

The Division of Gaming Enforcement argues that the Commission has previously found that section 70o of the act had been violated by the publication of misleading and deceptive advertising. State v. Boardwalk Regency Corporation, supra. Thus, the Division argues that the respondent has been properly charged with a violation of section 70o. The Division further notes that the respondent's argument is, in effect, irrelevant because the respondent is in violation of the regulatory provisions adopted pursuant to the statute.

I agree with the Division's contentions. The respondent has violated the regulations adopted pursuant to section 70o of the act. In addition, section 70o does set forth a specific guideline concerning advertisements. Casino licensees may advertise locations, hours of operations, types of games and other amenities. They may not advertise information about odds, the number of games, or the size of the casino. Most

important for purposes of this discussion, advertisements may in no way be deceptive. Thus, I **CONCLUDE** that section 70o of the act can be and has been violated by the respondent's publication of misleading and deceptive advertising.

In its answer to the Division's complaint, the respondent stated as an affirmative defense that the charges create a chilling effect upon the dissemination of truthful and informative advertising representations in violation of the respondent's rights under the First Amendment to the United States Constitution. At the request of the respondent, the prehearing order in this matter included the issue of whether the charges in the Division's complaint create such a chilling effect. However, the post-hearing submission of the respondent presents no support for its contention. In any event, deceptive advertising is not entitled to protection under the First Amendment to the United States Constitution. The United States Supreme Court stated in Central Hudson Gas and Electric v. Public Service Commission, 447 U.S. 557, 563 (1980):

The first amendment's concern for commercial speech is based on the informational function of advertising. Consequently, there cannot be constitutional objection to the suppression of commercial messages that do not accurately inform the public . . . the government may ban forms of communication more likely to deceive the public than to inform it.

One of the clear purposes of section 70o of the Casino Control Act is that the public be protected from misleading and deceptive advertising by casino licensees. Having concluded that the respondent has engaged in a deceptive and misleading advertising campaign, I further **CONCLUDE** that the charges in the Division's complaint do not create a chilling effect upon the dissemination of truthful and informative advertising representations.

The remaining issue to be resolved is what monetary penalty would be appropriate, pursuant to sections 129 and 130 of the Casino Control Act. N.J.S.A. 5:12-129(5) provides that the Commission may assess such civil penalties as may be necessary to punish misconduct and to deter future violations of the act, which penalty in the case of a casino licensee may not exceed \$50,000 for an individual violation. (Under section 123 of the act, a continuing violation of any provision of the law is deemed to be a separate offense on each day it occurs, and the Commission may impose multiple penalties for multiple infractions, with the total penalty for all of the infractions exceeding \$50,000.)

N.J.S.A. 5:12-30 sets forth the factors which the Commission shall consider in determining the appropriate sanctions in a particular case:

- 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 licensee or registrant involved with respect to gaming activities;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring;
- 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.

In applying the foregoing standards, it should be noted that the respondent's advertising campaign took place in September and October of 1984. It involved advertisements in a trade newspaper on three dates in October 1984. The respondent placed full page advertisements in Atlantic City Magazine and Philadelphia Magazine for both months of its advertising campaign. A full page advertisement was placed by the respondent in Gambling Times Magazine for the month of October 1984. The respondent's advertisement appeared on a billboard from September 1 to October 31, 1984. Finally, post cards brought the respondent's advertisement to 25,000 of its customers.

It is apparent from the foregoing that the respondent utilized various advertising media with the intention of reaching thousands of existing and potential customers. In the manner previously described, each of these advertisements was deceptive and misleading. Thus, the risk to the public created by the conduct of the respondent was substantial.

Obviously, some thought, time and effort went into the respondent's advertising campaign. The result was an advertising campaign which was deceptive and misleading. However, the evidence in the record does not establish that the respondent acted with knowledge that it was violating the Casino Control Act and the attendant regulations.

The prior regulatory history of the respondent was admitted into evidence as Exhibit R-1. The present matter is the third complaint filed against the respondent, and the first which involves advertising. Subsequent matters, including one complaint involving alleged advertising violations, remained pending at the time the record closed in this proceeding. That the present case is the first advertising complaint filed against the respondent is a mitigating factor in considering an appropriate penalty.

At N.J.S.A. 5:12-1b, the New Jersey Legislature has declared it to be the public policy of the state that:

....

- (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.

....

Given the foregoing statement of public policy, it is apparent that when a licensed casino enterprise engages in the practice of deceptive and misleading advertising, its misconduct is serious. Such misconduct should be dealt with strictly. Therefore, I **CONCLUDE** that the appropriate sanction in this matter, which is necessary both to punish the respondent's misconduct and to deter future violations, is a civil monetary penalty of \$30,000, pursuant to N.J.S.A. 5:12-129(5) and 130.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent, Marina Associates, shall pay a civil monetary penalty in the amount of \$30,000, pursuant to N.J.S.A. 5:12-129(5).

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 24, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

7/27/87
DATE

Heide Vandewilt
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 29 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

Joint Exhibits:

Aa through Ah	Billboard on Route 30 in Absecon, New Jersey
B	Post card
C	<u>Atlantic City Magazine</u> and <u>Philadelphia Magazine</u> <u>Advertisement</u>
D	<u>Whoot Newspaper</u> Advertisement
E	<u>Gambling Times</u> Advertisement

For the Petitioner:

Da-1 through Da-9	Casino Revenues and Estimated Tax on Gross Revenues Forms, January through June 1984
Da-1	Resorts International Casino Hotel, Inc.
Da-2	Bally's Park Place, Inc.
Da-3	Harrah's Marina Hotel and Casino
Da-4	Adamar of New Jersey, Inc. D/B/A Tropicana Hotel and Casino
Da-5	Caesar's Atlantic City
Da-6	Playboy-Elsinore Associates/Elsinore's Atlantis Casino Hotel
Da-7	Golden Nugget
Da-8	Claridge
Da-9	Sands

For the respondent:

R-1	Regulatory History of Marina Associates as of October 15, 1986
R-2	<u>The Wall Street Journal</u> of October 15, 1986
(a)	Chart titled "Married and Jobless," appearing on front page;
(b)	Four charts titled "Industrials," "Transportation," "Utilities" and "N.Y.S.E." Volume" for the Dow Jones Averages, Pg. 66;

- (c) Four charts titled "Stocks," "Interest," "Bonds," "U.S. Dollar," under the heading "Markets and Money," Pg. 67

R-3 The New York Times of October 15, 1986, charts titled "Market Index" and "Market Volume," Pg. D9

R-4 Business Week of October 20, 1986

- (a) Two charts under the heading "Business Week Index," Pg. 4
- (b) Two charts showing Sales and Earnings under the heading "Information Processing," Pg. 132
- (c) Two charts showing the "Monthly Averages" and "Weekly Close" for the Standard & Poor's 500-Stock Index, Pg. 141

R-5 The Wall Street Journal of October 16, 1986, chart titled "S&P 500 Stock Futures," Pg. 54

WITNESSES

For the petitioner:

None

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-481
OAL DOCKET NO. CCC 6015-86
LICENSE NO. 08379-22
ORDER NO. 87-38-8

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

Complainant, :

v. :

GERARD H. MARINO, :

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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this *14th* day of October 1987, ORDERED that the initial decision is modified as follows:

The Commission rejects as unnecessary that portion of the initial decision which provides for the retroactive suspension of the respondent's casino employee license from February 4, 1986, to reinstatement date, the date of the Commission's disposition of the complaint for revocation of the casino employee license. The "retroactive suspension" recommended by the ALJ has previously been accomplished by the Commission's suspension order dated February 4, 1986.

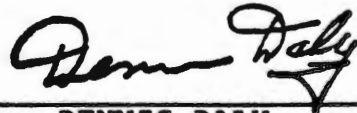
ORDER NO. 87-38-8

IT IS FURTHER ORDERED that the Commission's order of February 4, 1986, suspending the casino employee license of Gerard H. Marino is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 6015-86

AGENCY DKT. NO. 85-481

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

Petitioner,

v.

GERARD H. MARINO,
Respondent.

Barth F. Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Jerry H. Steiner, Esq., for the respondent

Record Closed: July 20, 1987

Decided: September 3, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Gerard H. Marino, respondent and the holder of casino employee license no. 8379-22, had committed criminal misconduct, i.e., drug offenses, which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act) under section 86c(4) by means of section 86g, and established that the respondent no longer possesses the requisite good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference, for which the Division seeks revocation of his casino employee license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint and application for suspension of the respondent's license, dated December 13, 1985, with the Casino Control Commission (Commission). The respondent filed his answer and notice of defense on January 17, 1986. By order entered on February 4, 1986, the Commission suspended the respondent's license pending the outcome of this matter. By letter filed on September 2, 1986, the respondent requested a hearing. On September 10, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On October 22, 1986, a telephonic prehearing was conducted and the matter was scheduled for a hearing. By order entered on February 11, 1987, the matter was placed on the inactive list for a period of three months, pursuant to section 86d. The matter was heard on July 20, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Marino is 26 years of age. He resides in Margate with his wife, whom he married in May 1985.

In 1978, at age 18, the respondent matriculated at Stockton State College. He attended Stockton, where he was a business management major, full-time until 1982. The respondent withdrew from school from late 1982 until the fall semester of 1985. He explained that he enjoyed working and earning money. The respondent's grades were primarily Cs, Ds, Fs and course withdrawals.

In May 1979, the respondent was issued casino employee license no. 8379-22 by the Commission.

In 1979, the respondent was employed by Boardwalk Regency Corporation (BRC) as a barporter. In 1981 he was promoted to bartender, which position he held until his suspension on November 2, 1985, as a result of an incident which will be described in greater detail. The respondent believes he was ultimately terminated from employment.

On October 16, 1985, following a motor vehicle stop, the respondent was arrested by the Northfield Police Department and was charged with violations of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams; N.J.S.A. 24:21-47, possession of drug paraphernalia - a pipe; and N.J.S.A. 2A:170-77.8, possession of prescription drug without a prescription - one valium tablet (P-5, P-6 and P-7). On the same date, a complaint was filed with the Northfield Municipal Court (P-12). A laboratory analysis of the substances taken from the respondent revealed 0.2 grams of marijuana and one valium (diazepam) tablet (P-8). By stipulation in this matter, the respondent admitted his culpability to each charge.

On November 2, 1985, the respondent was arrested by the New Jersey State Police and was charged with a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - cocaine (P-1 and P-2). The charge concerned the respondent's conduct during the course of his licensed employment, when he was observed by a supervisor to be in possession of and using what appeared to be cocaine (P-1). A laboratory analysis of the substance taken from the respondent revealed 0.09 grams of cocaine (P-3 and P-4). On January 29, 1986, the respondent was indicted by an Atlantic County Grand Jury on the same charge (P-9). Again, the respondent stipulated his culpability to the charged misconduct.

On February 4, 1986, the Commission suspended the respondent's license pending the outcome of these proceedings.

On May 5, 1986, the respondent was granted a conditional discharge to the indictment upon the condition that he submit to a drug screening program for a one-year period; also, the municipal court charges were dismissed (P-10). The respondent had drug screens performed on July 14, 1986, October 10, 1986 and January 8, 1987, each of which revealed an absence of any drugs (R-1). Therefore, on May 5, 1987, an order was entered which terminated the probationary supervision and dismissed the indictment (P-11).

Subsequent to his arrests and during the fall semester of 1985, the respondent changed his major to computer science. During the 1985-86 school year, the respondent earned straight As. Thereafter, he earned As and Bs (R-3). The respondent needs seven courses in order to complete his major.

The respondent currently holds two jobs. During the day he delivers furniture, which is his summer employment. At night he is a bartender at the Knife and Fork Restaurant in Atlantic City, which position he has held since February 1987.

The respondent's wife is currently employed, and has been employed previously in the casino industry. They plan to have a family, which depends, in part, upon the respondent obtaining full-time employment. The respondent and his wife are in the process of purchasing a condominium in Northfield, where they will reside.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying as well as the extent and nature of the respondent's drug use, his rehabilitation from drugs, and his good character, honesty and integrity. The respondent testified that he first began to experiment with marijuana in 1980, while age 20. He participated in these activities with coworkers from BRC on an infrequent and recreational basis. Approximately one year prior to his arrest, the respondent began to use cocaine, valium and occasionally "crank." At about the time of his arrests, the respondent used drugs every few days on a social basis. He characterized his drug use as an escape.

The respondent further testified that at the time of his arrests he had no direction or goals; i.e., he was going through the motions. Also, he was unsure about continuing his education. He hung around with coworkers who drank heavily and used some drugs; i.e., they were "party people."

At the time of the incident, the respondent was assigned to the graveyard shift. He was tired and felt that the drugs would help him get through the night.

The respondent also described the impact the incidents and his drug use have had upon him. Following his arrests he viewed himself as a loser, was very depressed and recognized fully the possibility of incarceration. As a result, he determined that there was something he needed to prove to himself. He then began to focus his energies on his education, where he has made excellent progress.

The respondent has not used drugs since November 2, 1985. This testimony is supported by the drug screens to which the respondent submitted as part of his probation (R-1). In November 1986, upon the advice of his attorney, the respondent sought out an evaluation by Anne T. McFadden, a certified alcoholism counselor in New Jersey. Ms. McFadden testified that her certification includes drug counseling. She is currently supervisor of alcohol services, i.e., in charge of the detoxification unit, at Shore Memorial Hospital and maintains a private practice. The respondent completed a questionnaire and submitted to a substantial interview. Ms. McFadden believed that the respondent was open and honest during the interview. The witness was of the opinion that the respondent was never an addict, but was caught up in peer pressure. Further, the respondent's testimony during the hearing was consistent with the information he provided to Ms. McFadden during the interview. The witness was of the opinion that he had made substantial progress toward rehabilitation, which was confirmed during his testimony in the hearing. More specifically, the witness was of the opinion that the respondent has achieved rehabilitation by reason of his efforts to pursue his education, his saved marriage, his continued employment, the establishment of personal goals, his abstinence from drugs and disassociation from persons who are involved in drugs. Also, the witness was of the opinion that the respondent will be successful because he has established a record of achieving his goals.

Mr. Marino also testified to his current attitude toward drugs; specifically, he is anti-drug. His attitude is based upon his recognition of the impact of his past errors and the extreme negative effect it has upon him; i.e., he lost his job, almost lost his marriage and almost ruined his life. The respondent testified that his wife was unaware of his drug use, but that the difficulties they encountered have strengthened their marriage. He now has a greater concern regarding acquaintances and friends. The respondent has established a goal of graduation from Stockton within the next one to one and one-half years. He is considering the possibility of graduate school. He views the purchase of a condominium as a milestone in his life because of the attendant responsibilities. Although the respondent believes that he has made substantial progress and has a good self-esteem, he recognizes that there is still a need to prove himself in other areas. Specifically, the respondent wants to retain his license in an attempt to remove a black mark on his record. He desires to be reemployed within the industry to support his continued education and wants to be a contributing member of the industry. Also, the respondent believes that the industry will afford him possible career opportunities consistent with his education.

James W. Allen, business representative for Local 54 of the Hotel and Restaurant Employees and Bartenders International Union and a former casino licensee, and formerly employed as a bartender by BRC, testified on behalf of the respondent. The witness worked with the respondent at BRC. Prior to 1985, the witness observed that the respondent was associated with the "wrong crowd," i.e., they were wild. Today, however, the respondent is associated with a different type of people and has good direction and positive goals. The witness was of the opinion that the respondent is a person of good character, honesty and integrity.

The respondent also offered letters on his behalf. Bill Tracy, the beverage manager of the Tropicana Hotel and Casino and a former supervisor of the respondent, stated that the respondent was "a very dependable and reliable employee and I strongly recommend him" (R-5). Mr. Tracy was aware of the respondent's misconduct. Also, the respondent offered a letter from Francis M. Celestino, a former supervisor at BRC (R-6). The witness was of the opinion that the respondent was "a trustworthy, honest and dependable employee."

Although the Division did not offer any evidence to refute the respondent's testimony, it is necessary to assess Mr. Marino's credibility prior to making findings of fact. Initially, the respondent's position in this matter must be recognized. He is the holder of a casino employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning his drug use was consistent with the documentary evidence and was supported by the testimonies of Ms. McFadden and Mr. Allen. It was clear both during the hearing and during the review of the record that from my observations of the respondent's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and the sincerity with which the respondent acknowledged his misconduct, the respondent testified truthfully. The respondent's testimony was candid, consistent, believable, sincere and completely persuasive. The respondent acknowledged fully the extent of his wrongdoing and accepted full responsibility therefor. In the final analysis, I am persuaded to accept his testimony in all respects.

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

1. Mr. Marino was a credible witness and his testimony was candid, consistent with the documentary evidence, and believable in all respects.

2. The respondent's explanation of the circumstances underlying his misconduct was believable and persuasive, and is adopted fully as a finding of fact.
3. The respondent's explanation of his rehabilitative efforts was believable and persuasive, and is adopted fully as a finding of fact.
4. The respondent has not used or otherwise been involved with illegal drug activity since November 1985.
5. There is little likelihood, if any, that the respondent will repeat his prior drug abuse.
6. Close friends and employment supervisors of the respondent are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) 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 any such person from holding his license." The Division contends that the respondent's misconduct renders his continued licensure to be inimical to the policies of the Act under section 86c(4), and therefore, does not continue to be qualified under section 90b.

(A) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant/licensee can be disqualified from licensure because of the commission of any act 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 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 association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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 for all facets of casino activities.

It has been established by stipulation that the respondent's misconduct constitutes the offenses with which he was charged for both incidents. Although these offenses are not listed disqualifiers under section 86c(3), they are serious because of the drug-related nature thereof. Further, the fact that on November 2, 1985, the respondent was in possession of and was using cocaine during the course of his licensed employment in a licensed facility substantially enhances the seriousness of the misconduct. In addition, it was apparent that the respondent had used various drugs over a period of five years and, it was inferred, that such conduct had occurred previously during the course of his employment. Also, he participated in some of these activities with his coworkers. Accordingly, this misconduct is clearly inimical to the policies of the Act. However, the inimicality of the offenses must include consideration of the circumstances underlying the incident and the respondent's subsequent conduct.

The circumstances underlying the misconduct as described by the respondent do not mitigate the seriousness thereof, although they do indicate that the misconduct was due, in part, to the respondent's immaturity. In addition, the respondent has made substantial rehabilitative efforts. He has acknowledged fully his misconduct and has accepted responsibility therefor. He satisfied fully the terms and conditions of his conditional discharge. In addition, albeit upon advice of counsel, he voluntarily sought professional counseling in order to ensure that there would be no relapse in the future. He has not been involved with illegal drug activities since his arrest on November 2, 1985. Also, the respondent has established a positive employment record subsequent to his termination from employment and suspension of his license. It was well established that the respondent is a responsible, reliable and trustworthy person. The respondent has also, and most significantly, redefined his priorities and goals. In this regard he has pursued aggressively and with great success his educational opportunities. This success has established a positive foundation for his employment and personal future. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation, other than the passage of additional time. Nevertheless, minimally sufficient time has elapsed by which the respondent's rehabilitation can be assessed.

I am persuaded that the respondent's rehabilitative efforts reflect a sincere, positive and substantial alteration of his behavior and are sufficient to overcome the very serious nature of his misconduct.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that continued licensure of the respondent at this time would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Marino was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Mr. Marino's burden in this matter was substantial by reason of the seriousness of his misconduct and the fact that it was committed by a licensed employee during the course of his employment in the casino industry. Nevertheless, the respondent has accepted responsibility for his misconduct and has seized the opportunities available to him in order to redirect his life in a positive manner. The respondent's testimony was supported fully by both witnesses and documentary evidence. Accordingly, there is little likelihood, if any, that the respondent will repeat his misconduct. The respondent now presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of continued licensure.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(C) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . .

Although the respondent's prior misconduct may not now render continued licensure to be inimical, it is clear that such misconduct was inimical at a time proximate to the specific incidents and before the respondent had the opportunity to rehabilitate himself and, as such, constitutes a violation of the Act. This is supported by the Commission's suspension of the respondent's license pending the outcome of this matter. On any occasion when a licensee commits an offense within his licensed employment and in a casino, there is an inherent risk to the integrity of the industry. Because this misconduct did not involve any patrons of the hotel, there was no immediate risk to the public. Given the respondent's rehabilitation, his misconduct was not irreparable. Also, with the exception of the charged incidents, the respondent's employment history within the casino industry was positive. Nevertheless, in order to ensure that the respondent recognizes his misconduct and that he will not repeat it in the future, and in order to

enhance "the public confidence and trust in the efficacy and integrity of the regulatory process," N.J.S.A. 5:12-1b(6), and in order to have the respondent's employment record accurately reflect a violation of the Act, the imposition of a penalty is warranted. An appropriate penalty would be a suspension of the respondent's license for the actual period of suspension served until reinstatement.

I **CONCLUDE** that the respondent's casino employee license should be suspended for the period of time served from February 4, 1986 until reinstatement.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against casino employee license no. 8379-22 held by Gerard H. Marino be **GRANTED**, and that the license be suspended from February 4, 1986 until reinstatement. It is further **ORDERED** that Mr. Marino's casino employee 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 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 3, 1987
DATE

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

September 4, 1987
DATE

Receipt Acknowledged:

Alfred Lopez
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

SEP 9 1987
DATE

bc

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 New Jersey State Police - Investigation Report, November 2, 1985 (2 pages)
- P-2 New Jersey State Police - Arrest Report, November 2, 1985
- P-3 New Jersey State Police - Request for Examination of Evidence No. 70565H, November 4, 1985
- P-4 New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau - Laboratory Report No. 70565H, December 4, 1985
- P-5 Northfield Police Department - Investigation Report, October 16, 1985 (2 pages)
- P-6 Northfield Police Department - Arrest Report, October 16, 1985
- P-7 Northfield Police Department - Property Report, October 16, 1985
- P-8 New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau - Laboratory Report No. 70539-H, November 4, 1985
- P-9 State of New Jersey v. Gerald (sic) Henry Marino, Superior Court of New Jersey, Law Division - Criminal, Atlantic County Grand Jury, No. 86-01-0185-C-CP, Indictment, filed on January 29, 1986
- P-10 State of New Jersey v. Gerard Henry Marino, Indictment No. 86-01-0185-C-CP, Order for Sentencing, May 5, 1986 (2 pages)
- P-11 State of New Jersey v. Gerard H. Marino, Indictment No. 86-01-0185-C-CP, Order, May 5, 1987
- P-12 State of New Jersey v. Gerard Henry Marino, Northfield Municipal Court, County of Atlantic, Complaint No. S.S.150-58-6540, October 16, 1985
- R-1 Damon Clinical Laboratories - Drug Screens for Gerard Marino, July 15, 1986, October 10, 1986, January 8, 1987, and April 24, 1987 (5 pages)
- R-2 Letter to Jerry H. Steiner, Esq., from Anne T. McFadden, November 4, 1986
- R-3 Stockton State College, Transcript of Gerard H. Marino, October 21, 1986 and June 2, 1987 (3 pages)
- R-4 Letter from Murray R. Kirch, December 15, 1986
- R-5 Letter from Bill Tracy, November 20, 1986
- R-6 Letter from Francis M. Celestino (handwritten and typewritten, 2 pages)

WITNESS LIST

For the petitioner:

None

For the respondent:

James W. Allen

Gerard H. Marino, Jr.

Anne T. McFadden

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-166
OAL DOCKET NO. CCC 7918-86
LICENSE NO. 41586-21
REGISTRATION NO. 42820-40
ORDER NO. 87-41-20

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

Complainant,

ORDER

v.

RICHARD J. MARTINEZ,

Respondent.

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision; and the Commission having considered the entire record of the proceedings at its public meetings of October 21 and 28, 1987,

IT IS on this 2nd day of November 1987, ORDERED that the complaint is remanded to the Office of Administrative Law for further proceedings at which the following issues, without limitation, are to be addressed:

- (1) Whether the DGE can prove by a preponderance of the evidence that the elements of falsification or tampering with records, fourth degree, in violation of N.J.S.A.

2C:21-4a, were committed by this respondent. Of particular concern to this Commission is Judge Holmes' statement at page 3 of the initial decision which states in pertinent part: "I FIND that the respondent created a false record with the purpose (albeit incidental) to deceive his employer." [Emphasis added].

- (2) If the DGE proves a violation of N.J.S.A. 2C:21-4a which warrants disqualification of the respondent under N.J.S.A. 5:12-86(c)(1) and (g), whether he can demonstrate, by clear and convincing evidence, that he is rehabilitated pursuant to N.J.S.A. 5:12-90(h) and -91(d).
- (3) Whether, based upon all of the evidence adduced at the hearing and on remand, the respondent possesses the good character, honesty and integrity required of a casino employee pursuant to N.J.S.A. 5:12-90(b) and -89(b)(2).
- (4) In consideration of the above issues, it is suggested that the DGE produce and the administrative law judge consider evidence concerning the implementation of the player rating system at Harrah's Marina Hotel Casino, in general, as well as how an A-rating is achieved, how an A-rating is lost, and the effect of continued gaming on one's status as an A-rated player. It is also suggested that evidence be produced regarding such factors as whether

the patron here, Mr. Scamardella,
was a credit or cash player, and
whether the respondent was enriched
in any way by his actions.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____

A handwritten signature in dark ink, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. 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 J. MARTINEZ,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General, for petitioner (W.
Cary Edwards, Attorney General of New Jersey, attorney)
Richard J. Martinez, respondent, pro se**

Record Closed: July 1, 1987

Decided: August 21, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The 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 he committed theft in a casino. 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. The matter was pretried on January 13, 1987 and a plenary hearing was conducted on June 1, 1987. The record was held open for 30 days in order to

give the respondent an opportunity to supply letters of recommendation. One was received on July 1, 1987, at which time the record closed.

ISSUES

At the hearing the Division elected to proceed on the grounds of inimicality pursuant to sections c(4) and g. of N.J.S.A. 5:12-86 because the criminal complaint in this matter was dismissed at the request of the casino prosecution section, and on the further grounds that the respondent lacks the good character, honesty and integrity required by sections 89b2 and 90b of the Casino Control Act. The Division pled a violation of N.J.S.A. 2C:20-4. At the hearing the Division sought to amend to include a violation of N.J.S.A. 2C:21-4.

THE CONTEXT

When a person spends so much time and money in a casino as to be noticed by the help he is given a rating. These ratings are letters such as A or B or C. I apprehend that an A rated player loses more money consistently than a B rated player. Nevertheless it is considered a great honor to be an A rated player. Persons actually vie for such ratings.

Player ratings are punched into a computer by floor persons who identify the player, how much time he spends at the game and how much money he is betting. These ratings entitle players to rewards called "complimentaries", such as free meals, free hotel rooms and free limousine rides.

FACTS

Mr. S. was a good friend of the respondent. Mr. S. was a rated player. Sometimes when he was not feeling well enough to play he would ask the respondent to punch some time in for him. The respondent did and was discovered. The respondent was charged with theft. The Division learned that the false information punched in by the respondent on behalf of Mr. S. did not affect Mr. S.'s rating. Mr. S. came by his rating honestly by his own efforts at the tables. The Division moved the Superior Court to dismiss the criminal charge. It complied.

DISCUSSION

The rationale for the Division's motion to dismiss is not part of the record here. One can only speculate that they did not think a crime was committed or that if they did it was subject to a de minimis defense. Perhaps they realized that no right thinking juror would convict for theft on this evidence. But I shall not speculate.

It is obvious that what the respondent did violated the rules and regulations of the casino industry. He attempted to enrich his friend by creating the false impression that his friend played harder than he actually did. His friend, had he not been already a rated player, may have received something of value to which he was not entitled by the rules of the industry. The value of that thing however, is not in evidence. It may have been less than \$200. If it were less than \$200 it would constitute only disorderly theft 2C:20-3b(3). An attempt to commit a disorderly persons offense is not itself an offense State v. Clark 198 N.J. Super. 219 (A.D. 1985)

On the other hand, it is easily seen and I **FIND** that the respondent created a false record with the purpose (albeit incidental) to deceive his employer. This constitutes a violation of 2C:21-4 and is a 4th degree offense.

REHABILITATION FACTORS

- (1) The respondent is a floor person and has continuous patron contact.
- (2) The offense is not serious. It is a fourth degree offense. It did not result in harm. The respondent did not intend harm, he only intended to benefit a friend and patron.
- (3) The offense occurred in a casino during the course of respondent's employment and there was an abuse of his position.
- (4) The offense occurred on June 28, 1986.
- (5) The respondent was 25 years old when the offense occurred.
- (6) The offense occurred approximately 10 to 15 times over a period of a year.
- (7) The casino industry rewards persons for gambling with all their might. It then attempts to convince them that they enjoy enhanced status as a

result. This bizarre state of affairs must have contributed to the offense.

- (8) The respondent has organized and is operating a small gift shop since he was terminated from the casino. The State's witness who actually discovered the respondent's false entries testified that he 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 describe what he did as a mistake. I am satisfied he would not do it again.

I **CONCLUDE** that the respondent's continued licensure would not be inimical to the policy of this act and to casino operations as described in N.J.S.A. 5:12-86c(4).

**THE GOOD CHARACTER, HONESTY & INTEGRITY REQUISITE FOR CASINO
EMPLOYEE LICENSURE PURSUANT TO N.J.S.A. 5:12-89B(2) AND 90B**

The respondent did not come to the hearing with documentary evidence that he possesses the requisite good character, honesty and integrity for casino employee licensure. He relied instead 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. He appears to be a shy person; he was somewhat reticent in his testimony. This is sometimes considered to be a mark of good character. However, even persons with the highest reputation for good character, honesty and integrity make mistakes. This respondent has paid for his mistake; he is cured of it. I **CONCLUDE** that he now possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to sections 89b(2) and 90b.

ORDER

I **ORDER** that the complaint filed by the Division 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 21, 1987
DATE

Edgar R. Holmes, ALJ
EDGARR. HOLMES, ALJ

Receipt Acknowledged:

August 25, 1987
DATE

Richard R. Harris
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 26 1987
DATE

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Elisa Ciboldi
Detective Ronald Bunkowski
Richard Martinez

For the Respondent:

Richard Martinez

EXHIBIT LIST

For the Petitioner:

J-1 Complaint and Summons
J-2 Letter, dated 8/1/86, to Judge Porreca from Sheri Tanne, DAG

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-84
APPLICATION NO. 21972-21
OAL DOCKET NO. CCC 300-87
ORDER NO. 87-25-2

APPLICATION OF KIMBERLY I. McCALL :
FOR RENEWAL OF HER :
CASINO EMPLOYEE LICENSE :

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; and the Commission having considered the entire record of these proceedings at its public meeting of July 1, 1987,

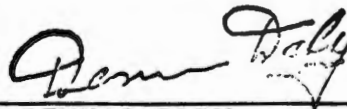
IT IS on this 14th day of August 1987, ORDERED that the initial decision is modified to:

1. Find that the applicant's receipt unemployment benefits to which she was not entitled constitutes theft by deception (third degree) in violation of N.J.S.A. 2C:20-4 and a disqualifying offense pursuant to N.J.S.A. 5:12-86(c) (1) and -86(g); and
2. Find that, in light of the affirmative finding of rehabilitation pursuant to N.J.S.A. 5:12-90(h) and the applicant's representation that she will pay the \$236 fine and penalty which she owes to the New Jersey Division of Unemployment and Disability Insurance, the applicant has established that she possesses the good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89(b) (2) and -90(b).

IT IS FURTHER ORDERED that the application of Kimberly I. McCall for renewal of her casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 300-87

AGENCY DKT. NO. 87-EA-84

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

Petitioner,

v.

KIMBERLY I. McCALL,

Respondent.

Nancy P. Scharff, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Kimberly I. McCall, respondent, pro se

Record Closed: April 20, 1987

Decided: June 1, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of an objection to the renewal of respondent's casino employee license filed by petitioner with the Casino Control Commission 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 held on April 20, 1987.

The questions presented are whether certain unprosecuted conduct constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c and g, undermines respondent's good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2), and if so, whether she can establish rehabilitation pursuant to N.J.S.A. 5:12-90h.

The basic facts are undisputed. Between July 29, 1981 and October 6, 1981 respondent received unemployment insurance benefits in the amount of \$966. During this same period, she became employed by the Tropicana Hotel and Casino and was no longer eligible for such benefits. In documents filed with the Division of Unemployment and Disability Insurance (Unemployment) in 1982, respondent acknowledged that the principle amount, plus penalties and interest, were owing. A judgment in the amount of \$1,074 was subsequently entered against respondent. The \$966 in principle was recouped by Unemployment during subsequent periods when respondent would otherwise have been eligible for benefits. The penalty amount, some \$236, remains outstanding, and according to this record may not be recouped by means of offset, but rather must be paid directly. Respondent has been employed by various casinos as a dealer on a sporadic basis over the last four years. She is presently employed outside the casino industry.

In November 1983, respondent pled guilty to a charge of simple assault upon a police officer, N.J.S.A. 2C:12-1a, and paid a fine of \$125. Petitioner submitted this information as bearing on the question of rehabilitation.

Respondent testified that when she was first employed by the Tropicana, friends told her that she could continue to collect unemployment benefits as she was simply completing the last few months of eligibility. Respondent now knows that this was erroneous advice. She also regretted her longstanding failure to pay the penalty amount due. Respondent testified that the assault in 1983 stemmed from an altercation with her roommate. When the officer arrived and tried to separate them, she was out of control and lashed out at him.

Respondent's sister, Bonnie Johnson, testified as a character witness and various character references were placed in the record.

This is the substance of the record. Respondent acknowledged her wrongdoing and her willingness to repay Unemployment. She was a credible witness. The rehabilitation criteria of the Act require that we weigh the severity of the offense, its

remoteness in time, and any more recent wrongdoing in an effort to determine whether rehabilitation has taken place. Respondent was already receiving unemployment benefits when she became employed by the Tropicana, and did not report this fact as required. Most of the money involved has been recouped. The offense took place six years ago and except for the assault in 1983, respondent has not been involved in further difficulty. Thus, she comes close to establishing rehabilitation. In this case, however, it does not appear that the passage of time alone can fully satisfy the act. To put this matter to rest, respondent must pay the outstanding debt.

Based on the foregoing, it is my conclusion that petitioner has established that respondent committed the unprosecuted conduct complained of, and that she in turn has established her rehabilitation. Respondent is entitled to the renewal of her license, subject to satisfaction of Unemployment's judgment. It is thus **ORDERED** that respondent's license be renewed upon the submission of proof to the Commission that this obligation has been satisfied.

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.

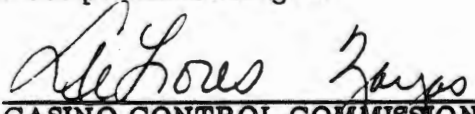
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6/1/87
DATE


SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

6-2-87
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 3 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

ij

WITNESSES

Kimberly I. McCall

Bonnie Johnson

EXHIBITS

For petitioner:

- P-1 Determination and Demand For Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation
- P-2 Claimant's Benefit Payment and Employment Record
- P-3 Claimant Ledger
- P-4 Notice of Hearing
- P-5 Record of Hearing
- P-6 Certificate of Debt
- P-7 Letter from Joan Rowland to Nancy Scharff, dated April 6, 1987
- P-8 Complaint

For respondent:

- R-1 Letter from Kimberly I. McCall to Nancy Scharff, dated April 9, 1986
- R-2 Affidavit of David Fargher
- R-3 Certification
- R-4 Letter from Marianne T. Martino, dated March 18, 1987
- R-5 Receipt for the Offset of Benefits
- R-6 Final Grade Report
- R-7 Receipt of the Offset of Benefits
- R-8 Letter from David Whiting, dated March 11, 1987
- R-9 Letter from Magnolia Walker

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-198
OAL DOCKET NO. CCC 2643-87
LICENSE NO. 03046-21
ORDER NO. 87-46-6

APPLICATION OF DELMERAH E. McCOY :

FOR RENEWAL OF HER :

ORDER

CASINO EMPLOYEE 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 (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 December 2, 1987,

IT IS on this 28th day of December 1987, ORDERED that the ALJ's recommendation that the subject application be denied based upon the conclusions that the applicant failed to establish both her rehabilitation and her good character, honesty and integrity is rejected; and

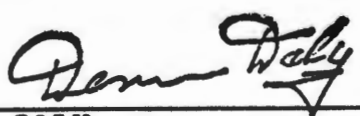
IT IS FURTHER ORDERED that the application of Delmerah E. McCoy is granted based upon the factual findings contained in the initial decision, which are incorporated herein by reference, and upon the following findings and conclusions:

ORDER NO. 87-46-6

- (1) Although we conclude from the evidence of record (without resort to the doctrine of res judicata) that in 1981 the applicant committed theft by deception (third degree) in violation of N.J.S.A. 2C:20-4, a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and -86(g), we find pursuant to N.J.S.A. 5:12-90(h) that she is rehabilitated from that disqualification. While the offense was serious and the applicant seeks re-licensure in the sensitive position of dealer, we find the circumstances and social conditions surrounding the offense, viz., the applicant unlawfully collected unemployment benefits at a time when she was the sole support of her family which included two children and a drug-addicted husband, the passage of six years without further unlawful conduct of any sort, and her favorable casino employment record in the interim all mitigate the disqualification in a manner sufficient to warrant a finding of rehabilitation.
- (2) For essentially the same reasons noted above and noting the absence of any other basis for disqualification, we find that the applicant has demonstrated her good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and -90(b).

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 2643-87

AGENCY DKT. NO. 87-EA-198

DELMERAH E. MC COY,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

Paul K. Wright, Esq., for the petitioner

Ralph Fusco, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: September 3, 1987

Decided: October 16, 1987

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the application filed by the petitioner, Delmerah E. McCoy, with the Casino Control Commission for the renewal of her license as a casino employee (dealer and blackjack floorperson), pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. By letter dated March 11, 1987, the Division of Gaming Enforcement, Department of Law & Public Safety (Division), recommended that the petitioner's application be denied. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on April 20, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 29, 1987, and the parties agreed that the issues in this matter are:

- (a) Whether the petitioner improperly collected unemployment compensation benefits.
- (b) If so, whether the amount of said unemployment compensation benefits exceeded \$500, and whether this action is analogous to a violation of N.J.S.A. 2C:20-4, which is a statutory disqualifier pursuant to the provisions of N.J.S.A. 5:12-86c and 5:12-86g.
- (c) Whether the petitioner has the necessary good character, honesty and integrity as required for licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90b.
- (d) Whether the petitioner can show her rehabilitation pursuant to the provisions of N.J.S.A. 5:12-90h.

The hearing was held on September 3, 1987, in the City Hall at Somers Point, New Jersey, and the record closed on that date.

FINDINGS OF FACT

In its March 11, 1987 letter, the Division stated the reason for its negative recommendation was that the petitioner improperly collected unemployment compensation benefits (UCB) from the Division of Unemployment and Disability Insurance, Department of Labor (Labor), for a five-week period—October 27, 1981 through November 30, 1981—while she was employed by Tropicana Hotel and Casino (Tropicana) (R-1). Although not listed as reasons for its negative recommendation, the following matters were mentioned in the Division's letter:

- (1) The petitioner's delinquent account with the New Jersey Higher Education Assistance Authority of approximately \$3,000.

- (2) The petitioner's delinquent account with the Internal Revenue Service in the amount of \$2,000, which was being repaid by installment payments.

At the hearing, Ms. McCoy stated that she has had serious financial problems dating back to before 1981, because of her husband's financial mismanagement and his addiction to drugs. Ms. McCoy has had to support herself and her two children, and her husband is currently incarcerated at Trenton State Prison.

After working about five months for Atlantis Casino and Hotel, Ms. McCoy was terminated on September 14, 1981 (P-5), since the casino had initially hired too many employees. Ms. McCoy immediately applied for UCB, and thereafter, she received three UCB checks, each for a two-week period. The checks were dated November 4, 1981, November 18, 1981 and December 2, 1981, and each check was for the amount of \$266 (P-1, P-2, P-3).

On November 2, 1981, Ms. McCoy was hired by Tropicana and worked there as a dealer through November 26, 1982 (P-6).

Currently, Ms. McCoy has a full-time job as a dealer with Trump Castle Hotel and Casino and has recently completed the payment of the Internal Revenue Service debt at the rate of \$150 from each salary payment (P-7).

According to Ms. McCoy, she took the student loan mentioned in the Division's letter to take courses to improve her employment opportunities. She initially made several payments to reduce the student loan debt but stopped making said payments because of her financial problems.

As to the UCB matter, Ms. McCoy stated that sometime after 1981, she was notified of the overpayment and she attended a hearing regarding the matter. Ms. McCoy admitted that she had discussed repayment with Labor's representatives; however, she has not voluntarily made any payments nor has she agreed to repay the amount on an installment basis. Ms. McCoy stated that two of her State income tax refunds have been withheld and applied against the UCB debt.

On behalf of the Division, Karen Smolensky testified that she did the background investigation regarding the petitioner's renewal application. Ms. Smolensky spoke to Ms. McCoy on July 14, 1987, at which time Ms. McCoy indicated that she was repaying the UCB debt by way of salary deductions. Ms. Smolensky determined that there was a judgment against Ms. McCoy for the UCB debt of \$665.00 plus a penalty of \$100 and that the only payments were the two state income tax refunds (R-1). After Ms. Smolensky established that the deductions were for the debt owed to the Internal Revenue Service, she relayed this information to the petitioner and advised the petitioner that the UCB debt might be viewed as a negative factor when her renewal application was reviewed. Ms. McCoy told Ms. Smolensky that she would contact Labor and make arrangements to repay the UCB debt. The day before the hearing, Ms. Smolensky checked with Labor and was told that Ms. McCoy had made no voluntary payments, had not made any arrangements to pay the UCB debt, and that the current total of the debt is \$682.86. Ms. McCoy admitted at the hearing that she could now afford to make installment payments if requested by Labor.

Ms. McCoy was a very poor witness, and even with the prompting of her attorney, she had difficulty recalling her actions in 1981. However, Ms. McCoy did state that she cashed the three unemployment checks since she needed the money. Ms. McCoy admitted that she did not initially report her job with Tropicana to Labor since there was a delay before she received her first salary. Once she started receiving salary payments from Tropicana, Ms. McCoy stated that she informed the Labor office of her job.

The Division disputes her testimony regarding the checks based on the documents submitted into evidence. All three UCB checks were given to Ms. McCoy after she was hired by Tropicana and Ms. McCoy was employed by Tropicana for five of the six weeks covered by these checks (P-1, P-2, P-3, P-6).

Nadine L. Thompson, a long-term friend of the petitioner, testified that Ms. McCoy has a good reputation in the community and that she was aware of Ms. McCoy's financial difficulties. Ms. Thompson stated that it was her understanding that Ms. McCoy's financial problems have improved recently.

Also, Ms. McCoy submitted a letter from Robert P. Colaluca, assistant casino manager, in which he indicated that the petitioner is a conscientious, efficient and

cooperative employee who takes her job seriously and that there have been no instances of any dishonesty or financial irregularity during her employment with Tropicana (P-4).

I **FIND** that the pertinent facts are not in dispute except for the testimony regarding the three UCB checks. Even if Tropicana initially had held back the first salary payment, it is doubtful that the period would have exceeded two weeks, and therefore, I **FIND** that Ms. McCoy would have been receiving salary payments from Tropicana when she received the last UCB check. Further, I note that in endorsing each of the UCB checks, Ms. McCoy had to certify that she was unemployed during the periods covered by the checks (P-1, P-2, P-3).

CONCLUSIONS OF LAW

Deputy Attorney General Ralph Fusco argued that the UCB overpayment, even though unprosecuted, constitutes a criminal offense pursuant to N.J.S.A. 2C:20-4, theft by deception, and that Ms. McCoy is disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In addition, Mr. Fusco argued that because of this outstanding UCB debt, Ms. McCoy had not shown her rehabilitation pursuant to N.J.S.A. 5:12-90h, nor has she shown that she can meet the requisite for good character, honesty and integrity that is required for licensure pursuant to N.J.S.A. 5:12-89b. Mr. Fusco noted that Ms. McCoy knew she could not collect UCB while she was employed and that there was no evidence presented to show the extent of her alleged financial problems.

On behalf of the petitioner, Paul K. Wright, Esq. questioned the amount of the UCB judgment, and argued that this was an isolated incident and that Ms. McCoy has had serious financial problems which were compounded by the fact that she had to delay payment of some bills in order to pay the debt to the Internal Revenue Service. According to Mr. Wright, if the Division had any questions regarding Ms. McCoy's financial situation, it could have obtained information by way of discovery. Lastly, Mr. Wright argued that Ms. McCoy did not intend to commit a crime when she cashed the UCB checks and that she cashed them because she needed the money.

Based on the facts presented, I agree with Mr. Fusco's argument and I **CONCLUDE** that Ms. McCoy knowingly accepted unemployment benefits to which she was not entitled because she was gainfully employed, and that such action constitutes a

criminal offense pursuant to N.J.S.A. 2C:20-4. As to the amount of the UCB debt, I **CONCLUDE** that the petitioner is foreclosed by collateral estoppel from raising this as an issue in this matter since there was a hearing and judgment as to the amount of this debt.

In view of the amount of monies involved, this criminal activity constitutes a crime of the third degree, which is an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 5:86g. In making this determination, I specifically reject Mr. Wright's argument that Ms. McCoy had no criminal intent when she accepted the checks. Although I recognize that Ms. McCoy had financial difficulties during the period, it is clear from the facts that she intentionally failed to tell Labor about her employment, and she accepted and cashed the checks even though she knew she was not entitled to the benefits.

Since the Division has established a statutory disqualification, it is necessary to consider whether the respondent has shown her rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-90h sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining or retaining a casino employee license:

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

Although Mr. Wright has presented some evidence of rehabilitation, I **CONCLUDE** that since Ms. McCoy has not made any attempt to repay the UCB judgment, she has not shown her rehabilitation nor has she proven that she is a person of good character, honesty and integrity. Although Mr. Wright put a great deal of emphasis on her financial problems, the petitioner did not present any evidence regarding her debts. Also, Ms. McCoy admitted that since she completed the payment of the Internal Revenue Service debt, she has been able to make some payment of her UCB debt. It is obvious that the petitioner has not done so because Labor has not initiated any formal action to force her to make these payments. In view of Ms. McCoy's failure to arrange a repayment schedule, especially after being alerted that this might have a negative effect on her license reapplication, I **CONCLUDE** that the Division properly recommended that Ms. McCoy's reapplication be denied.

Therefore, I **ORDER** that the application for renewal of a casino employee license submitted by Delmerah E. McCoy 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. -

October 16, 1987
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt-Acknowledged:

October 19, 1987
DATE

Adrian Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 21 1987
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Check of the New Jersey Department of Labor & Industry made out to D. McCoy, dated November 4, 1981
- P-2 Check of the New Jersey Department of Labor & Industry made out to D. McCoy, dated November 18, 1981
- P-3 Check of the New Jersey Department of Labor & Industry made out to D. McCoy, dated December 2, 1981
- P-4 Letter from Robert P. Colaluca, dated August 28, 1987
- P-5 Letter from Eleanor Derry, dated April 27, 1987
- P-6 Memorandum regarding Delmerah McCoy's employment with Tropicana Hotel and Casino, dated April 27, 1987
- P-7 Payroll deduction agreement for the repayment of \$2,453.43 owed by Delmerah McCoy to the Internal Revenue Service

FOR THE RESPONDENT:

- R-1 Packet of information regarding the overpayment of unemployment compensation benefits to Delmerah McCoy

WITNESSES:

FOR THE PETITIONER:

Delmerah E. McCoy
Nadine L. Thompson

FOR THE RESPONDENT:

Karen Smolensky

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-158
LICENSE NO. 01216-11
OAL DOCKET NO. CCC 8012-84
ORDER NO. 87-28-18

APPLICATION OF CHARLES MEYERSON

FOR RENEWAL OF HIS CASINO KEY

ORDER

EMPLOYEE LICENSE

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 22, 1987,

IT IS on this 5th day of August 1987, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that this matter is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

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 8012-84

AGENCY DKT. NO. 84-EA-158

CHARLES MEYERSON,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC

SAFETY,

Respondent.

G. Michael Brown, Esq., and Guy S. Michael, Esq., for the petitioner (Brown and Michael, attorneys)

John J. Sheehy and Frederick J. McDonough, Deputy Attorneys General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: May 7, 1987

Decided: May 18, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Charles Meyerson, petitioner, applied to the Casino Control Commission (Commission) for renewal of casino key employee license no. 1216-11, pursuant to N.J.S.A. 5:12-89. Although the Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, did not oppose relicensure, it raised issue with the application on its assertions that the petitioner had committed certain violations of the Casino Control Act (Act), and therefore lacked financial stability, integrity and responsibility, under section 89b(1), good character, honesty and integrity, under section

89b(2), and sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a casino key employee, under section 89b(3).

PROCEDURAL HISTORY

Mr. Meyerson filed his application for renewal of his casino key employee license with the Commission. By letter, the Commission advised the petitioner that based upon information received in a report from the Division, dated August 7, 1984, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. By letter dated October 16, 1984, the petitioner requested a hearing. On October 29, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter has an extensive procedural history, including numerous prehearing conferences and motions.

FINDINGS OF FACT AND CONCLUSION

Following substantial negotiation sessions, the parties agreed to the following procedure.

On May 2, 1987, Mr. Meyerson resigned his position as an executive host for GNOC Corp. (see, copy of resignation attached). On May 4, 1987, the petitioner determined not to seek renewal of his casino key employee license, which expires in May 1987, or his casino employee license, and surrendered both to the Commission (see, attached letter from Guy S. Michael, Esq., May 4, 1987, together with acknowledgement of Chris Storcella of receipt of both licenses).

Accordingly, and concurrent with the expiration of the petitioner's casino key employee license and the submission thereof to the Commission, together with the petitioner's stated intention of terminating his participation in the casino industry in this state, the subject proceeding is rendered moot. I so **FIND**.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

May 18, 1987
DATE

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

May 19, 1987
DATE

Receipt Acknowledged:

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

May 21, 1987
DATE
ml/EE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

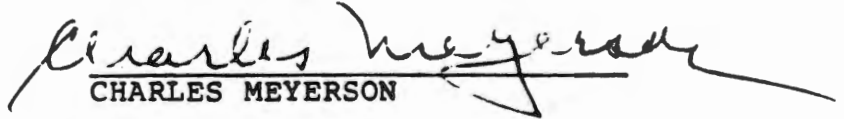
None

RESIGNATION

To: Henry M. Applegate, III
Senior Vice President

Please be advised that effective on the close of business
on May 2, 1987, I resign my position as Executive Host for
GNOC, CORP.

DATED: March 18, 1987


CHARLES MEYERSON

RECEIVED
STATE OF N.J.
DEPT. OF ADM. LAW
MAR 30 12 17 PM '87

LAW OFFICES

BROWN & MICHAEL

1537 ATLANTIC AVENUE
ATLANTIC CITY, NEW JERSEY 08401
609-344-6445

600 SEA GIRT AVENUE
SEA GIRT, NEW JERSEY 08750
201-448-5511

REPLY TO ATLANTIC CITY

TELECOPIER 609-345-2166

May 4, 1987

Chris Storcella, Director
Licensing Division
Casino Control Commission
Arcade Building
So. Tennessee & The Boardwalk
Atlantic City, N.J. 08401

Re: Charles Meyerson
Key License No. 01216-11
Employee License No. 40879-21

RECEIVED
OFFICE OF N.J.
STATE OF ADM. LAW
MAY 1 2 25 PM '87

Dear Chris:

Charles Meyerson has determined that he is no longer interested in participating in the casino industry in Atlantic City and based upon that fact has decided not to pursue his efforts to continue as a casino key or casino employee. Mr. Meyerson has not filed and will not file a license renewal application. Since Mr. Meyerson has no intention of seeking renewal of his casino key license, which expires this month, or his casino employee license, he is surrendering both as he will be relocating out of the State of New Jersey in the near future.

Enclosed please find the casino key license and employee license of Mr. Meyerson which are being surrendered to you today pursuant to the execution of Mr. Meyerson's resignation from his employment with Bally's Golden Nugget, effective the close of business on May 2, 1987.

Very truly yours,

Guy S. Michael

GSM:rg
Encls.

cc: Honorable Richard J. Voliva, A.L.J.
George Henningsen, Deputy Director
Alfred J. Luciani, Esquire
Charles Meyerson

This shall confirm that I received this day, May 4, 1987,
the casino key license number 01216-11, and the casino employee
license number 40879-21 of Charles Meyerson for the surrender
thereof.

A handwritten signature in black ink, appearing to read 'Chris Storcella', written over a horizontal line.

Chris Storcella, Director
Licensing Division
Casino Control Commission

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-69
OAL DOCKET NO. CCC 3886-83
LICENSE NO. 04332-21

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

Complainant, : ORDER

v. :

LOUIS S. MISTER, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission) by the administrative law judge; and the Commission having considered the entire record at its public meetings of January 15 and 29, 1986,

IT IS on this 11th day of September 1987, ORDERED that the initial decision is modified as follows:

The Commission finds that the respondent's conduct does not constitute a violation of N.J.S.A. 5:12-113(a), swindling and cheating. Rather, his improper actions as a blackjack dealer violated N.J.A.C. 19:47-2.6. The Commission affirms the finding of a second violation of N.J.S.A. 5:12-100(n). The conclusion that the respondent's actions undermine his good character, honesty and integrity and warrants disqualification is rejected.

IT IS FURTHER ORDERED that the initial decision, as modified, is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that for these regulatory violations, the respondent's casino employee license is suspended from April 10, 1985, until June 10, 1986, inclusive, reflecting a twelve-month suspension for the improper dealing violation and a two-month suspension for the 100(n) violation; the suspensions to be served consecutively and credit given for the suspension period already served.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

RECEIVED
DECEMBER 2, 1985

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 3886-83

AGENCY DKT. NO. 83-69

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

LOUIS S. MISTER,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Jack S. Feinberg, Esq., for respondent (Blatt, Mairone, Biel, Zlotnick, Feinberg & Griffith, attorneys)

Record Closed: October 10, 1985

Decided: December 2, 1985

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 16, 1983, and amended on March 28, 1985, seeking judgment revoking the respondent's casino employee license, or imposing such fine or other relief as the Casino Control Commission may deem just and appropriate under the circumstances, pursuant to sections 100n, 113, and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). This complaint is based upon the allegation that the respondent has for a second time wagered at blackjack while employed as a casino employee, in violation of N.J.S.A. 5:12-100n. The complaint also alleges that the respondent was arrested and charged with swindling and cheating, in violation of N.J.S.A. 5:12-113(a), while employed by the Tropicana Hotel and Casino as a blackjack dealer. The issues to be determined in this matter are as follows:

1. Whether the respondent has committed a second violation of section 100n of the Casino Control Act, on or about October 22, 1982, and whether the respondent has committed a violation of section 113 of the Act, on or about January 20, 1985, and if so, whether judgment revoking the respondent's casino employee license, or some other appropriate sanction, should be imposed, pursuant to sections 129 and 130 of the Casino Control Act.
2. Whether the respondent, with specific reference to the allegations of the amended complaint, has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b (2) and 90b of the Casino Control Act, thereby requiring revocation of licensure, or some other appropriate sanction, pursuant to sections 129 and 130 of the Act.

PROCEDURAL HISTORY

On May 16, 1983, the respondent filed his answer to the original complaint of the Division of Gaming Enforcement. On May 23, 1983, 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. The respondent did not appear at the prehearing conference which was scheduled for July 11, 1983, and for good cause shown, the prehearing conference was rescheduled for and held on September 19, 1983.

The hearing in this matter was originally scheduled to be held on November 21, 1983. However, prior to that date, the parties agreed that the matter should be placed on the inactive list in order to permit the Division to bring the matter directly before the Casino Control Commission on a stipulation of facts. By letter dated January 19, 1984, the Division requested that the Commission place the matter on the Commission's agenda. The matter remained on the inactive list while the parties awaited consideration of the matter by the Commission.

Apparently, a stipulation of facts was never submitted for the Commission's consideration. On January 20, 1985, the respondent was arrested and charged with swindling and cheating, in violation of N.J.S.A. 5:12-113a. On March 28, 1985, the Division filed its amended complaint with the Commission. By order dated April 23, 1985, the Commission suspended the respondent's casino employee license pending the final disposition of the amended complaint. The hearing in this matter was subsequently rescheduled and held on October 10, 1985.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The respondent is a resident of Pleasantville, New Jersey, and he holds casino employee license number 04332-21, issued by the Casino Control Commission. Presently an employee of the Comfort Inn, the respondent is married and is the father of two children.

On or about June 30, 1981, the Division of Gaming Enforcement filed a complaint against the respondent, alleging that the respondent, while employed by the Golden Nugget Casino as a blackjack floorperson, wagered at a casino on June 9, 1981, in violation of N.J.S.A. 5:12-100n. The respondent admitted the allegations and on January 14, 1982, the Casino Control Commission issued a final order which assessed a fine of \$200 against the respondent. As a result of this violation, the respondent was suspended by the Golden Nugget Casino for a period of one week.

On March 18, 1983, the Division of Gaming Enforcement again filed a complaint with the Casino Control Commission which alleged that the respondent was observed gaming at blackjack at Bally's Park Place Hotel and Casino on October 22, 1982, in violation of N.J.S.A. 5:12-100n. The respondent, who was still an employee of the Golden Nugget Casino on October 22, 1982, admits this second violation of section 100n of the Casino Control Act. He also acknowledges that the Golden Nugget Casino suspended him for approximately eight months and then terminated him from employment following this second incident. The respondent testified at the hearing that he had a gambling problem and that he attended Gamblers Anonymous. He further explained that he no longer has a gambling problem.

On March 23, 1984, the respondent was hired by the Tropicana Casino Hotel as a blackjack dealer. On January 20, 1985, he was arrested and charged with swindling and cheating, in violation of N.J.S.A. 5:12-113a. The criminal complaint against the respondent alleges that he arranged playing cards while serving as a blackjack dealer in such a manner as to enable a patron to receive winning hands worth in excess of \$25. It is undisputed that the respondent was fired by the Tropicana Casino following his arrest. As noted previously, the Casino Control Commission suspended the respondent's casino employee license by order dated April 23, 1985, pending the final disposition of the Division's complaint. Finally, it is undisputed that the respondent was never indicted concerning the swindling and cheating charge and there has been no criminal adjudication.

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

The factual dispute in this matter concerns whether the respondent did improperly arrange playing cards in a manner which would enable a patron to receive winning hands at the game of blackjack on January 20, 1985. Agent Arthur J. Grimmie, Jr., testified on behalf of the Division of Gaming Enforcement that he was summoned to the Tropicana Casino on January 20, 1985, and informed by Lieutenant Brown of the casino security staff that the respondent was suspected of having cheated while dealing blackjack. The security staff had made a videotape of the respondent and Agent Grimmie reviewed the tape.

A composite videotape of two incidents involving the respondent on January 20, 1985, was admitted into evidence as exhibit P-1, and the parties stipulated that the composite tape is an accurate representation of the actual events. The composite tape was shown at the hearing and Agent Grimmie testified concerning his interpretation of the events shown. According to the tape, the first incident occurred at 12:55 p.m. The respondent was dealing blackjack to a patron who was playing two hands with \$50 wagered on each. The respondent dealt to the player's first hand and, according to Agent Grimmie, the player then signaled for another card to be dealt to his first hand, but the respondent reviewed the next card and then delivered it to the player's second hand. It was the opinion of Agent Grimmie that the player would have been over 21 on his first hand if that hand had received the card for which the player had signaled.

Testifying on cross examination, Agent Grimmie explained that the player's first hand was a total of 14 and the dealer had six. In the view of Agent Grimmie an experienced blackjack player would probably not have asked for another card on his first hand because the chances were good that the dealer's hand would lose. However, Agent Grimmie also stated that he did not know if an experienced dealer would tend to play a patron's hand for the patron.

The second incident occurred at 4:46 p.m. According to Agent Grimmie, the same patron who had been involved in the earlier incident was now playing three hands of blackjack. It is undisputed that the player had left the respondent's table for some time between the two incidents and then had returned. It was the testimony of Agent Grimmie that the respondent dealt the hands normally to all of the players at the table. When the respondent dealt the next cards, he did so normally to the other players at the table. However, when the respondent reached the patron in question, he dealt much slower. When the patron had doubled down on his third hand, the respondent slowly looked at the next card to be dealt and dealt it to the third hand. In the agent's opinion, the respondent's observation of the card and slow dealing was an overt act of cheating intended to help the patron.

Testifying on cross examination, Agent Grimmie explained that a player may stand pat on his first two hands and double down on his third hand simply by doubling the bet on the third hand. The agent acknowledged that an experienced dealer would know to deal the next card to the third hand when its bet was doubled down. Agent Grimmie also acknowledged that while the respondent pulled the next card, observed it, and then dealt it, there was no indication that the player saw the card, and the player had actually doubled down his bet on the third hand and had signaled for a card to be dealt to that hand. The respondent then did, in fact, deal the card to the third hand.

Following the second incident, Agent Grimmie approached the respondent and after the respondent was informed of his Miranda rights, he was interviewed. The respondent denied any wrongdoing and he stated that he knew the patron in question only as a steady customer of the casino. Agent Grimmie acknowledged on cross examination that he made an inquiry and determined that the player was a regular patron of the Tropicana Casino. It was also acknowledged by the agent that he was unable to find any

other connection between the patron and the respondent. Finally, Agent Grimmie testified that he also interviewed the patron and the patron explained that he only knew the respondent as a dealer because he was a steady customer of the casino. The patron also denied being involved in any wrongdoing.

Testifying on his own behalf, the respondent stated that he knew the patron in question only to the extent that the patron was a regular customer of the casino. The respondent further stated that he had never spoken to the patron outside of the casino.

The respondent confirmed that he had also reviewed the composite tape. It was his testimony that he never intentionally altered his way of dealing in any way to improve the patron's chances of winning. He denied having any financial dealings whatsoever with the patron or with anyone connected to the patron. Testifying on direct examination, the respondent stated that the incidents in question were simply mistakes. However, in response to questioning by the undersigned, the respondent stated that he was dealing in his normal fashion during both incidents and he really did not see any mistakes.

The testimony of Agent Grimmie was straightforward and sincere. His impressions concerning the manner in which the respondent dealt blackjack are entitled to substantial weight. In contrast, the assertion of the respondent that he was dealing in his normal fashion is unconvincing. Having considered the testimony and having viewed the composite videotape, I make the following additional FINDINGS OF FACT:

1. At approximately 12:55 p.m. on January 20, 1985, the respondent, while performing as a blackjack dealer, reviewed the next card to be dealt and then delivered it to a player's second hand, despite the player having signaled for the card to be dealt to his first hand. This action by the respondent was intended to provide the player with a winning hand worth in excess of \$25 when the player would have otherwise had a losing wager on his first hand.
2. At approximately 4:46 p.m. on January 20, 1985, the respondent dealt slowly when he reached the previously favored patron and when the patron doubled down his bet on the third of his three hands, the respondent slowly looked at the next card and then properly dealt it to the player's third hand. Although the manner of dealing was unusual, it does not establish an attempt by the respondent to improperly assist the player.

3. Although the credible evidence in the record establishes that the respondent acted improperly during the first incident on January 20, 1985, it has not been established that the patron was involved in any wrongdoing.

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 under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Pursuant to sections 80, 89b(2) and 90b of the Act, a casino employee licensee must establish, by clear and convincing evidence, his reputation for good character, honesty and integrity.

Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding a license. Section 100n of the Act provides that it shall be unlawful for any casino employee who is directly involved with the conduct of gaming operations to wager at any game in any casino in this state. On January 14, 1982, the Casino Control Commission fined the respondent \$200 as a result of his having wagered at a casino on June 9, 1981. At the hearing, the respondent admitted that he again violated section 100n of the Casino Control Act by wagering at Bally's Park Place Hotel and Casino on October 22, 1982. Based upon this admission, I **CONCLUDE** that the respondent has committed a second violation of N.J.S.A. 5:12-100n.

Pursuant to section 113 of the Casino Control Act, any person who by any trick or sleight of hand performance, or by a fraud or fraudulent scheme, cards, dice or device, for himself or for another wins or attempts to win money or property or a representative of either or reduces a losing wager or attempts to reduce a losing wager in connection with casino gaming is guilty of a crime of the fourth degree and shall be subject to a fine of not more than \$25,000, if the value of such money or property or representative of either is over \$25. I have found that the respondent, at approximately 12:55 p.m. on January 20, 1985, improperly dealt a playing card while serving as a blackjack dealer in such a manner as to enable a patron to receive a winning hand worth in excess of \$25. I **CONCLUDE** that this intentional act of the respondent constitutes a violation of section 113a of the Casino Control Act.

The respondent's second violation of the prohibition against wagering by casino employees indicates a disregard of the strict regulatory process contemplated by the Casino Control Act. Even more serious is the conduct of the respondent while performing as a blackjack dealer which was intended to unlawfully provide a winning hand for a player, in violation of section 113 of the Act. I **CONCLUDE** that such conduct prevents the respondent from establishing that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90b of the Casino Control Act. I further **CONCLUDE** that the respondent's conduct is so adverse to the integrity of gaming operations that revocation of licensure is the appropriate sanction, pursuant to sections 129 and 130 of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Louis S. Mister be and is hereby **REVOKED**.

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

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

December 2, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/3/85
DATE

Ruth Stout
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 5 1985
DATE

Ronald J. Parkes
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Composite videotape

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

Arthur J. Grimmie, Jr.

FOR THE RESPONDENT:

Louis S. Mister

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-78
OAL DOCKET NO. CCC 9001-86
(CCC 6016-86 ON REMAND)
LICENSE NO. 22577-21
ORDER NO. 87-27-3

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
IRA K. MITCHELL, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 15, 1987,

IT IS on this 15th day of September 1987, ORDERED that the initial decision is modified as follows:

The administrative law judge characterized the respondent's indictment as the sole criminal event in an otherwise law-abiding life which, based upon the respondent's testimony, is not entirely accurate. T9. Mr. Mitchell testified that he had never been arrested subsequent to this event but that prior to it on an unspecified date, he had been arrested for driving under the influence of drugs. Thereafter, again on an unspecified date, he enrolled in and completed a drug rehabilitation program at Seabrook House. He currently attends Narcotics Anonymous or Alcoholics Anonymous

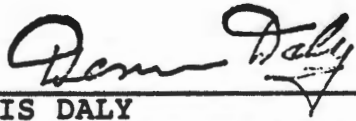
ORDER NO. 87-27-3

meetings approximately once a week. T10. Apparently neither the deputy attorney general nor the administrative law judge regarded drug abuse as a current problem for the respondent because the issue was not pursued with further questioning. Although the Commission finds that these events are not an impediment to licensure, it takes notice of them to correct the misimpression conveyed by the initial decision that the attempted theft and burglary charges are the respondent's sole involvement with the criminal justice system.

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 9001-86

(On Remand CCC 6016-86)

AGENCY DKT. NO. 86-78

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

Petitioner,

v.

IRA K. MITCHELL,

Respondent.

William E. Mountford, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Ira K. Mitchell, respondent, pro se

Record Closed: May 4, 1987

Decided: June 4, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out a complaint filed by petitioner with the Casino Control Commission seeking revocation of respondent's casino hotel 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 took place on May 4, 1987.

The questions presented are whether certain conduct by respondent casts sufficient doubt on his good character, honesty and integrity to warrant revocation,

N.J.S.A. 5:12-89b, and if so, whether he can demonstrate rehabilitation, N.J.S.A. 5:12-90h. Though petitioner alleged in its complaint that the incident was a statutory disqualifier, N.J.S.A. 5:12-86c, it indicated on the record that respondent's crime did not rise to that level, and that it would proceed solely on the question of good character.

The basic facts are undisputed. On December 3, 1984, at approximately 7:00 a.m., respondent was apprehended by Ventnor City Police inside a boarded-up single-family dwelling belonging to another. In his pocket he had a silver butter knife and teaspoon which he had taken from the kitchen. With him was a second individual, Barbara J. Gerr, whose knapsack was searched, revealing among other things, two chisels. On January 17, 1985, respondent was indicted for attempted theft and burglary in violation of N.J.S.A. 2C:5-1, 2C:20-3 and 2C:18-2. On or about April 17, 1985, he entered a Pre-Trial Intervention Program (PTI) which he has successfully completed.

The house in which respondent was found has since been demolished. Respondent has no prior or subsequent criminal history. He has been employed by various casinos in Atlantic City since February 1981.

Respondent testified that on the morning in question he had finished working his shift as a blackjack dealer at the Boardwalk Regency Hotel and Casino. He picked up his friend, Ms. Gerr, and they went for a ride. They had seen the house in question before and had always been interested in it. Ms. Gerr restores old furniture, and respondent has an interest in architecture, antiques and old junk. He and Ms. Gerr sometimes ride around on garbage days looking for things of interest. The house was boarded up and they believed it to be abandoned. They went in through a window opening that had no glass in it. They were there for about an hour, during which time respondent picked up the tarnished butter knife and teaspoon which he hoped to take home and polish. There was some weather-beaten old furniture in the house and some books strewn around. When he heard the sounds of other people in the house, he froze in his tracks. He could not move a step and when the police arrived he was standing in the middle of a room; Ms. Gerr was hiding in a closet.

Respondent testified that he had no intention to commit a crime, and entered the house more out of curiosity than anything else. He testified that the chisels which Ms. Gerr had in her knapsack were tools which she used in furniture stripping and she simply had them with her. It was not their intention to take furniture from the house.

Petitioner presented no witnesses, relying instead on police reports, the indictment and subsequent completion of PTI.

This is the substance of the record. The statutory framework requires that respondent maintain good character, honesty and integrity. The circumstances here really do not call these personal qualities into question. Respondent did enter this house illegally and arguably took things of value which did not belong to him. Nevertheless, he was a credible witness and I accept his testimony to the effect that both he and Ms. Gerr felt that this house was abandoned. Much of the record supports this understanding, particularly the fact that the house has since been demolished. While that does not excuse the trespass or his taking items from the house, it does place the incident in context. However, even if one were to conclude that the conduct requires a showing of rehabilitation, I believe this has been satisfied. Respondent successfully completed a PTI program. He had never had a problem before with the law and has had none since. He was truly remorseful at the hearing and I have no doubt that he has learned his lesson. Thus, based on the nature of the offense, respondent's clear record since the incident, and his completion of PTI, I **CONCLUDE** that respondent has established rehabilitation in accordance with the criteria of the statute.

It is **ORDERED** that petitioners complaint be **DISMISSED**, and that respondent be permitted to retain his license.

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

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

DATE

6/4/87

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

6/5/87

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUN 9 1987

OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS

Ira K. Mitchell

EXHIBITS

For petitioner:

P-1 Investigation Report

P-2 Complaint

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-197
OAL DOCKET NO. CCC 5066-86
LICENSE NO. 20577-21
ORDER NO. 87-25-5

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
LAWRENCE S. MORROW, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 1, 1987,

IT IS on this 14th day of July 1987, ORDERED that the initial decision is modified as follows:

(1) The Commission finds that, pursuant to State v. Jester, 68 N.J. 87 (1975), charges brought against the respondent on April 5, 1985, for possession of CDS with intent to distribute and distribution of CDS, merged into a violation of N.J.S.A. 24:21-19a(1) warranting his disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g).

(2) The ALJ referred to the respondent's misconduct as having "occurred over a period of several months which necessarily included several incidents." Init. dec. at 10. The record does not reveal that Mr. Morrow committed prior offenses of

distribution or possession of CDS with intent. The Commission determines that the initial decision should be clarified to reflect this point.

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 5066-86

AGENCY DKT. NO. 86-197

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

Petitioner,

v.

LAWRENCE S. MORROW,

Respondent.

Barth Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Harry A. Goldenberg, Esq., for the respondent (Goldenberg, Mackler and Sayegh,
attorneys)

Record Closed: April 10, 1987

Decided: May 26, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Lawrence S. Morrow, respondent and the holder of casino employee license no. 20577-21, had committed criminal misconduct which constituted a violation of section 86c(3) of the Casino Control Act (Act) by means of section 86g, which rendered continued licensure to be inimical to the policies of the Act under section 86c(4) and established that the respondent no longer possesses the requisite good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference,

for which the Division seeks revocation of his casino employee license, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 28, 1986. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter dated July 25, 1986, the respondent requested a hearing. On July 31, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on September 29, 1986. The matter was heard on April 10, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Lawrence Scott Morrow is 25 years of age and has resided in Ventnor for the past two years.

In December 1980, the respondent was issued casino employee license no. 20577-21 by the Commission. His license is endorsed as a craps dealer and a box person. Although he successfully completed blackjack dealer school, he never sought that endorsement.

In January 1981, the respondent was employed by Bally's Park Place, Inc., t/a Bally's Park Place Casino Hotel, as a craps dealer. He left this position in September 1981, to return to Atlantic County College.

In approximately January 1982, the respondent was employed by the Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino, where he remained for one and one-half years.

Thereafter, in 1983, the respondent was employed as a craps dealer by the Claridge Hotel and Hi Ho Casino (Claridge).

In January 1985, the respondent's mother, age 41, died suddenly as the result of an automobile accident. The respondent enjoyed a close relationship with his mother, and had planned a vacation with his parents and his fiancée. The impact of this event upon the respondent was in dispute and will be discussed, infra.

The respondent was involved in an incident on April 5, 1985, during which he was arrested by the Atlantic City Police Department (P-1 and P-2). He was charged with violations of N.J.S.A. 24:21-19a, possession of a controlled dangerous substance - marijuana over 25 grams; and N.J.S.A. 24:21-20a(4), distribution of a controlled dangerous substance - marijuana (P-5). Police officers had observed the respondent in a parking lot deliver 233 grams of marijuana to another (his work supervisor) in exchange for approximately \$700 (P-3). On October 3, 1985, the respondent was indicted and charged with two violations of N.J.S.A. 24:21-19a(1), one count of distribution or sale of a controlled dangerous substance - marijuana, and one count of possession of a controlled dangerous substance - marijuana - with intent to distribute; and a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance - marijuana - over 25 grams (P-6). On December 23, 1985, the respondent pled guilty to a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - marijuana - over 25 grams (P-7). The remaining two counts of the indictment were dismissed. On January 31, 1986, the respondent was sentenced to two years probation, one day in the Atlantic County Jail with credit, a fine of \$2,000, payment of a \$25 penalty to the Violent Crimes Compensation Board, and forfeiture of \$673. The respondent has paid his fine and has completed successfully his probationary obligation. The probation office has submitted a request to the court for early termination of the respondent's probation, which is now pending (R-2).

The respondent was suspended by the Claridge immediately following his arrest.

Thereafter, the respondent returned to his home in Deptford. He was employed by his fiancée's father as a handyman, and also worked evenings collecting trash at the Deptford Mall.

Following sentencing, on February 1, 1986, the respondent returned to employment at the Claridge, where he remains to date.

In October 1986, the respondent enrolled in a drug rehabilitation program with Operation Junction in Ocean City (R-3 and R-5). This program involved individual and group counseling on a weekly basis. In addition, the respondent was subjected to random urinalysis tests, all of which were negative. The respondent successfully completed the program on February 3, 1987.

Within a few months of his return to the Claridge, the respondent was elected by the dealers on his shift to the Toke Committee. His duties and responsibilities as a member of the Toke Committee involve the collection of all tips received by dealers on a shift, accounting for the tips and the performance of paperwork for the deposit and distribution of the tips. The respondent is entrusted with one of the sets of keys for all toke boxes. He is also responsible to correct disputes between employees and payroll. The Toke Committee handles approximately \$100,000 per week.

The respondent was also elected by his fellow dealers to the Dealers' Council, which acts in a liaison capacity with upper management. The Council, with which the respondent has a nonpaid position, meets with management on a monthly basis to discuss future plans and grievances.

The respondent is now seeking reelection to both positions.

The respondent and Karen Sergeant, his fiancée, plan an August 22, 1987 wedding.

The respondent has not committed any other violations of criminal laws.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the respondent's commission of criminal misconduct, his rehabilitation, and his current good character, honesty and integrity.

The respondent described the circumstances underlying his misconduct. He was deeply depressed following his mother's death. He did not handle the situation well and began to drink heavily, took valium and used a heavy amount of marijuana. The respondent acknowledged that prior to January 1985, he had used marijuana on occasion and solely on a recreational basis. The respondent attributed his misconduct directly to his use of marijuana and valium. Although the respondent did not deny his involvement in the transaction, he stated that he did not expect to receive money for his actions; rather, he expected to receive marijuana.

The respondent offered two witnesses concerning the manner in which he responded to his mother's death. Shelley Horne, a floorperson at the Claridge, has known the respondent for approximately six years. The witness socialized with the respondent and his family. Ms. Horne observed an identifiable change in the respondent's personality subsequent to his mother's death. Prior thereto, there was a close and happy family relationship, and the respondent was an outgoing and friendly person. After the accident, he was despondent, withdrew from his friends and often left work early. Carlos Caballero, a boxman at the Claridge for the past four years, described the respondent prior to the accident as an exemplary employee. The witness observed that the respondent was shocked and crushed by the accident and became depressed, left work early, associated with different persons, drank often and was withdrawn, i.e., he did not communicate with his friends.

Mr. Morrow also described his rehabilitative efforts. He entered the program at Operation Junction in order to ensure that he would remain drug-free in the future. Subsequent to the Division's complaint, the respondent had incurred some depression, which raised concerns and caused him to seek professional assistance. He has never used any drug other than marijuana, and has been drug-free since April 1985. Further, the respondent testified that he will not repeat his misconduct because he now understands better the seriousness of his deeds, now appreciates that which he has earned, wants to remain in the casino industry as his career and because he is getting married.

Again, the respondent relied upon the testimonies of Ms. Horne and Mr. Caballero. Ms. Horne testified that from discussions with the respondent, she believes he has expressed a recognition of his misconduct and realizes that he made a mistake. The respondent has regained his prior personality and has worked very hard to get his life back to normal. The respondent was elected to positions of responsibility by his coworkers because he has proven himself to be worthy of respect. Specifically, the Toke Committee position requires hard work and a great deal of responsibility. Coworkers would not elect a drug abuser to this position. Ms. Horne also testified that the respondent is well liked by his coworkers and upper management. The respondent has acknowledged the seriousness of his misconduct and has used that experience as a basis for a positive attitude about the future. Mr. Caballero testified that he was surprised at the respondent's misconduct, because it was out of character. However, and upon reflection, the witness attributes the misconduct to a period of confusion. The witness has observed that the respondent has returned to his prior behavior and has renewed old friendships. The respondent is now enthusiastic about his future and has matured. Further, the respondent is well regarded by his coworkers. Mr. Caballero has left the Claridge and plans to enter medical school in August (R-7). Both witnesses described the respondent as a good person.

The respondent also offered several letters on his behalf. James L. Derr, casino manager at the Claridge, referred to the respondent's positions on the Dealers' Council and the Toke Committee, as well as participation in charitable activities (R-1). Mr. Derr characterized the respondent as "a loyal and dependable employee" whom he is proud to supervise. William Brent Henson, pit supervisor for the Claridge and the respondent's direct supervisor, commented positively upon the respondent's technical abilities and his general professionalism, and concluded that the respondent is an asset to the entire casino industry community (R-4). Last, Steven C. Miller, assistant shift manager for the Claridge, stated that based upon performance, the respondent is "an exemplary employee," and was of the opinion that the respondent has been rehabilitated (R-6).

Although the Division did not offer any evidence to refute the respondent's explanation of the circumstances underlying the incident, it is necessary to assess Mr. Morrow's credibility prior to making findings of fact. Initially, the respondent's position in this matter must be recognized. He is the holder of a casino employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the incident was consistent with the documentary

evidence. Further, the respondent's testimony concerning his reaction to his mother's death and his rehabilitative efforts was corroborated in full by the believable testimonies of Ms. Horne and Mr. Caballero. It was clear both during the hearing and during the review of the record that from my observations of the respondent's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and the sincerity with which the respondent acknowledged his misconduct, the respondent testified truthfully. The respondent's testimony was candid, consistent, believable, sincere and completely persuasive. The respondent acknowledged fully the extent of his wrongdoing and accepted full responsibility for his misconduct. In the final analysis, I am persuaded to accept his testimony in all respects.

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

1. Mr. Morrow was a credible witness and his testimony was candid, consistent with the documentary evidence, and believable in all respects.
2. The respondent's explanation of the circumstances underlying his misconduct was believable and persuasive, and is adopted fully as a finding of fact.
3. The respondent's explanation of his rehabilitative efforts was believable and persuasive, and is adopted fully as a finding of fact.
4. There is little likelihood, if any, that the respondent will repeat his prior misconduct.
5. The respondent has not used or otherwise been involved with illegal drug activities since April 1985.
6. Close friends and employment supervisors of the respondent are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(B) N.J.S.A. 5:12-86c(4)

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."

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

Section 86g provides that an applicant/licensee can be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19, be disqualified from licensure and/or registration. The Division alleges that the respondent's misconduct constituted two violations of N.J.S.A. 24:21-19a(1), which could disqualify the respondent from continued licensure. The respondent did not dispute the allegation that his misconduct constituted violations of N.J.S.A. 24:21-19a(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed two violations of N.J.S.A. 24:21-19a(1), which disqualifies him from continued licensure.

The conclusion that the respondent's misconduct constitutes a disqualifying offense under section 86c(3) and the conclusion that the respondent has established his rehabilitation under section 90h, infra, render moot the issue of inimicality under section 86c(4). I so **CONCLUDE**.

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

A respondent faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued licensure and/or

continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. The following eight specific criteria must be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Morrow seeks to retain his casino employee license in order to continue in his employment as a craps dealer at the Claridge. In this capacity he has direct responsibilities for actual gaming activities and has substantial contact with casino patrons.

Second, the respondent committed violations of N.J.S.A. 24:21-19a(1), possession with intent to distribute, as well as distribution of controlled dangerous substances - marijuana. It is also apparent that the respondent used marijuana on a continuing basis during the several months immediately preceding his arrest. Because the offenses are included as disqualifiers under section 86c(3), they are serious. In addition, the misconduct was committed by a licensee during a period of active employment in the industry, which enhances the seriousness thereof.

Third, the misconduct occurred approximately two years ago. However, the circumstances underlying the incident tend to mitigate substantially the seriousness thereof. More specifically, the respondent's understandable extreme emotional reaction

1007 to the unanticipated death of his mother left the respondent vulnerable and readily

subject to aberrational behavior. In turn, the aberrational behavior, i.e., excessive use of marijuana, further led the respondent to his misconduct. The respondent's emotional state cannot serve to excuse totally his misconduct, especially because his prior recreational use of marijuana may have contributed to the nature of his reaction; nevertheless, these circumstances do mitigate substantially the seriousness of his reaction. The aberrational nature of his behavior and his nonuse of drugs since his arrest support his proposition.

Fourth, the respondent's misconduct occurred in early 1985, and ceased upon his arrest approximately two years ago.

Fifth, the respondent was 23 years of age at the time of the incident. He was a young adult who, for the first time, was faced with an extreme personal tragedy. This indicates that his misconduct was due, in part, to immaturity and inexperience.

Sixth, although the respondent's misconduct occurred over a period of several months, which necessarily included several incidents, it was isolated in nature. Given the circumstances underlying the incident, it does not appear appropriate to consider the occasions preceding the incident when the respondent used marijuana as related, and there has not been any subsequent use of marijuana by respondent.

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

Eighth, the respondent has made substantial rehabilitative efforts. He has acknowledged fully his misconduct and has accepted responsibility therefore. The respondent accepted and satisfied fully the sentence imposed. In addition, he recognized the seriousness of his misconduct and voluntarily sought professional assistance in order to ensure that there would be no relapse in the future. He has not been involved subsequently with illegal drugs. Also, the respondent has established a very positive employment record in the casino industry, including his being elected by coworkers to positions of high trust and responsibility. It was well established that the respondent is a responsible, reliable and trustworthy person. He has earned the respect of his coworkers as well as his supervisors. The respondent has undergone an intense personal review, reassessed his priorities, and established a solid foundation for his future life. In the final analysis, the respondent has distinguished himself in his efforts to overcome his prior misconduct. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation.

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

(D) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Morrow was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Mr. Morrow's burden in this matter was substantial by reason of the seriousness of his misconduct and the fact that it was committed by a licensed employee during a period of active employment in the casino industry. However, it is apparent that immediately following his arrest, the respondent was able to regain control over his life and obtained the assistance necessary to ensure that his future actions would be proper in all respects. Accordingly, there is little likelihood, if any, that the respondent will repeat his misconduct. 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 continued licensure. An examination of the "whole man" clearly and convincingly establishes that Mr. Morrow is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. Boardwalk Regency Corporation.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(E) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- 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. . .

For the reasons previously expressed, it is clear that the respondent's prior misconduct does not now disqualify him from continued licensure. Further, there is every reason to believe that he will not repeat his misconduct in the future. Accordingly, no penalty shall be imposed against his license. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino employee license held by Lawrence Scott Morrow be **DENIED** and **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

May 26, 1987
DATE

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

May 26, 1987
DATE

Receipt Acknowledged:

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

June 1, 1987
DATE

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Atlantic City Police Department - Investigation Report, April 5, 1985 (6 pages)
- P-2 Atlantic City Police Department - Arrest Report, April 5, 1985 (2 pages)
- P-3 State of New Jersey, Department of Law and Public Safety, Division of State Police - Request for Examination of Evidence; New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau - Laboratory Report, May 6, 1985 (2 pages)
- P-4 Atlantic City Police Department - Property Report, April 5, 1985 (2 pages)
- P-5 State of New Jersey v. Lawrence Scott Morrow, Atlantic City Municipal Court, Dkt. No. C-03412 and -03413, Complaint, April 5, 1985
- P-6 State of New Jersey v. Lawrence Scott Morrow, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Dkt. No. 85-10-1848-C, Indictment, filed on October 31, 1985 (4 pages)
- P-7 State of New Jersey v. Lawrence Scott Morrow, New Jersey Superior Court, Law Division - Criminal, Atlantic County, Dkt. No. 85-10-1848-C, Judgment of Conviction and Order for Commitment, January 31, 1986 (5 pages)

- R-1 Letter from James L. Derr
- R-2 Letter from Lee J. Mooney, April 8, 1987
- R-3 Letter from John Sheldon, April 7, 1987
- R-4 Letter from William B. Henson, November 26, 1986
- R-5 Letter from John Sheldon, January 5, 1987
- R-6 Letter from Steven C. Miller, November 28, 1986
- R-7 Letter from Carlos F. Caballero, January 2, 1987 (2 pages)

WITNESS LIST

For the petitioner:

None

For the respondent:

Carlos F. Caballero
Shelley Horne
Lawrence S. Morrow

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-COI-6;
87-COI-7 AND 87-COI-8
APPLICATION NOS. 2205-70;
2060-70 AND 2061-70
VENDOR ID NOS. 20459; 17979
AND 18712
OAL DOCKET NO. CCC 932-87
(CONSOLIDATED)
ORDER NO. 87-47-12

APPLICATIONS OF NASHUA TRUST CO.,
JEFFERSON INN, INC.,
AND
1600 PACIFIC AVENUE CORP.
FOR CASINO SERVICE INDUSTRY LICENSES

ORDER

Proceedings in this matter having been conducted in the Office of Administrative Law; and the administrative law judge (ALJ) having filed an initial decision settlement, with the Casino Control Commission in which the ALJ concluded that this matter is no longer a contested case and ordered the parties to comply with the terms of a settlement reached between them; and the Commission having considered the entire record of these proceedings at its public meeting of December 9, 1987,

IT IS on this 28th day of December 1987, ORDERED that the initial decision is adopted; and

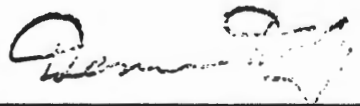
IT IS FURTHER ORDERED that pursuant to the representations of its counsel the Division of Gaming

ORDER NO. 87-47-12

Enforcement will promptly submit a letter-report on the qualifications of the applicant companies for licensure as casino service industries and the applications will thereafter be processed to a conclusion.

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

SETTLEMENT

OAL DKT. NO. CCC 932-87

AGENCY DKT. NOS. 87-C SI-6,

87-C SI-7 and 87-C SI-8

**NASHUA TRUST COMPANY,
JEFFERSON INN, INC., AND
1600 PACIFIC AVENUE CORP.,**

Petitioners,

v.

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

Respondent.

**Robert K. Malone, Esq., for the petitioners (Crummy, DelDeo, Dolan, Griffinger and
Vecchione, attorneys)**

**Frederick J. McDonough, Deputy Attorney General, for the respondent (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

Record Closed: October 20, 1987

Decided: October 23, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

This matter concerns the applications of Nashua Trust Company, Jefferson Inn, Inc., and 1600 Pacific Avenue Corp., petitioners, to the Casino Control Commission for licensure as casino service industries, pursuant to N.J.S.A. 5:12-92c. The Division of

Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of one of the principal corporate officers having a history of arrests and convictions involving securities law violations and alleging that the petitioners lacked the requisite good character, honesty and integrity for casino service industry licensure.

PROCEDURAL HISTORY

The petitioners filed applications with the Commission seeking licensure as casino service industries, pursuant to N.J.S.A. 5:12-92c. By letter dated October 30, 1986, the Division objected to the applications of the petitioners for licensure as casino service industries, asserting that one of the principal officers of the corporations, John Peter Galanis, had a long history of involvement in illegal securities activities, that the petitioners filed for bankruptcy pursuant to Chapter 11 of the Federal Bankruptcy Code and that their financial situation is virtually hopeless, and that the petitioners cannot establish their good character, honesty and integrity. On December 3, 1986, the Division filed a supplemental letter with the Commission further objecting to the petitioners' licensure, asserting that John Peter Galanis had been convicted in federal court on charges of conspiracy to commit securities fraud and mail fraud. Finally, on December 23, 1986, the Division filed another supplemental letter with the Commission further objecting to the petitioners' licensure, asserting that information had been filed against John Peter Galanis by the Quebec Securities Commission charging him with securities fraud. By application dated December 10, 1986, which was received by the Commission on December 12, 1986, the petitioners requested a hearing. On February 9, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on February 17, 1987, 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 before me on April 10, 1987. The issues set forth at the prehearing conference to be resolved at the hearing are:

- A. Whether petitioners' licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86e because one of their principal corporate officers is alleged to have a history of arrest and convictions involving securities law violations.

- B. Whether the petitioners possess the requisite good character, honesty and integrity for casino service industry licensure, pursuant to N.J.A.C. 19:43-1.3(c).

At the prehearing conference, the attorney for the petitioners represented that the petitioners were in bankruptcy, were being administered by a trustee in bankruptcy, Jack Birnberg and Associates, and that none of the petitioners' original corporate officers, including John Peter Galanis, were still involved with the petitioners. Based upon this representation, the Division agreed to conduct an investigation into the suitability of licensure of the trustee in bankruptcy, Jack Birnberg Associates, for a casino service industry license. The Division further agreed that if it is found that Jack Birnberg and Associates is a separate qualifier and that the old officers of the petitioners' companies are no longer involved with those companies, then the Division will reconsider its position of objection with regard to the petitioners' applications for licensure. Finally, the Division indicated that if after concluding its investigation, the Division decides not to object to Jack Birnberg and Associates' suitability for licensure and finds that Mr. Galanis and the original officers of the petitioners are no longer associated with the petitioners, then the Division of Gaming Enforcement will not proceed against Mr. Galanis and any other of the original officers of the petitioners' companies in this action, but it retains the right to initiate separate actions against those individuals to have them disqualified in their individual capacities. By letter dated April 24, 1987, the Division indicated that it had initiated an investigation into the suitability of Jack Birnberg and Associates for licensure as a casino service industry.

A hearing in this matter was scheduled for June 24, 1987. On that date, both parties requested an adjournment of the proceedings because the Division had yet to complete its investigation of Jack Birnberg and Associates and a settlement had not yet been reached. The hearing was rescheduled for August 13, 1987. On August 11, 1987, the Division requested an adjournment of the August 13, 1987 hearing because the Division had not yet completed its investigation of Jack Birnberg and Associates. On August 13, 1987, a conference was held between the attorneys representing the parties in this matter and me in order to discuss any outstanding issues and to determine the status of the case.

A hearing in this matter was held on October 20, 1987, at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey, after which the record closed.

The parties have agreed to a settlement and have prepared a letter/stipulation indicating the terms thereof, which is attached and fully incorporated herein.

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

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be 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.

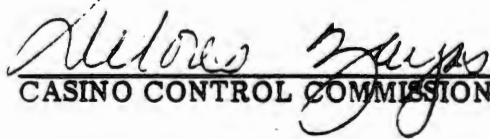
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

23 October, 1987
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

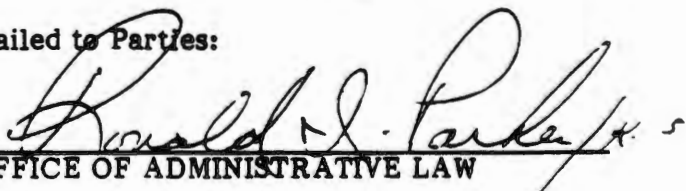
October 27, 1987
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OCT 28 1987


OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

None

WITNESSES

None

W. CARY EDWARDS
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: Frederick J. McDonough
Deputy Attorney General
(609) 984-3608

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DKT. NO.: CCC 932-87
AGENCY REF. NOS. 87-COI-6,
87-COI-7 and 87-COI-8

NASHUA TRUST COMPANY
JEFFERSON INN, INC., and
1600 PACIFIC AVENUE CORP.,

Petitioners,

vs.

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

Respondent.

CIVIL ACTION

STIPULATIONS AND SETTLEMENT
AGREEMENT

Petitioners, Nashua Trust Company, Jefferson Inn, Inc. and
1600 Pacific Avenue Corp., and Respondent, State of New Jersey,
Department of Law and Public Safety, Division of Gaming
Enforcement, through their respective counsel, do hereby enter into
the following Stipulations:

1. Nashua Trust Company, Jefferson Inn, Inc. and 1600
Pacific Avenue Corp. (hereinafter referred to collectively as
"Petitioners") filed applications with the Casino Control
Commission seeking licensure as casino service industries pursuant
to N.J.S.A. 5:12-92(c).

2. The Respondent filed letter reports with the Casino Control Commission objecting to the license applications of the Petitioners. These letter reports are dated October 30, 1986, December 3, 1986 and December 23, 1986. The Respondent's objection is based upon its conclusion that the Petitioners were unable to demonstrate by clear and convincing evidence their good character, honesty and integrity as required by the Casino Control Act and N.J.A.C. 19:43-1.3(c).

3. The individual who formerly controlled the management and operations of the Petitioners is John Peter Galanis. Mr. Galanis is a convicted felon and has a long history of involvement in fraudulent investment schemes. Mr. Galanis is presently under the following indictments:

1. The State of New York Indictment #_____;¹
2. Federal Indictment #87-520 filed on September 15, 1987 in the United States District for the Southern District of New York.

Certified copies of these indictments are annexed hereto as, respectively, Exhibits A and B. The foregoing indictments arose in part out of and in connection with Mr. Galanis' activities on behalf of the Petitioners in this matter.

4. The Petitioners have no defense to the conduct of Mr. Galanis as alleged in the Respondent's aforesaid letter reports and in Exhibits A and B.

¹ According to the Manhattan District Attorney's Office, the court will not certify the indictment until all defendants

(Footnote Continued On Following Page)

5. On June 5, 1986, Petitioner Nashua Trust Co. filed for bankruptcy pursuant to Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas. On September 5, 1986, Jack Birnberg and Associates was appointed by an order of the United States Bankruptcy Court for the Northern District of Texas to be the Trustee for Petitioner Nashua Trust Co. On or about September 5 or 6, 1987, the bankruptcy case was transferred from Texas to the U.S. Bankruptcy Court for the District of New Jersey. Subsequently, on September 25, 1986, Petitioners Jefferson Inn, Inc. and 1600 Pacific Avenue Corporation filed bankruptcy petitions pursuant to Chapter 11 of Title 11 of the United States Code; these filings were made in New Jersey. On or about October 8, 1986, Jack Birnberg and Associates was appointed by the Hon. Hugh M. Leonard United States Trustee for the Region of New Jersey, Delaware and Pennsylvania and approved by the Hon. Rosemary Gambardella to serve as Trustee for Petitioners Jefferson Inn, Inc. and 1600 Pacific Avenue Corp.

6. On September 9, 1986 Judge Gambardella entered an order authorizing Jack Birnberg & Associates to retain the firm of Crummy, DelDeo, Dolan, Griffinger & Vecchione as counsel for the trustee of the Petitioners.

(Footnote Continued From Previous Page)

have been arrested and entered a plea. One of the defendants is in Ohio and has refused to waive extradition. Accordingly, this indictment is not certified and remains unnumbered.

7. The Trustee was subsequently notified by the Casino Control Commission staff that it would be required to file for licensure as a casino service industry and the appropriate forms were sent to the Trustee by the Commission staff. By letter dated July 2, 1987, the Commission staff advised the Trustee that the staff was withdrawing its previous request that the Trustee file for licensure as a casino service industry, and that the Commission staff would, instead, consider the Trustee as a qualifier of the Petitioners.

8. Concurrently, the Respondent was conducting an investigation of the Trustee and that investigation is now complete. In connection with the aforesaid investigation, the Trustee completed and filed with the Respondent a Personal History Disclosure Form, a Net Worth Statement, financial statements and schedules and the Trustee's federal income tax returns for the three most recent tax years.

9. The officers of the Petitioners during all times material to the Respondent's objection were Richard D. Young, John M. Lewis, Richard E. Enright and Michael A. Tocicki. These individuals resigned or abandoned their positions prior to the bankruptcy filings and have no involvement in or control over the business activities of the Petitioners. The Petitioners represent that the aforesaid individuals, together with Mr. Galanis, will have no connection with the Petitioners or any entities affiliated with the Petitioners at any time in the future.

10. Subsequent to the filing of the Division's letter reports, the Petitioners, through their counsel, requested a hearing on their applications for licensure as casino service

industries and the matters were transmitted to the Office of Administrative Law to be heard as a contested case.

11. A prehearing conference was conducted in this matter by the Honorable Steven L. Carnes, Administrative Law Judge, on April 13, 1987. During the prehearing conference, the petitioners were represented by Robert K. Malone, Esq., of the firm of Crummy, DelDeo, Dolan, Griffinger and Vecchione, counsel for the Trustee.

12. Judge Carnes entered a prehearing order following the prehearing conference, which order identified the two issues to be resolved at the hearing. A copy of the prehearing order is annexed hereto as Exhibit C.

13. As part of the prehearing order, a settlement agreement was entered into between the Petitioners and the Respondent which agreement was incorporated into the prehearing order. This agreement obligated the Respondent to conduct an investigation into the suitability of licensure of Jack Birnberg & Associates, Inc. During the course of this investigation, the Respondent learned that Jack Birnberg, individually, was the subject of an order (S.E.C. No. 34-9582) entered by the Securities and Exchange Commission on April 25, 1972. The aforesaid order was entered into by consent of the parties. Investigation of the Trustee disclosed no other derogatory information. Given the age and nature of the conduct which precipitated the aforesaid consent order, Respondent will not interpose an objection on this ground.

14. Based upon the information presently available to it, the Respondent is aware of no information that would adversely impact upon the status of Jack Birnberg & Associates, Inc. as a qualifier of Petitioners.

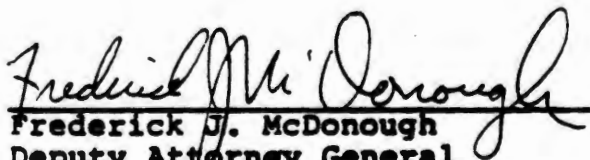
The parties in this contested case have voluntarily resolved all disputed matters and enter into the following settlement which fully disposes of all issues in controversy between the Petitioners and the Respondent:

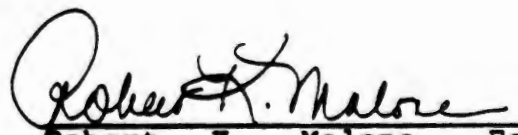
7mm
Qm
1. The Respondent withdraws its objection to the licensure of the ^{Petitioners} ~~Respondents~~ as casino services ^{7mm} ~~industries~~ pursuant to N.J.S.A. 5:12-92(c). _{LM}

2. The Petitioners withdraw their request for a hearing.

3. Nothing in this agreement shall be deemed to be an admission of liability on behalf of either party. This agreement shall not constitute a precedent in matters involving other applications for licensure.

4. This agreement will only become effective when it is approved by the Casino Control Commission. Any disapproval by the Casino Control Commission shall not interfere with the rights of either party to pursue the matter further.


Frederick J. McDonough
Deputy Attorney General
Attorney for Respondent


Robert K. Malone, Esq.
Crummy, DelDeo, Dolan,
Griffinger & Vecchione
Attorneys for the
Petitioners - Jack
Birnberg & Associates,
Inc.
Trustee for Nashua Co. and
its Related Entities

100287/A2
DATED: October 20, 1987

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

JOHN PETER GLANIS, SAMUEL ROSENGARTEN, :
LOUIS ROSEN and LAURENCE KLUSKY, :

Defendants. :

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment accuse the defendants of the crime of CONSPIRACY IN THE FIFTH DEGREE, violation of Section 105.05 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during a period from on or about November 1, 1934 to on or about June 3, 1936, with intent that conduct constituting the felonies of Grand Larceny in the Second Degree, Scheme to Defraud in the First Degree, and violations of Section 352-c(5) and 352-c(6) of the General Business Law be performed, agreed with each other and with others known and unknown to the grand jury to engage the performance of such conduct, as follows:

The conspirators agreed to market and sell fraudulent tax shelter investments in real estate limited partnerships to members of the public. The investments sold were units, or fractions of units, in limited partnerships whose ostensible purpose was to purchase, own, rehabilitate and operate non-casino hotels and related businesses in Atlantic City, New Jersey. As part of the conspiracy, the conspirators caused the formation of Nashua Trust Company, also known as Natco. Natco's role was to acquire and rehabilitate the property and sell it to the partnerships (the "Natco partnerships"). Also as part of the conspiracy, the conspirators prepared and authorized private placement memoranda, which purported to describe the partnerships accurately, but which contained material misstatements, misrepresentations and omissions. A private placement memorandum was issued for each partnership and was used by the conspirators to sell units in the Natco partnerships.

As part of the conspiracy, the conspirators failed to disclose and concealed from potential investors material facts and made misrepresentations as to other material facts. The conspirators failed to disclose and concealed the identity and involvement of JOHN PETER GALANIS, who was the principal promoter of the ventures and who was to and did receive a substantial share of the money invested in the partnerships by members of the public. The conspirators also concealed Galanis' business background and criminal background from potential investors.

Other material misrepresentations included false and misleading statements of the application of funds obtained through the sale of units of

the partnerships. The conspirators failed to disclose and concealed the fact that substantial funds would be channeled to people and entities controlled by Galanis.

Other material misrepresentations in the private placement memoranda included the overstatement of the assets of Natco and the false representations as to the financial projections of operating expenses and income for the hotels which were to be owned by the limited partnerships. The conspirators agreed and knew that these projections would be false, misleading and baseless as contrivances to enhance sales.

The principal promoter of the Natco partnerships was JOHN PERCIVAL GALANIS, who controlled the business and assets of Natco, despite the fact that he was not named as an officer or director of that company. It was part of the conspiracy to conceal the true involvement of Galanis in the Natco partnerships. Galanis was the financial organizer and creative mind behind the scheme. He managed the financial and corporate structure of the conspiracy. He was the person who controlled the acquisition of real estate and the syndication of the limited partnerships. He devised the business and marketing concept and supervised its execution. Galanis also recruited other conspirators.

It was part of the conspiracy to conceal the background of Galanis in order to facilitate the sale of units in the Natco partnerships. Galanis had promoted and syndicated other limited partnerships during the ten years prior to the conspiracy. In 1973, he was convicted of a scheme to defraud in connection with an investment company. Under a separate information in 1973

he was also convicted of conspiracy to file false statements with Securities and Exchange Commission. In 1972 and 1980, he entered into consent decrees with the Securities and Exchange Commission, in which he was temporarily barred from promoting or otherwise participating in the sale of securities, including units in limited partnerships. At the time the Natco partnerships were offered for sale, Galanis was charged in an indictment pending in Supreme Court, New York County, with misapplication of bank funds and other crimes. The convictions, consent decrees and pending indictment were required to be disclosed in any securities offering of which Galanis was a promoter, such as the Natco partnerships.

It was part of the conspiracy to offer the Natco partnerships for sale throughout the United States through four sales organizations controlled by Natco: Churchill Investment Corp.; Whitney Group, Inc.; Westbrock Securities, Inc. and Millbrook Investors Securities, Inc. ~~SAMUEL ROSENGLARTEN~~ headed the operation of Churchill. Rosengarten supervised a number of salesmen who offered the units directly to investors or to their lawyers, accountants and investment advisors. As part of the conspiracy, Rosengarten and the salesmen, as well as other conspirators, offered the private placement memoranda to lawyers, accountants and investment advisors, some of whom in turn recommended to their clients that they invest in the partnerships. He himself sold units to investors and to their financial advisors. He also participated, with Galanis, in working out the details of the Natco partnerships and in supervising the preparation of the private placement memoranda.

During the course of the conspiracy, Natco and its affiliated and related companies had offices at various addresses in Greenwich, Connecticut. Galanis' office during the conspiracy was at the same address as Natco. Rosengarten and Churchill Investment Corp. also shared offices with Natco.

LAURENCE KLUSKY was a certified public accountant. As part of the conspiracy, the conspirators agreed to conceal the facts that Klusky worked with Galanis on the financial projections included in the private placement memoranda and that these projections were unrealistic and baseless. The conspirators knew and agreed to conceal the fact that the projections were derived by determining what numbers would make the offering most acceptable to potential investors, regardless of the real facts and figures.

LOUIS ROSEN was an officer and director of Nashua Trust Company during the time of the conspiracy. He was responsible for the disposition of the assets of Natco, which included primarily the proceeds of the purchase of units in the Natco partnerships by members of the public. As part of the conspiracy, he agreed to transfer funds to the conspirators, and in particular to Galanis, instead of spending the funds for the benefit of the partnerships. During the period of the conspiracy, over \$6,000,000 was transferred directly to Galanis and his family in this way.

The conspirators sold units in the following ten limited partnerships as part of this conspiracy:

Rockingham Income Hotel Limited Partnership 101

Boscobel Hotel Limited Partnership 201

Sterling Hotel Limited Partnership 301

Emanuel Hotel Limited Partnership 401

Chester Inn Limited Partnership

Columbus Hotel Limited Partnership

Spruce Hotel Limited Partnership

Healy Limited Partnership

Boardwalk Limited Partnership

Envoy Hotel Limited Partnership

As part of the conspiracy, the conspirators caused each private placement memorandum to contain economic projections showing the partnership to be a potentially viable business operation. The conspirators knew that the information contained in the economic projections section was false and that Galanis and Klusky had faked the numbers included in that section. Among other things, the conspirators knew that the number of rooms in the hotels included in the projections was inflated, so that the income based on a certain amount per room would also be inflated. They also knew that the stated cost and schedule for the construction and rehabilitation of the hotels could not be met and that, by the time the first of the Nastro partnerships was offered to the public, the construction was already far behind schedule and the contractors were not being and would not be paid.

Rosengarten and Klusky had worked with Galanis on prior real estate limited partnerships, sponsored by Consolidated Mortgage Company (CMC) and Madison Realty and Development Company, known as the Madison partnerships.

The conspirators knew that, at the time the Natco partnerships were offered for sale to the public, mortgage payments due from CMC for some of the real estate purchased for the Madison Partnerships were in default and some property had been or was about to be foreclosed. The conspirators knew and agreed that some of the money invested in the Natco partnerships would be used to meet obligations of the Madison partnerships.

As part of the conspiracy, the conspirators caused misleading statements to be included in the Natco private placement memoranda referring to the previous real estate limited partnerships, but neglecting to mention that the assets of these partnerships had been dissipated, that the property involved in these partnerships was being foreclosed, and that the financial projections for these partnerships also had been unrealistic and baseless.

As part of the conspiracy, persons who were members of the sales organizations were solicited by Rosengarten or Galanis to be the general partners of the limited partnerships. The private placement memoranda stated that the general partners would make a capital contribution to the partnership; would receive a fee from the partnership dependent on the earnings of the partnership; and would be responsible for the business of the partnership. As part of the conspiracy, the conspirators agreed to and did conceal the facts that the general partner was to play no role in the business of the limited partnership, but was to be a figurehead; was to receive a set fee; and would not make any genuine capital contribution to the partnership. The conspirators agreed to and did conceal the fact that the business of the partnerships and the assets of the partnerships were controlled by Natco and by Galanis.

As part of the conspiracy, the conspirators sold units in the partnerships to members of the public. The units were purchased either by cash or by a promissory note. During the period of the conspiracy, over 1300 people bought units in the Natco partnerships, for a total amount in cash and notes of over \$75 million.

Overt Acts

In the course of and in furtherance of the conspiracy, the following overt acts were performed in New York County and elsewhere:

1. In November, 1984, the conspirators caused the incorporation of Nashua Trust Company, also known as Namo.

2. In late 1984, John Peter Galanis and his conspirators hired Louis Rosen.

3. In the Spring of 1985, the conspirators opened a checking account at Bankers Trust Company in the name of Nashua Trust Company, over which Louis Rosen, Daniel Brier and Richard Young had signatory authority.

4. During the spring of 1985, the conspirators prepared the Rockingham Income Hotel Limited Partnership 101 private placement memorandum.

5. On about April 11, 1985, the private placement memorandum for the Rockingham Income Hotel Limited Partnership 101 was issued.

6. During the period from April 11, 1985 to July 11, 1985, John Peter Galanis, Samuel Rosengarten and others caused the sale of units in the Rockingham Income Hotel Limited Partnership 101.

7. Between July 9 and July 30, 1985, \$120,000 was transferred from CMC's account to the C.C. Galanis Household account.

8. On about June 13, 1985, the private placement memorandum for the Boscobel Hotel Limited Partnership 201 was issued.

9. During the period from June 13, 1985 to August 1, 1985, John Peter Galanis, Samuel Rosengarten and others caused the sale of units in the Boscobel Hotel Limited Partnership.

10. On July 11, 1985, the Rockingham Hotel Limited Partnership closed.

11. On July 11, 1985, a check in the amount of \$6,466,667, drawn on the Nashua Trust Company account at Bankers Trust and signed by Daniel Brier, was deposited in the account of Consolidated Mortgage Company (CMC).

12. On July 12, 1985, checks totalling \$6,466,667, signed by Daniel Brier and written on the account of CMC, were deposited in the Rockingham Hotel Partnership Escrow Account.

13. On July 12, 1985, a check on the account of the Rockingham Hotel Limited Partnership Escrow account, in the amount of \$6,466,667, signed with the name of William Fuchs was deposited in the Rockingham Hotel Limited Partnership checking account.

14. On July 12, 1985, seven checks on the account of the Rockingham Income Hotel Limited Partnership in the total amount of \$3,363,500 were severally deposited in the accounts of Dayton Leasing Company, Thomas Williams, Noram Services and Whittier Manor and checks in the total amount

drawn on the account of the Rockingham Income Hotel Limited Partnership were deposited in the account of Nashua Trust Company.

15. On July 12, 1985, checks on the accounts of Dayton Leasing Company, Thomas J. Williams, Noram Services and Whittier Manor in the total amount of \$3,369,593 and these checks on the account of Rockingham Hotel Limited Partnership in the total amount of \$2,497,074 were deposited in the account of Nashua Trust Company for a total deposit of \$6,466,667.

16. On July 12, 1986, a check in the amount of \$6,466,667 on the account of Nashua Trust Company signed by Daniel Brier, was deposited in the account of Consolidated Mortgage Company.

17. On about July 17, 1985, the private placement memorandum for the Sterling Hotel Limited Partnership was issued.

18. Between July 17 and October 31, 1985, John Peter Galanis, Samuel Fosengarten and others sold units in the Sterling Hotel Limited Partnership.

19. On about July 19, 1985, the private placement memorandum for the Emanuel Hotel Limited Partnership was issued.

20. Between July 19 and November 91, 1985, John Peter Galanis, Samuel Fosengarten and others sold units in the Emanuel Hotel Limited Partnership.

21. On August 1, 1985, the Boscobel Hotel Limited Partnership closed.

22. On August 1, 1985, checks numbered 1849 through 1903 in the total amount of \$4,848,485 signed by Louis Rosen and drawn on the account of CMC were deposited in the Boscobel Hotel Limited Partnership Escrow account.

23. On August 1, 1985, a check in the amount of \$4,848,485 drawn on the Boscobel Hotel Limited Partnership Escrow account was deposited in the Boscobel Hotel Limited Partnership operating account.

24. On August 1, 1985, a number of checks drawn on the Boscobel Hotel Limited Partnership operating account totalling \$2,470,700 were severally deposited in the accounts of Whittier Manor, Dayton Leasing, Thomas J. Williams attorney and Noram Services.

25. On August 1, 1985, checks in the total amount of \$2,470,700 drawn on the accounts of Whittier Manor, Dayton Leasing, Thomas J. Williams attorney and Noram Services and checks in the total amount of \$2,377,700 drawn on the Boscobel Hotel Limited Partnership operating account were deposited in the Nashua Trust Company account, for a total deposit of \$4,848,485.

26. On August 1, 1985, a check in the amount of \$4,848,485 drawn on the account of Nashua Trust Company was deposited in the CMC account.

27. Between August 2, 1985 and August 26, 1985, \$230,000 was transferred from the CMC account to the C.C. Galanis Household Account.

28. Between September 10, 1985 and September 23, 1985, \$200,779.00 was transferred from the CMC account to the C.C. Galanis Household account.

29. On about July 22, 1985, \$144,000 from investors for the purchase of units in the Boscobel Hotel Limited Partnership were deposited in the Boscobel Hotel Limited Partnership Escrow account.

30. On about July 22, 1985, a check in the amount of \$144,000 drawn on the Boscobel Hotel Limited Partnership Escrow account was deposited in Natco's account.

31. Between August 19 and August 20, 1985, \$187,000 from investors for the purchase of units in the Emanuel Hotel Limited Partnership was deposited in the Emanuel Hotel Limited Partnership Escrow account.

32. On August 20, 1985, a check in the amount of \$187,000 drawn on the Boscobel Hotel Limited Partnership Escrow account was deposited in Natco's account.

33. On October 10, 1985, \$475,000 was wire transferred from the Sterling Hotel Limited Partnership Escrow account to the Natco account.

34. On October 31, 1985, the Sterling Hotel Limited Partnership closed.

35. On October 31, 1985, checks numbered 1002 through 1096 drawn on the account of Nashua Trust Company in the total amount of \$7,231,818 were deposited in the Sterling Hotel Limited Partnership Escrow account.

36. On October 31, 1985, a check drawn on the Sterling Hotel Limited Partnership Escrow account in the amount of \$7,231,818 was deposited in the Sterling Hotel Limited Partnership operating account.

37. On October 31, 1985, checks totalling \$4,857,981 drawn on the Sterling Hotel Limited Partnership operating account were severally deposited in the accounts of Churchill Private Capital Corporation, T.J. Williams Attorney, Natco Realty & Development, Natco Service Corp., Dayton Leasing and 154 Kentucky Sterling.

38. On October 31, 1985, checks totalling \$4,857,981 drawn on the accounts of Churchill Private Capital Corporation, T.J. Williams Attorney Natco Realty & Development, Natco Service Corp., Dayton Leasing and 15 Kentucky Sterling and checks totalling \$2,373,837 drawn on the Sterling Eote Limited Partnership operating account were deposited in Natco's account for a total deposit of \$7,231,818.

39. On November 19, 1985, the Emanuel Hotel Limited Partnership closed.

40. On November 19, 1985, checks numbered 2113 through 2205 and 2210 through 2213 drawn on Natco's account and totalling \$6,611,111 were deposited in the Emanuel Hotel Limited Partnership Escrow account.

41. On November 19, 1985, a check in the amount of \$6,611,111 drawn on the Emanuel Hotel Limited Partnership Escrow account was deposited in the Emanuel Hotel Limited Partnership operating account.

42. On November 19, 1985, checks totalling \$5,883,413 drawn on the Emanuel Hotel Limited Partnership operating account were severally deposited in the accounts of Natco Realty & Development, T.J. Williams Attorney, Dayton Leasing Inc., Westbrook Private Capital Corp., and Natco Service Corp.

43. On November 19, 1985, checks totalling \$5,883,413 drawn severally on the accounts of Natco Realty & Development, T.J. Williams Attorney, Dayton Leasing Inc., Westbrook Private Capital Corp., and Natco Service Corp. and checks totalling \$727,698 drawn on the Emanuel Hotel Limited Partnership operating account were deposited in Natco's account, for a total deposit of \$6,611,111.

44. Between October 1, 1985 and October 25, 1985, \$328,457.85 was transferred from CMC's account to the C.C. Galanis Household Account.

45. Between November 1, 1985 and December 20, 1985, \$95,000 was transferred from CMC's account to the C.C. Galanis Household Account.

46. Between January 1, 1986 and January 31, 1986, \$225,000 was transferred from CMC's account to C.C. Galanis, who was John Peter Galanis' wife.

47. On about September 30, 1985, the private placement memorandum for the Chester Inn Limited Partnership was issued.

48. During the period from September 30, 1985 to December 27, 1985, John Peter Galanis, Samuel Rosengarten and others offered units in the Chester Inn Limited Partnership for sale.

49. On December 27, 1985, the Chester Inn Limited Partnership closed.

50. On September 27, 1985, the private placement memorandum for the Columbus Hotel Limited Partnership was issued.

51. During the period from September 27, 1985 to December 27, 1985, John Peter Galanis, Samuel Rosengarten and others offered units in the Columbus Hotel Limited Partnership for sale.

52. On December 27, 1985, checks drawn on the account of Nashua Trust Company in the total amount of \$8,349,747 were deposited in the Chester Inn Limited Partnership Escrow account.

53. On December 27, 1985, a check in the amount of \$8,349,747 drawn on the Chester Inn Limited Partnership Escrow account was deposited in the Chester Inn Limited Partnership operating account.

54. On December 27, 1985, checks totalling \$2,260,151 were drawn on the Chester Inn Limited Partnership Escrow account and deposited in the accounts of Natco Realty and Development, Dayton Leasing, Natco Service Corp., Churchill Private Capital and T.J. Williams Trustee.

55. On December 27, 1985, checks totalling \$2,260,151 drawn on the accounts of Natco Realty and Development, Dayton Leasing, Natco Service Corp., Churchill Private Capital and T.J. Williams Trustee were deposited in Natco's account and checks totalling \$6,089,596 drawn on the Chester Inn Limited Partnership operating account was deposited in Natco's account, for a total amount of \$8,349,747.

56. On December 27, 1985, the Columbus Hotel Limited Partnership closed.

57. On December 27, 1985, checks in the total amount of \$10,931,818 drawn on Natco's account were deposited in the Columbus Hotel Limited Partnership Escrow account.

58. On December 27, 1985, a check in the amount of \$10,931,818 drawn on the Columbus Hotel Limited Partnership Escrow account was deposited in the Columbus Hotel Limited Partnership operating account.

59. On December 27, 1985, checks totalling \$3,166,631 drawn on the Columbus Hotel Limited Partnership operating account were deposited in the accounts of Westbrook Private Capital Corp., Natco Realty & Development, Thomas J. Williams Attorney, Natco Service Corp. and Westbrook Private Capital Corp.

60. On December 27, 1985, checks totalling \$3,166,651 drawn on the accounts of Westbrook Private Capital Corp., Natco Realty & Development, Thomas J. Williams Attorney, Natco Service Corp. and Westbrook Private Capital Corp. and checks totalling \$3,166,651 drawn on the Columbus Hotel Limited Partnership operating account were deposited in Natco's account, for a total deposit of \$10,931,818.

61. On about November 20, 1985, the private placement memorandum for the Spruce Hotel Limited Partnership was issued.

62. Between November 20, 1985 and December 30, 1985, the conspirators sold units in the Spruce Hotel Limited Partnership.

63. On about December 6, 1985, the private placement memorandum for the Eealy Hotel Limited Partnership was issued.

64. Between December 6, 1985 and December 30, 1985, the conspirators sold units in the Eealy Hotel Limited Partnership.

65. On about December 16, 1985, the private placement memorandum for the Boardwalk Marketplace Limited Partnership was issued.

66. Between December 16, 1985 and December 30, 1985, the conspirators sold units in the Boardwalk Marketplace Limited Partnership.

67. On December 30, 1985, the Spruce Hotel Limited Partnership closed.

68. On December 30, 1985, the Eealy Hotel Limited Partnership closed.

69. On December 30, 1985, the Boardwalk Marketplace Limited Partnership closed.

70. On December 30, 1985, a check in the amount of \$10,432,50 drawn on the account of Natco was deposited in the Healy Limited Partnership Escrow account.

71. On December 30, 1985, a check in the amount of \$10,432,50 drawn on the Healy Limited Partnership Escrow account was deposited in the Healy Limited Partnership operating account.

72. On December 30, 1985, checks drawn on the Healy Limited Partnership operating account in the total amount of \$2,789,941 were severally deposited in the accounts of Natco Service Corp., Natco Realty Development, Churchill Private Capital, and T.J. Williams Attorney.

73. On December 30, 1985, checks in the total amount of \$2,789,94 drawn on the accounts of Natco Service Corp., Natco Realty & Development Churchill Private Capital and T.J. Williams Attorney and checks in the total amount of \$7,642,559 drawn on the Healy Limited Partnership operating account were deposited in the Nashua Trust Company account, for a total deposit of \$10,432,500.

74. On December 30, 1985, a check in the amount of \$8,257,50 drawn on the account of Nashua Trust Company was deposited in the Spruce Hotel Limited Partnership Escrow account.

75. On December 30, 1985, a check in the amount of \$8,257,50 drawn on the Spruce Hotel Limited Partnership Escrow account was deposited in the Spruce Hotel Limited Partnership operating account.

76. On December 30, 1985, the net amount of \$2,226,066 was transferred from the Spruce Hotel Limited Partnership operating account to the accounts of Natco Realty & Development, Westbrook Private Capital, Natco Service Corp., and T.J. Williams Attorney.

77. On December 30, 1985, checks in the total amount of \$2,226,066 drawn on the accounts of Natco Realty & Development, Westbrook Private Capital, Natco Service Corp., and T.J. Williams, Attorney were deposited in Natco's account, and checks in the total amount of \$6,021,434 drawn on the Spruce Hotel Limited Partnership operating account were deposited in Natco's account, for a total deposit of \$8,287,500.

78. On December 30, 1985, a check in the amount of \$19,530,000 drawn on the Natco account was deposited in the Boardwalk Marketplace Limited Partnership Escrow account.

79. On December 30, 1985, a check in the amount of \$19,530,000 drawn on the Boardwalk Marketplace Limited Partnership Escrow account was deposited in the Boardwalk Marketplace Limited Partnership operating account.

80. On December 30, 1985, the net amount of \$5,521,178 was transferred from the Boardwalk Marketplace Limited Partnership operating account to the accounts of Natco Service, Natco Realty & Development, Churchill Private Capital and T.J. Williams Attorney.

81. On December 30, 1985, checks in the total amount of \$5,521,178 drawn on the accounts of Natco Service, Natco Realty & Development, Churchill Private Capital and T.J. Williams Attorney and checks in the total

amount of \$13,978,822 drawn on the Boardwalk Marketplace Limited Partnership operating account were deposited in Natco's account, for a total deposit of \$19,500,000.

82. On February 28, 1986, the private placement memorandum for the Envoy Hotel Limited Partnership was issued.

83. Between February 28, 1986 and June 5, 1986, the conspirators sold units in the Envoy Hotel Limited Partnership.

85. In 1986, John Galanis said that the money invested in the Envoy Hotel Limited Partnership should be returned to the investors.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Rockingham Income Hotel Limited Partnership 101 to investors for \$97,000 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$6,390,360 from approximately 119 investors.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,000 per unit, in the Buckingham Income Hotel Limited Partnership to investors. The defendants, in the course of their criminal scheme obtained approximately \$6,390,360 from approximately 119 investors.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Rockingham Income Hotel Limited Partnership 101.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** i violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from John T McGraw having an aggregate value in excess of \$1500, to wit, \$97,000, being the cost of one unit in the Rockingham Income Hotel Limited Partnership 101.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** i violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Richard J Taylor having an aggregate value in excess of \$1500, to wit, \$291,000, being the cost of three units in the Rockingham Income Hotel Limited Partnership 101.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Boscobel Hotel Limited Partnership 201 to investors for \$55,000 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$4,800,500 from approximately 79 investors.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$96,000 per unit, in the Boscobel Hotel Limited Partnership 201 to investors. The defendants, in the course of their criminal scheme, obtained approximately \$4,800,500 from approximately 79 investors.

NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Boscobel Hotel Limited Partnership 201.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** : violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Meyer Dwek having an aggregate value in excess of \$1500, to wit, \$192,000, being the cost of two units in the Boscobel Hotel Limited Partnership 201.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Eal Si having an aggregate value in excess of \$1500, to wit, \$192,000, being the cost of two units in the Boscobel Hotel Limited Partnership 201.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of SCHEME TO DEFRAUD IN THE FIRST DEGREE, in violation of Section 190.63 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Sterling Hotel Limited Partnership 301 to investors for \$96,750 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$7,152,375 from approximately 104 investors.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units, for \$96,750 per unit, in the Sterling Hotel Limited Partnership 301 to investors. The defendants, in the course of their criminal scheme, obtained approximately \$7,152,375 from approximately 104 investors.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Sterling Hotel Limited Partnership 301.

FIFTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Edward R. Murphy having an aggregate value in excess of \$1500, to wit, \$240,375, being the cost of two and one-half units in the Sterling Hotel Limited Partnership 301.

SIXTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Saxo Textile Co. having an aggregate value in excess of \$1500, to wit, \$48,375 being the cost of one-half unit in the Sterling Hotel Limited Partnership 301.

SEVENTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Emanuel Hotel Limited Partnership 401 to investors for \$93,500 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$6,545,000 from approximately 129 investors.

EIGHTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$93,400 per unit, in the Emanuel Hotel Limited Partnership, 401 to investors. The defendants, in the course of their criminal scheme, obtained approximately \$6,545,000 from approximately 129 investors.

NINETEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Emanuel Hotel Limited Partnership 401.

TWENTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Harri Cooper having an aggregate value in excess of \$1500, to wit, \$93,500, being the cost of one unit in the Emanuel Hotel Limited Partnership 401.

TWENTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Sheldie Kraft having an aggregate value in excess of \$1500, to wit, \$93,500, being the cost of one unit in the Emanuel Hotel Limited Partnership 401.

TWENTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Chester Inn Limited Partnership to investors for \$97,250 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$6,022,625 from approximately 138 investors.

TWENTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,250 per unit, in the Chester Inn Limited Partnership to investors. The defendants, in the course of their criminal scheme, obtained approximately \$8,022,625 from approximately 138 investors.

TWENTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Chester Inn Limited Partnership.

TWENTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from John Hodges having an aggregate value in excess of \$1500, to wit, \$148,875, being the cost of one and one-half units in the Chester Inn Limited Partnership.

TWENTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Nicholas Barnabas having an aggregate value in excess of \$1500, to wit, \$291,750, being the cost of three units in the Chester Inn Limited Partnership.

TWENTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Columbus Hotel Limited Partnership to investors for \$97,500 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$10,767,250 from approximately 202 investors.

TWENTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,500 per unit, in the Columbus Hotel Limited Partnership to investors. The defendants, in the course of their criminal scheme, obtained approximately \$10,767,250 from approximately 202 investors.

TWENTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Columbus Hotel Limited Partnership.

THIRTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** : violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Neil Sene having an aggregate value in excess of \$1500, to wit, \$97,500, being the cost of one unit in the Columbus Hotel Limited Partnership.

THIRTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** : violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Robert S Newman having an aggregate value in excess of \$1500, to wit, \$195,000, being the cost of two units in the Columbus Hotel Limited Partnership.

THIRTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of SCHEME TO DEFRAUD IN THE FIRST DEGREE, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Spr Hotel Limited Partnership to investors for \$97,500 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$8,623,750 from approximately 179 investors.

THIRTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,500 per unit, in the Spruce Hotel Limited Partnership to investors. The defendants, in the course of their criminal scheme, obtained approximately \$8,823,750 from approximately 179 investors.

THIRTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Spruce Hotel Limited Partnership.

THIRTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Pan Varkell having an aggregate value in excess of \$1500, to wit, \$97,500, being the cost of one unit in the Spruce Hotel Limited Partnership.

THIRTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period November 1, 1984 to June 5, 1986, stole property from William Bruck having an aggregate value in excess of \$1500, to wit, \$146,250, being the cost of one and one-half units in the Spruce Hotel Limited Partnership.

THIRTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Realy Limited Partnership to investors for \$97,500 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$9,067,570 from approximately 168 investors.

THIRTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,500 per unit, in the Healy Limited Partnership to investors. The defendants, in the course of their criminal scheme, obtained approximately \$9,067,570 from approximately 168 investors.

THIRTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Healy Limited Partnership.

FORTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Craig Brown having an aggregate value in excess of \$1500, to wit, \$48,750, being the cost of one-half unit in the Healy Limited Partnership.

FOURTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from John F. Pollis II having an aggregate value in excess of \$1500, to wit, \$97,500, being the cost of one unit in the Healy Limited Partnership

FOURTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units in the Boardwalk Limited Partnership to investors for \$97,500 per unit. The defendants, in the course of their criminal scheme, obtained approximately \$13,966,875 from approximately 274 investors.

FORTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$97,500 per unit, in the Boardwalk Limited Partnership to investors. The defendants, in the course of their criminal scheme, obtained approximately \$13,966,875 from approximately 274 investors.

FORTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Boardwalk Limited Partnership.

FORTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from Arthur Grundhoefer having an aggregate value in excess of \$1500, to wit, \$97,500, being the cost of one unit in the Boardwalk Limited Partnership.

FORTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, stole property from George W. and B.V. Love having an aggregate value in excess of \$1500, to wit, \$195,000, being the cost of two units in the Boardwalk Limited Partnership.

FORTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell units and fractions of units to investors, for \$49,000 per unit, in the Envoy Hotel Limited Partnership and so sold at least one such unit.

FORTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell units and fractions of units for \$49,000 per unit, in the Envy Hotel Limited Partnership to investors and so sold at least one unit.

FORTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1984 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, units in the Envoy Hotel Limited Partnership.

FIFTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accus the said defendants of the crime of CONSPIRACY IN THE FIFTH DEGREE, i violation of Section 105.05 of the Penal Law, committed as follows:

The defendants, from on or about November 1, 1985 to on or about June 5, 1986, in the County of New York and elsewhere, with intent tha conduct constituting the felonies of Grand Larceny in the Second Degree Scheme to Defraud in the First Degree, and violations of Sections 352-c(5 and 352-c(6) of the General Business Law be performed, agreed with each othe and with others known and unknown to the Grand Jury to engage in th performance of such conduct, as follows:

The conspirators agreed to market and sell a fraudulent investment in mortgage-backed notes issued by Nashua Trust Company (Natco) and known a the "Series II" notes. The notes were sold in principal amounts of \$30,00 per note, with half interests being sold to some investors. The ostensibl purpose of the Series II offering was to raise funds for the genera corporate purposes of Natco. As part of the conspiracy, a private placemen memorandum was prepared and authorized by the conspirators which purported t describe the terms of the offering accurately. As part of the conspiracy, i the memorandum, the conspirators failed to disclose and concealed fro potential investors material facts and made misrepresentations as to othe material facts.

A principal inducement to potential investors in the Series II offering memorandum was the representation that collateral, an undivided interest in a first or wrap mortgage in favor of Natco on the Emanuel Hotel in Atlantic City, New Jersey, would protect the investment. In fact, as the conspirators knew, no such mortgage was recorded at the time that the Series II notes were sold. Further, the conspirators agreed to and did represent in the offering memorandum that a collection account and agency agreement would be established with Columbia Federal Savings Bank. Neither was ever established. As part of the conspiracy, the conspirators represented in the memorandum that an escrow account would be established. No such account was ever established. The conspirators further concealed the existence of a joint venture agreement which substantially reduced Natco's interest in the Emanuel Hotel and misrepresented the relationship of the Emanuel Hotel Limited Partnership 401 to Natco.

The principal promoter of the Series II offering was JOEN PETER GALANIS, who controlled the business and assets of Natco, despite the fact that he was not named as an officer or director of that company. It was part of the conspiracy to conceal the true involvement of Galanis in the Natco partnerships and the Series II offering. Galanis was the financial organizer and creative mind behind the scheme. He managed the financial and corporate structure of the conspiracy. He was the person who controlled the acquisition of real estate, the syndication of the limited partnerships, and the offering of the Series II notes. He devised the business and marketing concept and supervised its execution. Galanis also recruited other conspirators.

The conspirators agreed to conceal the background of Galanis in order to facilitate the sale of the Series II notes. Galanis' prior criminal convictions, consent decrees, and pending indictment were required to be disclosed in any securities offering of which Galanis was a promoter, such as the Series II, but were not disclosed.

It was part of the conspiracy to offer the Series II notes for sale throughout the United States through sales organizations controlled by Natco, including Churchill Investment Corp. SAMUEL ROSENGARTEN headed the operation of Churchill, Rosengarten supervised a number of salesmen who offered the notes directly to investors or to their lawyers, accountants and investment advisors. As part of the conspiracy, Rosengarten and the salesmen, as well as other conspirators, offered private placement memorandum to lawyers, accountants and investment advisors, some of whom in turn recommended to their clients that they invest in the Series II notes. He himself sold notes to investors and to their financial advisors. He also participated, with Galanis, in working out the details of the offering. Galanis' office during the conspiracy was at the same address as Natco; Rosengarten and Churchill Investment also had offices at the same address as Natco. For a time during the conspiracy, Galanis and Rosengarten shared one office.

LAURENCE KLUSKY was a certified public accountant. As part of the conspiracy, the conspirators concealed the facts that Klusky worked with Galanis on the financial information included in the private placement memorandum and that the information was false and misleading in that Natco's assets were overstated and Natco was essentially insolvent at the time the Series II notes were being offered to the investing public.

LOUIS ROSEN was an officer and director of Nashua Trust Company shortly before the time of the conspiracy. At the time of the conspiracy, he was responsible for the disposition of the assets of Natco, which included the proceeds of the purchases of the Series II notes by members of the public. As part of the conspiracy, he transferred funds to the conspirators, and in particular to Galanis, instead of spending the funds for the business of Natco. During the period of the conspiracy, over \$6,000,000 was transferred directly to Galanis and his family in this way.

As part of the conspiracy, the conspirators sold these Series II notes to members of the public for cash. During the period of the conspiracy, numerous individuals bought notes for a total investment of over \$2,000,000.

Overt Acts

In the course of and in furtherance of the conspiracy, the following overt acts were performed in New York County and elsewhere:

1. During the time period covered by the conspiracy, the conspirators caused to be written, a private placement memorandum for the Nashua Trust Mortgage-Backed Notes, Series II.
2. The conspirators disseminated the private placement memorandum to sales organizations, including Churchill Investment Corp.
3. During the time period encompassing the conspiracy, a Churchill salesman solicited a certified public accountant John Berry to recommend to his clients that they purchase the Series II notes.

4. During March and April, 1986, the conspirators sold one and one-half Series II notes for \$45,000 to Christine Hightower and Richard Jasper.

5. During February, 1986, the conspirators sold one-half Series II note for \$15,000 to Marie and Jurgen Krause.

6. During March and April, 1986, the conspirators sold one Series II note for \$30,000 to Laverne and Alexander Kuzo.

7. During March, 1986, the conspirators sold one Series II note for \$30,000 to Fred Metcalfe.

8. During the period of the conspiracy, the conspirators obtained over \$2,000,000 from investors in the Series II notes.

FIFTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Section 190.65 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons by engaging in a scheme which constituted a systematic, ongoing course of conduct, as follows:

The defendants, in a systematic, ongoing course of conduct, employed fraud, deceit, misrepresentations, and false and fraudulent pretenses and promises to sell mortgage-backed notes of Nashua Trust Company for \$10,000 per note. The defendants, in the course of their criminal scheme, obtained over \$2,000,000 from investors.

FIFTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(5) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, with intent to defraud ten or more persons and to obtain property from ten or more persons by false and fraudulent pretenses, representations and promises, obtained property from one or more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities, by engaging in a scheme which constituted a systematic ongoing course of conduct, as follows:

The defendants employed false and fraudulent pretenses, representations and promises in order to sell notes in an offering called Nassua Trust Mortgage-Backed Notes, Series II, for \$30,000 per note. The defendants, in the course of their criminal scheme, obtained over \$2,000,000 from investors.

FIFTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a VIOLATION OF SECTION 352-c(6) OF THE GENERAL BUSINESS LAW, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, intentionally engaged in fraud, deception, concealment, suppression, and false pretense and made material false representations and statements with intent to deceive and defraud while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from New York State of securities, to wit, Nassua Trust Mortgage-Backed Notes, Series II.

FIFTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** : violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, stole property from Free Mercalfe having an aggregate value in excess of \$1500, to wit, \$30,000.

FIFTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuses the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** : violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, stole property from Christina Hightower having an aggregate value in excess of \$1500, to wit, \$45,000.

FIFTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, stole property from Marie and Jurgen Krause having an aggregate value in excess of \$1500, to wit, \$15,000.

FIFTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of a **GRAND LARCENY IN THE SECOND DEGREE** in violation of Section 155.35 of the Penal Law, committed as follows:

The defendants, in the County of New York and elsewhere, during the period from November 1, 1985 to June 5, 1986, stole property from Laverne and Alexander Kuso having an aggregate value in excess of \$1500, to wit, \$30,000

ROBERT M. MORGENTHAU
District Attorney
New York County

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

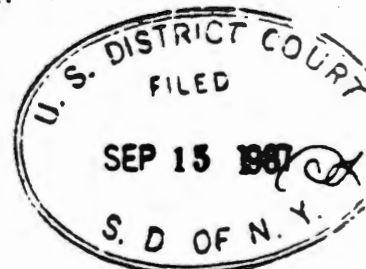
JOHN PETER GALANIS,
ANTHONY J. MARCHESE,
DANIEL S. BRIER,
RONALD G. WILLIAMS,
SAMUEL ROSENGARTEN,
LAURENCE H. KLUSKY,
ARTHUR D. MASON, and
JOHN GEANOULIS,

Defendants.

INDICTMENT

S 87 Cr. 520 (CLB)

JUDGE REBERT



COUNT ONE

Introduction

The Grand Jury charges:

1. At all times relevant to this Indictment:

(a) Transpac and Brooksco Drilling Ventures

(collectively "Transpac Drilling Ventures") were a series of Delaware limited partnerships formed in 1982 and 1983 to conduct oil and gas drilling and development operations on behalf of their respective limited partners (hereinafter the "Transpac Drilling Venture program"). Twenty-two Transpac Drilling Venture limited partnerships were formed in 1982. Fifty-one Transpac Drilling Venture limited partnerships were formed in 1983. There were approximately 2,500 limited partner investors in the Transpac Drilling Venture program.

(b) Each Transpac Drilling Venture had one or two corporate or individual general partners. The general partners of the various Transpac Drilling Ventures maintained offices in New York, New York; Scarsdale, New York; Palo Alto, California; Warwick, Rhode Island; and Providence, Rhode Island.

(c) Transpac Oil Company and Transpac Oil Drilling Company were Texas corporations and maintained an office in Salt Lake City, Utah.

(d) Andover Funding Limited ("Andover Funding") and Andover Finance Limited ("Andover Finance") were South Dakota general partnerships whose principal place of business was Greenwich, Connecticut.

(e) The corporate general partners of Andover Funding were Lake Trust Company, a Texas corporation, and Bronson Company, Inc., a Delaware corporation.

(f) The corporate general partners of Andover Finance were Fairfield Trust Company, a Texas corporation, and Nemesis Finance Company, Inc., a Delaware corporation.

(g) Noram Secured Income, N.V. ("Norsec Netherlands") was a Netherlands company and a wholly-owned subsidiary of Noram Secured Income, N.V. ("Norsec Antilles"), a Netherlands Antilles company. Norsec Netherlands and Norsec Antilles had offices in London, England.

(h) Hartwell International, N.V. (also called Heartwell International, N.V.) ("Hartwell"), was a Netherlands Antilles company which maintained an address in Washington, D.C. Hartwell was a wholly-owned subsidiary of Norsec Antil

(i) Dayton Leasing, Inc., was a New Hampshire corporation whose principal place of business was Greenwich, Connecticut.

(j) JOHN PETER GALANIS, the defendant, was the undisclosed principal of, and directly and indirectly controlled, operated, and managed the business affairs of an organization based in Greenwich, Connecticut (hereinafter the "Galanis Organization"), comprised of associated individuals and corporate and partnership entities, including each of the entities and individuals previously and subsequently referred to in paragraph 1 of this Indictment. (The Galanis Organization is more fully described in paragraphs 9 through 16 of this Indictment.) The Galanis Organization was engaged in, among other things, the syndication of the Transpac Drilling Venture program and the financing of investments therein.

(k) ANTHONY J. MARCHESE, the defendant, held management positions with Andover Funding and related Andover entities until 1983 and thereafter functioned as a financial and banking consultant to JOHN PETER GALANIS and the Galanis Organization.

(l) DANIEL S. BRIER, the defendant, held the position of president of Bronson Company, Inc., and Nemesis Finance Company, Inc. BRIER was an accountant who functioned as de facto controller and chief accounting officer of the Galanis Organization.

(m) RONALD G. WILLIAMS, the defendant, was an attorney and promoter of tax-sheltered investments based in Dallas, Texas. WILLIAMS helped JOHN PETER GALANIS conceive the idea for and basic terms of the Transpac Drilling Venture program and helped draft the offering materials provided to prospective investors and their financial advisers. WILLIAMS provided an opinion as to the federal income tax consequences of investments in the Transpac Drilling Venture limited partnerships and a due diligence memorandum concerning the function and activities of the Transpac Drilling Venture limited partnerships.

(n) SAMUEL ROSENGARTEN, the defendant, helped JOHN PETER GALANIS conceive the idea for and basic terms of the Transpac Drilling Venture program and functioned as the de facto head of the Galanis Organization's nationwide sales operations.

(o) LAURENCE H. KLUSKY, the defendant, was a certified public accountant who helped prepare the financial projections contained in the Transpac Drilling Venture program offering materials and provided an opinion that the projections had been properly compiled.

(p) ARTHUR D. MASON, the defendant, was an attorney in Washington, D.C., who acted on behalf of Norsec Antilles, Norsec Netherlands, and Hartwell in connection with an audit of those entities conducted during 1984 and 1985 by accounting firm in London, England.

The Conspiracy to Defraud the IRS

2. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, and ARTHUR D. MASON, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other (1) to defraud the United States of America and the Internal Revenue Service by impeding, impairing, defeating, and obstructing the lawful governmental functions of the Internal Revenue Service in the ascertainment, evaluation, assessment, and collection of income taxes, and (2) to commit the following offense against the United States:

- (a) unlawfully, wilfully, and knowingly aid and assist in, and procure, counsel, and advise the preparation and presentation under, and in connection with matters arising under, the internal revenue laws, of returns which were fraudulent and false as to material matters, in violation of Title 26, United States Code, Section 7206(2).

The Goal of the Conspiracy

3. It was a goal of the conspiracy that the conspirators, through fictitious and fraudulent transactions, would and did create false federal income tax deductions based on fictitious business expenditures, to be passed on to the

limited partners of the various Transpac Drilling Ventures. From 1982 through 1984, these fictitious and fraudulent transactions generated more than \$172 million in such false tax deductions to be passed on to the limited partners.

The Means of the Conspiracy

4. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) The conspirators fraudulently created the appearance that legitimate and genuine business transactions were engaged in by, between, and among the various entities involved in the Transpac Drilling Venture program and that legitimate and genuine business expenditures were made by the various Transpac Drilling Venture limited partnerships.

(b) The conspirators caused the issuance and distribution of fraudulent offering materials to potential investors in the Transpac Drilling Venture limited partnerships. The offering materials falsely declared, among other things, that the Transpac Drilling Venture program was designed to provide significant future income and economic benefits to limited partner investors; that the general partners of the various Transpac Drilling Venture limited partnerships would have exclusive and complete discretion and control over the management, business, and affairs of the partnerships; that each entity involved in the Transpac Drilling Venture program was

The Conspiracy to Defraud the IRS

2. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, and ARTHUR D. MASON, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other (1) to defraud the United States of America and the Internal Revenue Service by impeding, impairing, defeating, and obstructing the lawful governmental functions of the Internal Revenue Service in the ascertainment, evaluation, assessment, and collection of income taxes, and (2) to commit the following offense against the United States:

- (a) unlawfully, wilfully, and knowingly aid and assist in, and procure, counsel, and advise the preparation and presentation under, and in connection with matters arising under, the internal revenue laws, of returns which were fraudulent and false as to material matters, in violation of Title 26, United States Code, Section 7206(2).

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(b) The conspirators caused the issuance and distribution of fraudulent offering materials to potential investors in the Transpac Drilling Venture limited partnerships. The offering materials falsely declared, among other things, that the Transpac Drilling Venture program was designed to provide significant future income and economic benefits to limited partner investors; that the general partners of the various Transpac Drilling Venture limited partnerships would have exclusive and complete discretion and control over the management, business, and affairs of the partnerships; that each entity involved in the Transpac Drilling Venture program was

totally independent of every other entity involved in the program; and that all capital contributions to the Transpac Drilling Venture limited partnerships and all expenditures by the partnerships would be paid in cash at the time of closing the partnerships. In addition, the offering materials omitted state, among other things, that JOHN PETER GALANIS (i) was the principal of, and directly and indirectly controlled, operated and managed the business affairs of the Transpac Drilling Ventures and their general partners, Transpac Oil Company, Transpac Oil Drilling Company, Andover Funding, and Andover Finance; (ii) had been convicted in a United States District Court in approximately February 1973 of conspiracy to make false statements to the Securities and Exchange Commission and conspiracy to commit mail fraud; (iii) had been charged in Quebec, Canada, in approximately February 1973, with alleged criminal securities fraud violations; (iv) had been indicted in approximately June 1983 in the New York Supreme Court, New York County, in connection with alleged misappropriations of \$9.5 million from a bank; and (v) had been enjoined in 1972 and 1973 by a United States District Court in unrelated matters involving alleged violations of the federal securities laws.

(c) The conspirators also caused the Transpac Drilling Venture program to be marketed to the public as an investment that would provide significant current tax benefit

to investors. According to the offering materials, tax benefits were to accrue to each investor from pre-paid drilling expense, minimum annual royalties, and other cash expenditures made by the various partnerships on behalf of their respective limited partners out of the limited partners' capital contributions to the partnerships.

(d) The conspirators offered to arrange one-hundred percent financing for the limited partners' capital contributions. Approximately seventy to eighty percent of the cost of a limited partnership interest could purportedly be financed on a long-term basis by Andover Funding or Andover Finance. Virtually all the investors took advantage of the Andover financing package.

(e) The conspirators caused the Galanis Organization to utilize its undisclosed control of the various entities involved in the Transpac Drilling Venture program to create fictitious financing to "fund" the Andover Funding and Andover Finance long-term investor loans. This was done to create the false appearance that the full amount of the limited partners' investments was contributed in cash to the partnerships and that the partnerships then made cash expenditures in full payment of various partnership business expenses. These fictitious and fraudulent transactions gave rise to fictitious partnership expenditures which were then reported on partnership tax returns (Forms 1065) filed with the Internal Revenue Service on behalf of the various Transpac Drilling Ventures.

(f) The conspirators caused Schedules K-1 containing false information concerning the fictitious and fraudulent transactions to be mailed to the limited partners of the various Transpac Drilling Venture limited partnerships to be used by the limited partners in the preparation of their personal income tax returns. The true nature of the transactions was concealed, which had the effect of passing false and fraudulent partnership losses on to the limited partners who utilized these false and fraudulent losses to reduce their respective income tax liabilities.

OVERT ACTS

5. In furtherance of the conspiracy, and to effect its objects, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On or about June 18, 1981, RONALD G. WILLIAMS caused Transpac Oil Company to be incorporated.

(b) On or about August 1, 1983, RONALD G. WILLIAMS caused Transpac Oil Drilling Company to be incorporated.

(c) During 1982 and 1983, JOHN PETER GALANIS and RONALD G. WILLIAMS drafted the offering materials for the 1982 and 1983 Transpac Drilling Venture program.

(d) During 1982 and 1983, RONALD G. WILLIAMS prepared a tax opinion letter and due diligence memorandum to be included in the private placement memoranda for the various 1982 and 1983 Transpac Drilling Ventures.

(e) During 1982 and 1983, LAURENCE H. KLUSKY prepared an accountant's opinion as to the compilation of financial projections for the Transpac Drilling Venture program, to be included in the private placement memoranda for the 1982 and 1983 Transpac Drilling Ventures.

(f) During 1982 and 1983, JOHN PETER GALANIS and SAMUEL ROSENGARTEN caused the offering materials relating to the 1982 and 1983 Transpac Drilling Ventures to be distributed throughout the United States to prospective investors and their financial advisers, including prospective investors and their financial advisers in the Southern District of New York.

(g) In or about December 1982, ANTHONY J. MARCHESE arranged for certain transactions to be conducted at Citizens National Bank of Fairfield, Fairfield, Connecticut, in connection with the closing of the 1982 Transpac Drilling Venture limited partnerships.

(h) From on or about December 28, 1982, to on or about December 31, 1982, DANIEL S. BRIER signed checks totalling approximately \$42.5 million drawn on an account of Andover Funding and payable to Citizens National Bank of Fairfield.

(i) During 1983, SAMUEL ROSENGARTEN retained an accounting firm in New York, New York, to assist in the preparation of partnership tax returns (Forms 1065) and Schedules K-1 for the various Transpac Drilling Ventures and their respective limited partners.

(j) On or about June 30, 1983, JOHN PETER GALANIS, ANTHONY J. MARCHESE, and DANIEL S. BRIER caused approximately 800 promissory notes with an apparent face value of approximately \$41 million to be sold by Andover Funding to Peoples National Bank of Rockland County, Monsey, New York, for approximately \$4.1 million.

(k) On or about June 30, 1983, DANIEL S. BRIER signed checks totalling approximately \$4.1 million drawn on an account of Andover Funding payable to and negotiated at Peoples National Bank of Rockland County, Monsey, New York.

(l) On or about December 16, 1983, in New York, New York, ARTHUR D. MASON purchased Hartwell for \$2,000.

(m) On or about December 28, 1983, JOHN PETER GALANIS caused Transpac Oil Drilling Company to enter into an agreement with Hartwell whereby Transpac Oil Drilling Company agreed to buy the stock of Norsec Grand Rapids, Inc., and Norsec Flint, Inc., from Hartwell for approximately \$128 million.

(n) In or about December 1983, ANTHONY J. MARCHESE arranged for certain transactions to be conducted at Citizens National Bank of Fairfield in connection with the closing of the 1983 Transpac Drilling Venture limited partnerships.

(o) From on or about December 27, 1983, to on or about December 31, 1983, DANIEL S. BRIER signed checks totalling approximately \$124 million drawn on an account of Andover Finance and payable to Citizens National Bank of Fairfield.

(p) On or about February 22, 1984, ARTHUR D. MASON travelled to London, England.

(q) On or about April 12, 1984, JOHN PETER GALANIS caused Transpac Oil Company to sue Lake Trust Company for payment on a purported loan in the amount of approximately \$42.3 million.

(r) On or about April 27, 1984, ARTHUR D. MASON travelled to London, England.

(s) On or about December 3, 1984, ARTHUR D. MASON caused a letter to be delivered to an accounting firm in London, England.

(t) During 1982, 1983, and 1984, the conspirators caused Issuer Statements for each of the Transpac Drilling Ventures to be filed with the Department of Law of the State of New York, Two World Trade Center, New York, New York.

(u) During 1983, 1984, and 1985, DANIEL S. BRIER and LAURENCE H. KLUSKY provided an accounting firm in New York, New York, with the information it used to prepare partnership tax returns (Forms 1065), and Schedules K-1 for the various Transpac Drilling Ventures and their respective limited partners.

(v) On or about June 4, 1985, ARTHUR D. MASON signed a letter addressed to the board of directors of Norsec Netherlands in London, England.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH TWENTY-ONE

The Grand Jury further charges:

6. The allegations contained in paragraphs 1 and 3 through 5, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

7. On or about the dates set forth below, in the Southern District of New York, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, and LAURENCE H. KLUSKY, the defendants, unlawfully wilfully, and knowingly did aid and assist in, and procure, counsel, and advise the preparation and presentation under, and in connection with matters arising under, the internal revenue laws, of the federal partnership tax returns (Forms 1065) listed below, which were fraudulent and false as to material matters, to wit, the amounts claimed for "other deductions" (line 22), a hereinafter set forth:

<u>Count</u>	<u>Approximate Filing Date</u>	<u>Partnership</u>
2	3/31/83	Transpac Drilling Venture 1982-8
3	4/1/83	Transpac Drilling Ventures 1982-15 and 1982-16
4	4/5/83	Transpac Drilling Ventures 1982-5, 1982-7, and 1982-18

APPROXIMATE
FILING DATE

PARTNERSHIP

4/11/83

Transpac Drilling Ventures
1982-13, 1982-14, 1982-30,
and 1982-32

4/13/83

Transpac Drilling Ventures
1982-11 and 1982-12

4/15/83

Transpac Drilling Ventures
1982-1, 1982-3, 1982-4,
1982-20, 1982-21, 1982-22,
1982-23, and 1982-24

4/18/83

Transpac Drilling Venture
1982-10

4/23/83

Transpac Drilling Venture
1982-25

4/5/84

Transpac Drilling Ventures
1982-13, 1982-30, and
1982-32

4/6/84

Transpac Drilling Venture
1982-14

4/12/84

Transpac Drilling Vent
1982-11

4/13/84

Transpac Drilling Venture
1982-10

4/16/84

Transpac Drilling Ventures
1982-5, 1982-7, 1982-8,
1982-12, 1982-15, 1982-18,
1982-20, 1982-21, 1982-22,
1982-23, 1982-24, and
1982-25

4/18/84

Transpac Drilling Ventures
1982-1, 1982-3, 1982-4, an
1982-16

<u>COUNT</u>	<u>APPROXIMATE FILING DATE</u>	<u>PARTNERSHIP</u>
16	4/13/85	Transpac Drilling Ventures 1982-10, 1982-11, 1982-12, 1983-19, 1983-20, 1982-21, 1983-22, 1983-23, 1983-24, 1983-25, 1983-26, and 1983-28
17	4/14/85	Transpac Drilling Ventures 1983-17 and 1983-27
18	4/15/85	Transpac Drilling Ventures 1982-1, 1982-3, 1982-4, 1982-13, 1982-14, 1982-15, 1982-16, 1982-20, 1982-21, 1982-22, 1982-23, 1982-24, 1983-1, 1983-2, 1983-3, 1983-4, 1983-6, 1983-7, 1983-8, 1983-9, 1983-12, 1983-13, 1983-14, 1983-31, 1983-32, 1983-33, 1983-34, 1983-35, 1983-36, 1983-37, 1983-38, 1983-39, 1983-40, 1983-41, 1983-42, 1983-43, 1983-61, 1983-63, 1983-64, 1983-66, 1983-67, 1983-68
19	4/16/85	Transpac Drilling Ventures 1982-25, 1982-32, and 1983-16
20	4/19/85	Transpac Drilling Ventures 1982-5, 1982-7, 1982-8, 1982-18, 1983-5, 1983-10, 1983-11, 1983-15, and 1983-44; Brooksco Drilling Ventures 1983-46, 1983-47, 1983-48, and 1983-49
21	8/1/85	Transpac Drilling Venture 1982-30

(Title 26, United States Code, Section 7206(2).)

COUNT TWENTY-TWO

Racketeering

The Grand Jury further charges:

8. The allegations contained in paragraphs 1 and 3 through 5, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference here as though fully set forth at length.

The Enterprise

9. At all times relevant to this Indictment, there was an "enterprise" as defined by Title 18, United States Code Section 1961(4), which enterprise consisted of, among others, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, ARTHUR D. MASON, JOHN GEANOULIS, the Transpac Drilling Ventures, Transpac Oil Company, Transpac Oil Drilling Company, Andover Fund Limited, Andover Finance Limited, Lake Trust Company, Bronson Company, Inc., Fairfield Trust Company, Nemesis Finance Company, Inc., Noram Secured Income, N.V. (Netherlands Antilles), Noram Secured Income, N.V. (Netherlands), Hartwell International, N.V. (also called Heartwell International, N.V.), Dayton Leasing, Inc., CFS Corp., Nashua Trust Co. (and affiliated companies),

Corporation, and Chilton Private Bank (hereinafter the "Galan Organization"), associated in fact, and which was engaged in, the activities of which affected, interstate commerce.

Objects, Means, and Methods of the Racketeering Activity

10. It was an object of the racketeering activity to obtain money, property, and personal benefits for the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, and LAURENCE P. KLUSKY, through the obtaining of money from investors in the Transpac Drilling Venture program. During 1982, 1983, and 1984 through the use of fraudulent misrepresentations and omission of material facts in the offering materials used to promote, make, and sell Transpac Drilling Venture limited partnership interests to the public, the Galanis Organization obtained approximately \$50 million from investors.

11. It was a further object of the racketeering activity to defraud the Internal Revenue Service by creating false federal income tax deductions based on fictitious business expenditures, to be passed on to the limited partners of the various Transpac Drilling Ventures.

12. It was a further object of the racketeering activity corruptly to influence, through the payment of bribes, the actions of certain bank officials at Peoples National Bank.

of Rockland County, Monsey, New York, in connection with transactions between the bank and members of the Galanis Organization.

13. It was a further object of the racketeering activity for the Galanis Organization to acquire a controlling interest in and to obtain money from Heritage Bank & Trust, Sa Lake City, Utah, by fraudulently (i) misrepresenting to the bank and federal and state regulatory authorities the true affiliations of certain prospective purchasers of the bank's common stock, (ii) concealing from the bank and federal and state regulatory authorities the fact that the Galanis Organization intended to use the bank for its own purposes, including, among other things, its tax shelter syndication and financing activities, and (iii) causing the bank to loan approximately \$4.6 million to Hartwell International, N.V.

14. It was a further object of the racketeering activity to obtain money and funds from the limited partners of the 1983 Transpac Drilling Ventures, through the use of fraudulent misrepresentations and omissions, for the purchase of certificates of deposit. Using these funds and the proceeds thereof, and utilizing its undisclosed control of Hartwell, Andover Finance, Transpac Oil Drilling Company, the Transpac Drilling Ventures, and the general partners of the Transpac Drilling Ventures, the Galanis Organization obtained approximately \$4.6 million from Heritage Bank & Trust.

15. It was a further object of the racketeering activity for the Galanis Organization to acquire a controlling interest in Columbia Federal Savings Bank (formerly County Federal Savings and Loan Association), Westport, Connecticut fraudulently (i) misrepresenting to the Federal Home Loan Bank Board the true affiliation between ARTHUR D. MASON and certain other members of the Galanis Organization, including JOHN PETER GALANIS, and (ii) concealing from the Federal Home Loan Bank Board the fact that the Galanis Organization intended to use the bank for its own purposes, including, among other things, its shelter syndication and financing activities.

16. It was a further object of the racketeering activity for the Galanis Organization to acquire ISI Corporation's investment advisory contract to manage the assets of ISI Trust Fund, ISI Growth Fund, and ISI Income Fund (the "funds"), Oakland, California, and to obtain money from the funds by fraudulently (i) concealing from the funds' boards of directors the true affiliation between JOHN GEANOULIS and certain other members of the Galanis Organization, including JOHN PETER GALANIS, (ii) concealing from the funds' boards of directors the fact that the Galanis Organization intended to use the assets of the funds for its own purposes, and (iii) causing securities issued or sold by persons or entities within the Galanis Organization to be sold to the funds at artificially inflated prices without regard to the investment merits of such securities.

The Racketeering Conspiracy

17. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, ARTHUR D. MASON, and JOHN GEANOULIS, the defendants, and others known and unknown to the Grand Jury, being persons associated with the enterprise described in paragraphs 9 through 16 above, which was engaged in and the activities of which affected interstate commerce, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to conduct and participate, directly and indirectly in the conduct of the affairs of that enterprise through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5).

The Pattern of Racketeering Activity

18. The pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisted of the following acts:

Racketeering Acts One and Two: Fraud in
The Sale of Transpac Drilling Venture
Limited Partnership Units

19. It was a part of the pattern of racketeering activity that from on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL

ROSENGARTEN, and LAURENCE H. KLUSKY, along with others known unknown to the Grand Jury, unlawfully, wilfully, and knowingly by the use of means and instrumentalities of interstate commerce and the mails, directly and indirectly, did employ devices, schemes, and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading, and engage in active practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of securities, to wit, limited partnership units in the limited partnerships referred to below, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Rule 10b-5 of the Rules and Regulations promulgated by the Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2:

<u>Racketeering Act</u>	<u>Limited Partnerships</u>	<u>Year Sold</u>
One	Transpac Drilling Ventures	1982
Two	Transpac Drilling Ventures and Brooksco Drilling Ventures	1983

Racketeering Act Three: Scheme To Defraud
The Internal Revenue Service

20. It was a further part of the pattern of racketeering activity that from on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, and ARTHUR D. MASON, along with others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud the United States and an agency thereof to wit, the Internal Revenue Service, in its lawful governmental function of administering and overseeing the collection of taxes in the United States, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises and for the purpose of executing such scheme and artifice and attempting to do so, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon, certain mail matter to be sent and delivered by the United States Postal Service, to wit, Schedules K-1 which were mailed to the limited partners of the Transpac Drilling Venture including limited partners in the Southern District of New York in violation of Title 18, United States Code, Sections 1341 and 2.

Racketeering Acts Four Through Eight:
Bribery of Peoples National Bank
Officials

21. It was a further part of the pattern of racketeering activity that from in or about May 1983 to in or about November 1984, in the Southern District of New York, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, and DANIEL BRIER, along with others known and unknown to the Grand Jury unlawfully, wilfully, and knowingly did travel and cause others to travel in interstate commerce, between Connecticut and New York, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of unlawful activities, to wit, bribery and related offenses in violation of New York State Penal Law, Article 18 and thereafter did perform and attempt to perform the promotion, management, establishment, carrying on, and facilitation of promotion, management, establishment, and carrying on of such unlawful activities, as specified below, in violation of Title 18, United States Code, Sections 1952 and 2:

<u>Racketeering Act</u>	<u>Approximate Date</u>	<u>Description</u>
Four	6/30/83	ANTHONY J. MARCHESE delivered a check to the Chairman of the Board of Directors of Peoples National Bank of Rockland County (the "Chairman of Peoples") in the amount of \$75,000, drawn on an account of Andover Funding Ltd. and signed by DANIEL S. BRIER

<u>Racketeering Act</u>	<u>Approximate Date</u>	<u>Description</u>
Five	12/83	ANTHONY J. MARCHESE cashed approximately \$20,000 in United States currency to delivered to the Chairman of Peoples
Six	2/3/84	ANTHONY J. MARCHESE delivered a check to the Chairman of Peoples in the amount of \$100,000 drawn on an account of Andover Finance Ltd. and signed by DANIEL S. BRIER
Seven	10/84	ANTHONY J. MARCHESE delivered checks totalling \$165,000 to Peoples National Bank of Rockland County, the proceeds of which were used to extinguish a personal debt of the Chairman of Peoples
Eight	12/83 to 11/84	ANTHONY J. MARCHESE delivered approximately \$12,000 in United States currency to the vice president of Peoples National Bank of Rockland County

Racketeering Act Nine: Fraudulent Takeover of and Transactions at Heritage Bank & Trust

22. It was a further part of the pattern of racketeering activity that from in or about May 1983 through filing of this Indictment, in the District of Utah, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, and JOHN GEANOULIS, along with others known and unknown to the Grand Jury unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud Heritage Bank & Trust

Salt Lake City, Utah, and to obtain money and property, to wi
majority of the issued and outstanding common stock of Herita
Bank & Trust, Salt Lake City, Utah, and approximately \$4.6
million, by means of false and fraudulent pretenses, represen
tions, and promises, and for the purpose of executing such sc
and artifice and attempting to do so, did place and cause to
placed in post offices and authorized depositories for mail
matter, and did cause to be delivered by mail according to th
directions thereon, certain mail matter to be sent and delive
by the United States Postal Service, as specified below, in
violation of Title 18, United States Code, Sections 1341 and

<u>Approximate Date of Mailing</u>	<u>Mail Matter</u>	<u>Addressee</u>
a) 12/5/83	Letter from John R. Starley	Department of Financial Institutions Heber G. Wells Building 160 East 300 South, Third Floor P.O. Box 89 Salt Lake City, Utah 84110
b) 12/9/83	Letter from Utah Department of Financial Institutions	John Starley, President Heritage Bank & Trust P.O. Box 15917 Salt Lake City, Utah 84115
c) 12/30/83	Letter from Utah Department of Financial Institutions	John R. Starley, President Heritage Bank & Trust P.O. Box 15917 Salt Lake City, Utah 84115

<u>Approximate Date of Mailing</u>	<u>Mail Matter</u>	<u>Addressee</u>
d) 2/7/84	Letter from John R. Starley	Ms. Elaine B. Weis, Commissioner State of Utah, Department of Financial Institutions P.O. Box 89 Salt Lake City, UT 84110

23. It was a further part of the pattern of racketeering activity that from in or about May 1983 through the filing this Indictment, in the District of Utah and elsewhere, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, and JOHN GEANOULIS, along with others known and unknown to the Grand Jury unlawfully, wilfully, and knowingly, by the use of means and instrumentalities of interstate commerce and the mails, directly and indirectly, did employ devices, schemes, and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make statements made in the light of the circumstances under which they were made, misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons in connection with the purchase and sale of securities, to wit the common stock of Heritage Bank & Trust, Salt Lake City, Utah which GALANIS, MARCHESE, GEANLOUIS, and others caused to be sold to GEANOULIS and others on or about January 30, 1984, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Rule 10b-5 of the Rules and Regulations promulgated by the

and Exchange Commission, Title 17, Code of Federal Regulation, Section 240.10b-5; and Title 18, United States Code, Section

Racketeering Act Ten:
Transportation of Money
Taken By Fraud

24. It was a further part of the pattern of racketeering activity that from in or about January 1983 to in or about A 1984, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, and LAURENCE KLUSKY, along with others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did transport and cause transported in interstate and foreign commerce goods, wares, merchandise, securities, and money, of a value in excess of \$5,000, to wit, money and funds totalling approximately \$5.8 million, and the proceeds thereof, paid by the limited partners of the 1983 Transpac Drilling Ventures for the purchase of certificates of deposit, knowing the same to have been stolen, converted, and taken by fraud, in violation of Title 18, United States Code, Sections 2314 and 2.

Racketeering Act Eleven: Fraudulent Takeover
of Columbia Federal Savings Bank

25. It was a further part of the pattern of racketeering activity that from in or about May 1982 through filing of this Indictment, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS and ARTHUR MASON, along with others known and unknown to the Grand Jury,

unlawfully, wilfully, and knowingly, by the use of means and instrumentalities of interstate commerce and the mails, directly and indirectly, did employ devices, schemes, and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make statements made in the light of the circumstances under which they were made, not misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of securities to wit, common stock of CFS Corp., which GALANIS, MASON, and others caused to be sold to MASON in or about July 1985, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Rule 10b-5 of the Rules and Regulations promulgated by the Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

**Racketeering Acts Twelve Through Nineteen:
Fraudulent Takeover of ISI Trust Fund, ISI
Growth Fund, and ISI Income Fund**

Racketeering Acts Twelve Through Fourteen

26. It was a further part of the pattern of racketeering activity that from in or about November 1985 through the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS and JOHN GEANOULIS, along with others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud ISI Trust Fund, ISI Growth Fund, and ISI Income Fund (the "funds"), and to obtain

money and property, to wit, ISI Corporation's investment advisory contract to manage the funds' assets as well as approximately \$4.8 million, by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire, radio, and television communication interstate and foreign commerce, writings, signs, and signals to wit, wire transfers of monies as specified below, in violation of Title 18, United States Code, Sections 1343 and 2:

<u>Racketeering Act</u>	<u>Approximate Date</u>	<u>Sender of Wire Transfer</u>	<u>Recipient of Wire Transfer</u>	<u>Nature of Wire Transfer</u>
Twelve	1/15/86	Bankers Trust Company, White Plains, New York	Security Pacific National Bank, Los Angeles, California	Transfer of \$750,000 from account of J.F. Landon Co. to account of Merri Lynch, Pierce, Fenner & Smith, Inc.
Thirteen	5/8/86	Republic Bank, Waco, Texas	Bank of America, Palo Alto, California	Transfer of \$700,000 from account of Chilton Private to account of John Landon

<u>Racketeering Act</u>	<u>Approximate Date</u>	<u>Sender of Wire Transfer</u>	<u>Recipient of Wire Transfer</u>	<u>Nature of Wire Transfer</u>
Fourteen	5/13/86	First Interstate Bank of California, San Francisco, California	Republic Bank, Waco Texas	Transfer of \$1,000,000 from account of ISI Trust Fund to account of Chilton Private Bank

Racketeering Acts Fifteen Through Nineteen

27. It was a further part of the pattern of racketeering activity that from in or about December 1985 through the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants JOHN PETER GALANIS and JOHN GEANOULIS, along with others known and unknown to the Grand Jury unlawfully, wilfully, and knowingly, by the use of means and instrumentalities of interstate commerce and the mails, directly and indirectly, did employ devices, schemes, and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make statements made in the light of the circumstances under which they were made, not misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of securities to wit, the securities referred to below, in violation of Title

15, of United States Code, Sections 78j(b) and 78ff(a); Rule 10b-5 of the Rules and Regulations promulgated by the Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section

<u>Racketeering Act</u>	<u>Approximate Date</u>	<u>Securities Sold</u>	<u>Purchased By</u>	<u>Approximate Amount</u>
Fifteen	5/27/86	29,500 shares of CFS Corp.	ISI Growth Fund	\$147,500
Sixteen	5/27/86	50,000 shares of CFS Corp.	ISI Income Fund	\$250,000
Seventeen	5/27/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,900,000
Eighteen	6/4/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,000,000
Nineteen	6/19/86	100,000 shares of CFS Corp.	ISI Trust Fund	\$600,000

(Title 18, United States Code, Section 1962(d).)

COUNT TWENTY-THREE

Participation in the Racketeering Enterprise

The Grand Jury further charges:

28. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, a

incorporated by reference herein as though fully set forth at length.

29. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, LAURENCE H. KLUSKY, ARTHUR D. MASON, and JOHN GEANOULIS, the defendants, being persons associated with the enterprise described in paragraphs 9 through 16 of this Indictment, which was engaged and the activities of which affected interstate commerce, unlawfully, wilfully, and knowingly did conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity, to wit, the racketeering acts set forth in paragraphs 19 through 27 of Count Twenty-Two of this Indictment.

(Title 18, United States Code, Sections 1962(c) and 2.)

COUNTS TWENTY-FOUR AND TWENTY-FIVE

The Grand Jury further charges:

30. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

31. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, and LAURENCE KLUSKY, the defendants, unlawfully, wilfully, and knowingly, the use of means and instrumentalities of interstate commerce, the mails, directly and indirectly, did employ devices, schemes and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to statements made, in the light of the circumstances under which they were made, not misleading, and engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and of securities, to wit, limited partnership units in the limited partnerships referred to below:

<u>Count</u>	<u>Limited Partnerships</u>	<u>Year Sold</u>
24	Transpac Drilling Ventures	1982
25	Transpac Drilling Ventures and Brooksco Drilling Ventures	1983

(Title 15, United States Code, Sections 78j(b), 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNTS TWENTY-SIX THROUGH THIRTY

The Grand Jury further charges:

32. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts

thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as through fully set forth at length.

33. On or about the dates set forth below, in the Southern District of New York, JOHN PETER GALANIS, ANTHONY J. MARCHESE, and DANIEL S. BRIER, the defendants, unlawfully, wilfully, and knowingly did travel and cause others to travel in interstate commerce, between Connecticut and Monsey, New York, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activities, to wit, bribery and related offenses in violation of New York State Penal Law, Article 180, and thereafter did perform and attempt to perform the promotion, management, establishment, carrying on, and facilitation of the management, establishment, and carrying on of such unlawful activities, as specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Description</u>
26	June 30, 1983	ANTHONY J. MARCHESE delivered a check to the Chairman of the Board of Directors of Peoples National Bank of Rockland County (the "Chairman of Peoples") in the amount of \$75,000, drawn on an account of Andover Funding Ltd. and signed by DANIEL S. BRIER

<u>Count</u>	<u>Approximate Date</u>	<u>Description</u>
27	December 1983	ANTHONY J. MARCHESE caused approximately \$20,000 in United States currency to be delivered to the Chairman of Peoples
28	February 3, 1984	ANTHONY J. MARCHESE delivered a check to the Chairman of Peoples in the amount of \$100,000, drawn on an account of Andover Finance Ltd. and signed by DANIEL S. BRIEF
29	October 1984	ANTHONY J. MARCHESE delivered checks totalling \$165,000 to Peoples National Bank of Rockland County, the proceeds of which were used to extinguish a personal debt of the Chairman of Peoples
30	December 1983 to November 1984	ANTHONY J. MARCHESE delivered approximately \$12,000 in United States currency to a vice president of Peoples National Bank of Rockland County

(Title 18, United States Code, Sections 1952 and 2.)

COUNTS THIRTY-ONE AND THIRTY-TWO

The Grand Jury further charges:

34. The allegations contained in paragraphs 1, through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

35. On or about the dates set forth below, in the Southern District of New York, JOHN PETER GALANIS, ANTHONY J. MARCHESE, and DANIEL S. BRIER, the defendants, unlawfully, willfully, and knowingly did directly and indirectly give, offer, and promise something of value, to wit, money, to an officer, director, and employee of Peoples National Bank of Rockland County ("Peoples"), Monsey, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for and in connection with transactions and business of said bank, as specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Description</u>
31	October 15 and October 22, 1984	ANTHONY J. MARCHESE delivered checks totalling \$165,000 to Peoples, the proceeds of which were used to extinguish a personal debt of the Chairman of the Board of Directors of Peoples
32	November 1, 1984	ANTHONY J. MARCHESE delivered approximately \$4,000 in United States currency to a vice president of Peoples

(Title 18, United States Code, Sections 215(b) and 2.)

COUNT THIRTY-THREE

The Grand Jury further charges:

36. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

37. From in or about May 1983 to in or about July 1983, in the Southern District of New York, JOHN PETER GALAN, ANTHONY J. MARCHESE, and DANIEL S. BRIER, the defendants, unlawfully, wilfully, and knowingly did make false statements and overvalue property and security for the purpose of influencing the actions of Peoples National Bank of Rockland County ("Peoples"), Monsey, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon purchase, purchase agreement, and repurchase agreement, to make false statements as to the true value of certain promissory notes of Andover Funding Limited having an apparent face value of approximately \$41 million which were sold to Peoples for approximately \$4.1 million.

(Title 18, United States Code, Sections 1014 and 2.)

COUNTS THIRTY-FOUR AND THIRTY-FIVE

The Grand Jury further charges:

38. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts

thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

39. On or about the dates set forth below, in the Southern District of New York, ANTHONY J. MARCHESE, the defendant, unlawfully, wilfully, and knowingly did make false statements for the purpose of influencing the actions of Peoples National Bank of Rockland County ("Peoples"), Monsey, New York, bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon loans, to wit, the statement that MARCHESE was to be the borrower on certain loans when, in fact, he was acting as a nominee for the Chairman of the Board Directors of Peoples, as specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Loan Amount</u>
34	February 10, 1984	\$165,000
35	May 24, 1984	\$ 25,000

(Title 18, United States Code, Sections 1014 and 2.)

COUNT THIRTY-SIX

The Grand Jury further charges:

40. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

41. In or about November 1984, in the Southern District of New York, ANTHONY J. MARCHESE and DANIEL S. BRIER, the defendants, unlawfully, wilfully, and knowingly did make false statements for the purpose of influencing the actions of Peoples National Bank of Rockland County, Monsey, New York, bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon loans, to wit, the presentation of a back-dated letter containing the statement that a check dated June 30, 1983, in the amount of \$400,000, drawn on an account of Andover Funding Ltd., represented the proceeds of a loan to MARCHESE.

(Title 18, United States Code, Sections 1014 and 2.)

COUNT THIRTY-SEVEN

The Grand Jury further charges:

42. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, incorporated by reference herein as though fully set forth at length.

43. In or about November 1984, in the Southern District of New York, and in a matter within the jurisdiction of a department and agency of the United States, to wit, the Comptroller of the Currency, ANTHONY J. MARCHESE and DANIEL BRIER, the defendants, unlawfully, wilfully, and knowingly d

falsify, conceal, and cover up material facts by trick, scheme, and device, did make false, fictitious, and fraudulent statements and representations, and did make and use a false writing and document knowing the same to contain false, fictitious, and fraudulent statements and entries, to wit, the presentation of a back-dated letter containing the statement that a check dated June 30, 1983, in the amount of \$400,000, drawn on an account of Andover Funding Ltd., represented the proceeds of loan to MARCHESE.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT THIRTY-EIGHT

The Grand Jury further charges:

44. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

45. From in or about January 1983 to in or about April 1984, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, ANTHONY J. MARCHESE, DANIEL S. BRIER, RONALD G. WILLIAMS, SAMUEL ROSENGARTEN, and LAURENCE H. KLUSKY, the defendants, unlawfully, wilfully, and knowingly did transport a cause to be transported in interstate and foreign commerce goods, merchandise, securities, and money, of a value in excess of \$5,000, to wit, money and funds totalling approximately

\$5.8 million, and the proceeds thereof, paid by the limited partners of the 1983 Transpac Drilling Ventures for the purchase of certificates of deposit, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2384 and 2385.)

COUNT THIRTY-NINE

The Grand Jury further charges:

46. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

47. From in or about May 1982 through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS and ARTHUR D. MASON, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and the Federal Home Loan Bank Board by impeding, impairing, defeating, and obstructing the lawful governmental functions of the Federal Home Loan Bank Board in the exercise of its regulatory duties with respect to the control and operation of County Federal Savings and Loan Association and Columbia Federal Savings Bank.

48. It was a goal of the conspiracy that the conspirators would acquire a controlling interest in Columbia Federal Savings Bank (formerly County Federal Savings and Loan Association) (the "bank") by fraudulently (i) misrepresenting to the Federal Home Loan Bank Board the true affiliation between ARTHUR D. MASON and, among others, JOHN PETER GALANIS, and (ii) concealing from the Federal Home Loan Bank Board the fact that the conspirators intended to use the bank for the purposes of the Galanis Organization, which organization is described above in paragraphs 9 through 16 of this Indictment.

49. It was a further goal of the conspiracy that after acquiring a controlling interest in the bank the conspirators would (i) cause the bank to violate, breach, and contravene certain provisions of a Supervisory Agreement entered into between County Federal Savings and Loan Association and the Federal Home Loan Bank Board on January 21, 1985, and (ii) conceal from the Federal Home Loan Bank Board the fact that the bank had engaged in transactions and done business with JOHN PETER GALANIS and other members of the Galanis Organization.

OVERT ACTS

50. In furtherance of the conspiracy, and to effect its objects, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) In or about August 1982, ARTHUR D. MASON and five other persons purchased, in the aggregate, approximately

52.3 percent of the issued and outstanding common stock of CFS Corp., the parent corporation of County Federal Savings and Loan Association.

(b) On or about February 25, 1983, ARTHUR D. MASON submitted an affidavit to the Federal Home Loan Bank Board.

(c) On or about March 11, 1983, ARTHUR D. MASON told the Federal Home Loan Bank Board that JOHN PETER GALANIS was not then and would not in the future be involved in any activity in connection with the operation of CFS Corp. or County Federal Savings and Loan Association.

(d) In or about April, May, and June, 1984, JOHN PETER GALANIS caused various shareholders of CFS Corp. common stock to agree not to tender their stock to ARTHUR D. MASON.

(e) On or about June 13, 1984, ARTHUR D. MASON obtained a letter from a finance company.

(f) On or about June 29, 1984, ARTHUR D. MASON entered into an agreement to purchase and/or make a cash tender offer for up to 41.05 percent of the issued and outstanding common stock of CFS Corp.

(g) On or about September 20, 1984, ARTHUR D. MASON caused a law firm in New York, New York, to file an application on his behalf with the Federal Home Loan Bank of Boston pursuant to the Change in Savings and Loan Control Act.

(h) On or about March 7, 1985, ARTHUR D. MASON sent a letter to the Federal Home Loan Bank Board.

(i) On or about March 11, 1985, ARTHUR D. MASON caused a law firm in New York, New York to send a memorandum to the Federal Home Loan Bank Board.

(j) On or about March 29, 1985, ARTHUR D. MASON gave a deposition to the Federal Home Loan Bank Board.

(k) In or about July 1985, JOHN PETER GALANIS caused approximately \$2.8 million to be paid by Nashua Trust Co. to ARTHUR D. MASON.

(l) On or about September 16, 1985, JOHN PETER GALANIS caused a check drawn on an account at a bank in White Plains, New York, to be made payable to ARTHUR D. MASON in the amount of \$2,100,000.

(m) On or about September 16, 1985, ARTHUR D. MASON signed a check payable to CFS Corp. in the amount of \$2,000,000.

(Title 18, United States Code, Section 371.)

COUNT FORTY

The Grand Jury further charges:

51. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

52. On or about March 11, 1985, in the Southern District of New York, and in a matter within the jurisdiction of a department and agency of the United States, JOHN PETER GALANI and ARTHUR D. MASON, the defendants, unlawfully, wilfully, and knowingly did falsify, conceal, and cover up material facts by trick, scheme, and device, did make false, fictitious, and fraudulent statements and representations, and did make and use false writing and document knowing the same to contain false, fictitious, and fraudulent statements and entries, to wit, the presentation to the Federal Home Loan Bank Board of a memorandum dated March 11, 1985, prepared by a law firm in New York, New York, and addressed to the Federal Home Loan Bank Board in Boston, Massachusetts.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT FORTY-ONE

The Grand Jury further charges:

53. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

54. From in or about May 1982 through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS and ARTHUR D. MASON, the defendants, unlawfully, wilfully, and knowingly, by the use of means and instrumentalities of interstate commerce and the mails, directly and indirectly, did employ devices, schemes, and artifices to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of securities, to wit, common stock of CFS Corp., which GALANIS, MASON, and others caused to be sold to MASON in or about July 1985.

(Title 15, United States Code, Sections 78j(b), 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNTS FORTY-TWO THROUGH FORTY-FOUR

The Grand Jury further charges:

55. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

56. From in or about November 1985 through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS and JOHN GEANOULIS, the defendants, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud ISI Trust Fund, ISI Growth Fund, and ISI Income Fund (the "funds"), and to obtain money and property, to wit, ISI Corporation's investment advisory contract to manage the funds' assets as well as approximately \$4.8 million, by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire, radio, and television communication interstate and foreign commerce, writings, signs, and signals to wit, wire transfers of monies as specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Sender of Wire Transfer</u>	<u>Recipient of Wire Transfer</u>	<u>Nature of Wire Transfer</u>
42	1/15/86	Bankers Trust Company, White Plains, New York	Security Pacific National Bank, Los Angeles, California	Transfer of \$750,000 from account of J.F. Landon Co. to account of Merrill Lynch, Pierce, Fenner & Smith, Inc.
43	6/6/86	Chase Manhattan Bank, New York, New York	Republic Bank, Waco, Texas	Transfer of \$997,500 from account of Noram Secured Inco to account of Chilton Private Bank
44	7/3/86	The Bank of New York, New York, New York	Republic Bank, Waco, Texas	Transfer of \$597,000 fro account of Baird, ri & Co., Chilton Priv Bank

(Title 18, United States Code, Sections 1343 and 2.)

COUNTS FORTY-FIVE THROUGH FIFTY

The Grand Jury further charges:

57. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

58. On or about the dates set forth below, in the Southern District of New York and elsewhere, JOHN PETER GALANIS and JOHN GEANOULIS, the defendants, unlawfully, wilfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, did aid, abet, counsel, command, induce and procure an investment adviser, to wit, ISI Corporation, directly and indirectly, to employ devices, schemes, and artifice to defraud its clients, to wit, ISI Trust Fund, ISI Growth Fund and ISI Income Fund (the "funds"), to engage in transactions, practices, and courses of business which operated as a fraud and deceit upon the funds, and engage in acts, practices, and courses of business which were fraudulent, deceptive, and manipulative, in connection with the acquisition by the funds of the securities specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Securities Purchased</u>	<u>Purchased By</u>	<u>Approximate Amount</u>
45	5/13/86	Certificate of deposit issued by Chilton Private Bank	ISI Trust Fund	\$1,000,000
46	5/27/86	29,500 shares of CFS Corp.	ISI Growth Fund	\$ 147,500
47	5/27/86	50,000 shares of CFS Corp.	ISI Income Fund	\$ 250,000
48	5/27/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,900,000
49	6/4/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,000,000
50	6/19/86	100,000 shares of CFS Corp.	ISI Trust Fund	\$ 600,000

(Title 15, United States Code, Sections 80b-6 and 80b-17; and Title 18, United States Code, Section 2.)

COUNTS FIFTY-ONE THROUGH FIFTY-FIVE

The Grand Jury further charges:

59. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

60. On or about the dates set forth below, in the Southern District of New York and elsewhere, JOHN PETER GALANIS and JOHN GEANOULIS, the defendants, unlawfully, wilfully, and knowingly did steal, abstract, and convert to their use and to the use of others, and embezzle moneys, funds, securities, credits, property, and assets of the registered investment companies specified below, in connection with the transactions specified below:

<u>Count</u>	<u>Approximate Date</u>	<u>Securities Purchased</u>	<u>Purchased By</u>	<u>Approximate Amount</u>
51	5/27/86	29,500 shares of CFS Corp.	ISI Growth Fund	\$ 147,500
52	5/27/86	50,000 shares of CFS Corp.	ISI Income Fund	\$ 250,000
53	5/27/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,900,000
54	6/4/86	Investment certificates of Noram Secured Income, N.V.	ISI Trust Fund	\$1,000,000
55	6/19/86	100,000 shares of CFS Corp.	ISI Trust Fund	\$ 600,000

(Title 15, United States Code, Sections 80a-36 and 80a-48; and Title 18, United States Code, Section 2.

COUNT FIFTY-SIX

The Grand Jury further charges:

61. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

62. From on or about January 1, 1981, through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, the defendant, unlawfully, wilfully, and knowingly did disobey and resist a lawful order, decree, and command of the United States District Court for the Southern District of New York, to wit, a "Partial Final Judgment of Permanent Injunction as to Defendants John P. Galanis and Sinalag, S.A.," filed March 25, 1980, in that the defendant engaged in and aided and abetted certain fraudulent and illegal transactions in connection with the promotion, marketing, financing, and sale of limited partnership units in the Transpac Drilling Venture program, as more fully described above in paragraphs 1 through 5, 10, 11, 14, 19, 20, 24, 31, and 45, and all subparts thereof, of this Indictment.

(Title 18, United States Code, Section 401.)

COUNT FIFTY-SEVEN

The Grand Jury further charges:

63. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

64. From in or about November 1985 through the filing of this Indictment, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, the defendant, unlawfully, wilfully and knowingly did disobey and resist a lawful order, decree, and command of the United States District Court for the Southern District of New York, to wit, a "Judgment of Permanent Injunction as to John Peter Galanis and Consent Thereto," filed June 7, 1972, in that the defendant engaged in and aided and abetted certain fraudulent and illegal transactions involving ISI Corporation, ISI Trust Fund, ISI Growth Fund, and ISI Income Fund, as more fully described above in paragraphs 16, 26, 27, 56, 58, and 60, and all subparts thereof, of this Indictment.

(Title 18, United States Code, Section 401.)

COUNT FIFTY-EIGHT

The Grand Jury further charges:

65. The allegations contained in paragraphs 1, 3 through 5, 9 through 16, and 18 through 27, and all subparts thereof, of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length.

66. On or about April 16, 1986, in the Southern District of New York and elsewhere, JOHN PETER GALANIS, the defendant, unlawfully, wilfully, and knowingly did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due administration of justice, to wit, a Grand Jury investigation then pending in the United States District Court for the Southern District of New York, in that the defendant caused documents to be removed from his office in order to prevent their seizure pursuant to the execution of a search warrant.

(Title 18, United States Code, Section 1503.)

Michael A. Marx
FOREMAN

Rudolph W. Giuliani
RUDOLPH W. GIULIANI
United States Attorney

OCT 7 1987



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

PREHEARING ORDER

OAL DKT. NO. CCC 932-87

AGENCY DKT. NOS. 87-COI-6 and

87-COI-7 and

87-COI-8

CASINO CONTROL COMMISSION

**NASHUA TRUST COMPANY,
JEFFERSON INN, INC., AND
1600 PACIFIC AVENUE CORP.,**

Petitioners.

v.

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

Respondent.

After notice, a prehearing conference was held in the above-entitled matter on April 10, 1987 and the following procedures were settled:

I. NATURE OF PROCEEDINGS AND IDENTIFICATION OF ISSUES:

The Division filed a letter with the Casino Control Commission on October 30, 1986, December 3, 1986, and December 23, 1986, objecting to the issuance of a casino service industry license to the petitioners. The petitioners requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case.

The issues to be resolved at the hearing are as follows:

- A. Whether petitioner's licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86e because one of their principle corporate officers is alleged to have a history of arrests and convictions involving securities law violations.
- B. Whether the petitioners possess the requisite good character, honesty and integrity for casino service industry licensure, pursuant to N.J.A.C. 19:43-1.3(c).

II. PARTIES:

A. Respondent: Division of Gaming Enforcement

By: Frederick J. McDonough, Deputy Attorney General
(W. Cary Edwards, Attorney General of New Jersey,
attorney)
Richard J. Hughes Justice Complex
CN 047
Trenton, New Jersey 08625

B. Petitioner's: Nashua Trust Company
Jefferson Inn, Inc., and
1600 Pacific Avenue Corp.

By: Robert K. Malone, Esq.
(Crummy, Del Deo, Dolan, Griffinger & Vecchione,
attorneys)
Gateway 1
Newark, New Jersey 07102

C. Issuing Agency: Casino Control Commission
3131 Princeton Pike
Building 5
CN 208
Trenton, New Jersey 08625

III. LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:

The notice of hearing shall be served upon the parties by ordinary mail.

IV. SCHEDULE OF HEARING DATES:

The hearing shall commence at 9:00 a.m. on June 24, 1987, at the Office of Administrative Law, 9 Quakerbridge Plaza, Mercerville, New Jersey 08625. The parties will be informed by notice of the hearing.

V. STIPULATIONS:

The parties agreed to the following stipulations of fact:

1. The petitioner's stipulated that they have no defense to Mr. Galanis' prior conduct.
2. All of the petitioners entered into bankruptcy pursuant to the provisions of federal law.
3. Jack Birnberg Associates is the trustee in bankruptcy appointed by the federal bankruptcy judge to manage the petitioner's affairs.

VI. SETTLEMENT AGREEMENT:

The Division of Gaming Enforcement will conduct an investigation into the suitability of licensure of the trustee in bankruptcy, Jack Birnberg Associates, for a casino service industry license. If it is found that Jack Birnberg Associates is a separate qualifier and that the old officers of the petitioner's companies are no longer involved with those companies then the Division of Gaming Enforcement will reconsider its position of objection with regard to the petitioner's applications for licensure.

If after concluding its investigation, the Division of Gaming Enforcement decides not to object to Jack Birnberg Associates' suitability for licensure and finds that

Mr. Galanis and the original officers of the petitioners are no longer associated with the petitioners, then the Division of Gaming Enforcement will not proceed against Mr. Galanis and any other of the original officers of the petitioners companies in this action but retains the right to initiate separate actions against those individuals to have them disqualified in their individual capacity.

VII. SPECIAL PROVISIONS FOR DISCOVERY:

- A. The parties may seek discovery in this matter as permitted by N.J.A.C. 1:1-11.2.
- B. The parties shall exchange lists of the names and addresses of all persons who may be called to testify as witnesses at the hearing.
- C. The parties shall exchange copies of all documents which may be relied upon at the hearing.
- D. Pursuant to N.J.A.C. 1:1-11.5, all discovery shall be completed no later than June 12, 1987 or ten (10) days prior to the date set for the hearing.

VIII. ORDER OF PROOFS AND WITNESSES:

- A. The State has the burden of proving the elements of any alleged statutory disqualifier and/or inimicality by a preponderance of the credible evidence.
- B. Respondent has the burden of affirmatively establishing his qualification for licensure by clear and convincing evidence.

IX. EXHIBITS MARKED FOR IDENTIFICATION:

None.

X. EXHIBITS MARKED IN EVIDENCE:

None.

XI. LIMITATION TO THE NUMBER OF EXPERT WITNESSES:

No limitation.

XII. MOTIONS PENDING AND GRANTED:

None.

XIII. BRIEFS:

None.

XIV. STATUTORY REQUIREMENT MANDATING DATE OF AGENCY HEAD DECISION:

Pursuant to N.J.S.A. 52:14B-10(c), the final decision or order of the Casino Control Commission shall be entered no later than forty-five (45) days after receipt by the Commission of the Initial Decision of the Administrative Law Judge.

XV. SPECIAL MATTERS:

None.

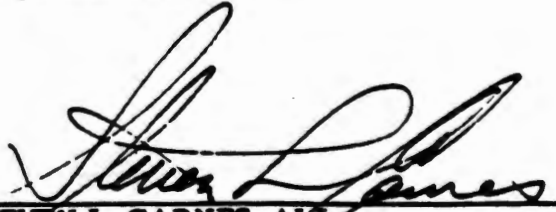
XVI. ATTORNEYS:

See II.

This Order may be reviewed by the **CASINO CONTROL COMMISSION** either upon interlocutory review, pursuant to N.J.A.C. 1:1-9.7, or at the end of the contested case, pursuant to N.J.A.C. 1:1-16.5

It is hereby **ORDERED** that on this 13th day of April, 1987, a copy of this Prehearing Order be served on all parties of record.

13 April 1987
DATE


STEVEN L. CARNES, ALJ

ks

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-51
OAL DOCKET NO. CCC 3031-84
APPLICATION NO. 43874-21
REGISTRATION NOS. 17651-40;
11145-40

APPLICATION OF PATRICK T. NEWMONES
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 20, 1985,

IT IS on this 16th day of September 1987, ORDERED that the initial decision is modified as follows:

1. On page 6 of the initial decision the date of the applicant's arrest is given as May 31, 1984, rather than the correct date which is May 31, 1983.
2. On pages 2 and 3 of the initial decision the ALJ found that Mr. Newmones intentionally failed to disclose employment at the Golden Crest Nursing Home. However, on his PHDF-2A (R6 in evidence), the applicant did disclose this employment along with the fact that he had left the job to join the Iroquois Job Corps Center. The applicant explained that he believed he had resigned from Golden Crest although records from the nursing home may have reflected that Mr. Newmones had been terminated. The initial decision is modified to eliminate any reference to a culpable failure by the applicant to disclose his employment at the Golden Crest Nursing Home.

IT IS FURTHER ORDERED that the casino employee license of Patrick T. Newmones is denied substantially for the reasons stated in the initial decision as modified which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Patrick T. Newmones is prohibited from applying for any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Patrick T. Newmones from retaining his casino hotel employee registration.

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 3031-84

AGENCY DKT. NO. 84-EA-51

PATRICK T. NEWMONES,

Petitioner,

v.

DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Patrick T. Newmones, petitioner, pro se

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

Record Closed: November 23, 1984

Decided: January 7, 1985

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Patrick T. Newmones to the Casino Control Commission for licensure as a casino employee, permitting him to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the Act.

2. Whether the petitioner, with specific reference to his record of arrests and employment terminations, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria, within the meaning of sections 86b and 90e of the Act.
3. Whether the petitioner, with specific reference to his arrest on May 31, 1983, for theft of a gaming cheque, has committed an offense which would indicate that his licensure would be inimical to the policies of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the Act.

PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated February 27, 1984, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on April 30, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 21 year old resident of Atlantic City, New Jersey, and he has satisfied the experiential requirements for the position of a craps dealer, having successfully completed a 240 hour craps dealer course on February 17, 1983. The petitioner is presently unemployed; his last employment was as a cabdriver from July 1984 until October 1984. The petitioner was terminated from this employment following his involvement in an accident.

It is undisputed that the petitioner has held employment in several Atlantic City casinos. From October 10, 1979 until February 26, 1980, the petitioner was employed as a buseperson by Caesar's Boardwalk Regency. He was terminated from this position for unsatisfactory job performance. From July 10, 1980 until July 14, 1980, the petitioner was employed as a buseperson at Bally's Park Place Hotel Casino. When he was discovered near a marijuana cigarette in a men's room by a casino security guard, the

petitioner was given an option of resigning or being charged with possession of marijuana. The petitioner chose to resign from his employment. In August 1980, the petitioner was employed as a porter by the Claridge Hotel Casino. He lost this employment when he came to work late.

It is undisputed that the petitioner failed to disclose his casino employments and terminations on his personal history disclosure form (Exhibit R-6). Testifying on behalf of the Division of Gaming Enforcement, Agent Alexander Love stated that he conducted a background check of the petitioner, which revealed the petitioner's casino employments and terminations. When Agent Love asked the petitioner during an interview why he had not disclosed his casino employments and terminations, the petitioner stated that he felt it was a bad reference to put on his application and that he had gained the employments by putting down the wrong birthdate on his applications, because he had been underage at the time. Testifying on his own behalf at the hearing, the petitioner acknowledged that he had not disclosed the casino employments on his personal history disclosure form because he thought it might hurt his chances of obtaining employment, since he had been underage at the time he held the casino jobs. It is undisputed that the petitioner also failed to disclose his employment at the Golden Crest Nursing Home between April 10, 1982 and May 21, 1982.

Agent Love also testified that the petitioner had been arrested on two occasions. The first arrest occurred on January 5, 1982, when the petitioner was charged with possession of methamphetamines and marijuana, under 25 grams, in violation of N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-20a(4). Following his arrest, an indictment was entered against the petitioner (Exhibits R-1 and R-2). The petitioner entered a plea of guilty to the charge of possession of a controlled dangerous substance, methamphetamines, and the charge of possession of marijuana was dismissed. The petitioner subsequently was granted a conditional discharge, which he satisfactorily completed, and the indictment was dismissed on April 8, 1983 (Exhibit R-3).

The petitioner was again arrested on May 31, 1983, and charged with theft, contrary to N.J.S.A. 2C:20-3. It is undisputed that this arrest followed an incident during which the petitioner participated in a craps game at the Resorts International Hotel Casino by wagering with a \$5.00 gaming cheque which did not belong to him (Exhibits R-4 and R-5). The gaming cheque allegedly belonged to a female patron, but the charge of

theft against the petitioner was subsequently dismissed when the complainant, who resided in the State of Michigan, failed to appear to prosecute the matter.

Agent Love testified that the petitioner failed to disclose on his personal history disclosure form his drug arrest on January 5, 1982. According to the agent, he asked the petitioner during his interview if he had ever been arrested. The petitioner admitted the January 1982 drug arrest and said that he had no other arrests. Agent Love then confronted the petitioner with the May 1983 arrest for theft of the gaming cheque and the petitioner admitted this arrest after previously denying it. Agent Love testified that the petitioner stated that he thought that disclosing the arrest might hurt his chances to obtain a license, and besides, the charge had been dismissed. Testifying on his own behalf, the petitioner acknowledged his arrests. He stated that he did not disclose his drug arrest on his personal history disclosure form because he felt it would prevent him from obtaining employment. His arrest for theft of the gaming cheque occurred after the petitioner filed his personal history disclosure form. However, the petitioner acknowledged that he intentionally lied to Agent Love when he denied having any arrests other than the drug arrest. The petitioner admitted that he played a gaming cheque which did not belong to him, but he added that he did not think it belonged to the complaining patron either. He acknowledged that he knew at the time that he was doing something which was wrong.

The petitioner testified sincerely and with candor at the hearing. He acknowledged that he had read every notice, warning and question on his personal history disclosure form and he stated that he was sure he had understood its contents. He recalled reading the certifications which stated that the contents reported were true and he admitted that he had intentionally lied on the disclosure form. The petitioner stated that he was more mature now than when he was underage and he feels he deserves a chance to be self-sufficient.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), which incorporates the licensing criteria set forth in section 89, an applicant for a casino

employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the Act. Section 86b provides that licensure shall be denied to any applicant who has failed to reveal any fact pertaining to the qualification criteria. Sections 86c(4) and 86g provide that licensure shall be denied to any applicant who has committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the petitioner failed to reveal on his personal history disclosure form that he had been arrested on a drug offense in January 1982. He failed to reveal to a Division of Gaming Enforcement Agent that he was arrested in May 1983 for theft of a gaming cheque from a patron at an Atlantic City casino. The credible evidence in the record establishes that one of the reasons that the petitioner failed to reveal this material information was that he thought its disclosure would affect his chances of obtaining casino employment. Thus, the failure to disclose was not inadvertent, but, rather, was intentional, and I **CONCLUDE** that the petitioner has failed to disclose facts material to qualification within the meaning of sections 86b and 90e of the Casino Control Act.

The petitioner has admitted that he picked up a \$5.00 gaming cheque and wagered with it at the Resorts International Hotel Casino on May 31, 1983. This theft in an amount under \$200.00 was a disorderly persons offense, contrary to N.J.S.A. 2C:20-3. Theft in such an amount is not an enumerated disqualifier under section 86c of the Casino Control Act. Thus, the question to be determined is whether the offense would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even though the conduct was not prosecuted under the criminal laws of New Jersey, within the meaning of section 86g of the Act.

In order to determine whether the offense in question indicates that the petitioner's licensure would be inimical, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Docket No. 79-CL-1(1979). At the time of his theft of the gaming cheque, the petitioner was 19 years old. The offense has a direct bearing on the petitioner's suitability for licensure, since it occurred in a licensed casino facility. The petitioner is

now 21 years old and he is unemployed. However, he did hold employment as a cabdriver between July and October 1984. The offense of theft occurred in a licensed casino after the petitioner had completed a craps dealer course and after he had completed his personal history disclosure form.

Following his commission of the offense of theft on May 31, 1984, the petitioner denied the arrest to a Division of Gaming Enforcement agent when he was interviewed on November 9, 1983. The petitioner has admitted that he intentionally lied to the agent when he denied the arrest. Given the nature of the theft which occurred in a licensed casino, and in light of all of the other circumstances, the credible evidence in the record indicates that the petitioner's participation in the legalized gaming industry at this time would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I must **CONCLUDE** that the respondent has engaged in conduct constituting an offense which would indicate that licensure would be inimical to the policy of the Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4).

The petitioner's sincerity and candor during the hearing itself were notable. His desire to overcome his past mistakes and to make a new life for himself was apparent. However, his intentional failure to disclose material information and his commission of an offense which would render licensure inimical to the policy of the Casino Control Act prevent him from establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, and I so **CONCLUDE**.

ORDER OF DISPOSITION

Accordingly, for the foregoing reasons, it is **ORDERED** that the application of the petitioner, Patrick T. Newmones, for a casino employee license permitting him to work in a casino as a craps dealer, be denied.

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

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

January 7, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

1/9/85
DATE

Mary Ann Tenczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 10 1985
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW /pho

ml

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

- R-1 Atlantic City Police Department investigation report
- R-2 Indictment
- R-3 Atlantic County Superior Court Criminal Record
- R-4 Atlantic County Municipal Court complaint
- R-5 Resorts International Hotel incident report
- R-6 Personal History Disclosure Form

WITNESSES

For the petitioner:

Patrick T. Newmones

For the respondent;

Alexander Love

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-364
OAL DOCKET NO. CCC 02907-87
LICENSE NO. 54414-21
REGISTRATION NO. 22030-40
ORDER NO. 87-44-9

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
JOSE D. NIEVES, :
Respondent. :

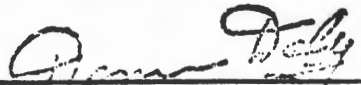
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 18, 1987,

IT IS on this 4th day of December 1987, 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 and made a part hereof.

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 2907-87

AGENCY DKT. NO. 87-364

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

Petitioner,

v.

JOSE D. NIEVES,
Respondent.

**R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Lorraine Gormley, Staff Attorney, for the respondent (Cape-Atlantic Legal
Services, attorney)**

Record Closed: September 30, 1987

Decided: October 2, 1987

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 Jose D. Nieve's casino employee license no. 54414-21 and his casino hotel employee registration no. 22030-40, pursuant to N.J.S.A. 5:12-90, N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license and registration by reason of its contention that the respondent had been convicted of a criminal offense which rendered continued licensure and registration to be inimical to the policies of the Casino Control

Act (Act), pursuant to section 86c(4) and, therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 80b, which incorporates section 89b(2) by reference. The respondent contended that his actions were not inimical to the policies of the Act and were not of sufficient degree to warrant revocation of his license and registration.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license and a casino hotel employee registration from the Commission. By complaint to the Commission, filed April 3, 1987, the Division objected to the respondent's continued licensure and registration, asserting that the respondent had been indicted for aggravated assault and riot, which is a disqualifying offense under section 86c(4). The Division also objected pursuant to section 90b. Based upon the complaint, the Commission notified the respondent on April 10, 1987, 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 April 20, 1987, which was received by the Commission on April 21, 1987, the respondent requested a hearing. On April 27, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 1, 1987, 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 July 16, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent's continued license 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:12-1b(5), aggravated assault, 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's continued license and registration 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:33-1a, riot.

- C. 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).
- D. If a section 86c disqualifier is established by the petitioner, should the Commission, pursuant to section 91e, then waive the disqualification criterion, consistent with the public policy of the Casino Control Act, upon a finding that the interests of justice so require?

A hearing was held on September 21, 1987, in the Municipal Courtroom, Somers Point Municipal Building, Somers Point, New Jersey. The record remained open pursuant to N.J.A.C. 1:1-15.6 in order to allow the respondent time to submit an affidavit authenticating a document. The affidavit was received by me on September 30, 1987, and the record closed at that time.

At the hearing the parties agreed to limit the issues to issues B and C stated above. The Division conceded that there was insufficient evidence to establish the elements of the charge of aggravated assault, and that in fact, no assault had occurred.

THE FACTS

The respondent, Jose D. Nieves, is a member of Local 54 of the Hotel and Restaurant Employees and Bartenders International Union, and in 1986, he was employed at the Sands Hotel and Casino. In September 1986, Local 54 went on strike at the casinos in Atlantic City. On September 16, 1986, the respondent participated in the strike activities of his union. He, along with approximately 300 to 400 other employees of the Sands who were members of Local 54, picketed outside the main entrance of the Sands. The strike effort was an organized effort; however, the respondent was not an organizer of the strike. The respondent was issued a sign to wear on the front of his person, and he joined the 300 to 400 other picketers walking in a large circle in front of the Sands.

Detective James Pflaumer, New Jersey State Police, assigned to the Division of Gaming Enforcement, was dispatched to the Sands in order to assess the strike situation. Detective Pflaumer was dressed in civilian clothing and was driving an unmarked car. As he approached the Sands, he saw a large crowd congregated on the indoor parking ramp, blocking the street, and acting disorderly. As Detective Pflaumer

turned into the parking ramp, his car was struck by a beer bottle. Detective Pflaumer turned, saw a man whom he thought had thrown the beer bottle heading toward the crowd, exited his vehicle, and attempted to apprehend the man.

As Detective Pflaumer approached the crowd, he stated, "When I get the guy who threw the beer bottle, I'm going to lock you up." Someone in the crowd asked, "Who the hell are you?" Detective Pflaumer responded, "State Police." Mr Nieves thought Detective Pflaumer was ordering the strikers to leave the Sands. At this point Mr. Nieves walked up to Detective Pflaumer, stated "we are on strike," and held his strike sign up in front of Detective Pflaumer's face. Detective Pflaumer ripped the strike sign from the respondent's hands. The respondent stepped back and held his hands up in the air as if surprised or shocked. Detective Pflaumer was then pushed back by William Johnson, who asked, "What the hell are you doing?" Detective Pflaumer then produced his badge and said, "State Police officer." Detective Pflaumer then turned around and walked away from the area.

On November 25, 1986, the respondent was indicted in the Superior Court of New Jersey, Law Division-Criminal, Atlantic County, and was charged with aggravated assault, in violation of N.J.S.A. 2C:12-1b(5), and riot, in violation of N.J.S.A. 2C:33-1a (P-1a).¹ On March 9, 1987, pursuant to a plea bargain offered by the prosecutor, the respondent entered a plea of guilty to the amended charge of failure to disperse in place of the original charge of riot. The charge of aggravated assault was dismissed. The respondent was sentenced to pay a \$200.00 fine, and to pay a \$30.00 Violent Crimes Compensation Board penalty (P-1b). The respondent has paid all fines and penalties.

The respondent is 33 years of age and was born in Puerto Rico. The respondent left school while in the ninth grade in order to work with his father on a farm. In 1974, his family moved to the United States. The respondent has not obtained any formal education or job training since arriving in the United States, other than taking a three-month course in English.² The respondent has lived in Atlantic City for the last 14

¹ I note that the respondent was indicted for allegedly committing these offenses on August 16, 1986, when the strike activity occurred on September 16, 1986.

² The respondent has an extremely limited knowledge of the English language and spoke at the hearing through an interpreter.

years, except for a two-year period in 1978 and 1979, when his father moved to North Jersey.

The respondent received his casino hotel employee registration in 1978 and obtained a job at Resorts International Hotel and Casino (Resorts). The respondent worked in the kitchen at Resorts for three months. He left the position to accompany his father to North Jersey. After returning to Atlantic City, the respondent began working in the kitchen at the Sands in 1980. In 1985, the respondent advanced from a kitchen worker to a bus person at the Sands, the position he currently holds. In 1985 he also worked in the kitchen of the Trump Plaza; however, he left that job as he found the strains of working two jobs to be too great.

The respondent was "laid off" from his job at the Sands after the strike because of the criminal investigation (R-2). After six weeks the respondent began drawing unemployment benefits. He attempted to obtain other employment in the industry, but he was unable to find any. After the criminal case was concluded, the respondent contacted Local 54, and the Union contacted the Sands (R-3). The Sands agreed to reinstate the respondent without back pay but with full seniority.

The respondent submitted three letters in support of his good character. The first, written by Charles Conway, restaurant supervisor, Trump Plaza Hotel and Casino, states, "In the six years that I have known Jose Nieves, he has shown himself an honest, hard working individual and in general an upstanding citizen" (R-4).

The second, written by Thomas Cooper, manager, Employee Dining Areas, Sands Hotel and Casino, states, "Mr. Nieves has been employed by the Sands Hotel Casino for more than six years. During that time Mr. Nieves has complied [sic] an excellent record. I have found Mr. Nieves to be honest, dependable, and forthright" (R-5).

Finally, Jeffrey Umstead, shop steward, Local 54, Hotel and Restaurant Employees and Bartenders International Union, writes that he has been employed at the Sands for over seven years. Mr. Umstead also writes:

During my tenure at the Sands Hotel and Casino I've known and worked with Jose Nieves, who has also been employed for seven years with the Sand's [sic] Hotel and Casino. It is in my sincerest opinion that Mr. Nieves is an inspiration to his co-workers and also

an asset to the Sand's [sic] Hotel and Casino. It's also my opinion that Mr. Nieves is a person of high moral conduct and standards.
(R-6)

The Division did attempt to refute the respondent's testimony concerning the circumstances underlying the incident but did not attempt to refute 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 holder of a casino employee license and 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 the videotape, 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 appeared that the petitioner testified truthfully in every regard. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. The respondent, as a member of Local 54, was picketing outside the Sands Hotel and Casino on September 16, 1986, as part of an organized strike.
2. A man in a jacket approached the picketers and the respondent thought the man was telling the strikers to leave the area.
3. The respondent stated "we are on strike," and held up a strike sign in the man's face. The man then ripped the strike sign from the respondent's hands.
4. Due to the crowd noise, the respondent did not hear the man previously identify himself as a State Police officer.
5. After being pushed back by William Johnson, the State Police officer identified himself by showing his badge.
6. The respondent continued his picketing and the State Police officer departed the area.

7. On March 9, 1987, pursuant to a plea bargain, the respondent entered a plea of guilty to the amended charge of failure to disperse, in violation of N.J.S.A. 2C:33-1b.
8. The respondent was sentenced to pay a \$200.00 fine, and to pay a \$30.00 Violent Crimes Compensation Board penalty (P-1b). The respondent has paid all fines and penalties.
9. The respondent is 33 years of age.
10. The respondent was born in Puerto Rico, and has an extremely limited command of the English language.
11. The respondent is employed as a bus person at the Sands.
12. The respondent attended school in Puerto Rico, but he quit in the ninth grade in order to help his father do farm work.
13. The respondent has lived in Atlantic City for 12 of the last 14 years.

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 under New Jersey law at the time of application a violation of any of the following provisions of law:

...

- (4) any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; 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 and provided, further however, that any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant or person demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for disqualification pursuant to paragraph (1) of this section.

...

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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 juris-

diction 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.

....

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual license or registrant." Section 129(1) 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 or registration." The Division contends that the respondent's criminal misconduct constitutes a disqualifying offense under section 86c(4) and, therefore, he cannot continue to hold a license or registration.

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 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 established that the respondent was convicted of riot. Although the respondent's conviction for riot is not listed as a disqualifier under section 86c, such conduct, when committed by a licensee, raises serious concerns. Further, when the circumstances underlying the criminal misconduct occur in front of a licensed casino, the offense takes on a far greater significance. Normally, a conviction for riot in front of a licensed casino would render continued registration to be inimical to the Act. The court conviction, along with the documentary evidence submitted by the Division, establishes the charged misconduct; however, the circumstances surrounding the offense substantially mitigate the seriousness of the offense.

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] [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 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 applicant 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.

First, Mr. Nieves is the holder of a casino employee license and is a casino hotel registrant. He is employed as a bus person in a restaurant. As such, he does not have direct responsibilities for actual gaming activities and has minimal contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:33-1b, failure to disperse. This is a disorderly persons offense and is not normally considered to be a serious offense. The fact that the failure to disperse occurred in front of a licensed casino somewhat increases the seriousness of the offense.

Third, the circumstances surrounding the offense substantially mitigate the seriousness of the offense. The respondent was peaceably and lawfully participating in an organized strike action. When Detective Pflaumer was pursuing the man who threw the beer bottle, he identified himself in a loud voice as a State Police officer. I had Detective Pflaumer demonstrate at the hearing how loud he identified himself. In my opinion, considering the location and the crowd noise, very few people could have heard him. The respondent, thinking Detective Pflaumer was ordering the strikers to leave the area, went up to him, said "we are on strike," and held his strike sign up in Detective Pflaumer's face. Detective Pflaumer then ripped the strike sign from the respondent. Detective Pflaumer testified that the respondent stepped back, assumed a defensive position, and raised his hands in a fist. The respondent testified he stepped back and raised his open hands in order to show he was not being aggressive. The videotape of the incident (R-1), beginning at 1374 feet, shows that the respondent stepped back and raised his open hands in surprise or shock. His actions do not appear threatening or aggressive. The respondent did not yell, fight, throw objects, or otherwise threaten the detective. The detective then identified himself and left the area. The respondent then resumed his lawful picketing.

Fourth, the respondent's misconduct occurred on September 16, 1986, approximately one year ago.

Fifth, the respondent was either 32 or 33 years of age at the time of the offense. I do not believe that his age at the time of the offense was a contributing or mitigating factor in this case.

Sixth, the respondent's conduct was isolated in nature. He has not committed any other prior or subsequent violations of the criminal laws.

Seventh, this was the first strike activity in which the respondent participated, and he was not given any instructions by his union on proper strike conduct.

Eighth, the respondent is an imigrant from Puerto Rico. He never completed high school as he had to leave school in order to assist his father in working on a farm in order to support his family. He has lived in Atlantic City for 12 of the last 14 years. He

has paid all his fines. He has performed well in the industry for several years and he enjoys his job. The respondent, however, does not understand that what he did was wrong.

"Failure to disperse" is defined in N.J.S.A. 2C:33-1b as:

When five or more persons are participating in a course of disorderly conduct as defined in section 2C:33-2a. likely to cause substantial harm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a disorderly persons offense.

"Disorderly conduct" is defined in N.J.S.A. 2C:33-2a as:

- a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
 - (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or
 - (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

The respondent was with 5 or more people; in fact, he was with 300 to 400 people. However, 5 or more people were not participating in a course of disorderly conduct; only William Johnson shoved the intruder, and the respondent held a sign up in the Detective's face. Johnson and the respondent were not acting in concert.

The Division argues that the respondent's conduct is inimical to the policies of the Act as it violates the policies of the Act, specifically, the hospitality and tourism policies of the Act set forth in section 1b, paragraphs 1 to 5. The Division further argues that when such conduct occurs at a licensed casino, the conduct undermines the goals of the Act. The Division stresses that the person could have been a patron and such conduct is detrimental to the hospitality and tourism provisions of the Act. If the respondent had been disorderly to a patron, that would be one issue. However, if a patron ran up to a peaceful picketer who was lawfully exercising his federally protected right to lawful strike activity and ripped the strike sign from the picketer, then the patron's action would be unlawful and he would be the aggressor.

When considering the respondent's conduct as taken in context and the overall nature of his character, I do not find that holding up a picket sign in the face of a person who seemed to be interfering with a peaceful and lawful strike activity (even though he was a law enforcement officer who was attempting to apprehend a person as the officer's identity and authority was not readily apparent to the picketers) is 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 or registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Nieves was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to 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 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.

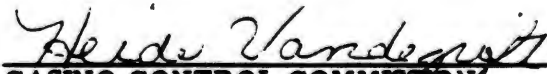
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 2, 1987
DATE


STEVEN L. CARNES, ALJ

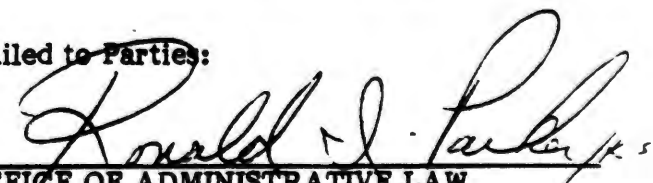
Receipt Acknowledged:

10/5/87
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 7 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

Joint Exhibits

J-1 Letter from the Casino Control Commission, dated April 10, 1987

For the Petitioner

P-1a Indictment No. 86-11-2370D, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, in State v. Jose D. Nieves

P-1b Judgment of Conviction in State v. Jose D. Nieves, dated March 9, 1987

For the Respondent

R-1 Videotape of the strike activity outside the Sands Hotel and Casino on September 16, 1987

R-2 Letter of Michael J. Lamond, Labor Relations Specialist, Sands Hotel and Casino, dated September 23, 1986

R-3 Letter of Timmie Hilferty, Arbitration Officer, Local 54, dated June 1, 1987

R-4 Letter of Charles Conway, Restaurant Supervisor, Sands Hotel and Casino, dated September 20, 1987

R-5 Memorandum of Thomas Cooper, Manager, Employee Dining Area, Sands Hotel and Casino, dated September 18, 1987

R-6 Letter of Jeffrey Umstead, Shop Steward, Local 54, Sands Hotel and Casino, dated September 17, 1987

WITNESSES

For the Petitioner

Detective James Pflaumer, New Jersey State Police, assigned to the Division of Gaming Enforcement

For the Respondent

Jose D. Nieves, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-158
APPLICATION NO. 51116-21
OAL DOCKET NO. 6910-85
ORDER NO. 87-29-2

APPLICATION OF PAUL PERLES
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having commenced before the Office of Administrative Law (OAL); and the applicant having filed a motion to withdraw his application for a casino employee license pursuant to N.J.A.C. 19:41-8.6(c); and the Administrative Law Judge (ALJ) having filed an initial decision granting this motion despite the refusal of the Division of Gaming Enforcement (Division) to consent to the withdrawal; and the Casino Control Commission (Commission) having considered the entire record of this matter at its public meeting of July 29, 1987, and having resolved to consider the applicant's withdrawal request de novo,

IT IS on this 24th day of August 1987, ORDERED that the initial decision is rejected on the grounds that the applicant's motion to withdraw his casino license should not have been considered by the ALJ but, consistent with the prior practice of both the OAL and the Commission in cases

involving withdrawal, should have been forwarded to the Commission for determination;

IT IS FURTHER ORDERED that the applicant's request for withdrawal is denied because: (1) given the substantial derogatory information revealed by the Division in its letter-report dated August 29, 1985, concerning the applicant's qualifications for licensure, the Division's refusal to consent to withdrawal was appropriate, (2) extraordinary circumstances justifying withdrawal have not been presented and (3) withdrawal would not be consistent with the public interest and the policies of the Casino Control Act.

IT IS FURTHER ORDERED that the applicant be given fifteen (15) days from receipt of this order to reassert his request for a hearing on his application for licensure, should he so desire.

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 6910-85

AGENCY DKT. NO. 85-EA-158

PAUL PERLES,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Guy S. Michael, Esq., for petitioner (Brown & Michael), attorneys

Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: March 10, 1987

Decided: June 16, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

The issue presented in this matter is whether the petitioner should be permitted to withdraw his application to the Casino Control Commission for licensure as a junket representative, sole owner and operator, pursuant to N.J.A.C. 19:41-8.6(c).

PROCEDURAL HISTORY

By letter report to the Casino Control Commission dated August 29, 1985, the Division of Gaming Enforcement (Division) recommended that the petitioner's application for licensure be denied. The petitioner requested a hearing upon his application by letter dated October 14, 1985. On October 30, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on December 18, 1985, at which time it was agreed that oral argument on motions would be conducted on March 3, 1986, and the hearing would commence on March 17, 1986. Because the prehearing discovery process was not yet complete, the originally scheduled dates for oral argument and commencement of the hearing were adjourned. The hearing was then rescheduled to begin on May 6, 1986.

At the request of the petitioner, an adjournment from the May 6, 1986 hearing date was granted to permit the filing of a motion for partial summary decision. The petitioner's initial motion papers were filed on May 7, 1986. The Division's brief in opposition to the motion was filed on July 14, 1986. Supplemental arguments were filed by both parties, the last of which was received from the Division on August 5, 1986.

The petitioner's motion for partial summary decision sought the dismissal from the proceeding of certain issues which had been identified at the time of the prehearing conference. Following consideration of the moving and responsive papers, the undersigned notified the parties that the motion for partial summary decision was denied in its entirety. On November 24, 1986, counsel for the parties agreed to a schedule of ten hearing days, beginning February 2, 1987.

A telephone conference was conducted on January 16, 1987. At that time, counsel for the petitioner gave notice that the petitioner chose not to proceed to a hearing and indicated the petitioner's intention to seek a withdraw of his application for licensure, pursuant to N.J.A.C. 19:41-8.6. Consequently, the hearing dates were adjourned and the parties were instructed to submit their arguments concerning the petitioner's request for withdraw. The last of the submissions was received on March 10, 1987, and the record closed on that date. The filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

FINDINGS OF FACT

In determining whether the petitioner should be permitted to withdraw his application, consideration must be given to the foregoing procedural history. Therefore, the history is incorporated in these findings by reference. The nature of the issues raised at the prehearing conference is also a factor relevant to the withdrawal question. Those issues were stated in the prehearing order as follows:

A. Whether the petitioner has demonstrated, by clear and convincing evidence, his financial stability, integrity and responsibility, within the meaning of sections 89b(1), 90b and 102 of the Casino Control Act, with specific reference to the following areas of concern identified in the letter report of the Division of Gaming Enforcement, dated August 29, 1985:

1. The source of applied funds between January 1, 1979 and December 31, 1983.
2. The alleged circumvention of the cash reporting requirements under the Bank Secrecy Act.
3. The alleged use by his office personnel of personal safe deposit boxes to hold casino funds.
4. The alleged absence of adequate record keeping pertaining to casino marker payments.
5. The respondent's declaration of personal bankruptcy.
6. The alleged failure to satisfy markers from King's Castle at Lake Tahoe, Nevada.
7. The alleged debt of approximately \$8,500 relating to markers from Caesars Palace in Nevada.
8. The alleged interest fee, unsecured and unrepaid loan of \$100,000 from Isadore Becker, a principal of the Riviera Hotel in Las Vegas, Nevada.

B. Whether the petitioner has demonstrated, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2), 90b and 102b of the Casino Control Act, with specific reference to the following areas of concern identified in the letter report of the Division of Gaming Enforcement, dated August 29, 1985:

1. The petitioner's business, professional and personal associations with 19 individuals specifically identified on pages 4 through 12 of the Division's letter report.
2. The alleged barring of the petitioner by the Thoroughbred Racing Protective Bureau from racetracks which are members of the Thoroughbred Racing Association.
3. The events pertaining to the alleged initial denial in 1980 of his junketeer work card by the Las Vegas Metropolitan Police Department, and the subsequent granting of the work card.

4. The petitioner's arrest and conviction record.
- C. Whether the petitioner has demonstrated, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act, with specific reference to the following areas of concern identified in the letter report of the Division of Gaming Enforcement, dated August 29, 1985:
 1. The alleged use of personal safe deposit boxes for the storage of payments received on markers.
 2. The alleged absence of a reliable method of accounting for the movement of marker funds in and out of safe deposit boxes.
 3. The alleged avoidance of compliance with the cash reporting requirements of the Bank Secrecy Act.
 4. The alleged receipt of funds in payment for Atlantic City gaming debts without Casino Control Commission approval and in a manner inconsistent with the requirements of N.J.A.C. 19:45-1.26(b).
 5. The alleged lack of adequate controls and record keeping regarding receipt of funds for payments for Atlantic City gaming debts.

Other facts material to whether the petitioner should be permitted to withdraw his application are also undisputed. The petitioner is approximately 70 years old. He is not employed in Atlantic City in any capacity in connection with any licensed casino hotel. He presently has no intention to seek such employment in the future. Obviously, several years have passed since the petitioner first applied for licensure in 1984.

It is undisputed that the issues raised in this proceeding would require extensive time to litigate. The petitioner's assertion that he would experience physical and financial hardship if required to proceed to a hearing on his application is unrefuted. Finally, the Division has stated its readiness to proceed to a hearing on the matter and the Division expressly does not consent to withdrawal of the petitioner's application for licensure.

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

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 19:41-8.6(a), a written notice of withdrawal of application may be filed by an applicant at any time prior to final commission action thereon. However, no application shall be permitted to be withdrawn unless the applicant shall have first established to the satisfaction of the Commission that withdrawal of the application would be consistent with the public interest and the policies of the casino control act (N.J.S.A. 5:12-1 et seq.). The foregoing is subject to subsections (b) and (c) of N.J.A.C. 19:41-8.6, which provide:

- (b) where a hearing on an application has been requested by a party or directed by the Commission, the Commission shall not permit withdrawal of said application after:
 - 1. The application matter has been transmitted to the Office of Administrative Law; or
 - 2. The application matter has been assigned to any other hearing examiner authorized by law to hear such matter; or
 - 3. The Commission has made a determination to hear the application matter directly.
- (c) Notwithstanding the foregoing, the Commission may accept and consider a written notice of withdrawal after the time specified herein if the Division consents to the withdrawal and if the Commission is satisfied that there exists extraordinary circumstances justifying withdrawal.

Section 1b of the Casino Control Act sets forth an extensive declaration of the New Jersey Legislature's findings of public policy. N.J.S.A. 5:12-1b(6) and (7) 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. In addition, licensure of a limited number of casino establishments, with the comprehensive law enforcement supervision attendant thereto, is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process.

- (7) Legalized casino gaming in New Jersey can attain 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, and the exclusion of removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto.

The petitioner does not concede that he is a person with an unacceptable background or record of behavior warranting his exclusion from the licensed casino industry in Atlantic City. However, it is his contention that the policy of strict state regulation is as well served by permitting his withdrawal as by any ultimate denial of his application which might be entered. The petitioner recognizes that the Commission shall have the authority, pursuant to N.J.A.C. 19:41-8.6(a), to direct that he shall not be eligible to apply again for licensure until after the expiration of one year from the date of withdrawal.

In addition to contending that the withdrawal of his application would be consistent with the public interest and the policies of the Casino Control Act, the petitioner asserts that there exist extraordinary circumstances justifying withdrawal. He is almost 70 years old and he has no intention of seeking employment in or by an Atlantic City casino hotel. Requiring the petitioner to proceed with the extensive litigation necessary to avoid a license denial would result in physical and financial hardship.

It is the position of the Division that extraordinary circumstances justifying withdrawal of the petitioner's application for licensure do not exist. The Division contends that the petitioner's age does not present an extraordinary circumstance and points out that the petitioner was 66 years old when he applied for licensure. Since he was aware of the numerous objections to his licensure when he requested a hearing, the contention that

being required to proceed to a hearing would result in physical or financial hardship is inconsistent with his initial request for a hearing. The Division also argues that the absence of intent to seek employment in the licensed casino industry is not an extraordinary circumstance, since numerous individuals maintain such licenses even though they are not so employed.

The Division argues that a proposed hearing schedule of ten days is not an extraordinary circumstance justifying the withdrawal of the petitioner's application. The Division is ready to proceed with the matter and it also argues that the information developed during the course of its investigation would become stale if the applicant were permitted to withdraw and then reapply at a later date. Based on all of its arguments, the Division expressly does not consent to the petitioner's withdrawal.

In response to the Division's contentions, the petitioner argues that the Division's consent to the withdrawal may not be unreasonably withheld. Pursuant to N.J.S.A. 5:12-63, the Casino Control Commission has the responsibility to hear and decide all causes affecting license applications. To the extent that the Legislature has accorded the Attorney General concurrent approval power concerning the licensing of casinos, pursuant to N.J.S.A. 5:12-82, the concurrence of the Attorney General may not be unreasonably withheld.

The general duties and powers of the Division of Gaming Enforcement are set forth at N.J.S.A. 5:12-76. The authority granted to the Division by the Legislature does not include the power to hear and decide causes affecting the licensing of applicants. Thus, the petitioner argues that to the extent the Commission has afforded the Division by regulation with the opportunity to object to the withdrawal of an application for licensure, the Division's consent to the withdrawal may not be unreasonably withheld.

In light of the specific grants of authority to the Commission and the Division pursuant to sections 63 and 76 of the act, I accept the petitioner's argument that the consent of the Division to withdraw may not be unreasonably withheld, and I so **CONCLUDE**. The petitioner's age, the procedural history of this matter and the expected duration of a hearing are all factors which are relevant to the question of withdrawal. Other important factors are the physical and financial hardship which the petitioner would face if required to go through with a hearing, as well as the absence of any intention on his part to seek employment in any capacity in connection with a licensed casino hotel in

Atlantic City. Taken individually, any one of these circumstances may not be extraordinary. However, the impact of all of these factors in the aggregate is substantial. Accordingly, and notwithstanding the readiness of the Division to proceed to a hearing, I **CONCLUDE** that there exist extraordinary circumstances justifying withdrawal of the petitioner's application for licensure, within the meaning of N.J.A.C. 19:41-8.6(c). I further **CONCLUDE** that the withdrawal of the application would be consistent with the public interest and the policies of the Casino Control Act, pursuant to N.J.A.C. 19:41-8.6(a).

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the petitioner shall be permitted to withdraw his application to the Casino Control Commission for licensure as a junket representative, sole owner and operator, pursuant to N.J.A.C. 19:41-8.6.

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

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

June 16, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

June 17, 1987
DATE

Receipt Acknowledged:

Nicholas Zappo
CASINO CONTROL COMMISSION

June 19, 1987
DATE

Mailed to Parties:
Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

None

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-1
OAL DOCKET NO. CCC 1064-85
APPLICATION NO. 44993-21

APPLICATION OF JAMES T. POWELL FOR A :
CASINO EMPLOYEE LICENSE (SOLE OWNER/ : ORDER
OPERATOR JUNKET ENTERPRISE) :

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission) by the administrative law judge; and exceptions to the initial decision having been filed; and the Commission having considered the entire record in this matter at its public meeting of September 11, 1985,

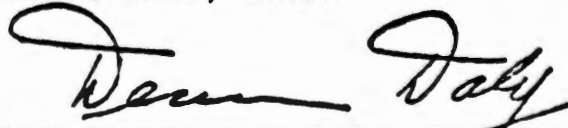
IT IS on this 15TH day of September 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The Commission finds that the applicant was misled by Victor Guralnick in completing his junket representative application form by following Mr. Guralnick's instructions to list "Nat Teplis" as his employer. The applicant has never met or done business with Mr. Teplis nor does he continue to do business with Mr. Guralnick. The Commission is satisfied that the applicant did not intend to deceive the regulatory authorities by his answer on the application form. The Commission does not find this incident sufficient to undermine the character and business qualifications of the applicant pursuant to N.J.S.A. 5:12-89(b), -90(b) and -102.

2. The Commission finds that the conduct of one junket by the applicant in conjunction with Mr. Guralnick and under Guralnick's name and license, prior to the applicant's temporary licensure, is a serious concern. However, after weighing it against the considerable, positive character evidence presented at the OAL hearing, we find that the applicant has demonstrated by clear and convincing evidence the requisite good character, honesty and integrity as well as his financial integrity and business ability pursuant to N.J.S.A. 5:12-89(b), -90(b) and 102(c).

IT IS FURTHER ORDERED that based on these findings, the casino employee license of James T. Powell is granted.

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 1064-85

AGENCY DKT. NO. 85-EA-1

JAMES T. POWELL,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Robert C. Lake, Jr., Esq., member of the South Carolina Bar, admitted pro hac vice, for petitioner. Attorney of record: **Walter S. Jeffries, Esq.**

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

Record Closed: May 31, 1985

Decided: July 15, 1985

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of James T. Powell to the Casino Control Commission for licensure as a casino employee, permitting him to act as a junket representative, sole owner/operator. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner has demonstrated, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2), 90b and 102b of the Casino Control Act.

2. Whether the petitioner has demonstrated, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter to the Casino Control Commission, dated November 28, 1984. On January 9, 1985, the petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on February 26, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held in this matter on April 10, 1985, and the hearing was held on May 31, 1985.

FINDINGS OF FACT

The petitioner is a 49-year-old resident of Greenville, South Carolina. On April 13, 1983, the Casino Control Commission awarded temporary licensure to the petitioner as a junket representative. This temporary license was renewed for one additional six-month period in February 1984. The Casino Control Commission awarded the petitioner temporary licensure as a sole owner/operator junket enterprise on April 18, 1984.

The petitioner is self-employed in the tour, public relations and promotion business. He is a high school graduate and he attended Clemson University. Following military duty, the petitioner was employed in the newspaper advertising sales field. In 1968, the petitioner was employed on a part-time basis by the Hejas Shrine Temple in Greenville, South Carolina, with responsibility for public relations, promotions and similar activities. In 1971, the petitioner became a full-time employee of the Shrine Temple, and this employment continued until July 1980, when the petitioner became self-employed in the tour and promotion business.

At some time in 1982, the petitioner traveled to Las Vegas, Nevada, on a gambling junket. This tour was organized by Victor Guralnick, the owner of Casino Tours, Inc., of Columbia, South Carolina. According to the petitioner, it was his desire to become involved in arranging junkets to Nassau, and he contacted Mr. Guralnick and asked for his assistance. Mr. Guralnick permitted the petitioner to solicit customers to fill one half of the seats on an airplane junket to Nassau. The petitioner charged each customer \$100, of which \$50 per customer was paid to Mr. Guralnick. According to the petitioner, Mr. Guralnick explained that he needed \$50 per person from the petitioner because \$30 per customer was to be paid by Mr. Guralnick to "the other man." The petitioner testified candidly that he did not ask, nor did he care, who the other man would be. Mr. Guralnick also charged his customers \$100 per person and the petitioner assumed that a share of this fee was also paid to the "other man." The petitioner stated that he wanted to bring his own trips to the casino in Nassau, but he was told that he would have to work with Mr. Guralnick.

Late in 1982, the petitioner told Victor Guralnick that he would like to run gambling junkets to the casinos in Atlantic City, New Jersey. Subsequently, Mr. Guralnick contacted the petitioner and asked him to fill one half of the seats on an airplane junket to Atlantic City. Again, the petitioner was to charge a fee of \$100 per person, half of which would be paid to Mr. Guralnick. According to the petitioner, he believes that part of the share that he paid to Mr. Guralnick would be given to "another man," but he did not remember whether Mr. Guralnick told him this directly or whether he simply assumed it from the things that Mr. Guralnick said.

It was the petitioner's testimony that Mr. Guralnick told him that he would have to be licensed as a junket representative before he ran trips to Atlantic City. Mr. Guralnick obtained a personal history disclosure form and he gave it to the petitioner to fill out while on the first junket to the Claridge Casino Hotel in Atlantic City early in 1983. According to the petitioner, he had registered as a junket representative in Las Vegas, Nevada, at the time he brought his first junket there, and he proceeded in a similar manner by applying for his junket representative license when he brought his first junket to Atlantic City. In addition, the junket manifest bore the name of Mr. Guralnick, and not the name of the petitioner, so the petitioner felt that there would be no problem. The petitioner testified candidly that he now knows he should have been licensed prior to his first junket to Atlantic City.

The Personal History Disclosure form prepared by the petitioner (exhibit R-1) includes a junket representative attachment which requires an applicant for the position of junket representative to state whether or not he is presently employed with, or anticipates becoming employed with, an applicant for licensure as a junket enterprise or a junket enterprise licensee. The petitioner answered this inquiry, "yes." An applicant answering "yes" must also list the name and address of the company with which he is or will be employed. The petitioner testified credibly that Mr. Guralnick told him to list the name Nate Teplis of Atlanta, Georgia, as the petitioner's potential employer. Although the petitioner did not know the man, he thought he would be considered an employee of Nate Teplis, and would thus meet the requirements to run the junket.

At the hearing, the petitioner was questioned closely on cross-examination concerning his arrangement with Mr. Guralnick. The petitioner stated that he knew he had to be an employee of a licensed casino or a licensed junket enterprise in order to act as a junket representative. He felt he could be considered to have been working for Mr. Guralnick, based upon his being able to keep one half of the \$100 per person customer fee which he charged. However, in testimony which appears to be inconsistent, the petitioner acknowledged that he was not employed by either Mr. Guralnick or Mr. Teplis, and that he assumed he was still self-employed.

The petitioner received his temporary junket representative license on April 13, 1983, and it was his testimony that he ran only three junkets to Atlantic City. After his first junket to Atlantic City, the petitioner learned that he would not be able to deal directly with a licensed casino without being licensed as a sole owner/operator. After applying, he received his temporary sole owner/operator junket enterprise license on April 18, 1984 (exhibit R-2). According to the petitioner, 10% to 50% of his income comes from casino junkets and he seeks licensure as a sole owner/operator so that he can make his own deals with the casinos and not have to split the profit with anyone else.

On September 26, 1984, the petitioner participated in a sworn interview conducted by the Division of Gaming Enforcement. According to the petitioner, he did not have counsel present during the interview and he became uneasy when he was asked questions about things of which he had no knowledge. The petitioner was also questioned at the hearing concerning an 89 count indictment handed down by a New Jersey State Grand Jury on September 6, 1984, which indictment resulted from an inquiry conducted by

the New Jersey Division of Criminal Justice in connection with an investigation of Atlantic City bus operations. The petitioner testified credibly that he had read the indictment and that he had no knowledge concerning any of the matters set forth in the 220 pages of the indictment.

The petitioner offered into evidence numerous letters of recommendation (exhibits P-1 through P-10). These letters from government officials, as well as from people in various organizations in the petitioner's community, attest to the petitioner's reputation for good character, honesty and integrity.

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

CONCLUSIONS OF LAW

Pursuant to sections 89b(2), 90b and 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license which would permit him to act as a junket representative must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Pursuant to N.J.A.C. 19:49-2.1(c)(1) and (2), a person acting as a junket representative must be licensed as a junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise. Pursuant to N.J.A.C. 19:49-2.1(a), a junket representative is any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in or accompanies for purposes of monitoring or evaluating the participants on, any junket to a licensed casino, regardless of whether or not those activities occur within the state of New Jersey.

The petitioner did not receive his temporary licensure as a sole owner/operator junket enterprise until April 1984. He began operation of junket activities to Atlantic City, New Jersey, early in 1983, before receiving his temporary licensure as a junket representative. Prior to his licensure as a sole owner/operator, the petitioner participated in arranging several junkets to Atlantic City. His activities in this regard meet the definition of junket representative, pursuant to 19:49-2.1. However, it is conceded that the petitioner was at no time an employee of a licensed casino. In addition,

the petitioner conceded at the hearing that he was not an employee of a licensed junket enterprise, but rather, he was self-employed. Consequently, his operation of junket activities prior to his temporary licensure as a sole owner/operator junket enterprise in April 1984 violated the provisions of N.J.A.C. 19:49-2.1(c)(1) and (1).

The petitioner's operation of junket activities without proper licensure calls into question his good character, honesty and integrity, as well as his business ability and casino experience. The petitioner offered inconsistent explanations for his junket activities without proper licensure. At one point in his testimony, the petitioner stated that he felt he could have been working for Mr. Guralnick, but he conceded that he had given a share of his customer's fees to Mr. Guralnick. At another point in his testimony, the petitioner stated that he assumed he was self-employed when he organized the junkets to Atlantic City.

The petitioner's good character, honesty and integrity, as well as his business ability and casino experience, are further placed into question by his use of the name Nate Teplis on his Personal History Disclosure Form which he completed at the time he brought his first junket to Atlantic City. The petitioner needed to identify a potential employer in order to obtain his licensure as a junket representative, so at the suggestion of Mr. Guralnick, the petitioner provided the name of Nate Teplis. The petitioner did not know Nate Teplis at the time that he filled out the disclosure form, and he still did not know him at the time of the hearing. Thus, there was no actual basis for the petitioner to anticipate employment with Nate Teplis and the name was provided simply as an expedient to obtain licensure.

It is undisputed that the petitioner enjoys a reputation for good character, honesty and integrity. However, he must demonstrate by clear and convincing evidence that he actually possesses the attributes in order to obtain licensure. Based upon his operation of junket activities without proper licensure and upon his identification of Nate Teplis as a potential employer when he did not even know Nate Teplis and had no reason to anticipate such employment, I **CONCLUDE** that the petitioner has failed to sustain his burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act, as incorporated in section 102 of the Act. For the same reasons, I further **CONCLUDE** that the petitioner has failed

to demonstrate, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of his success and efficiency as a junket representative, sole owner/operator, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of James T. Powell for a casino employee license, permitting him to act as a junket representative, sole owner/operator, be **DENIED**.

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

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

July 15, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

July 17, 1985
DATE

Receipt Acknowledged:
Vincent D. Vialle
CASINO CONTROL COMMISSION
Assistant Counsel

July 19, 1985
DATE

Mailed to Parties:
Charles H. [Signature]
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Letter, dated April 15, 1985
- P-2 Letter, dated May 22, 1985
- P-3 Letter, dated April 16, 1985
- P-4 Letter, dated May 15, 1985
- P-5 Letter, dated May 10, 1985
- P-6 Letter, dated May 22, 1985
- P-7 Letter, dated April 19, 1985
- P-8 Letter, dated April 16, 1985
- P-9 Letter, dated May 15, 1985
- P-10 Letter, dated April 30, 1985

FOR THE RESPONDENT:

- R-1 Personal History Disclosure Form
- R-2 Position addition request, dated March 21, 1984

WITNESSES

FOR THE PETITIONER:

James T. Powell

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-3
OAL DOCKET NO. 5118-86
REGISTRATION NO. 59665-40
ORDER NO. 87-38-3

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	<u>ORDER</u>
v.	:	
	:	
SOLOMON S. PRATT,	:	
	:	
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 30th day of October 1987, ORDERED that the initial decision is modified as follows:

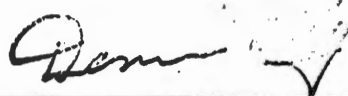
The Commission finds that the respondent's conviction for conspiracy to commit robbery in Pennsylvania on December 20, 1982, is equivalent to a violation of N.J.S.A. 2C:5-2 and a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial

ORDER NO. 87-38-3

decision, as modified, which is incorporated herein by
reference and made a part hereof.

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 5118-86

AGENCY DKT. NO. 87-3

DIVISION OF GAMING ENFORCEMENT

Petitioner,

v.

SOLOMON SYLVESTER PRATT,

Respondent.

William E. Mountford, Deputy Attorney General (W. Cary Edwards Attorney General of New Jersey, attorney) for petitioner

Jack Edward Granzow, Esq., for respondent.

Record Closed: June 18, 1987

Decided: August 21, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint on July 15, 1986, with the Casino Control Commission seeking to revoke the respondent's casino hotel registration because he had been convicted of disqualifying offenses. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The respondent inadvertently abandoned a pretrial conference on September 30, 1986. A pretrial conference was rescheduled for and completed on December 2, 1986. The matter was scheduled for hearing on May 8, 1987, at which time

the parties appeared. The respondent mistakenly thought he had assigned counsel. He was given leave to obtain counsel. The parties convened again in Atlantic City on June 18, 1987, and the record closed on that day.

CONVICTIONS

- I. The Division proved, the respondent admitted, and I **FIND** that the respondent was convicted of the crime of burglary in Philadelphia Pa. on August 27, 1981 by his plea of guilty.

I also **FIND** that the exact burglary charge to which the respondent pled is equivalent to N.J.S.A. 2C:18-2 in the third degree (the Pa. statute requires criminal intent, N.J. merely requires the intention to commit an offense).

I **CONCLUDE** that this conviction is not a statutory disqualification listed at N.J.S.A. 5:12-86c(1) because it was not in the second degree.

The respondent testified that the police said (and he was so charged) that "Someone had a gun" but he was not convicted of this offense.

Had he been also convicted of this offense, then the degree of the crime would have been second degree and a statutory disqualification would have appeared.

- II. The Division proved, the respondent admitted, and I **FIND** that the respondent was convicted at a Bench Trial on December 13, 1982, of the crime of Robbery in Philadelphia, Pa.

I also **FIND** that the exact robbery charge of which the respondent was convicted is equivalent to N.J.S.A. 2C:15-1.

I **CONCLUDE** that the respondent has been convicted of an offense (robbery) which disqualifies him from casino employee licensure pursuant to N.J.S.A. 5:12-86c(1).

ARRESTS

The respondent was arrested in Absecon, N.J. on February 17, 1986, and charged with aggravated assault. On March 12, 1986, the matter was remanded to Absecon as simple assault. On December 15, 1986, the matter was dismissed. The respondent testified, and the Division's evidence is not inconsistent with his testimony, that he was merely protecting his sister from her husband's assault. This evidence was apparently offered in anticipation of a rehabilitation claim. I cannot make out from the evidence whether he was a hero or a villain. I attribute no weight to this evidence.

REHABILITATION

Solomon Sylvester Pratt was the next to last of twelve children. He was raised in southwest Philadelphia. He does not know if he completed the 10th grade at John Bartram High School. In any case, he cannot read or write. He was often confused by the hearing procedure. He testified that the burglary of which he was convicted occurred while he was under the influence of Valium and beer. His recollection of this event is not clear. He may have been armed.

He testified that he is innocent of the robbery of which he was convicted. His explanation was interesting. He was at a party. The man who was robbed was being robbed by some members of the party. Other members of the party were spectators to this event. He was not. He was a spectator, along with other members of the party, to a different event. In the event he was watching some members of the party were shooting someone.

In May of 1983 the respondent obtained employment at the Claridge as a kitchen worker. He is a reliable employee (R3) (R4), (R5), (R6) and (R7). He made excellent progress as a probationer (R1). He is current in his child support payments (R2). He visits his child. But for the incident in Absecon he has had no further police contact. It may be that casino hotel employment itself has brought about the rehabilitation of this respondent. He is apparently a productive contributing member of a family and to society in general.

I make the following additional finding of fact pursuant to N.J.S.A.
5:12-91h(1):

1. The respondent's position is kitchen porter. He has no casino patron contact.
2. The offense of Robbery is serious, at common law it was a felony.
3. The victim was apparently waylaid on the highway by the respondent and a juvenile.
4. The offense occurred on February 20, 1982.
5. The respondent was 19 years old when he committed the offense.
6. This was the respondent's second adult conviction.
7. The respondent is an undereducated inner city poor black male who, once having obtained employment, has not since committed a crime.
8. The respondent has good recommendations from persons who have had him under their supervision. He is performing his obligations as a parent.

I **CONCLUDE** that the respondent is rehabilitated within the meaning of N.J.S.A. 5:12-91h.

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 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.

Aug 21, 1987
DATE

Edgar R. Holmes ALJ
EDGAR R. HOLMES, ALJ

August 24, 1987
DATE

Receipt Acknowledged:

Alfonso Zayas
CASINO CONTROL COMMISSION

AUG 26 1987
DATE

Mailed to Parties:

Ronald J. Parks
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

For Petitioner:

- P-1 Certification dated March 6, 1986
- P-2 Four-page Investigation Report from the Philadelphia Police Department
- P-3 Certification dated March 6, 1986
- P-4 Five-page Investigation Report from the Absecon Police Department

For Respondent:

- R-1 Two-page Document, dated February 7, 1987, from Ruby B. Coleman, Adult Probation Department
- R-2 One-page Document, dated April 28, 1987, from Anthony J. Voci, Chief Probation Officer
- R-3 Letter of Recommendation, dated January 16, 1987 from Ramon Valentin
- R-4 Letter of Recommendation, dated January 18, 1987, from Eleuterio Quinones
- R-5 Letter of Recommendation dated February 18, 1987, from Edward Chrus
- R-6 Letter of Recommendation dated February 18, 1987, from Alodimo Cortes
- R-7 Letter of Recommendation, dated February 18, 1987 from Joseph P. Ferreira

WITNESSES

Solomon Sylvester Pratt

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-51
OAL DOCKET NO. CCC 7917-86
APPLICATION NO. 67305-21
REGISTRATION NO. 12693-40

APPLICATION OF ELIZABETH QUILES

a/k/a ELIZABETH ARTIS

ORDER

FOR A CASINO EMPLOYEE LICENSE

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 June 17, 1987,

IT IS on this *2nd* day of July 1987, ORDERED that the initial decision is modified as follows:

- (1) to delete the reference at p. 3 in the initial decision to the Commission's prior denial of the applicant's casino employee license application. Commission and Division of Gaming Enforcement records do not show a prior casino employee license application having been filed; and
- (2) to include N.J.S.A. 5:12-86(g) in the finding of disqualification.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial

decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that this action shall have no adverse effect upon the applicant's casino hotel employee registration.

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 7917-86

AGENCY DKT. NO. 87-EA-51

ELIZABETH QUILLES,

Petitioner,

v.

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

Respondent.

Elizabeth Quiles, petitioner, pro se

**Nancy P. Scharff, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: April 2, 1987

Decided: May 13, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Elizabeth Quiles, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (slot attendant), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the petitioner had committed a violation of N.J.S.A. 2C:20-4, theft by unlawful taking or disposition, third

degree, a disqualifying criminal offense pursuant to section 86c(1) by means of section 86g of the Casino Control Act (Act), and therefore, the petitioner lacked the requisite good character, honesty and integrity, under section 90b, which incorporates section 89b(2) by reference. Although the petitioner conceded her misconduct, she contended that she satisfied the rehabilitation criteria of section 90h.

PROCEDURAL HISTORY

Ms. Quiles filed her Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on May 15, 1986 (J-1). By letter, the Commission advised the petitioner that based upon a report received from the Division, dated September 17, 1986, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By request filed on November 3, 1986, the petitioner sought a hearing. On November 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 20, 1987, before Administrative Law Judge Stephen W. Thompson. The matter was heard on April 2, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Quiles is 31 years of age (J-1). She was born in New York City, New York, and has resided in New Jersey for many years. She is a 1975 graduate of Atlantic City High School.

From January through May 1976, the petitioner was employed as a clerk specialist with the United States Army in Fort Jackson, North Carolina. She received an honorable discharge from the United States Army National Guard.

From 1976 to 1977, the petitioner was employed as a tow truck operator by the Atlantic City Police Department. Her employment was terminated for cause following an incident during which she permitted a police officer to hold her weapon.

From 1977 to 1979, the petitioner was employed as a security officer by the Atlantic City Housing Authority. She resigned from this position.

From 1978 to 1979, the petitioner was employed as a gas station attendant by Cumberland Farms. She resigned from this position.

From 1979 to 1980, the petitioner was employed as a meter reader by South Jersey Gas Company. She resigned from this position.

In 1979, the petitioner received a casino hotel employee registration no. 12693-40 from the Commission. During the same year, her application for a casino employee license was denied, ostensibly by reason of an incomplete knowledge of her family history. Her registration is current.

For a brief period during 1980, the petitioner was employed as a security officer by a detective agency in Atlantic City. She resigned from this position.

From 1980 to 1981, the petitioner was employed as a bus driver by Bally's Park Place Casino (Park Place). She left this position for other employment.

From 1981 to 1982, the petitioner was employed as a bus driver by Transport of New Jersey. She resigned from this position.

For approximately one year in 1982, the petitioner was employed as a bus driver by GNOC Corp. (Golden Nugget). In fact, the petitioner was employed by Leisure Line Tours, a wholly owned subsidiary of the Golden Nugget. She resigned from this position because of problems over back pay and seniority.

Next, the petitioner was employed by Harrah's Marina Hotel Casino for a period of one week as a kitchen attendant. She left this employment because of alleged discrimination.

From 1982 to 1984, the petitioner was employed as a bus driver by American International Transport. The petitioner's employment was terminated because she allegedly did not respond to a telephone assignment. However, the company went bankrupt about this time.

From November 1984 to May 1985, the petitioner was employed as a gas station attendant by an Amoco gas station in Pleasantville. This employment was terminated.

From May 1985 to September 1985, the petitioner was employed as a valet parking attendant by Elsinore Shore Associates t/a Atlantis Casino Hotel (Atlantis). The petitioner resigned from this position because of a conflict with her other employment.

From June 1983 to December 1985, the petitioner was employed by Atlantic County as a chauffeur who delivered food to senior citizens. This employment was terminated by reason of the petitioner's absences and latenesses, which she attributed to two deaths in her family.

From June 1, 1984 to July 2, 1984, the petitioner, while employed by Atlantic County, collected unemployment benefits (P-2, P-3 and P-4). She collected \$850 in benefits to which she was not entitled (P-7). On June 25, 1985, a notice of hearing was forwarded to the petitioner (P-5). However, the petitioner claimed that she never received this or any other notification. On November 20, 1985, a certificate of debt was filed with the Superior Court, which reflected a judgment entered against the petitioner in the amount of \$1,062.50 (P-1). Ultimately, the Division of Unemployment Disability Insurance, Department of Labor, was owed an amount of \$1,186.94 by the petitioner, which consisted of \$850 of ineligible payments, fines of \$213.44 and interest of \$128.95 (P-8).

From March to April 1986, the petitioner was employed as a security officer by the Wackenhut Agency.

In April 1986, the petitioner successfully completed a slot attendant course at the Casino Career Institute.

From April to December 1986, the petitioner was employed as a valet parking attendant by the Enclave. She resigned from this position.

On May 15, 1986, the petitioner submitted her PHDF-2A to the Commission (J-1).

From January through March 1987, the petitioner was employed by a senior citizens' center in Vineland to transport senior citizens. She resigned from this position to attend school.

Currently, the petitioner is attending International Security Technician School in Upper Darby, Pennsylvania, where she is being trained for police and/or security work. The petitioner is due to graduate in September 1987.

Subsequent to filing her PHDF-2A with the Commission, the petitioner was contacted by a Division agent concerning various information on her application form, including her receipt of unemployment benefits to which she was not entitled. On November 28, 1986, the petitioner agreed to a repayment schedule with the Division of Unemployment and Disability Insurance, at a rate of \$40 per month. The petitioner has made the following payments:

November 5, 1986	\$10
November 10, 1986	10
November 28, 1986	40
March 9, 1987	40
March 9, 1987	40
March 9, 1987	40
March 9, 1987	40

The petitioner testified that her payments are now current, and she has a balance due of \$834.39 (P-8).

The petitioner has not committed any other violations of the criminal laws.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's receipt of unemployment benefits to which she was not entitled, her rehabilitation and her good character, honesty and integrity.

The petitioner testified that she had received unemployment benefits on several previous occasions. Apparently, this included benefits to which she was not entitled by reason of unreported employment. On subsequent occasions when she would again collect benefits, prior overpayments would be recouped from the then current benefits.

The petitioner testified that in 1985, she collected unemployment benefits to which she was not entitled because she did not know that she could not receive benefits during a brief period of employment. In addition, the petitioner was advised by her roommate and friend that it was permissible to collect unemployment benefits during a short period of employment. The petitioner attributed her lack of understanding to an absence of a full explanation by the Division of Unemployment and Disability Insurance that she was required to report all income. Again, the petitioner referred to her prior experience, i.e., that during a period of time when she worked and simultaneously collected unemployment benefits, the overpayment would be recouped from future benefits. Further, the petitioner stated that she never received notification of her obligation to make repayment (P-1 and P-2). The petitioner's mail was occasionally opened by her roommate, who then did not give it to the petitioner.

The petitioner testified that she has learned her lesson, now understands her obligations and will not repeat her misconduct.

The petitioner needs a career and does not want to impair her opportunities with a criminal record.

A resolution of this matter depends upon an assessment of the persuasiveness of the petitioner's version of the incident. However, the petitioner's claimed ignorance concerning the receipt of unemployment benefits during brief periods of employment is mutually inconsistent with her acknowledged prior experience, i.e., that she was not entitled to receive unemployment benefits during any period of employment, which benefits were recouped during subsequent periods of entitlement. Similarly, attribution of her ignorance to advice given by her roommate is in conflict with the petitioner's acknowledged prior experience. The petitioner's attempt to exculpate herself from responsibility for her misconduct based upon ignorance was totally unpersuasive.

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

1. The petitioner's claims of ignorance and misadvice concerning her eligibility to receive unemployment benefits during periods of brief employment were mutually inconsistent and were inconsistent with her acknowledged prior experience, and therefore, were not believable or persuasive.
2. The remainder of the petitioner's testimony was believable.
3. The petitioner offered no evidence of her rehabilitation or good character, honesty and integrity, other than her own testimony.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86g provides that an applicant be disqualified from licensure because of the commission of any act 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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division alleges that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4.

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;

* * *

The alleged crime contains several elements. "There must be a misrepresentation by a defendant. This misrepresentation must be knowing and made with the specific intent to cheat or defraud. The aggrieved party must rely on this misrepresentation in parting with his property and, finally, [the] defendant must receive something of value as a result of the misrepresentation." State v. Cox, 150 N.J. Super. 599, 604 (Law Div. 1977), *aff'd*, 160 N.J. Super. 28 (App. Div. 1978). As to reliance, it need not be great, sole or exclusive. State v. Franco, 153 N.J. Super. 428, 432 (App. Div. 1977). "However, it must be shown that the fraudulent misrepresentation or statement induced the victim to part with his money in order to sustain a conviction . . ." Id. at 432.

The Division's proofs established and the petitioner did not dispute each of the separate elements of the alleged offense.

As to the degree of the offense in question, N.J.S.A. 2C:20-2b(2)(a) provides that theft constitutes a crime of the third degree if the amount involved exceeds \$500 but is less than \$75,000. Accordingly, a theft of \$850 would be categorized as a crime of the third degree.

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. 2C:20-4, theft by deception - unemployment fraud, third degree, which is a disqualifying offense under section 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 and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;

- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Ms. Quiles is a registrant and is an applicant for licensure as a slot attendant, in which position she would have direct responsibilities for gaming activities and would have direct contact with casino patrons. As a registrant, she can also work in areas where there is substantial casino patron contact.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception - unemployment fraud. By reason of the degree of the offense, which renders it a disqualifier under section 86c(1), it was serious.

Third, the offense was committed knowingly during a period of employment. Also, the petitioner held a registration at the time of the offense. The petitioner's testimony concerning the circumstances underlying the incident was not believable and does not serve to mitigate her misconduct to any degree.

Fourth, the misconduct occurred from June 1 to July 2, 1984, and ceased approximately three years ago.

Fifth, the petitioner was 28 years of age at the time of the offense. There was no indication that her misconduct was due to immaturity.

Sixth, the petitioner's criminal misconduct was not isolated. She admitted receipt of unemployment benefits on prior occasions when she was not eligible by reason of unreported income. However, the petitioner was not prosecuted and it appears that any prior overpayments were recouped by means of deductions from subsequent benefits.

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

Eighth, the petitioner's rehabilitative efforts consist solely of the absence of any subsequent misconduct and some repayment. Although the petitioner acknowledged her ultimate responsibility for the overpayments, she attempted to evade full responsibility by offering an exculpatory explanation which was incompatible with her own prior experience. Also, while it is not possible to determine if the petitioner, in fact, had notice of her payment obligation to the Division of Unemployment and Disability Insurance prior to notification by a Division agent, it is apparent that her repayment efforts have been guided solely by her desire to be licensed; i.e., the payments were made conveniently in anticipation of this hearing. In addition, it should be noted that the petitioner has pursued several avenues of continuing education for purposes of employment. Clearly, the petitioner does wish to secure a permanent career.

Nevertheless, I am not persuaded that the petitioner has met her burden. Her attempts to evade responsibility for her own actions, together with an absence of a sincere effort to make restitution and a generally apathetic attitude, outweigh the positive factors of nonrepetition of misconduct and pursuit of employment training. It must be emphasized that the petitioner's proofs, although moderately positive, were not persuasive and did not engender confidence for the future.

I **CONCLUDE** that the petitioner has failed to establish, 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. Quiles was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: A good reputation may be undeserved by the existence of proof of bad character. In any event,

when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The petitioner's misconduct, her unwillingness to accept full responsibility therefore, and her lack of a meaningful effort to make restitution, all of which contributed to the absence of rehabilitation, raise serious negative concerns about her character, honesty and integrity. In addition, the petitioner's very poor employment record raises serious doubts. These factors, together with the absence of any other proofs, establish very little that is positive and are not sufficient to overcome the substantial negative evidence. Essentially, the petitioner's proofs were not minimally persuasive, let alone rising to meet the substantial burden of clear and convincing evidence.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

It is **ORDERED** that the application of Elizabeth Quiles for licensure as a casino employee (slot attendant) be **DENIED**.

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

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

May 13, 1987
DATE

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

Receipt Acknowledged:

May 14, 1987
DATE

W. Lee Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

May 15, 1987
DATE

Ronald J. P...
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Personal History Disclosure Form - 2A, Elizabeth Quiles, filed on May 15, 1986
(21 pages)
- P-1 State of New Jersey v. Elizabeth Quiles, Superior Court of New Jersey, Dkt. No.
DJ-56135-85, Certificate of Debt, recorded on November 20, 1985 (2 pages)
- P-2 Division of Unemployment and Disability Insurance, Department of Labor -
Unemployment and Disability Benefits and Imposition of Penalty and Disqualifica-
tion Because of Willful Misrepresentation, Elizabeth Quiles, October 3, 1985
(2 pages)
- P-3 State of New Jersey, Department of Labor, Division of Unemployment Disability
Insurance - Wage Information Inquiry, Elizabeth Quiles, May 10, 1985
- P-4 New Jersey Department of Labor, Division of UI-DI-Claimant Ledger, Elizabeth
Quiles, May 5, 1985 (2 pages)
- P-5 State of New Jersey, Department of Labor, Division of Unemployment Disability
Insurance, Bureau of Benefit Payment Control -Notice of Hearing, Elizabeth
Quiles, June 25, 1985
- P-6 Memorandum to G.E. Rogers, from County of Atlantic, re: Elizabeth Quiles
- P-7 Letter to Nancy Scharff, Deputy Attorney General, from Joan Rowland,
February 6, 1987
- P-8 Letter to Nancy Scharff from Joan Rowland, March 19, 1987

WITNESS LIST

For the petitioner:

Elizabeth Quiles

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 336505

IN THE MATTER OF THE PETITION OF :
RESORTS INTERNATIONAL HOTEL, INC.
FOR A DECLARATORY RULING PURSUANT :
TO N.J.S.A. 52:14B-8 AND N.J.A.C.
19:42-9.1 :

ORDER

This matter having been opened to the Casino Control Commission by the petition of Resorts International Hotel, Inc., for a declaratory ruling that a proposed "cashless" slot machine tournament would be permissible and more specifically, that each slot machine to be used in the tournament satisfied the statutory minimum payout requirement and that all payouts could be made from a pool formed from a portion of the entry fees with no payouts being made by individual slot machines; and the Commission having carefully considered the petition with supporting documents, the position of the Division of Gaming Enforcement and the comments of counsel; and the Commission having resolved at its public meeting on May 13, 1987, to deny the relief requested in Resorts International Hotel, Inc.'s petition,

IT IS on this ^{19th} day of May 1987, ORDERED that the petition of Resorts International Hotel, Inc., be and hereby is denied for the reasons stated in the record, to wit, that:

1. under the proposal the individual slot machines to be used in the tournament would not each payout 83% as statutorily required; and

2. that the lottery like aspects of the proposal were so predominant that the tournament could not be approved as a variation of the authorized game of slot machine.

IT IS FURTHER ORDERED that copies of this order be served upon Resorts International Hotel, Inc. and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION



WALTER N. READ, CHAIR

Dated: May 14 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 336505

IN THE MATTER OF THE PETITION OF
RESORTS INTERNATIONAL HOTEL, INC. FOR
A DECLARATORY RULING PURSUANT TO
N.J.S.A. 52:14B-8 AND N.J.A.C.
19:42-9.1 CONCERNING A "CASHLESS"
SLOT TOURNAMENT

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chair
Carl Zeitz, Vice-Chair
W. David Waters, Commissioner
E. Kenneth Burdge, Commissioner
Valerie H. Armstrong, Commissioner

APPEARANCES:

For Resorts International Hotel, Inc.

William Murtha, Esquire

For the Division of Gaming Enforcement:

Katherine A. Smith, Deputy Attorney General

I. INTRODUCTION AND PROCEDURAL HISTORY

On November 27, 1985, Petitioner, Resorts International Hotel, Inc. (Resorts) filed a petition with the Casino Control Commission (Commission) seeking permission to conduct a "cashless" slot tournament. This petition was subsequently supplemented by filings dated September 11, 1986, October 14, 1986 and April 15, 1987. Under Resorts' proposal, each participant in the tournament would pay an entry fee of \$1000. After payment of the entry fee, no further consideration would be required of patrons to enable them to play the slot machines during the tournament. No money would be placed in the slot machines and no money would issue from them. It is in that sense that the proposed slot tournament was described as "cashless." The slot machines used in the tournament would be reprogrammed to record jackpots as "points scored." As described by Resorts:

The tournament will consist of a series of rounds, each round consisting of fixed time intervals. At the commencement of each round, each participant will begin pulling the slot machine handle of his or her machine and continue to pull the handle as many times as possible until the round ends.... The object of the tournament will be to register the highest point total on the machine's meter as possible in the allotted time. Participants will not receive payouts based on their win totals. Rather, various prizes will be awarded to the top participants who "score" the highest cumulative point totals at the completion of all rounds of play. Resort's Brief of September 1986, p. 2.

Eighty-three percent of all money collected as entry fees would be awarded to the winners of the tournament in the

form of cash prizes. The prize package would be funded entirely from the money collected as entry fees. The portion of the entry fees not used to fund the prize package would be used by Resorts to cover administration costs, rooms, food, beverage and other amenities offered in connection with the tournament.

The Petitioner argued that the proposed slot tournament constituted the authorized game of slot machine and was thus permissible under N.J.S.A. 5:12-5, and that the proposed slot tournament complied with N.J.S.A. 5:12-100e, which requires that each slot machine shall have a minimum payout of 83%. Alternatively, Petitioner argued that the proposed slot tournament constituted a variation of the authorized game of slot machine and, as such, was permissible under N.J.S.A. 5:12-5. Under this approach, Resorts maintained that compliance with the 83% minimum payout requirement would not be mandatory for each slot machine used in the tournament.

The Division of Gaming Enforcement (Division) by letters dated March 12, 1987, and April 15, 1987, interposed no objection to Resorts' petition provided that the slot tournament could be conducted pursuant to adequate internal control procedures. The Division took the position that Resorts' proposed tournament was a variation of the game of slot machine and that the Commission could properly approve the variation as suitable for casino tournament gaming.

II. DISCUSSION

New Jersey has placed a constitutional and statutory limitation on the conduct of casino gaming in this State. The legalization of casino gaming in New Jersey is based upon N.J. Const. (1947), Art. IV, §VII, par. 2 which states:

The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.

This constitutional exception to the longstanding prohibition of casino gaming in New Jersey was reflected in and implemented by the provisions of the Casino Control Act (Act). N.J.S.A. 5:12-1 et seq. Subsection 100a of the Act provides:

This act shall not be construed to permit any gaming except the conduct of authorized games in a casino room in accordance with this act and the regulations promulgated thereunder. [N.J.S.A. 5:12-100a, emphasis supplied].

An "authorized game" is defined in section 5 of the Act as:

Roulette, baccarat, blackjack, craps, big six wheel, slot machines, minibaccarat and any variations or composites of such games, provided that such variations or composites are found by the commission suitable for casino use after an appropriate test or experimental period under such terms and conditions as the commission may deem appropriate. [N.J.S.A. 5:12-5].

There exist two ways for a game to be authorized for use by a casino licensee in New Jersey. First, the game may be one of the enumerated authorized games of roulette, baccarat, blackjack, craps, big six wheel, slot machines or minibaccarat

which must be conducted in strict compliance with the extensive rules governing such games. N.J.A.C. 19:47-1 et seq.; Uston v. Resorts International Hotel, 179 N.J. Super. 223 (App. Div. 1981), aff'd 89 N.J. 163, 166, (1982). Second, the game may be offered in a casino if the Commission, within its discretion, determines that a proposed game is a variation or composite of one of the specified authorized games. However, the Act neither defines the terms "variation" or "composite" nor sets any explicit standards for their application. Moreover, the Commission has never issued a general authorization for tournaments merely because they purport to be based on any of the enumerated games; each proposed tournament must be submitted for review and approved by the Commission on a case by case basis. Whether a proposed tournament constitutes a variation or composite of an authorized game or is suitable for casino use are matters left to the judgment of the Commission. See, generally, IGP-East v. Division of Gaming Enforcement, 182 N.J. Super. 562, 566-567 (App. Div. 1982) (hereinafter cited as IGP-East), which affirmed the Commission's determination that a particular craps tournament involving an entry fee was a variation of the authorized game of craps. As will be seen, the Commission has formulated the question in such cases as being whether the essential nature of the tournament remains one of the enumerated authorized games.

The first issue to be determined in this matter is whether the proposed slot tournament constitutes the authorized game of slot machine. The Act defines slot machine as:

[a]ny mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash, or to receive merchandise or anything of value whatsoever... whether the payoff is made automatically from the machine or in any other manner whatsoever, ...[N.J.S.A. 5:12-45].

Under this definition, a slot machine need not be activated by the insertion of a coin or similar object; rather, it is sufficient if there is "payment of any consideration whatsoever." Moreover, the payoff need not be made automatically from the machine but may be made in "any other manner whatsoever." Thus, Resorts' "cashless" slot tournament does not fall outside the definition of a slot machine simply because participants in the tournament do not insert coins in the machines and do not directly receive payments from them.

On the other hand, subsection 100e of the Act, N.J.S.A. 5:12-100e., provides that: "Each slot machine shall have a minimum payout of 83%." (Emphasis supplied). Manifestly, the slot machines under Resorts' proposal would not meet this requirement. The participants in the tournament do not retain a

winnings the value of the coins or tokens indicated as the jackpot on the coin out meter. Unless the participant is one of the winners of the tournament no winnings at all are paid. Certainly, no slot machine used by a loser of the tournament can be said to have paid out 83%. Nevertheless, "Resorts' position is that the proposed slot machines do comply with the 83% requirement in that (1) all machines will maintain a minimum payout which will be tabulated in the form of points, and (2) 83% of the entry fees will be awarded as prize money to winning participants, thus assuring an actual payout of 83% of the consideration to winning participants." (Resorts' letter of April 15, 1987, p. 1) It is true that winning participants will receive 83% of the amount paid by all participants as entry fees and that a payout of 83% will be tabulated in the form of points. It is simply not true, however, that each slot machine under Resorts' proposal has a minimum payout of 83% as specifically required by subsection 100(e) of the Act. If Resorts were to prevail in its argument, then every patron could be required to play not just the slot machine being operated by the patron but against all other patrons operating such machines in any given section of the casino for any given time in order to receive any payment at all. Thus, the proposed "cashless" slot tournament cannot be approved as constituting the authorized game of slot machine.

Resorts argued, in the alternative, that the tournament constituted a variation of the game of slot machine and that, as part of the variation, compliance with the 83% minimum payout requirement could be eliminated. As noted above, under N.J.S.A. 5:12-5, a game may be legally conducted if the Commission determines that the proposed game is a variation of one of the games listed in section 5 and further finds that the variation is suitable for casino use after an appropriate test or experimental period. Since the Commission is conducting an ongoing experimental period for all tournament games, the threshold question to be determined here is whether the proposed tournament can be approved as a variation of an authorized game so as to qualify for experimental testing. Specifically, does this slot machine tournament "change the fundamental nature of the underlying game" of slot machine? IGP-East, supra at 567.

The Commission's discretion to determine whether a proposed game constitutes a variation or composite of an authorized game is not unfettered. In deciding whether a slot tournament is a variation or composite of an authorized game under N.J.S.A. 5:12-5, the Commission must be mindful of the limited exception which the State has made to the general policy against gaming. The Commission must be sensitive in exercising its discretion under section 5 so as not to stray from the clear intent of the Legislature to restrict casino gaming to those traditional games listed in the statute and to variations of

composites which retain as their basic element one or more of the listed games. See, In the Matter of the Petition of International Gaming Consultants for a Declaratory Ruling Pursuant to N.J.S.A. 19:42-4.1, (Commission decision, November 9, 1984) [hereinafter cited as International Gaming Consultants]. In International Gaming Consultants, the Commission considered a proposed baccarat tournament in terms of "whether it is still essentially the game of baccarat or whether the proposed game is overridden or predominated by the other, lottery-like aspects of the game." Likewise, the question here is whether the proposed "cashless" slot tournament is still essentially the game of slot machine or whether the lottery-like aspects of the tournament predominate.

At the outset, it must be noted that Petitioner advocates an interpretation of N.J.S.A. 5:12-5 radically different from that articulated by the Commission in International Gaming Consultants. According to Petitioner: "The question with respect to variations of authorized games is not legal versus illegal or whether the proposed game incorporates elements of a lottery, but whether the Commission, in its discretion, determines whether the proposed game is suitable for casino use after an appropriate test or experimental period." Resorts' Letter Memorandum of October 1986, p. 3. By contrast the Commission stated in International Gaming Consultants at p. 13 that:

Section 5 of the Act cannot be employed by the Commission to permit games which would otherwise be outlawed by the criminal law and which were not within the contemplation of the Legislature in drafting the Act. The Legislature did not authorize lotteries or lottery based games for casino use. Indeed, the game of keno, long a fixture in Nevada gaming halls, was purposely omitted from the list of authorized games in New Jersey. (Citations omitted). Since keno is a form of lottery, similar in many respects to bingo, its omission indicates the need to exercise carefully the discretion in section 5 of the Act so as to avert a frustration of the legislative view of casino gaming in the state.

Accordingly, the Commission must assess the proposed slot tournament to determine whether it is still essentially the game of slot machine or whether the character of the proposed game is overridden or predominated by other, lottery-like aspects of the tournament.

The proposed baccarat tournament in International Gaming Consultants provided for an entry fee of \$10,000. The entry fees were to be placed into a fund which would constitute a prize package. These features distinguished the proposed baccarat tournament from past tournaments which had received Commission approval as variations or composites of authorized games. The Commission observed that: "Never before has an entry fee tournament proposed to require such substantial entry fees and to use the total sum of these entry fees to constitute the funding for a prize package to the winners based on the stake wagered in and determined by the outcome of the authorized game."

International Gaming Consultants, at p. 11. The Commission's fundamental objection was that: "The entry fee paid into the pool is being risked on the chance of making a greater return on the money posted. Thus, the major thrust of the proposed tournament becomes the competition for the pooled funds rather than the game of baccarat or the mere conduct of tournament play." Id. at p. 20.

Likewise, it is evident that the major thrust of Resorts' proposed "cashless" slot tournament would be the competition for the pooled funds rather than the game of slot machine. To begin with, since the machines to be used in the tournament would not each payout 83%, as statutorily required, participants in the program would not be playing the game of slot machine at all. Any proposed "variation" of the game of slot machine cannot be permitted if it would eliminate this express legislatively imposed element.

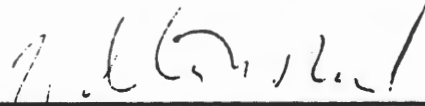
Furthermore, the proposed tournament would not involve slot machine gaming at all since there would be no money won or lost by the playing of any slot machine. Rather, in a manner similar to the playing of a bingo or keno game, the gaming would consist solely of a lottery using slot machine mechanisms. In other words, tournament participants would not be playing the game of slot machine but would be using slot machine mechanisms to ascertain the winners of the pooled funds. The subordination of the supposed authorized game to the lottery component would be

total. Although the entry fees and the pool prizes are not as large as in the International Gaming Consultants baccarat case, the minimization of the slot machine gaming aspect is complete. Unlike any other tournament authorized to this point, the underlying casino game would be irrelevant since patrons would not be playing to win at that game but solely at the lottery. Although the facts are somewhat different, the Commission concludes, as it did in International Gaming Consultants, that: "The creation of this pool by the payment of these substantial entry fees and the wagering upon that sum overbear the other elements of the proposal and convert the basic game...to one of lottery or other unauthorized pool." Id. at 18-19.

III. CONCLUSION

For the foregoing reasons, the Commission holds that the proposed slot machine tournament cannot be authorized by the Commission as a variation or composite of the authorized game of slot machine pursuant to N.J.S.A. 5:12-5. Additionally, and separately, the Commission finds that under the proposal the individual slot machines to be used in the tournament would not satisfy the minimum 83% payout requirement established by N.J.S.A. 5:12-100e. Accordingly, the Commission denies the relief requested by the Petitioner.

NEW JERSEY CASINO CONTROL COMMISSION



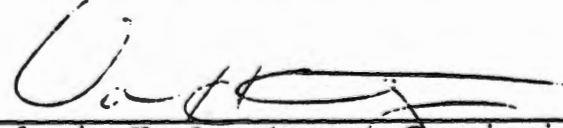
Walter N. Read, Chair



Carl Zeitz, Vice-Chair



W. David Waters, Commissioner



Valerie H. Armstrong, Commissioner

Dated: September 28, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION REFERENCE NO. 096701

IN THE MATTER OF THE SALE OF CERTAIN :
SHARES OF CLASS B COMMON STOCK OF :
RESORTS INTERNATIONAL, INC. BY THE : OPINION
ESTATE OF JAMES M. CROSBY, CHARLES E. :
MURPHY, JR. AND MEMBERS OF THE FAMILY :
OF JAMES M. CROSBY TO DONALD J. TRUMP :

Walter N. Read, Chair
Carl Zeitz, Vice-Chair
Valerie H. Armstrong, Commissioner
E. Kenneth Burdge, Commissioner
W. David Waters, Commissioner

APPEARANCES

For Trump's Castle Associates:

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Brian Spector, Esq.

For Resorts International, Inc.:

Joel H. Sterns, Esq.
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For Division of Gaming Enforcement:

Michael Vukceвич, Deputy Attorney General
Eugene Schwartz, Assistant Director

On March 8, 1987, Donald J. Trump contracted to
purchase 585,067 shares of Class B common stock of Resorts

International, Inc. (Resorts) from the estate of James M. Crosby, surviving members of Mr. Crosby's family and Charles E. Murphy, Jr. (Sellers) at a price of \$135 per share for an aggregate amount of \$78,984,045. These Class B holdings comprise 390,783 shares held by the estate, 4,530 shares owned by Henry B. Murphy, 83,471 shares owned by Elaine C. Murphy, 42,988 shares owned by Suzanne C. Murphy, 47,895 shares owned by other members of the Crosby family (Emily, John and Marietta Crosby) and 14,500 shares owned by Charles E. Murphy, Jr. These shares represent 77.8% of the Class B stock outstanding and constitute a 9.1% ownership interest and a 72.3% voting control interest in Resorts.¹

In addition, an express condition of the agreement (section 4.1) requires Trump to commence a tender offer "as promptly as practicable" after the purchase of these shares, for the acquisition of all of the remaining outstanding shares of Class B stock (167,230 shares) at a price not less than \$135 per share. In the event Trump acquired these remaining shares he would hold 100% of the outstanding B stock, an 11.7% ownership interest and a 92.9% voting control interest in Resorts.

1. The disparity between ownership and voting control is caused by the fact that the Class B stock has 100 times the voting power of the Class A common stock.

The stock purchase and sale agreement is contingent upon the satisfaction of various terms and conditions, including the approval of this Commission. In this regard, Trump, Resorts and Sellers petitioned for the following relief:

1. Approval of the purchase and sale agreement between Trump and the Sellers;

2. Approval of a confidentiality agreement relating to the purchase and sale agreement;

3. Approval of the transfer of the stock to Trump;

4. Qualification of Trump as a natural person
qualifier of Resorts;

5. A waiver of the provisions of N.J.S.A. 5:12-137 so as to permit closing to occur immediately following the approval of the Commission and other governing authorities;

6. A determination that the public policy directive in N.J.S.A. 5:12-1(b)(12) that the Commission regulate, control and prevent economic concentration and encourage and preserve competition in the casino industry does not constitute a bar to Commission approval of the transaction;
and

7. A determination that the purchase of the stock will not result in Trump being considered the holder of the casino license of Resorts, within the meaning of the three

casino license limitation in section 82(e) of the Casino Control Act (Act).

On May 26, 1987, the Division of Gaming Enforcement (Division) filed its report recommending that the first six prayers for relief be granted but that the request that Trump not be considered a holder of a casino license for purposes of the three license maximum be denied.

On June 10, 1987, the Commission approved the purchase and sale agreement, the confidentiality agreement with a revision exempting the Commission and the Division from its restrictions, and the stock transfer, found Trump qualified as a natural person qualifier of Resorts and waived the provisions of section 137 to permit an accelerated closing date. In addition, the Commission found that the economic concentration concerns engendered by section 1(b)(12) of the Act did not constitute a bar to Commission approval of the transaction which would result in Trump having a controlling interest in three casino hotel facilities: Resorts International Hotel and Casino, Trump Plaza Hotel and Casino, and Trump's Castle Hotel and Casino. However, the Commission expressly stated that the decision regarding economic concentration did not include a consideration of the impact of Resorts' proposed Taj Mahal Casino Hotel since that facility was not specifically addressed in the petition and presented issues that were not yet ripe for disposition.

Finally, the Commission ruled that Trump would be considered the holder of three casino licenses following the stock acquisition. An order was issued on June 12, 1987.

Subsequently, on June 17, 1987, Trump, Resorts and the Sellers filed a petition for a supplemental declaration seeking a determination that Trump's association with the operation of the Taj Mahal, together with two of the three present facilities, would not result in economic concentration. A hearing on this application was conducted on June 30 and July 2, 1987, whereupon the Commission granted the petition and amplified the prior decision regarding economic concentration to include the Taj Mahal. An order was entered on July 14, 1987.

This opinion is intended to elaborate upon the overriding issue surrounding this stock purchase agreement, namely, economic concentration, as well as the related matter of the three license limitation of section 82(e).

Trump contends that he should not be considered the holder of a casino license upon his purchase of the Class B stock pursuant to N.J.S.A. 5:12-82(e), which provides:

No person shall be issued or be the holder of more than three casino licenses. For the purpose of this subsection a person shall be considered the holder of a casino license if such license is issued to such person or such license is held by any holding, intermediary or subsidiary company thereof, or by any officer, director,

casino key employee or principal employee of such person, or of any holding, intermediary or subsidiary company thereof.

Trump argues that he is outside the purview of section 82(e) because (1) the definition of "holding company" in section 26 of the Act expressly excludes him as a natural person from being a "holding company" of a casino licensee; and (2) the intent of the Legislature was not to limit the ability of an individual to hold a controlling interest in a fixed number of licensees.

We find this argument totally devoid of merit. It is preposterous to believe that the Legislature consciously chose to preserve competition by singling out companies while at the same time allowing individuals to exercise control over multiple facilities. Moreover, as the Division maintains, Trump is a section 37-defined "person" who will, upon the purchase contemplated herein, have overwhelming majority control of a company that is a section 26-holding company whose subsidiary company, Resorts International Hotel, Inc. (RIH), holds a casino license. For this section to have any viability whatsoever, Trump must be considered a holder of a casino license under these circumstances. Clearly, Trump will exercise control over Resorts' entire operations by virtue of his stock acquisition. Similarly, Trump must be considered a holder of casino licenses for

Trump's Castle Associates and Trump Plaza Associates since he has virtually complete control over both enterprises. A contrary ruling would permit Trump to obtain beneficial ownership and control as an individual of as many casinos as he may desire without violating the three casino rule of 82(e). This is certainly an untenable position. Indeed, we find Trump to be the very type of person for whom the three license limitation was designed.

Accordingly, the Commission denies petitioners' request that Trump not be considered the holder of a casino license by virtue of his acquisition of the Class B stock of Resorts. As a result of the stock purchase, Trump shall be deemed the holder of three casino licenses. Prior to operation of the proposed Taj Mahal facility, Trump shall be required to divest himself of control of one of the existing casino operations, to wit, Resorts International Hotel and Casino, Trump Plaza or Trump's Castle in order to comply with the provisions of section 82(e) of the Act.²

We now turn our attention to the broader issue of economic concentration. By virtue of the stock purchase

2. This question of how Trump attempts to remain in compliance with the three casino limitation has not been the subject of the instant proceeding and the Commission expressly reserves the right to review that decision prior to its implementation.

agreement, Donald Trump will obtain control of Resorts and all of its operations, including its substantial land holdings in Atlantic City. As of December 31, 1986, Resorts' Atlantic City land holdings encompassed approximately 900 acres, including the uptown urban renewal tract. Excluding wetland areas located on Great Island and Rum Point, Resorts owns approximately 260 acres of buildable land in Atlantic City, including several potential casino sites on the uptown urban renewal tract, as well as a casino site in the Marina. Resorts' existing Atlantic City casino hotel facility and its annexed property include approximately 700 guest rooms and a 60,000 square foot casino. Resorts is constructing the Taj Mahal which will be the largest facility of its kind in the world with 1250 guest rooms and a proposed 120,000 square foot casino. In addition, Resorts is the lessor under a 99 year lease entered during October 1983 for the Showboat casino hotel facility.

Combined with Trump's present casino operations at Trump Plaza and Trump's Castle, the purchase of a controlling interest in Resorts triggers questions regarding possible economic concentration in Atlantic City's casino industry. The presence and strength of such a potentially dominant figure raises legitimate concerns as to the potential misuse of extraordinary economic power to exert an

unfair advantage over competitors. Additionally, an undue aggregation of casino properties and related facilities could hamper regulatory efforts which might have the effect of destabilizing the industry and the overall economy of the region. Therefore, it is imperative that we carefully evaluate the extent of Trump's market domination and its effect on competition in the casino industry to comply with the mandate of section 1(b)(12). Towards this end, we conducted an evidentiary hearing during which we heard testimony from several experts regarding the subject of economic concentration relative to the casino gaming industry and received exhibits analyzing the level of Trump's market share in various categories.

The language of section 1(b)(12) is clear and unequivocal. The Commission has both the power and the duty to regulate, control and prevent economic concentration, and to encourage and preserve competition. This regulation is intended to promote economic stability of casino operations through the diversification of ownership. It goes without saying that it would be severely detrimental to the entire industry if it became dependent upon any single casino operator. The encouragement and preservation of competition in casino operations assures the public of varied attractions, exceptional facilities and excellent services.

A thriving casino industry fosters the important goals of rehabilitation and redevelopment of Atlantic City.

The legislative history surrounding section 1(b)(12) is informative. Due to the unique nature of the casino industry, the Legislature was particularly concerned that the concentration of power in the hands of a few could prove detrimental to the underlying purposes of the Act. In this context, the Second Interim Report of the New Jersey Governor's Staff Policy Group on Casino Gambling (February 17, 1977) contains various statements with respect to the Act's policy in favor of competition and against economic concentration, including that "development must be fashioned to encourage a diversity of investor interest and commitment, in order to achieve the stability and permanency of Atlantic City's revitalization, and avoid an over-concentration of economic power in a few hands." Staff Policy Group Report at 8. The Staff Policy Group was "concerned that the domination of the industry, particularly in the early years, by one or two entrepreneurs, will effectively deaden managerial imagination and more significantly, enhance the opportunities already inherent in a closed environment for anticompetitive mergers, acquisitions and economic pressures to develop." Id. at 20.

As one means of addressing the matter of economic concentration, the Legislature enacted the three license

limitation set forth in section 82(e) to serve as an outer boundary of allowable concentration. However, the Legislature clearly did not intend to limit the Commission's power or responsibility to control economic concentration to section 82(e). Compliance with section 82(e) is one aspect of the question but is certainly not dispositive on the issue since there remains a separate burden to demonstrate that an acquisition of this nature will not negatively impact upon the economic stability of, and competition within, casino operations. Section 1(b)(12) reflects a legislative recognition that there may be instances where economic concentration exists, although within the parameters of the three license rule. We emphatically reject any argument to the contrary.

At this point, it should be noted that Trump has obtained the necessary federal approvals under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C.A. 18(a). However, these approvals do not foreclose the Commission's inquiry regarding economic concentration, for as the New Jersey Supreme Court recognized in Bally Manufacturing Corp. v. Casino Control Commission, 85 N.J. 325 (1981), appeal dismissed, 454 U.S. 804 (1981), the Commission is not confined with respect to implementing the policy announced in N.J.S.A. 5:12-1(b)(12) to addressing the kind of economic concentration proscribed by antitrust laws.

Rather, it is the provisions of the Casino Control Act which govern the critical issues of competition and economic concentration in the casino industry. Nevertheless, these federal approvals are not without some significance in resolving this issue, and it is useful to examine the antitrust standards as they may relate to a consideration of what constitutes economic concentration in the casino industry. Thus, the notion of prohibited economic concentration, although not easily susceptible of numerical specificity, may be better understood from a review of governmental responses to the dangers posed by merger activity.

Section 2 of the Sherman Antitrust Act, 15 U.S.C. §1 et seq., and the New Jersey Antitrust Law, N.J.S.A. 56:9-4(a), prohibit monopolization or attempts to monopolize. In this regard, monopoly power has been defined as "the power to control price or exclude competition." United States v. E.I. duPont de Nemours and Company, 351 U.S. 377, 391 (1956). The Supreme Court declared in United States v. Grinnell, 384 U.S. 563, 570-71 (1966), that the offense of monopoly under section 2 of the Sherman Act has two elements: "(1) the possession of monopoly power in a relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or

development as a consequence of a superior product, business acumen, or historical accident."

The offense of monopolization requires that a defendant dominate the relevant market, although the precise market share a defendant must control remains undefined. United States v. Columbia Steel Co., 334 U.S. 495, 527-528 (1948); Domed Stadium Hotel, Inc. v. Holiday Inns, Inc., 732 F. 2d 480 (5 Cir. 1984). However, in United States v. Aluminum Company of America, 148 F. 2d 416 (2 Cir. 1945), approved and adopted, American Tobacco Company v. United States, 328 U.S. 781, 811-14 (1946), Judge Learned Hand created the widely accepted standard that while a 90% market share definitely is enough to constitute monopolization, "it is doubtful whether 60 or 64% would be enough; and certainly, 33% is not." 148 F. 2d at 424. As the court observed in Domed Stadium Hotel, supra at 489, the majority of judicial decisions suggest that absent special circumstances, a defendant must have a market share of at least 50% before he can be guilty of monopolization. The courts have held that a market share percentage of less than the 50% generally required for actual monopolization may support a claim for attempted monopolization if other factors such as concentration of market, high barriers to entry, consumer demand, strength of the competition, or consolidation trend in the market are present. See Domed Stadium, supra at 490.

In addition to the Sherman Act, section 7 of the Clayton Act, 15 U.S.C. section 12 et seq., prohibits a corporation from acquiring the stock or assets of another corporation in any line of commerce in which the effect "may be substantially to lessen competition, or to tend to create a monopoly." A determination on the facts of a particular case that a company does not control enough of the market to violate the Sherman Act does not necessarily dispose of the section 7 issues for the latter has been held to be much broader than the Sherman Act. Therefore, a defendant need not have a market share approaching monopoly proportions to be within the reach of section 7. Domed Stadium, supra at 491. Significantly, Congress enacted this provision due to its concern over increasing economic concentration, and to address the problem of monopolies not yet within the reach of the Sherman Act. Brown Shoe Company v. United States, 370 U.S. 294, 317-18 (1962). Thus, the Supreme Court has observed that in applying section 7, courts must assess the probability of anti-competitive results flowing from the challenged merger or acquisition. United States v. General Dynamics Corp., 415 U.S. 496, 505 (1974).

The plaintiff in a section 7 suit may make a showing of probable anti-competitive impact in one of two ways. He may demonstrate that the size of the entities involved "makes them inherently suspect" in light of Congress' objective to

prevent undue economic concentration. United States v. Philadelphia National Bank, 374 U.S. 321, 363 (1963). If the size of the entities involved is not "inherently suspect" a plaintiff may show that other characteristics of the market make the merger or acquisition more economically harmful than the bare market share and market concentration statistics would otherwise indicate. Brown Shoe, supra, at 343-44. In the Philadelphia National Bank case, involving a merger of the second and third largest commercial banks in the Philadelphia metropolitan area, the Supreme Court found that a market share of 30% and a concentration increase of 15% threatened competition within the meaning of the Clayton Act.

The Clayton Act does not specifically encompass Trump's acquisition since the prohibition against anti-competitive stock acquisitions extends only to acquisitions made by corporations and not by individuals. United States v. Tracinda Inv. Corp., 477 F. Supp. (DC Cal. 1979). However, the above analysis is helpful in evaluating the issues before the Commission, particularly as to identifying certain factors bearing upon the issue of economic concentration. In determining what constitutes economic concentration it is important to look to the percentage of business controlled, the strength of the remaining competition, the probable development of the industry,

consumer demands, entry barriers and other characteristics of the market. The Supreme Court has recognized that there is no precise numerical figure for impermissible economic concentration but that the relative effect of percentage command of a market varies with the setting in which that factor is placed. United States v. Columbia Steel, supra at 527.

The Commission has had occasion to consider the policy directives of section 1(b)(12) in prior cases, although those instances did not specifically relate to the operation of casino hotel facilities. Rather, they concerned the business of a gaming-related casino service industry in Atlantic City and the operation of ancillary services by a casino licensee. Bally Manufacturing Corp. v. Commission, supra, involved an appeal by Bally regarding the adoption of N.J.A.C. 19:46-1.32 prohibiting a casino licensee from acquiring more than 50% of its slot machines from any one manufacturer. The Commission implemented this regulation as a reflection of its concern that market dominance in such a vital area of casino operations was the type of economic concentration that the Act sought to prevent. Bally was found to have dominated the domestic slot machine market, accounting for approximately 80% of all sales in this country. On appeal, the Supreme Court rejected Bally's contention that the statutory powers given the Commission to

prevent economic concentration and encourage and preserve competition related only to the well established principles of monopoly and antitrust law. Id. at 330. The court determined that the Legislature's intent was to prevent economic domination in any area related to the industry. The court further observed that it was the fact of market domination and the resultant economic concentration which concerned the Commission. Id. at 333.

The two other matters pertaining to section 1(b)(12) involve the operation of Boardwalk Trams by Resorts International Hotel, Inc. In the Matter of the Contract for Operation of the Boardwalk Trams by RIH, CCC Docket No. 79-CA-1 (July 9, 1979) addressed the issue of whether the operation of Boardwalk Trams by RIH would be contrary to the policies enunciated in section 1(b)(12). Hearing Commissioner MacDonald found that a real potential existed for the casino licensee to gain a competitive advantage through operation and control of its trams. He recommended, however, that the Commission refrain from approving or disapproving the tram agreement. He declared that RIH might enter the agreement to operate the trams but that it would do so with the knowledge that the Commission would terminate it unless it contained clear, precise and express conditions which would assure that the tram service would be conducted with fairness and impartiality. That recommendation was

followed by the Commission. Subsequently, the tram contract entered by RIH was submitted to the Commission, and it was approved subject to a number of conditions.

The case of In re Resorts International Hotel, Inc.'s Boardwalk Tram Fare Refund Program, petition reference no. 151308 (April 25, 1985), involved a request for a declaratory ruling with respect to a proposed revised tram fare refund promotion. In 1981, the Commission had ruled that the operation of the boardwalk tram refund program by RIH resulted in the competitive advantage for that operation over other casinos by reason of its exclusive control of the boardwalk trams. A 1983 petition included a discussion of whether competitive advantage would inure to RIH as a result of the program. In an initial decision dated March 13, 1985, Commissioner Zeitz, serving as hearing examiner, found that RIH had failed to demonstrate that the proposed revised refund program eliminated any competitive advantage accruing to that casino entity as the tram operator. By order dated April 25, 1985, the initial decision of Commissioner Zeitz was adopted by the Commission and the petition was denied.

In the above cases, the Commission was legitimately concerned with the apparent competitive advantage accruing to a particular licensee. These cases presented clear examples of economic domination in a particular area of the

casino industry which resulted in a distinct and easily recognizable competitive advantage.

With that background in mind, we turn to a review of Trump's interests to determine if they will constitute economic concentration having an adverse impact on the competitive marketplace. The statistical tables prepared by the Division and by the Commission staff demonstrate that after acquiring control of Resorts, Trump will have an approximate 25-28% market share for all relevant categories, including floor space, the number of games, the number of slot machines, the number of rooms, total revenue, casino win, "table drop", "slot handle" and the number of employees at each facility. These figures are not precise and may vary due to an inability to accurately gauge the effect of Showboat's opening, Bally's acquisition of the Golden Nugget, and expansion of various facilities. Based on a pure arithmetic analysis, Trump will control three casinos out of a total of 12, which amounts to 25%. Upon completion of the Taj Mahal, together with the operation of any two of the other facilities, the figures will increase slightly to approximately 30% of the market. Although his percentage holdings will far exceed any of his competitors, the Commission does not believe that in the context of this highly-regulated industry, a 30% market share could be

construed as being the kind of domination envisioned by section 1(b)(12).³

We fully recognize that as a result of this stock acquisition, Trump will become the largest casino operator in Atlantic City and will necessarily occupy a position of considerable significance, influence and power. His position will be further enhanced by his control of Resorts' vast real estate holdings. Consequently, his 30% market share may very well understate his dominant position in the industry.

Nevertheless, despite our concerns it is still doubtful whether Trump's acquisition may be shown to adversely effect the current competitive climate in the industry. Unlike the situation encountered in Bally, there is no real indication that Trump will be able to exercise his newly-gained status to unfair market advantage. The record fully supports such a finding. The witnesses who testified were unanimous in their appraisal that the stock transaction will not result in economic concentration. We were particular impressed

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3. As previously noted, the Commission has not been asked to rule upon the manner in which Trump seeks to maintain compliance with the three license rule of section 82(e) after the Taj Mahal is licensed. Depending on this decision by Trump, the concentration issue may again be presented.

with the informative testimony of Donald L. Flexner, currently a partner in the law firm of Crowell and Moring in Washington, D. C., and formerly a high-ranking attorney of long standing with the anti-trust division of the United States Department of Justice, that due to the competitive nature of the casino industry and the intensity of regulation, there is not a substantial likelihood of any diminution in competition. We also take appropriate notice of the testimony of casino analyst Daniel Lee, Vice-President of Drexel Burnham Lambert, who observed that Trump will not be able to hinder or suppress competition with even a 33% share of the marketplace. Further, although each casino license is controlled by Trump, each property has a separate organizational structure which includes different groups of shareholders and lenders. While not dispositive, the existence of independent obligations to each such group renders less likely any concerted effort by Trump to use all the properties to gain a competitive advantage over the rest of the industry.

The casino industry is extremely competitive in all respects. We believe that competition within the industry will not be deleteriously affected by Trump's increased visibility in the marketplace and may even be bolstered as existing operators strive to enhance the quality and customer appeal of their products and services in order to

maintain or increase their respective market shares. Although a few of Trump's competitors are presently encountering financial difficulties, the overall picture for the industry remains promising. Moreover, the current regulatory apparatus promotes competition and precludes to some extent the ability of any casino operator to engage in unfair business practices or to impede or imperil competition in an identifiable manner.

We also do not believe that Trump's control of Resorts will operate as a barrier to those new companies and individuals desiring to enter this lucrative market. Due to our licensing scheme, certain entry barriers to the casino industry do exist, but the industry is certainly not foreclosed to the introduction of new players. Indeed, if redevelopment proceeds as promised, further investment in Atlantic City may be stimulated. It is also unlikely that consumer interests will be adversely affected.

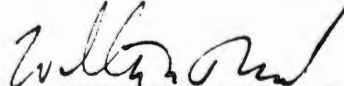
It is extremely difficult to predict Trump's effect on the future growth and development of the industry and the city. There may be some of a pessimistic nature who would argue that Trump's increased visibility will adversely affect the industry. By the same token, however, it is conceivable that Trump's ascension will prove beneficial. In Trump's favor is his apparent willingness to develop some of the vast real estate properties that have laid dormant

for so long under Resorts' previous regime. The Commission has viewed with considerable consternation a lack of appreciable progress in this area. We certainly encourage Trump to carry out his lofty promises and assurances concerning future development for the betterment of the entire Atlantic City region. We cannot emphasize this point too strongly.

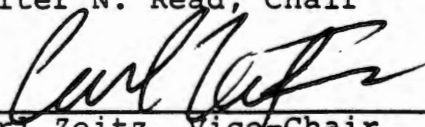
In conclusion, the Commission recognizes the serious concerns engendered by this agreement and the rise to such a prominent position by a single individual. No one can seriously question that Donald Trump will play a predominant part in charting the future course of Atlantic City. However, after weighing all of the relevant factors, including the 30% market share and existing competitive nature and strength of the industry, the Commission concludes that section 1(b)(12) will not be violated by approval of this transaction. The current environment in Atlantic City is such that although Trump will occupy the lead position in the industry, it is unlikely that he will be able to exert the kind of negative influence contemplated by section 1(b)(12). We will, however, continue to be vigilant in monitoring any subsequent events which may indicate economic concentration. Of course, if such negative effects

manifest themselves, the Commission remains authorized and obliged to take immediate steps.

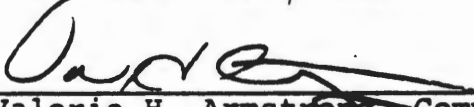
NEW JERSEY CASINO CONTROL COMMISSION



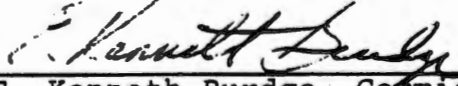
Walter N. Read, Chair



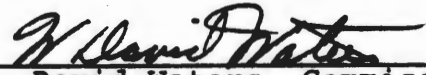
Carl Zeitz, Vice-Chair



Valerie H. Armstrong, Commissioner



E. Kenneth Burdge, Commissioner



W. David Waters, Commissioner

Date: October 20, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-CSI-15, 84-310
OAL DOCKET NO. CCC 8069-84
LICENSE NO. 00052-70

APPLICATION OF RILEY ENTERPRISES, INC.
FOR RENEWAL OF ITS CASINO SERVICE
INDUSTRY LICENSE

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

ORDER

Complainant,

v.

RILEY SIGNS, INC., RILEY ENTERPRISES, INC., :
AND RILEY BOYS CONSTRUCTION CO., INC., :
A/K/A RILEY BOYS, INC., :

Respondents.

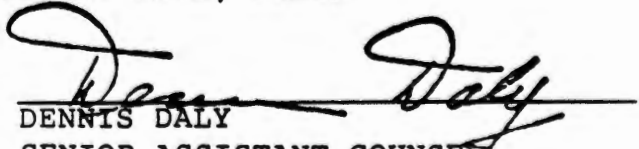
A hearing having been held before the Office of
Administrative Law; and an initial decision having been
filed with the New Jersey Casino Control Commission
(Commission); and the Commission having considered the
entire record at its public meeting of December 4, 1985,

IT IS on this 16th day of September 1987, ORDERED that
the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal of the casino
service industry license of Riley Enterprises, Inc., is
granted and the complaint is dismissed substantially for the
reasons stated in the initial decision, which is
incorporated herein and made a part hereof.

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 8069-84

AGENCY DKT. NO. 84-310

RILEY SIGNS, INC.,

Petitioner,

v.

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

Respondent.

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

Petitioner,

v.

**RILEY SIGNS, INC.; RILEY
ENTERPRISES, INC.; AND RILEY BOYS
CONSTRUCTION CO., INC.,
A/K/A RILEY BOYS, INC.,**

Respondents.

**Charles A. Matison, Esq., for Riley Signs, Inc.; Riley Enterprises, Inc.; and Riley
Boys Construction Co., Inc., a/k/a Riley Boys, Inc. (Cooper, Perskie, April,
Niedelman, Wagenheim & Weiss, P.A., attorneys)**

**Patricia M. Wild, Deputy Attorney General, for the Division of Gaming Enforcement
(Irwin L. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: July 1, 1985

Decided: August 12, 1985

1272

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Riley Signs, Inc. (Riley), applicant, to the Casino Control Commission (Commission) for renewal of its casino service industry license, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that John J. Riley, a corporate qualifier, committed disqualifying criminal misconduct and lacks the requisite good character, honesty and integrity, which, accordingly, disqualifies the corporation from continued licensure.

Initially, this matter also concerned an action initiated by the Division against the license held by Riley. However, the parties have resolved the circumstances underlying the action. Accordingly, the Division withdrew its complaint on July 1, 1985, at the hearing.

PROCEDURAL HISTORY

Riley filed its renewal application with the Commission. By letter dated September 28, 1984, the Commission advised the applicant that, based upon information received in a report from the Division, dated May 3, 1984, there was a "substantial possibility" the Commission would deny the application and that Riley had a right to a hearing. By letters dated May 18, 1984, and October 10, 1984, the applicant requested a hearing. On October 31, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 22, 1985. The matter was heard and the record closed on July 1, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Riley was formed and began operations shortly after World War II. The company was then owned and operated by Frank Riley, Sr., and his wife. From its inception and through the 1960's the company manufactured and erected all types of signs.

1273 The company is currently owned and operated by Frank Riley, Jr., Frank Riley, III,

and John J. Riley. Frank Riley, Sr., has retired. Frank Riley, Jr., entered the business when he was 17 years of age. Currently he is 51 years old. John J. Riley entered the business in 1978. He is currently 39 years of age. Frank Riley, Jr., is responsible primarily for field operations, and John Riley is responsible for office management, sales and administration.

During 1978/1979 Riley applied for and was issued a casino service industry license under section 92c of the Casino Control Act (Act). The company has and continues to perform exterior and interior sign work, including the manufacture, installation and maintenance, for most of the casinos in Atlantic City. In addition, the company also performs cabinet work and other speciality work.

Prior to 1980 Riley was never requested to and never provided performance or labor and material bonds on any work.

On June 6, 1980, Riley entered into a contract with Perini Corporation, who was the general contractor for the construction of the Marina Associates hotel/casino complex (R-1). Riley subcontracted to perform roof blocking work, insulation and concrete topping, at a contract price of \$237,180. The contract required that Riley provide performance and labor and material bonds. The circumstances under which Riley provided these bonds was in dispute and will be discussed further, infra. Nevertheless, after an initial delay, Riley secured the bonds from Alex Feinman, a purported agent in Philadelphia, Pennsylvania. On August 6, 1980, Feinman issued the bonds on the account of the General Insurance Company of America, N.A. (General Insurance). John Riley executed the bonds as president of Riley. Perini directly reimbursed Riley for the cost of the bonds.

On July 28, 1980, Riley entered into a second contract with Perini (R-3). Riley subcontracted to provide wood decking planters and perform seeding work at the Marina Associates' project in the amount of \$152,500. This contract also required that Riley provide construction bonds. John Riley again secured the bonds from Feinman, which were issued on the account of General Insurance on September 3, 1980 (R-4). However, instead of paying Feinman for the bonds, Riley performed remodeling work, including the movement of doors and construction of partitions, for a premises owned by Feinman in Galloway Township, and later known as the Avante Garde Club. Riley sent invoices to Perini for the cost of the bonds in the amount of approximately \$5,000, which was the value of the work Riley performed for Feinman.

By letter dated October 7, 1980, Riley requested waiver from Perini from the bond requirements for both contracts, because the work was completed on the first project and the majority of the work was completed on the second (P-12). By letter dated October 10, 1980, Perini conditionally accepted the offer (P-13).

On September 19, 1980, Riley entered into a contract with GNAC, Corp., for the construction and installation of interior and exterior signs at the Golden Nugget casino-hotel complex in the amount of approximately \$1.1 million (R-5). The contract also included a lease/purchase provision for the signs, and required Riley to provide construction bonds. John Riley secured the bonds from Feinman, which bonds were issued against the Industrial Indemnity Co., N.A. (Industrial Idemnity) (R-6). Pursuant to the contract, GNAC issued a check in the amount of \$32,010 payable to Industrial Idemnity for the cost of the bonds (R-7). However, as a result of circumstances which will be discussed hereafter, payment on the check was stopped. Following delivery of the bonds to GNAC, GNAC notified John Riley that Industrial Idemnity was not licensed to do business in New Jersey. The events following were in dispute and will be discussed, infra. In any event, GNAC ultimately waived the bond requirement (P-14).

In the fall of 1980 representatives of the Federal Bureau of Investigation appeared at Riley's offices and requested the production of a variety of records with regard to the bonds for the three contracts. Riley produced all of its records without the necessity of a subpoena. Further, John Riley testified before a federal grand jury in Philadelphia on behalf of the United States government and before a New Jersey state grand jury on behalf of the Division of Criminal Justice.

John J. Gill and John Herwick have, since September 1983, been employed by the Crown Carpet Center of New Jersey (Crown) in Pleasantville, as director of operations and director of marketing and sales, respectively. Prior to their employment with Crown, both were shareholders and employees of Floor Installers, Inc. (Floor Installers), also of Pleasantville. Floor Installers sold and installed commercial floor coverings. It performed work for most of the casinos in Atlantic City.

In 1980 Floor Installers bid successfully for a contract with GNAC. That contract required Floor Installers to provide construction bonds, the cost of which would be reimbursed by GNAC. Floor Installers was not able to secure these bonds from their

insurance agent, because time was of the essence and they lacked a track record on bonded work. Mr. Gill inquired of other contractors about the availability and sources of bonds. Ultimately, he made inquiry to John Riley, whom he had known previously and also knew to be a GNAC contractor. Mr. Riley advised Mr. Gill that Riley had obtained such bonds from Alex Feinman. Floor Installers contacted Feinman and, at Feinman's request, provided a completed application form, a recent financial statement, records of their work history and a company brochure. Mr. Herwick met Feinman at the Avante Garde Club, where he paid for the bond in cash, at a cost of 3 percent of the contract price. Feinman provided a written receipt of payment. Floor Installers delivered the bond to GNAC, which accepted it. Floor Installers assumed that GNAC had reviewed the bond and considered it to be valid. Messrs. Gill and Herwick had no reason to believe that Feinman's operation was not legitimate, and only later learned of his misdeeds. Messrs. Gill and Herwick also testified against Feinman before a New Jersey state grand jury.

On August 14, 1980, Feinman and others were indicted by a federal grand jury in the Eastern District of Pennsylvania and charged with 22 counts of violations of federal law, including conspiracy, mail fraud, wire fraud, transportation of falsely made securities in interstate commerce and transportation of money taken by fraud in interstate commerce (P-1). More specifically, Feinman was alleged to be the owner, a principal, an officer and an employee of Casualty and Indemnity Company, Limited (C & I), which had offices in Philadelphia and provided bonds and financial guarantees. Feinman was charged with providing false and fraudulent financial guarantees and construction bonds for which he collected a fee, commission or premium, during the period from July 1979 to April 1980. In addition, Feinman was charged with creating false assets of \$115 million in worthless securities on behalf of C & I. On July 9, 1981, Feinman was found guilty on 14 counts. He was sentenced to eight years imprisonment on each of 10 counts and five years on each of two counts. His incarceration was to run concurrent with a sentence imposed as the result of a subsequent indictment in the United States District Court, which will be discussed, infra (P-3).

On November 7, 1980, Feinman and Kenneth Solomon were indicted by a federal grand jury in the Eastern District of Pennsylvania on five counts of violations of federal law, including conspiracy, wire fraud and interstate transportation of fraudulent securities (R-8). More specifically, Feinman and Solomon were accused of operating sales agencies as businesses at 1211 Chestnut Street, Philadelphia, of which Feinman was

the owner, a principal, an officer and an employee, and Solomon was an employee and an associate of the agencies. The agencies sold false and fraudulent construction bonds for fees, commissions or premiums, on behalf of General Insurance and Industrial Indemnity which companies were not licensed to sell or issue bonds in New Jersey. Counts two through five of the indictment concerned Riley's purchase of bonds from Feinman for Riley's two contracts with Perini and the one contract with GNAC. On February 27, 1981, Solomon pled guilty to a portion of the charges (P-5). He was sentenced to six month's incarceration, suspended, and three years' probation. On March 16, 1981, Feinman pled guilty to various of the charges (P-2). He was sentenced to five years on each count, which period of incarceration was to be concurrent with his other incarceration.

On July 20, 1981, Feinman was named as a defendant in an accusation issued in the Superior Court of New Jersey, Law Division - Criminal, in Camden County (R-10). More specifically, Feinman was charged with violations of N.J.S.A. 2C:20-4, four counts of theft by deception; N.J.S.A. 2C:21-1, four counts of forging and uttering forged documents; N.J.S.A. 17:49-1, one count of transacting the business of insurance in New Jersey without authorization; and N.J.S.A. 2A:98-1 and 2, and N.J.S.A. 2C:5-2, conspiracy to commit these offenses, concerning a false and fraudulent business operation which obtained money by providing false and fraudulent construction bonds and financial guarantees, including bonds issued on behalf of General Insurance and Industrial Indemnity (R-10). The accusation concerns illegal activities which occurred between August 1979 and October 1980, and which involved bonds issued to Floor Installers and Riley for work performed at GNAC. On July 20, 1981, Feinman pled guilty to various charges under each count. On December 14, 1981, Feinman was sentenced to five years on four counts and 18 months on five counts, to run concurrent with his incarceration from violations of federal law.

On October 28, 1981, Solomon was named as a defendant in an accusation filed in the Superior Court of New Jersey, Law Division - Criminal, Mercer County, which alleged violations of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:2-6, theft by deception; N.J.S.A. 17:17-12, transacting the business of insurance in New Jersey without authorization; and N.J.S.A. 2A:98-1 and 2, and N.J.S.A. 2C:5-2, conspiracy to commit these offenses (P-6). The substance of the charges was substantially similar to those contained in the accusation against Feinman. On October 28, 1982, Solomon pled guilty to various charges under each count. On November 22, 1982, Solomon was sentenced to two years and less

on various counts, which was reduced to probation, and a fine of \$3,000. Solomon was not incarcerated by reason of his cooperation with authorities. On June 18, 1984, contempt proceedings were initiated against Solomon by reason of his failure to pay the fine. On June 27, 1984, contempt proceedings were held in abeyance pending payment on a time schedule basis.

On April 30, 1980, Feinman was indicted by a New Jersey State Grand Jury in Camden County, for violations of N.J.S.A. 2A:98-1 and N.J.S.A. 2C:5-2, conspiracy; N.J.S.A. 2A:85-1, contempt; N.J.S.A. 17:17-12 and N.J.S.A. 2A:85-14, maintaining an office for the transaction of insurance business without authorization; N.J.S.A. 17:17-12 and N.J.S.A. 2C:2-6 aid in the crime of maintaining an office of transaction of insurance business without authorization; and of N.J.S.A. 17:17-12, transaction of insurance business without authorization (P-4). On July 20, 1981, Feinman pled guilty to most of the charges. On December 14, 1981, Feinman was sentenced to various periods of incarceration which incarceration was also to run concurrent with his existing incarceration. On February 25, 1982, the court granted Feinman's motion for reduction of his sentence. Again on December 2, 1983, the court further reduced Feinman's sentence. The reasons for the substantial periods of incarceration in the initial sentence included the facts that a large sum of money was involved, that there were victims, and that there was a patent and knowing disregard of the laws.

On August 28, 1981, Casualty and Indemnity Company and the remaining partners of Feinman and Solomon in the scam were indicted by a New Jersey State Grand Jury on 31 counts of violations of the law with regard to the same misconduct of which Feinman and Solomon were guilty.

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

(B) DISPUTED FACTS

In dispute were the circumstances under which Riley commenced doing business with Feinman, the circumstances under which Riley secured each of the three sets of bonds from Feinman, the nature of the relationship between John Riley and Feinman and Solomon, as well as John Riley's good character, honesty and integrity. More

specifically, the Division contended that John Riley had violated N.J.S.A. 2C:21-1a(3), uttering a forged instrument, a crime of the fourth degree, by perpetrating a fraud against two licensed casinos by the production of false performance and labor and material bonds.

Mr. Riley testified that his company first provided bonds at Perini's request. Because Riley had no prior experience nor knowledge of such bonds, Mr. Riley made inquiry to his insurance carrier. He was advised that the process of securing such bonds was complex and could take six to eight months. The agent recommended that Riley make contact with a bonding agent. Mr. Riley also followed up several advertisements in newspapers, although such efforts were unsuccessful. In addition, he approached International Fidelity Company. This entity was interested, but wanted excessive financial guarantees, including personal mortgages. Mr. Riley also made inquiry of other contractors in the Atlantic City area, including Sal Fiorentino, part-owner of General Masonry Company. Mr. Riley knew Mr. Fiorentino previously and knew that his company performed work on various casino projects. Mr. Fiorentino advised that he did not know of a bonding agent but that a friend did. Mr. Fiorentino set up a meeting between his friend and Mr. Riley. This other person advised Mr. Riley that he had obtained bonds from a person named Alex Feinman and provided Feinman's telephone number. At this point, Riley had completed the majority of the work on the contract and time was of the essence for the production of the bonds.

Mr. Riley made a telephone call to Feinman and discussed the matter. Feinman required a recent financial statement, a company history, references of individuals associated with the company, a list of the largest jobs performed by Riley and copies of the first Perini contract and bond forms. Next and during June 1980, Mr. Riley met with Feinman at Feinman's offices in Philadelphia, at which time the respondent produced the requested information, including Exhibit P-8. Mr. Riley was most impressed with what appeared to be Feinman's professionalism, the location and luxuriousness of the offices and the number of employees present. In essence, Mr. Riley believed the enterprise was extremely professional and successful. Mr. Riley and Feinman discussed the subject project in detail and Feinman exhibited a thorough knowledge of the documentation previously provided by Riley. Feinman's reaction was favorable to issuance of the bond, and he advised Mr. Riley that a decision would be forthcoming within two to six weeks.

Thereafter, Mr. Riley returned to Atlantic City where he described the events to his brother Frank. During the ensuing several weeks, Mr. Riley made telephonic inquiries of Feinman and was advised that all approvals had been secured and that he was waiting for final clearance.

Ultimately, there came a time when Riley needed the bonds in order to make a draw on payments due from Perini, which payments were needed for Riley's cash flow. Mr. Riley contacted Feinman by telephone at his offices in Philadelphia and expressed that time was of the essence. Feinman advised that the bonds were available and could either be picked up in Philadelphia or Mr. Riley could meet Feinman at a restaurant at Bally's Park Place Casino Hotel (Park Place), where Feinman had arranged to have dinner with other persons. Mr. Riley agreed to meet Feinman at Park Place. However, Feinman stated that he could turn over the bonds only upon receipt of a certified check, treasurer's check, cash, etc. Since it was after 3:00 p.m., Mr. Riley cashed a company check in the amount of \$7,150, for which he received cash (P-9 and P-10). That evening, Mr. Riley met Feinman for dinner. Also present were several large contractors, including one who was a general contractor on a casino complex. The discussion concerned bonds for various substantial projects, including the Reading Terminal in Philadelphia. Mr. Riley testified that he was most impressed with the persons who were present and believed his project to be inferior in scope to the others discussed. Following dinner, Mr. Riley gave Feinman the cash and received the bonds in return. Feinman advised that the bonds were sufficient receipt for payment.

The following day, Mr. Riley submitted the bonds to Perini's clerk of the works. The clerk took the bonds and examined them against a master list. The clerk accepted the bonds and authorized payment to Riley under the contract.

When Riley needed bonds for its second contract with Perini, Mr. Riley again contacted Feinman by telephone. Feinman required the production of additional information, including the second contract and a status report on the first project. Ultimately, the bonds were issued. Also, Mr. Riley was advised by Feinman that he had purchased a building that formerly was an animal hospital in Galloway Township which he intended to convert into a health club. Feinman proposed that Riley perform construction services at the site in exchange for the bonds, which Riley did. Mr. Riley testified that the barter system is an acceptable form of business practice in the private sector. Also, Mr. Riley testified that he had no knowledge that Feinman intended to convert the facility into an adult club which was to be used for illicit purposes.

Mr. Riley also testified that at this time Feinman made efforts to solicit Riley's insurance business. This was consistent with what Mr. Riley had been advised by other persons, i.e., that the bond business is a "lead in" to the insurance business.

Mr. Riley further testified that the GNAC project did not initially require bonds. However, when GNAC activated the purchase option, bonds were required. Again Mr. Riley contacted Feinman, who required additional information because of his concern that the amount of the bonds was very substantial. Ultimately, Feinman indicated the necessary approvals had been secured. Upon receipt of the bonds, Riley forwarded them to GNAC. Following GNAC's rejection, Mr. Riley, with some difficulty, contacted Feinman. Feinman advised that he had inadvertently written the bonds against a company which was not authorized to write bonds of that amount in New Jersey; however, he indicated that the matter would be corrected imminently. Time passed and GNAC contacted Mr. Riley regarding the bonds. Mr. Riley made contact with Feinman and received assurances that the matter would be cured. However, Riley was next contacted by the FBI regarding Feinman and his operations.

Mr. Riley was last in contact with Feinman when he received a telephone call from Feinman during his period of incarceration. Feinman expressed his regret for the problems and requested money be sent to his wife by Mr. Riley. Mr. Riley declined.

During cross-examination, Mr. Riley denied that he had any prior knowledge that the bonds were fraudulent, claimed that his relationship with Feinman was purely business, denied that he had ever split commissions with Feinman or Solomon, denied that he had ever lived in Feinman's house and denied that he had made a loan to Feinman. Further, Mr. Riley testified that his discussions with Feinman were extraordinarily brief following their initial meeting in Philadelphia.

Frank Riley, Jr., also testified with regard to the issues in dispute. Essentially, he corroborated his brother's testimony that the company had never secured bonds prior to 1980, that it experienced difficulty in securing bonds for the first Perini contract, the extensive application process for the bonds, that John Riley was impressed substantially with Feinman's apparent business acumen and success, the circumstances surrounding the making of a cash payment to Feinman at Bally's for the bonds, John Riley's impression of the events and persons who attended the dinner with Feinman at Park Place, the belief that Feinman's facility in Galloway Township was to be a health club, and the events surrounding John Riley's attempts to secure valid bonds for the GNAC project.

Sal Fiorentino also testified on behalf of Riley. The witness has been self-employed for 17 years by L & S Steel Services, Inc., of Turnersville, New Jersey. This company installs reinforced steel and concrete. Mr. Fiorentino's company has worked at all casino sites in Atlantic City. He has known John Riley in excess of ten years. The witness recounted a discussion he had with Mr. Riley during 1980 with regard to Riley's efforts to obtain construction bonds. Mr. Fiorentino referred Mr. Riley to a friend of the witness', with whom he set up an appointment.

Messrs. Gill and Herwick also testified that they approached John Riley for information concerning bonding agents. Further, the process Floor Installers underwent in securing bonds from Feinman was substantially the same as that experienced by Riley.

Last, Riley called Alan Hart, a self-employed private investigator. Mr. Hart had been retained by an attorney representing a co-defendant of Feinman in the first indictment (P-1). The witness attended the entire eight-week trial in Philadelphia, which resulted in the conviction of Feinman and all other co-defendants. Mr. Hart testified that the scheme perpetrated by Feinman and others was enormous and included among its victims' attorneys, accountants, businessmen and the general public. The scheme was nationwide in scope. In addition, Hart had contacted Solomon within the past week at Solomon's residence in Pennsylvania. Solomon stated that he did not want to be involved in the subject proceeding and further stated that he was angry with John Riley because Solomon, in part, blamed Riley for the criminal proceedings in which he became involved.

In support of its case, the Division offered a transcript of the sworn interview of Kenneth Solomon and a report prepared by a State Police investigator, which summarized an interview with Feinman.

The sworn interview of Solomon was taken on January 17, 1984. Initially, Solomon admitted his role in the illegal enterprise and described the scope of the illegal activities (R-11). At page 43 of R-11 Solomon described the scope of the illegal operations:

We did bonding for just about every general contractor in the City of New York. A lot in South Jersey. A lot in Philadelphia, Pennsylvania, Virginia, Washington, D.C., Maryland, Michigan, Massachusetts, New York State, California, Texas, Oklahoma, Louisiana, Alabama, Florida and Georgia, plus a couple in the State Department for governments overseas and Air Force bases.

Solomon became employed by Feinman in September 1979. Nevertheless, Solomon stated that until January 1980 he was unaware Feinman's operation was unlawful. The essence of Solomon's statements was his belief that John Riley and other customers of Feinman knew that Feinman's operation was fraudulent and knowingly participated in a perpetuation of the scheme. Further, Solomon opined that Riley paid lower premiums and received percentages on other bonds, and that Mr. Riley threatened to cooperate with the New Jersey State Police and set up Feinman in the event Feinman did not make good on the bonds to GNAC. Solomon also stated that he had been approached by Matty and John Gambino to work for a finance guarantee company, which was in the process of being established, and which offer he rejected. Further, Solomon discussed Feinman's potential demise with the Gambino's.

The Division also offered an investigation report prepared by Detective Sergeant First Class Fred Romonowski (R-12). Initially, the report identifies John Riley as a person who obtained fraudulent construction bonds from Feinman. Further, the report identifies Feinman and Solomon as co-conspirators in an insurance fraud scheme operated in New Jersey and other states. In addition, the report summarizes an interview of Feinman conducted on January 30, 1984, by Deputy Attorney General Rosemary Quinn and Detective Romonowski at Allenwood Federal Prison Camp, where Feinman was then serving sentences on his several convictions. Essentially, Feinman acknowledges his introduction to Mr. Riley by the same individual identified by Riley. Further, Mr. Riley purchased construction bonds from Feinman for the Marina Associates and GNAC projects. Also, Feinman recalled that Mr. Riley had referred Floor Installers to him. In addition, Feinman stated that Riley received a discount in the cost of the bonds and/or shared in the proceeds thereof.

The resolution of this dispute essentially involves an assessment of the credibility of John Riley as opposed to the credibility of Messrs. Solomon and Feinman.

The Division's proofs consisted solely of the sworn interview of Solomon and a summary of an unsworn interview of Feinman. The Division was unable to produce either person as a witness, and neither was available for cross-examination.

Solomon acknowledged his participation in the illegal scheme and is a convicted felon. My review of his interview indicates that his statements were vague and included many assumptions which were not supported by fact. Further, many of Solomon's

statements to the Division concerned purported incidents, such as Feinman's receiving complimentary services from casinos, communications between Messrs. Solomon and Feinman and persons holding licenses within the casino industry, and solicitations by deputy attorneys general of Mr. Riley to participate in investigative efforts against Feinman, of which the Division offered no documentary evidence. However, it appears that further investigation could have uncovered such documentation, if any existed. Also, Solomon had a clear motive to make false statements implicating Mr. Riley in the illegal activities. In addition, Solomon's claim that Mr. Riley approached Feinman with a deal in exchange for Mr. Riley's nonparticipation in investigative efforts of Feinman by the State Police defies human experience, because it is illogical to advise a potential target of a potential investigative effort and still expect some compensation. Further, Solomon's purported belief that Mr. Riley and others who purchased bonds from the illegal enterprise knew of the scheme cannot be believed because it is incompatible with Solomon's statement that he was unaware of the unlawful nature of the operation during the first four months of his one year of full-time employment. In addition, Solomon's statements with regard to his relationship with the Gambinos and his discussion with the Gambinos of Feinman's potential demise was preposterous. Finally, a portion of Solomon's statements, in fact, corroborated portions of Mr. Riley's testimony, i.e., with regard to the efforts by GNAC to secure a valid bond. In the final analysis, I am not persuaded to believe any portion of Solomon's statement.

Similarly, the statements made by Mr. Feinman must be viewed with skepticism. Feinman was interviewed at Allenwood Prison and acknowledged his illegal conduct. Further, Feinman's statements include factual inaccuracies, such as who stopped payment on the GNAC check. Also, Feinman stated matters which were appropriate for further investigation by the Division and the ultimate production of documentary evidence in support thereof. However, no supplemental investigation was conducted and no such proofs were offered. Also, Feinman had a clear motive to make false statements against Mr. Riley. Nevertheless, Feinman did not implicate Mr. Riley in any criminal activity. In the final analysis, I am persuaded not to believe any portion of Feinman's statement.

It is also necessary to assess the credibility of John Riley. Initially, his position in this matter must be recognized. He is a qualifying owner and employee of the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, Mr. Riley's testimony was consistent with human

experience, was logical, was corroborated by the testimonies of Frank Riley, Jr., Mr. Fiorentino, Messrs. Gill and Herwick and Mr. Hart, was consistent with the documentary evidence, and was internally consistent. In addition, Mr. Riley had no record of any criminal misconduct. It was clear both during the hearing and during the review of the record that, from my observations of Mr. Riley's demeanor, the plausibility of his testimony and my examination of the documentary evidence, as well as the fact that Mr. Riley's testimony was opposed only by noncredible testimony and statements made by felons, that Mr. Riley testified truthfully. His testimony was candid, consistent, supported by testimonial and the documentary evidence, believable and persuasive. The witness responded fully and completely to each and every question asked. He also had a detailed recollection of the various incidents which were the subject of inquiry. In the final analysis, I am persuaded to accept his testimony and the testimonies of Messrs. Frank Riley, Jr., Mr. Fiorentino, Messrs. Gill and Herwick, and Mr. Hart as set forth herein in all respects.

Accordingly, it is evident that Mr. Riley had no prior knowledge of the illegal activities of Messrs. Feinman and Solomon and their associates, nor did Mr. Riley ever participate in any such illegal activities.

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

1. The sworn statements of Solomon were not believable nor reliable.
2. The statements made by Feinman were not believable nor reliable.
3. John Riley's testimony was credible, believable and persuasive in all respects.
4. Mr. Riley had no knowledge of the illegal enterprise operated by Messrs. Feinman, Solomon and others, and never participated in such activities.

Riley called two witnesses to testify to the good character, honesty and integrity of John Riley and Riley. The first was Joseph Campano, vice president of construction for RBG Associates, a construction company in Pleasantville, New Jersey. The witness has been employed in the construction industry for the past 30 years and in

New Jersey since 1979. From 1979 to 1981 Mr. Campano was employed on a project involving the construction of the Atlantis Casino (then Playboy) and held the positions of construction coordinator and, ultimately, project manager. From 1981 to 1984 the witness was employed as director of design construction and development by Park Place, where he was responsible for all new construction and renovations. In 1984, the witness became employed as a consultant for the Showboat Casino and was responsible for the preparation of the pre-bid package, which involved coordination between engineers and architects. Since then he has been employed by RBG, which is the holder of a casino service industry license, and acts as a consultant to the various casinos. Mr. Campano has held a casino key employee license for the past four years. The witness first learned of Riley during his employment at the Playboy in 1979, when it bid successfully for the job to install exterior signs. The witness stated that the job was difficult; however, Riley performed well under adverse circumstances. Also, during Mr. Campano's tenure with Park Place he had substantial contact with Riley and specifically with John Riley. Riley bid successfully for much of the interior and exterior sign work at the facility. The witness observed that Riley had no difficulty in performing all the required work. In addition, Riley was the successful low bidder on some general construction work. However, by reason of the extremely low bid, Mr. Campano offered Mr. Riley the opportunity to withdraw. However, Riley honored its bid and completed the work. The witness was of the opinion that Riley always performed well and was dependable. Further, Riley and Mr. Riley enjoy a positive reputation within the industry.

The applicant's second witness was Mr. Fiorentino. The witness has known John Riley for approximately ten years on both a business and social basis. Mr. Fiorentino was of the opinion that the company and Mr. Riley both enjoy fine reputations within the construction industry.

I further **FIND** that:

5. John Riley and Riley enjoy positive reputations for good character, honesty and integrity within the construction industry and, in particular, with regard to work performed for licensed casinos.

DISCUSSION OF LAW AND CONCLUSIONS

All entities that do business with casinos, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to section 92c of the Act. N.J.A.C. 19:41-1.3(c)1. Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications. Accordingly, Mr. Riley, although not required to be licensed, was required to establish his qualifications and his good character, honesty and integrity.

(A) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) is more commonly referred to as the "inimical clause." The issue under this section is whether the individual has committed an offense which is contrary to the policies of the Act. The Division alleged, under section 86g, that Mr. Riley's conduct in his dealings with Feinman and Solomon constituted a violation of N.J.S.A. 2C:21-1a(3), uttering a forged instrument, a crime of the fourth degree, which the Division claimed is inimical to the policies of the Act under Section 86c(4) and, therefore, mandates disqualification.

N.J.S.A. 2C:21-1 states, in pertinent part:

- a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or acknowledged that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
 - (1) Alters or changes any writing of another without his authorization;
 - (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 the 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

- (3) Utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2).

Initially, it should be noted that a person commits a fraud only if he acts with the purpose (conscience object) to defraud or injure anyone, or has knowledge (is aware) that he is facilitating a fraud or injury to be perpetrated by anyone. See N.J.S.A. 2C:2-2b(1) and (2) for definitions of "purposely" and "knowingly." In addition, "uttering" constitutes the offering of a forged instrument as genuine, accompanied by words or conduct that it is genuine. The instrument need not be accepted and the person intended to be defrauded need not be actually defrauded. Sufficient conduct appears to be just the attempt to finalize the fraud by gaining from it. This occurs by presenting the instrument to a person who is in a position to accept the real instrument of what the forgery purports to be.

The Division offered no evidence other than Solomon's "belief" that Mr. Riley knew of the falseness of the bonds obtained from Feinman and presented to Perini and GNAC. As set forth herein, Solomon's statement was not credible. In addition, Mr. Riley's denial of knowledge of the fraud was believable and persuasive in all respects. Accordingly, there was no credible evidence of any misconduct by Mr. Riley and, the applicant established, beyond any doubt, that Mr. Riley had not participated in the scheme.

I CONCLUDE that the Division has not established, by the preponderance of the credible evidence, that Mr. Riley's conduct constituted a violation of N.J.S.A. 2C:21-1a(3), nor that there was a violation of sections 86c(4) or 86g.

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

Riley was required to establish its good character, honesty and integrity. It is well settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796 (1972). Therefore, the fitness of the applicant business entity must be evaluated, in part, upon Mr. Riley's character, honesty and integrity. Accordingly, it is appropriate to utilize the standards set forth in Section 89b(2) of the Act.

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

The dispute in this matter centered upon the involvement, if any, of Mr. Riley in the illegal enterprise operated by Feinman. The applicant established clearly that he neither knew of the unlawful nature of the operation nor that he participated therein. It was clear that Mr. Riley and the applicant company were victims of a substantial and sophisticated scheme, which successfully defrauded many other persons and corporations throughout the United States. The fact that Mr. Riley was victimized by this scheme does not reflect adversely upon his good character, honesty and integrity to any degree. Also, it was evident that Mr. Riley cooperated voluntarily and fully with federal and state investigating authorities. In addition, it was established that Mr. Riley is well regarded for his integrity in the community and in his industry; and, the company is well regarded for its integrity and reliability in the construction industry. Such reputations are not easy to achieve and must be viewed positively. Accordingly, it was evident that the applicants present no risk to the public and to the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Mr. Riley is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation, Casino Control Commission, supra, at 51, 52.

I CONCLUDE that Mr. Riley and the applicant company have established, by clear and convincing evidence, their good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

Therefore, I **ORDER** that the application of Riley Signs, Inc., for renewal of its casino service industry license, under N.J.S.A. 5:12-92c, be **GRANTED**.

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

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

August 12, 1985
DATE

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

Receipt Acknowledged:

August 13, 1985
DATE

Nancy D. Shick
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 15, 1985
DATE

Ronald J. Parker/x.s.
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 United States of America v. Alex Feinman, John Valentine Goepfert, Seymour Pollack, Lawrence N. Rush, Thomas Eli Scott, and Mark Snyder, United States District Court for the Eastern District of Pennsylvania, Criminal Number 80-00257-01 through 06, Indictment, filed August 14, 1980 (36 pages)
- P-2 United States of America v. Alex Feinman, United States District Court for the Eastern District of Pennsylvania, Docket 80-00362-1, Judgment and Probation/Commitment Order, March 16, 1981
- P-3 United States of America v. Alex Feinman, United States District Court for the Eastern District of Pennsylvania, Docket Number 80-257-1, Judgment and Probation/Commitment Order, July 9, 1981
- P-4 State of New Jersey v. Alex Feinman, New Jersey Superior Court, Camden County, Law Division - Criminal, SBI Number 8100270-1, Judgment of Conviction and Order for Commitment, December 14, 1981; Order Granting Motion for Reduction of Sentence, February 25, 1982; Order Granting Motion for Reconsideration of Sentence, December 2, 1983; Order Modifying Sentence, December 15, 1983, Judgment of Conviction and Order for Commitment, Accusation Number A1874-80, December 14, 1981; Statement of Reasons for Sentence, December 14, 1981 (15 pages)
- P-5 United States of America v. Kenneth Solomon, United States District Court for the Eastern District of Pennsylvania, Docket Number 80-00362-2, February 27, 1981
- P-6 State of New Jersey v. Kenneth Solomon, Superior Court of New Jersey, County of Mercer, Law Division - Criminal, Accusation Number 75-81, Accusation, filed October 28, 1981 (11 pages); Waiver of Indictment and Trial by Jury, October 28, 1981; Judgment of Conviction, November 22, 1982 (2 pages); Notice of Contempt of Court, June 14, 1984; Court records (15 pages)
- P-7 The Philadelphia Inquirer, Thursday, April 25, 1985, pages 1 and 18A (2 pages)

- P-8 Riley Neon Signs, Inc., Financial Statements for the six-month period ended December 31, 1979, prepared by Ford Scott and Associates, Arthur T. Ford, Jr., CPA, February 29, 1980 (11 pages)

- P-9 Atlantic National Bank, Riley Boys Inc., Account number 104-660-BA, Statement date August 29, 1980

- P-10 Riley Boys Inc., checkbook stub for check numbers 1205, 1206 and 1207, account number 104-660-BA, Atlantic National Bank

- P-11 Riley Boys, Inc. - Invoice to Perini Construction Co.

- P-12 Letter to Perini Corp. from Michael J. Negro, the Riley Boys, Inc., October 7, 1980

- P-13 Letter to Mr. John Riley from Harry C. Coldreck, Project Manager for Perini Corp., October 10, 1980

- P-14 Letter to Joel D. Bergman, GNAC Corp., from Michael L. Ashner, Esq., October 10, 1980

- R-1 Agreement between Perini Corporation for the Account of Marina Associates and the Riley Boys Inc., June 6, 1980 (17 pages)

- R-2 Contractor's Performance Bond, number 341821, August 6, 1980 and Contractor's Labor and Material Payment Bond, number 341821, both issued by General Insurance Company of America, N.A., for the Riley Boys, Inc., August 6, 1980; General Insurance Company of America, N.A. -Power of Attorney issued to Ralph DiFronzo, July 31, 1980 (6 pages)

- R-3 Agreement between Perini Corp. for the Account of Marina Associates and the Riley Boys, Inc., July 28, 1980 (19 pages)

- R-4 Contractor's Labor and Material Payment Bond and Contractor's Performance Bond, both issued by General Insurance Company of America, N.A., on behalf of the Riley Boys Inc., September 3, 1980; General Insurance Company of America, N.A. Power of Attorney issued to Herbert Woodley, September 3, 1980 (6 pages)
- R-5 Agreement between GNAC, Corp., and Riley Signs, Inc., September 19, 1980 (13 pages)
- R-6 Performance Bond and Labor and Material Payment Bond both issued by Industrial Indemnity Co., N.A., on behalf of Riley Signs, Inc., September 18, 1980 (4 pages)
- R-7 Check drawn on the account of Golden Nugget GNAC Corp. at the First National Bank of South Jersey to Industrial Indemnity, N.A., September 19, 1980
- R-8 United States of America v. Alex Feinman and Kenneth Solomon, United States District Court for the Eastern District of Pennsylvania, Criminal number 80-00362-01 and 02, Indictment, filed on November 7, 1980 (11 pages)
- R-9 State of New Jersey v. Casualty and Indemnity Company, Florence Feinman, Benjamin Levinson, Samuel J. Pacifico, Jr., Madeline Russo, Ralph DiFronzo and C & I Agency, Inc., Superior Court of New Jersey, Law Division -Criminal, State Grand Jury number SGJ77-80-4(1), Indictment, filed August 28, 1981 (56 pages)
- R-10 State of New Jersey V. Alex Feinman, Superior Court of New Jersey, Law Division - Criminal, Camden County, Accusation number 1874-80, Waiver of Indictment and Trial by Jury, July 20, 1981; Accusation, filed on July 20, 1971; Statement by Defendant, July 20, 1981; Judgment of Conviction and Order for Commitment, December 14, 1981; Statement of Reasons for Sentence, December 14, 1981 (25 pages)

- R-11 In the Matter of Riley Sign, Co., Transcript of Sworn Interview of Kenneth Solomon conducted by Division of Gaming Enforcement, January 17, 1984 (51 pages)
- R-12 State of New Jersey, Division of Gaming Enforcement - Investigation Report, prepared by Detective Sergeant First Class Fred Romonowski, February 2, 1984 (3 pages)

WITNESS LIST

FOR THE PETITIONER:

Joseph J. Campano
Sal Fiorentino
John J. Gill
Alan Hart
John Herwick
Frank Riley, Jr.
John J. Riley

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-173
OAL DOCKET NO. CCC 7923-86
REGISTRATION NO. 57406-40
ORDER NO. 87-33-8

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

Complainant,

v.

DORIS M. 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 New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 2, 1987,

IT IS on this 30th day of December 1987, ORDERED that the initial decision is modified as follows:

The Commission finds that in 1983 the respondent pled guilty to two counts of receiving stolen property, third degree, in violation of N.J.S.A. 2C:20-7.

ORDER NO. 87-33-8

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 7923-86

AGENCY DKT. NO. 87-173

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

DORIS M. RIVERA,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Doris M. Rivera, respondent, pro se

Record Closed: June 4, 1987

Decided: July 20, 1987

BEFORE RICHARD J. MURPHY, ALJ:

The Department of Public Safety, Division of Gaming Enforcement (DGE), proposes to revoke the casino hotel registration of Doris M. Rivera, respondent, because of her conviction for receipt of stolen property. Respondent claims that she became unwittingly involved in her brother's scheme to steal and sell property when he asked her to drive him to a pawn shop. The issues presented are: (1) whether DGE has proven that the respondent Rivera has committed acts constituting a statutory disqualifier under N.J.S.A. 5:12-86c, and (2) whether Rivera has established by clear and convincing evidence that she has been rehabilitated within the meaning of N.J.S.A. 5:12-91(d). For the reasons set forth below, I **CONCLUDE** that the respondent is statutorily disqualified as a result of her conviction but that she has shown her rehabilitation.

The procedural history of this matter is as follows. The DGE filed a complaint on October 21, 1986, seeking revocation of Rivera's casino hotel employee registration based on her convictions. Rivera requested a hearing on November 3, 1986, and the matter was transferred on November 20 to the Office of Administrative Law for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was preheard before Administrative Law Judge Thompson on January 20 and a hearing was scheduled for March 27, 1987, which was adjourned at respondent's request and was rescheduled for June 4, at which time the hearing was held before the undersigned and the record closed.

The following facts are not in dispute. On October 26, 1983, Doris M. Rivera entered a retraxit plea of guilty to a charge of receipt of stolen property in excess of \$500 in violation of N.J.S.A. 2C:20-7. She had also been charged, along with her brother, Jose Seda, in a five count indictment on June 1, 1983, with burglary and theft by unlawful taking contrary to N.J.S.A. 2C:18-2 and 2C:20-3, but these counts were dismissed on motion of the prosecutor. The stolen property which respondent pled guilty to receiving consisted of firearms, which her brother sold in her presence to an undercover agent in a Vineland pawn shop. Rivera was sentenced to serve 364 days in Cumberland County Jail and served three months before being released for good behavior on two years' probation. Her brother and an accomplice were sentenced to state prison.

Rivera testified that sometime in April 1983¹, her brother Jose Seda asked her to give him a ride in her mother's car to a store. He gave her \$10 for gas, but did not advise her that the purpose of the trip was to sell stolen goods. Respondent admits that she suspected her brother's criminal purpose when one Edwin Echevarria came to the car with a bag containing a shotgun and a rifle. Although her suspicions were aroused by this action, she did not question her brother as to his intentions and entered the pawn shop in Vineland with him and Echevarria where the goods were sold to undercover agents who were recording the scene with a video camera. Although she entered the pawn shop with her brother and his accomplice, she did not have personal possession of the stolen goods and did not receive any monies from their sale or from her brother, who had a criminal record for burglaries and drug offenses. Rivera had no prior criminal record and has had none since. She was the subject of a probation violation proceeding in May 1985 for

¹The investigative report indicates that the crime occurred on November 19, 1982, but that Rivera was not arrested until April 11, 1983 (P-5).

failure to report for several months in 1984 and 1985 and claims that this was caused by her need to care for her deaf six-year-old son while she was working full-time. She pled guilty to a violation proceeding on May 30, 1985 and received a 30-day suspended sentence based on regular reporting to probation. A letter dated November 19, 1986, from her probation officer states that Rivera was involved in criminal activity because of her poor financial situation and was not a career criminal, and therefore would be a valuable employee in a casino.

In November 1984, after being released from jail, Rivera obtained work with Caesar's Boardwalk Regency as a guest room attendant and held that position for almost two years without any disciplinary problems. In August 1986, she resigned from Caesar's to take a job as a human resource clerk at the Showboat Hotel and Casino, where she has been promoted to facilities dispatcher.

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

There is also no dispute that the offense of receiving stolen property to which Rivera pled guilty is a statutory disqualifier under N.J.S.A. 5:12-86(c)(1), which, without sufficient evidence of rehabilitation, would bar her from licensure and employment as a casino hotel employee. I so **CONCLUDE**.

I further **CONCLUDE** that Rivera has affirmatively demonstrated by clear and convincing evidence her rehabilitation within the meaning of N.J.S.A. 5:12-91(d). In determining whether a registrant has demonstrated rehabilitation, the Commission is to consider the following factors.

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

- (8) Any evidence of rehabilitation, including good conduct in prison or in 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 registrant under their supervision.

In applying the above factors to the respondent's case, I note first that her offense, although it involved no harm to persons, was the serious one of receipt of stolen property consisting of dangerous firearms. However, the circumstances of the offense show that the respondent, who was 21 at the time of this 1982 crime, was unwittingly involved in the offense by her brother, who did not disclose the real purpose of his activity to her. Although she did have suspicions which she apparently failed to voice to her brother, it is apparent that she was just along for the ride. This was her first offense and it was an isolated incident conceived and carried out by her brother. The facts also reflect evidence of rehabilitation in the form of good conduct in jail resulting in her early release, as well as the recommendation of probation and a positive work record at Caesar's and Showboat. Although she did have a problem with probation resulting in violation proceedings, this may reasonably be attributed to problems in caring for her young son, and, in any event, she successfully completed probation.

Having reviewed all the required statutory factors, I **CONCLUDE** that respondent has affirmatively demonstrated her rehabilitation. I further note that I find her to be precisely the sort of person whom the rehabilitation provisions were designed to benefit.

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the complaint seeking to revoke 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 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 20, 1987
DATE

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

July 20, 1987
DATE

Receipt Acknowledged:

Adrian Zayas
CASINO CONTROL COMMISSION

JUL 23 1987
DATE

Mailed to Parties:

Ronald L. Parker, S.
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Doris M. Rivera

EXHIBITS

- P-1 Certified Indictment
- P-2 Judgments of Conviction
- P-3 Request for Violation of Probation Proceedings
- P-4 Suspended Judgment
- P-5 Investigative Reporting and Arrest Record

- R-1 Letter of November 1986 from Deborah Bertolini, Senior Probation Officer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET 87-EA-122
APPLICATION NO. 63723-21
OAL DOCKET NO. CCC 958-87
ORDER NO. 87-32-5

APPLICATION OF FANNIE MAE ROBINSON:

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 recommending that the Casino Control Commission (Commission) deny the application of Fannie Mae Robinson for a casino employee license; and the applicant having orally moved to withdraw her application for licensure pursuant to N.J.A.C. 19:41-8.6(c) and for permission to register as a casino hotel employee; and the Division of Gaming Enforcement having consented to the withdrawal; and the Commission having considered the entire record of these proceedings at its public meeting of August 19, 1987,

IT IS on this 11th day of September 1987, ORDERED that the initial decision is rejected in view of the consensual withdrawal of the casino employee license application of Fannie Mae Robinson; and

IT IS FURTHER ORDERED that the applicant's requests for withdrawal of her casino employee license application and

ORDER NO. 87-32-5

permission to register as a casino hotel employee are granted; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for a casino employee license for one year from the date of the Commission's determination.

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 958-87

AGENCY DKT. NO. 87-EA-122

FANNIE MAE ROBINSON,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Fannie Mae Robinson, pro se

**Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: June 30, 1987

Decided: July 15, 1987

BEFORE JEFF S. MASIN, ALJ:

Fannie Mae Robinson applied to the Casino Control Commission ("Commission") for licensure as a casino employee with a position designation as security employee. On December 15, 1986, the Division of Gaming Enforcement ("Division") objected to Ms. Robinson's licensure in a letter to the Chairman of the Commission. Ms. Robinson 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 was held before Stephen W. Thompson, ALJ, on April 13, 1987 and a prehearing order was issued on April 14. A hearing was held before Administrative Law Judge Jeff S. Masin on June 30, 1987 at the Bridgeton City Hall. The record closed on that date.

ISSUES

The prehearing order established the issues for consideration at the hearing. The Division contends that Ms. Robinson committed a statutory disqualifying offense, which would disqualify her from licensure, N.J.S.A. 5:12-86c. Specifically, the Division alleges that Robinson committed an aggravated assault, a violation of N.J.S.A. 2C:12-1b(3). The Division also argues that licensure of the petitioner would be inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-86c(4), and queries whether the petitioner has the requisite good character, honesty and integrity for casino employee licensure required by N.J.S.A. 5:12-89b(2), as incorporated within Section 90b. As a final issue, in light of the allegation that the respondent has committed a statutory disqualifying offense, the prehearing order includes the question of whether Ms. Robinson has rehabilitated herself from the adverse affects of such incident, as permitted by Section 90h of the Act.

EVIDENCE

Testimony and documents introduced at the hearing established that Ms. Robinson's most significant brush with the law occurred in 1969 when she was involved in an incident which resulted in the death of Roy Junior Hall. Robinson was indicted for first degree murder by the Cumberland County Grand Jury in 1969 and on March 24, 1970 she retracted her plea and entered a plea of non vult to the indictment. On April 10, 1970, she was sentenced by Honorable Harry Adler to a term of six to seven years at the New Jersey Reformatory for Woman at Clinton.

According to the testimony of Ms. Robinson, in the summer of 1969 she was working on a farm in Rosenhayn. She met Mr. Hall at a bar. She was there with several woman and men. Hall became involved in conversation with them and a girl friend invited Hall to come into their car. At about 11 or 12 a.m. they returned to Robinson's home. Mr. Hall and the girl friend apparently entered a bedroom for the purpose of a sexual encounter. According to Robinson, Hall fell onto a bed in which children were sleeping. An argument began and Hall started hitting the woman. All of the participants had been drinking. The woman began hitting back and some men, including Robinson's brothers, who had followed them back to the home, became embroiled in the melee. Sometime

later, most of the participants traveled by automobile to a bean field. Hall was with them. According to Robinson, they were going to drop Hall off. Two cars proceeded to the field with approximately nine people, including Hall. They drove approximately a mile to an open area where there were no houses and Hall was let out. The others also got out of their cars and some name-calling began. Eventually everyone started hitting Hall. Robinson denied that anyone made any request or demand to Hall for money, although the police eventually told her that someone tried to get his money. Some of the men began to hit Hall with a belt and she joined in with a belt that she obtained from one of the men. Hall was eventually knocked unconscious with a car jack by one of the male participants. He was left in the field. Robinson thought at the time that he was unconscious. She and the others panicked and went home. Approximately two days later, her girl friend called the police, who had by that time already found the body. Robinson was arrested about two weeks later and gave a statement about what had occurred. Ultimately she entered the non vult plea and was sentenced, serving time at Clinton until approximately May 1972.

On cross-examination concerning this incident, Robinson denied any knowledge of any attempt to rob Hall and specifically denied that she had ever told the police that one Willie Highsmith had said to Hall "we are going to rob you."¹

¹ The deputy attorney general offered in evidence 75 pages of police investigation reports concerning the Hall murder. These were offered after Ms. Robinson had testified, admitting her involvement, specifying that she had struck Hall in the field, and admitting her conviction. The offer of evidence was unaccompanied by an specification of what portions of the 75 pages of highly detailed investigative data the Division was offering as proof of circumstances of events which might establish that the murder was possibly of such a heinous nature as to, in and of itself, preclude Ms. Robinson's licensure, presumably under the inimical clause. When queried, the DAG did not suggest that the reports would add anything of any significant additional value to that which had already been learned from Ms. Robinson's testimony and her cross-examination. The police reports apparently contained a good deal of investigative speculation, hearsay, and possibly co-defendant's statements. Such material, full of hearsay and speculation, carries with it a great danger of filling the record with highly prejudicial material especially in an incident of this age, where neither side offers other witnesses available in court for examination and cross-examination. While this material might well be admissible if there were specific circumstances presented indicating that the applicant had either not been prosecuted, or convicted, or where there were specific representations of circumstances which would add to her own admissions and demonstrate a particularly heinous event, in the absence of such representations, I **CONCLUDE** that the admission of this material carries a sufficient potential for prejudice such as to outweigh the possible probative value of the documents, N.J.A.C. 1:1-15.1(c)2. It was therefore not admitted as evidence.

A second incident of an assaultive nature involving Ms. Robinson occurred in August of 1973 when she was at her twin sister's house. There was a party at which an argument ensued between the sisters. When the sister requested Robinson to leave the house and she would not do so, the sister called the police. Robinson's sister signed an assault complaint and ultimately Robinson pled guilty to a simple assault.

The third incident involving Robinson, which is the matter which the Division contends is a disqualifying offense, occurred in Fairfield Township in July 14, 1986. According to Robinson, by that time she had stopped frequenting bars or drinking. However, on the date in question she took someone to a bar so that that person could obtain beer. They went inside and one Anne Mae Burton, who was inside the bar, began "nasty talk" toward Robinson. As they were leaving, Burton stopped Robinson and struck her in the face. Robinson retaliated, striking Burton with her hand which contained her car keys. She denied that she had a knife. She was charged with aggravated assault in a complaint signed by Robinson. This matter was ultimately downgraded to a simple assault and, after a trial in the Municipal Court, Ms. Robinson was found guilty and fined \$100. She specifically denied that she had any hammer or other such instrument in her hand.

The police reports concerning the 1986 incident consist of an investigation report and a supplementary investigation report prepared by Patrolman Vai of the Fairfield Township Police Department. The police did not investigate the incident at the time it occurred. Ms. Burton came to the police station on July 3 to sign a complaint. According to the report, Burton reported that Robinson cut her with a pair of scissors and hit her on the wrist with a hammer. Burton also allegedly told the officer that "another guy . . . was hit in the head with a hammer by the same person. . . ." Vai noted that he observed a small cut under the right eye of the victim.

The supplementary investigation report reflects Vai's interview with Ms. Robinson when she came to court on the summons that had been mailed to her. This occurred on July 14. According to Robinson's version of the incident, as reported by Vai, she claimed that she hit Burton in the face with her keys "and hit the guy with a small blackjack-type stick, that she brought papers for." Vai further notes that:

This writer noted the papers that was signed and certified the carrier to have such weapon authorized by the Cumberland County College course that was given to her for security guards, for the casino.

Finally, the officer reports that Ms. Robinson told him that Burton had "jumped her at the bar."

Ms. Robinson was questioned concerning the alleged possession and use of a hammer or "blackjack-type stick" during the July 1986 incident. At the hearing, she specifically and categorically denied that she had any such weapon of any kind in her possession or that she made any use of such during the July incident and specifically denied that she hit any man during that fracas. She claimed that she never told the police officer such a story and she also denied that she ever made such statements to Investigator Charles Hale, an agent from the Division of Gaming Enforcement who interviewed her by telephone in connection with her casino employee application. Investigator Hale testified that he spoke to Robinson and discussed the July 1986 arrest. The charge was then still pending. According to Hale, Ms. Robinson described the incident to him, saying that Burton struck first and then reporting that she, Robinson, hit a male with a "small blackjack-type stick."

Ms. Robinson explained that she had attended a Cumberland County College course for training as a security officer in late 1985 or early 1986. As part of the course, a police officer showed the students how to use a blackjack. However, the students were not issued blackjacks, she never had one in her possession, and was given no certificate indicating that she was authorized to carry any such device. She did obtain a certificate for successful completion of the course, but that certificate did not purport to authorize her to carry or use any particular weapon. She did show this certificate to Patrolman Vai during her interview with him on July 14. According to Robinson, the officer "got the story mixed up." Officer Vai was not called as a witness at the hearing.

Ms. Robinson is the mother of four children, 19, 17, 13 and 10 years of age. She worked from 1976 to 1981 as a nurse's aide and also for Seabrook and Son's. After leaving Clinton in 1972, she was on parole through 1974 and was never charged with any parole violations, successfully completing her parole in 1974. According to the petitioner, she no longer drinks or goes to bars (with the exception of the circumstances involved in the 1986 incident). She avoids such situations because she felt that in the past they have "harmed her." She has not had anything to drink in three years.

Donna Hamlet Pretlow, a training counselor for the job training partnership in Cumberland County for the past ten years, testified that she is involved in interviewing and selecting participants for a work training program run by the county. As a result of the completion of the course which Ms. Robinson took, the participants are issued a certificate which reflects the successful completion of 350 hours of training as a security law enforcement officer. Included in this course is a one-time demonstration of a night stick by a Vineland Police Officer. The students are not issued night sticks or any certification which permits them to carry the same. According to Pretlow, at the time that Robinson applied for admission to the course she revealed her prior murder conviction to Pretlow, who advised her that she, Pretlow, felt that given the conviction Robinson had perhaps a fifty-fifty chance of getting a casino employee license. Ms. Robinson felt that she needed to provide a role model for her children and said that she was willing to commit herself to the 350 hour course, despite the risk that she would not be licensed. She was very cooperative and never hostile and received a very good evaluation. According to Pretlow, the former state trooper who runs the training program, a Mr. Garrion, who is also a former official at Bally's Casino, advised Pretlow that he would be happy to refer the petitioner for work in the industry if she were licensed.

DISCUSSION

As noted in the statement of issues, the Division contends that Ms. Robinson's 1986 involvement in an assault in a bar in Fairfield Township constituted an aggravated assault, which is a disqualifying offense pursuant to Section 86c of the Act. Such an offense would constitute a disqualification from licensure, barring a showing of rehabilitation. A review of the incident, as described by Robinson, indicates that she indeed strike Ms. Burton who, according to Robinson, struck first. At the time Robinson was holding her car keys and these did come in contact with Burton's face. When the matter was ultimately tried in the Municipal Court, Robinson was convicted of a simple assault. Interestingly enough, although Ms. Burton contended that Robinson had struck some male with a hammer, and although Patrolman Vai claims in his police report that Robinson admitted striking a male with a "small blackjack-type stick," apparently no one ever signed a complaint against her for such an assault and she was not charged with any such action. Robinson vehemently denies hitting any male or having any hammer or blackjack-type instrument in her possession at the time of the incident. The only evidence of such consists of the hearsay statements in the police report by an officer who

did not investigate the matter, but only took statements from the two ladies and who reports the same in his reports, and the purported admission by Robinson, first to Patrolman Vai and then to Investigator Hale.

With respect to the question of whether Robinson did in fact strike a male with some type of weapon, I **FIND** that the evidence in support of such contention is sketchy and unreliable. With respect to the police report, Vai reports the hearsay statement of Ms. Burton and then the hearsay statement of Ms. Robinson and claims to have seen a certificate which according to his report "certified the carrier to have such weapon. . . ." According to both Robinson and Pretlow, who is a neutral observer whose testimony I found to be exceedingly credible, no such certificate was ever issued and the only certificate which Robinson could have shown the officer made no such representation as to any permission granted to Robinson to carry or use such a weapon. This leads one to seriously question whether Patrolman Vai read the certificate properly. Since he was not called as a witness at the hearing, he could not be questioned about what he saw and the alleged certificate was never produced. Given these circumstances, I am reluctant to credit Vai's claim with respect to the nature of the certificate which he observed. Further, given Ms. Robinson's adamant denial, and the fact that Vai did not testify and we have only his hearsay statement to rely on, I **FIND** that the hearsay version of the alleged statement made by Robinson admitting the use of such a weapon is of doubtful credibility.

With respect to Investigator's Hale's potentially damaging testimony that Robinson admitted hitting a male with a "small blackjack-type stick", I am again forced to conclude that this statement is of dubious credibility. Investigator Hale testified that he asked Robinson what had occurred and she purportedly told him about Burton hitting her, she hitting Burton back and she hitting a male with a "small blackjack-type stick." This latter phrase "small blackjack-type stick," allegedly used by Ms. Robinson in her conversation with Hale, is the exact same phraseology used by Vai in his police report. Somehow, the likelihood that Robinson referred to the alleged weapon as a "small blackjack-type stick" even once, much less twice, in the exact same language, seems unlikely to this hearer. Although it is not impossible that she used this phrasing when referring to the weapon, something about the language does not seem to ring true for this petitioner and, even if she had used the phrasing for Officer Vai, it seems quite unlikely that she would have repeated the exact same words, "small blackjack-type stick," to Hale. It seems far more likely that Hale read Vai's report and somehow the language used by Vai ended up in Hale's statement of what Robinson purportedly said. Having carefully considered the

credibility of Ms. Robinson, Investigator Hale, and the hearsay report of Officer Vai, I **FIND** that Ms. Robinson testified truthfully and completely that she did not have any such hammer or blackjack-type instrument in her possession and further that she never told either the officer or Investigator Hale such a story. While it is difficult to ascribe reasons for Vai's having placed this statement in his report, given the failure of the Division to produce him as a witness and the necessity of relying on his police report containing included hearsay, I do not **FIND** the report to be worthy of belief.

Despite the above, when the entire matter is viewed in toto, I am compelled to **FIND** that Ms. Robinson cannot be licensed. While the 1969 murder, and the far less serious "domestic" dispute of 1973, are in some respects ancient history, when viewed in the context of the 1986 incident one must look with some skepticism on Ms. Robinson's claim that she has rehabilitated herself. Were it not for the 1986 incident, I would have no hesitation in ordering Ms. Robinson licensed. While clearly she was involved in a heinous offense, because of its age it does not constitute a statutory disqualifying offense and since it was committed at a time when Robinson was only 19 years old and under circumstances which indicate that she had become part of a crowd rather than the sole perpetrator of the murder, I do not **FIND** that the murder conviction and the circumstances surrounding the same would constitute a basis for a finding that her licensure would be inimical. However, with respect to the 1986 incident, when coupled with the past history, I do **FIND** that one who has been involved in a series of assaultive matters over the years, the most recent of which occurred just one year ago, does not stand up as the type of person whose licensure would be in the best interests of the industry or in conformity with the policies of the Act, particularly for so sensitive a position as that of security officer.

With respect to the question of whether the 1986 incident specifically constituted a disqualifying offense, the circumstances described do not convince me that Robinson did engage in an aggravated assault. In pertinent part, N.J.S.A. 2C:12-1b defines aggravated assault as:

- b. Aggravated assault. 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; or

- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or

While the evidence on the incident is sketchy and Burton did not testify to explain her version of what occurred, it appears from the credible evidence that Robinson struck back in retaliation for having been hit by Burton and that at the time that she did so she had in her hand her car keys which caused a cut on Burton's face. I do not credit Burton's version that Robinson had a knife. Given the sketchy details, the apparent defensive nature of the retaliatory blow, and the apparent minimal injury involved, the necessary factors involved in an aggravated assault would appear to be missing. This conclusion may well mirror the reasons which resulted in the downgrading of the matter to a simple assault.

For the reasons expressed above, I **CONCLUDE** that Ms. Robinson did not commit a statutory disqualifying offense. However, because of her history of assaultive behavior, particularly the recent nature of the last incident of that series, coupled as it is with the involvement in a heinous offense of many years ago, I **CONCLUDE** that Ms. Robinson's licensure as casino employee for a position such as security officer would be inimical to the policies of the Casino Control Act and therefore I **CONCLUDE** that she must be denied licensure.

While I have concluded that no statutory disqualifying offense occurred, in order to clarify the matter, I **CONCLUDE** that Ms. Robinson has not established that she has rehabilitated herself from any adverse inferences against her character that might arise from her recent episode of assaultive behavior. Were that offense to be considered an aggravated assault and thus a disqualifying offense, in light of the history of this petitioner, the fact that only a short time has passed since the incident detracts from any proof of Robinson's alleged rehabilitation. In some sense it may be unfortunate that Ms. Robinson's involvement in the 1969 murder may give anyone substantial pause before they would consider her to be free and clear of negative traits which would militate against her licensure; however, the facts being what they are where one with such a history again becomes embroiled in an assaultive incident, those charged with making a licensing decision must be quite cautious. Given the circumstances, even the relatively minor nature of this incident, (assuming it were considered an aggravated assault) would

necessitate that such caution be exercised and that a good deal of time pass before a license were granted (assuming all other aspects of the rehabilitative process were established).

Finally, with respect to the good character, honesty and integrity issue, the petitioner is required to prove by clear and convincing evidence that she has such character traits. The recent assaultive incident, occurring only one year ago, raises sufficient questions [particularly in light of Ms. Robinson's previous assaultive actions] which necessitate a finding that she has failed to establish by clear and convincing evidence the necessary good character, honesty and integrity required by Sections 89b(2), as incorporated within 90b.

In summary, while Ms. Robinson might well have received a license were it not for the 1986 incident, that unfortunate turn of events has cast a shadow over her situation such that licensure at this time is inappropriate. For these reasons, the application for licensure 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.

July 5 1987
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 16, 1987
DATE

L. L. Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1987
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of respondent:

- R-1 Judgment of Conviction, in State of New Jersey v. Fannie Mae Jenkins A/K/A Robinson, with attached Indictment
- R-2 Not in evidence - 75 pages of police reports, regarding the 1969 murder
- R-3 Fairfield Township Municipal Court Complaint, W419873
- R-4 Investigation Report and Supplementary Investigation Report of Patrolman D. Vai, dated July 8 and July 15, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-162
OAL DOCKET NO. CCC 7640-86
LICENSE NO. 52603-21
REGISTRATION NO. 39327-40
ORDER NO. 87-23-3

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
HARRY S. ROBINSON, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 17, 1987,

IT IS on this *9th* day of July 1987, ORDERED that the initial decision is modified as follows:

1. The Commission finds that on November 18, 1985, the respondent possessed marijuana with intent to distribute which warrants his disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g);
2. The Commission finds that the respondent has not demonstrated his rehabilitation by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h) and 91(d). Other than his

termination from probation, all of the other evidence of rehabilitation predates his arrest at the Sands on August 30, 1986, for possession of cocaine. Some of the evidence, such as the certificate of completion of dealers school (R2 and R3) even predates his arrest on November 18, 1985, for possession of marijuana and possession with intent to distribute;

3. The Commission finds that the respondent's arrest on August 30, 1986, at the Sands for possession of cocaine, coupled with his lack of rehabilitation indicates that he committed an inimical offense warranting his disqualification pursuant to N.J.S.A. 5:12-86(c)(4) and (g); and
4. The Commission finds that based upon all the evidence, including his lack of candor before the ALJ, the respondent does not possess the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Harry S. Robinson are revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other 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
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY

SENIOR ASSISTANT COUNSEL

1318



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7640-86

AGENCY DKT. NO. 87-162

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

Petitioner,

v.

**HARRY S. ROBINSON,
Respondent.**

William E. Mountford, Jr., Deputy Attorney General for petitioner, (W. Cary Edwards, Attorney General of New Jersey, attorney)

Harry S. Robinson, respondent pro se

Record Closed: April 7, 1987

Decided: May 13, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on October 23, 1986 seeking to revoke the respondent's casino employee license and registration based on his arrest for possession of cocaine in a casino while employed therein; and on duty, on August 30, 1986. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on February 4, 1987 in Atlantic City and testimony was taken but not completed. The matter was again heard on April 7, 1987. At the hearing there was an additional issue joined concerning the respondent's arrest on November 18, 1985 for a marijuana sale and

his subsequent plea to simple possession of marijuana. The basis of the continuance from February 24 to April 7, 1987 was the pro se respondent's need to consult an attorney concerning the Division's ability to call him as a witness and examine him about his alleged criminal activity on November 18, 1985, especially since the issue was not framed at the pretrial conference or during discovery.

THE DIVISION'S EVIDENCE

The Division produced the following documentary evidence:

P-1 An investigation report of a Detective Hipple dated November 18, 1985 which describes an undercover surveillance by Hipple and Detective Campbell on November 18, 1985 near the Florida Pub in Atlantic City. Hipple and Campbell observed a transaction between a "black male" wearing all black and "several males". The detectives approached and the "males were placed on the wall and a pat down was conducted. Det. Hipple found several small baggies of grn brn veg. in Mr. Robinsons rt frt pants pocket, approx four more baggies in rt frt jacket pocket and remainder in rtrear pocket. Total approx. wt. 40grms. Male was charged with Poss/Intent. Field test poss. for maraj."

Attached to the investigation report was an arrest report for Harry S. Robinson, a request for a laboratory analysis of the "12 small zip lock baggies" found on Robinson and a lab report confirming that the specimen submitted was marijuana weighing "33.87 grams." Finally, P-1 contained a copy of the warrant for Harry Robinson's arrest.

P-2 is the indictment found against Robinson for the above described event. It charges both possession of marijuana over 25 grams and possession of marijuana with intent to distribute the same. The attached judgment of conviction shows that Robinson pled to possession only, possession with intent was dismissed, he was fined \$200, placed on probation for one year, given 2 days in the Atlantic County jail with credit for 2 days served and charged \$25 for the Violent Crime Commission Board. Judge Newstadter in his Reasons For Sentence described the respondent as having a "clear prior record."

P-3 contained an Investigation Report of Detective Stall dated August 30, 1986 containing two pages which indicate that the respondent's wallet was found in the Sands Casino where he was employed as a change person. The wallet contained "(3) three

plastic envelopes containing suspected cocaine. Papers contained in the wallet indicated that ownership is held by Harry Steven Robinson CCC License 52603-21." The respondent was summoned to the office, identified the wallet as his and "denied any knowledge of the drugs and advised that they were not in his wallet when he lost it." Robinson was arrested on a summons and there was a Request for Examination of Evidence. The Casino Prosecution Section administratively dismissed the complaint on October 20, 1986 by sending a Dismissal Form to Judge Porrecca, then Criminal Assignment Judge for the vicinage.

P-4 is a lab report identifying the substance as cocaine; .56 grams.

RESPONDENT'S TESTIMONY

The respondent agreed with the facts contained in P-2. He initially refused to testify concerning P-1. He offered his own version of P-3 which did not essentially differ from the Division's report except that the respondent says that two forms of I.D. were missing from his wallet when it was returned to him.

The respondent said that he is still on probation and owes approximately \$20 of the fine imposed upon him. He further indicated he has no other arrests than these two. He is 22 years old now and was 21 when arrested on the marijuana charge. He is a free lance photographer and a graduate of Travel and Tour, a business school in Atlantic City. He completed a six month course in Tourism. He presently lives in Chesilhurst, New Jersey with his brother.

When pressed by the DAG concerning the alleged sale of marijuana, the respondent refused to answer without consulting an attorney. Leave was granted for him to do so.

On the return day of the hearing the respondent appeared without an attorney, although he claims he consulted with his "probation officer." He testified that on November 18, 1985 he was dressed all in black. He went up an alley to urinate against the wall, and while looking down, saw a single bag of what later appeared to be marijuana. He put the bag in his pocket and was immediately arrested by the police. He says he cannot explain why the police allege he had several bags of marijuana in different pockets. He does assert however, that the police helped themselves to at least one half the marijuana in his possession.

CREDIBILITY

The police report of November 18, 1985 is not clear. The respondent is only inferentially identified as the seller because he was charged as a seller. From the narrative he could as easily have been a buyer. His use of that old canard however, (that he only went up the alley et cetera), convinces me that he is not a truth teller, and I **CONCLUDE** that the respondent committed an act which is equivalent to the elements required to support a conviction for a statutory disqualifier pursuant to N.J.S.A. 5:12-86 i.e., N.J.S.A. 24:21-19 the sale of marijuana.

Because of the respondent's continuing lack of candor, I reject his assertion that the cocaine found in his wallet was not his.

P-3 in evidence leads me to conclude that it is more probable than not, that the cocaine found in respondent's wallet is his rather than a "plant." I therefore **FIND** that the respondent possessed cocaine on a casino floor while employed therein and on duty.

REHABILITATION

The Casino Control Act requires findings of fact in the following areas in order to consider rehabilitation:

1. The respondent seeks reemployment as a licensed changeperson in a casino and also possesses a registration for employment in a casino hotel.
2. The offense of November 18, 1985 was a street sale of small amounts of marijuana. The offense of August 30, 1986 was the possession of a small amount of cocaine in a casino by an employee on duty.
3. The circumstances under which the offenses occurred were dissimilar. The respondent was observed selling the marijuana by police officers. The cocaine possession was established by circumstantial evidence.
4. See 2 above.

5. The respondent was approximately 20 years old when the offenses occurred.
6. These are the respondent's only known drug arrests.
7. This pro se respondent did not address social conditions which may have contributed to the offense.
8. The respondent graduated from high school after his marijuana arrest and 2 months prior to his cocaine arrest. He previously graduated from Casino Schools, Inc. as a blackjack dealer. He is also a graduate of Associated Business Careers where he achieved an award as "most conscientious." He is a self taught, self employed photographer.

I **CONCLUDE** that the respondent is not rehabilitated. His lack of candor, the fact that he is still on probation, his failure to address in any way his apparent use of controlled dangerous substances, all lead me to this conclusion. These factors also convince me, and I **CONCLUDE** that the respondent lacks the requisite good character, honesty and integrity for casino licensure.

I **ORDER** that the respondent's casino employee license and casino hotel employee registration be **REVOKED**.

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

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

May 13 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

5/15/87
DATE

Edmund Feltch
CASINO CONTROL COMMISSION

Mailed to Parties:

May 18, 1987
DATE
bc

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the respondent:

Harry S. Robinson

EXHIBIT LIST

For the Petitioner:

- P-1 Atlantic City Police Investigation Report
- P-2 Indictment
- P-3 New Jersey State Police Investigation Report
- P-4 Lab Report

For the Respondent:

- R-1 Certificate from Casino Schools, Inc.
- R-2 Resume
- R-3 Document, dated May 16, 1985, from Casino Schools, Inc. for successful completion of 160 hour course
- R-4 Certificate Award
- R-5 Diploma

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-266
OAL DOCKET NO. CCC 1526-87
LICENSE NO. 04068-21
ORDER NO. 87-42-7

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
JOSE D. SANCHEZ, :
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 4, 1987,

IT IS on this 7th day of November 1987, ORDERED that the initial decision is adopted;

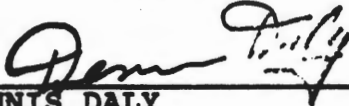
IT IS FURTHER ORDERED that the casino employee license held by Jose D. Sanchez is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration,

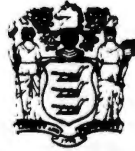
ORDER NO. 87-42-7

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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1526-87

AGENCY DKT. NO. 87-266

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

Petitioner,

v.

**JOSE D. SANCHEZ,
Respondent.**

**Ralph Fusco, Deputy Attorney General for petitioner, (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Jose D. Sanchez, respondent, pro se**

Record Closed: September 25, 1987

Decided: October 2, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 15, 1987 seeking revocation of the respondent's casino employee gaming license on the grounds that he was a convicted drug dealer. 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. There was a prehearing conference in

Atlantic City on May 26, 1987 and a plenary hearing in Atlantic City on September 25, 1987, at which time the record closed.

FACTUAL DISCUSSION

The Division called the respondent as its only witness. The respondent admitted that he sold cocaine to an undercover agent on March 12, 1985 and again on March 13, 1985 and again on March 20, 1985. He admitted that he pled guilty to two counts of distribution of a controlled dangerous substance (counts three and seven of indictment 85-04-05407) and that he was sentenced to three months in the Atlantic County Jail. He claimed that he never knew until a month ago that he was also ordered to pay "restitution"; he satisfied that aspect of the penalty on August 21, 1987.

In mitigation of his crime the respondent testified that these sales were as a "favor" to a woman named Gail. He said he had stopped being a drug dealer long before this. He says the woman called him and begged him to obtain cocaine for him. He reluctantly provided her with some and thereafter continued to supply her "friend" (the agent) on three additional occasions.

He claims that he would receive a call from Gail, reluctantly consent to obtain drugs for her; take a taxi to his source, obtain the drugs, proceed to a 7-11 store where he would meet the undercover agent, sell him the drugs and then return to his source and give he, she or it the money. He says he made no profit on the sale. Later we learned that his only connection to Gail from 4 or 5 years ago was that she was a customer of his when he was a marijuana seller. In addition, he claimed that the drugs he sold were "one sixteen" a phrase he defined for us as meaning "short weight."

The respondent claims that his jail sentence cured him of ever selling drugs again. The experience caused him to lose both financially and socially. His mother did not visit him in jail. His father came every Saturday and cried.

Finally, the respondent tells us that he did not think if necessary to provide letters of recommendation from persons who supervised him or to provide any other indicia of rehabilitation, although he was familiar with the rehabilitation

statute as a result of the prehearing conference. He insists "It is up to me to get my life straight, no one else!"

The respondent was well dressed and his demeanor was good. He appeared to be relaxed and confident. His words however were incriminating, inconsistent and obviously not thought out ahead of time.

I do not believe his explanations. I am satisfied that he was an active drug dealer at the time he was arrested, and that he has not been rehabilitated.

I **FIND** that the respondent was convicted on December 6, 1985 by his plea of guilty to two counts of distribution of a controlled dangerous substance contrary to N.J.S.A. 24:21-19a(1).

I **CONCLUDE** that the respondent is disqualified from casino employee licensure as a result of his conviction pursuant to N.J.S.A. 5:12-86c.

I **FIND** that he was not truthful under oath at the hearing of this matter.

I **CONCLUDE** that he does not have the good character, honesty and integrity for casino employee licensure as required by N.J.S.A. 5:12-89b2 and 90b.

The respondent elected to disregard the statutory scheme for proving rehabilitation, i.e., the eight points listed at N.J.S.A. 5:12-90h. The testimony he offered alternatively, I disbelieved.

I **CONCLUDE** that the respondent has failed to affirmatively show his rehabilitation pursuant to N.J.S.A. 5:12-90h.

I **ORDER** that respondent's casino employee gaming license 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.

October 2 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

October 6, 1987
DATE

Receipt Acknowledged:

Nelores Zayas
CASINO CONTROL COMMISSION

OCT 7 1987
DATE

Mailed to Parties:

Ronald L. Parker / x.s.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Jose D. Sanchez

For the Respondent:

Jose D. Sanchez

EXHIBITS

For the Petitioner:

C-1 Probation Officer Receipt

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-209
APPLICATION NO. 70163-22
REGISTRATION NO. 72385-40
OAL DOCKET NO. CCC 3260-87
ORDER NO. 87-35-11

APPLICATION OF MAIX SANDERS, JR.

FOR A CASINO EMPLOYEE LICENSE

ORDER

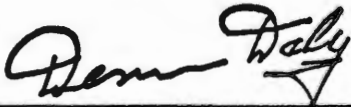
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

IT IS on this 21st day of October 1987, 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 made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

AUG 18 1987

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 3260-87

AGENCY DKT. NO. 87-EA-209

MAIX SANDERS, JR.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Maix Sanders, Jr., petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

Record Closed: August 4, 1987

Decided: August 10, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns the application by the petitioner, Maix Sanders, Jr., for a casino employee license (DGE 70163-22) in maintenance and cleaning. The Division of Gaming Enforcement (Division) objects to Mr. Sanders' licensure based upon petitioner's alleged conviction for receiving stolen property in violation of N.J.S.A. 2C:20-7. In addition, the Division contends that petitioner lacks the requisite good character, honesty and integrity for licensure, pursuant to N.J.S.A. 5:12-89b(2), as

incorporated within section 90b of the Casino Control Act (Act). Mr. Sanders asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) objecting to petitioner's application for licensure on April 6, 1987. The petitioner requested a hearing on May 1, 1987. On May 8, 1987, the Commission transmitted the within 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 July 16, 1987, and the matter was scheduled for a hearing. The matter was heard on August 4, 1987, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether petitioner 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:20-7, receiving stolen property.
- 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.

FINDINGS OF FACT

The facts in this matter are undisputed. Mr. Sanders' criminal behavior prior to December 1982, is both documented and acknowledged.

Mr. Sanders was arrested and charged by the New Jersey State Police on December 12, 1982, with unlawful possession of a weapon (shotgun) in violation of N.J.S.A. 2C:39-5. Mr. Sanders pled guilty to the offense. Mr. Sanders was sentenced

to two years probation, fined and ordered to pay \$50 to the Violent Crimes Compensation Board.

On October 12, 1982, the petitioner was arrested and charged with four counts of receiving stolen property in violation of N.J.S.A. 2C:20-7, and three counts of possessing a motor vehicle which had its vehicle identification number removed, obliterated or misrepresented, in violation of N.J.S.A. 39:10-7 and N.J.S.A. 39:10-24. On February 4, 1983, Mr. Sanders entered a plea of guilty to each count of the indictments. Petitioner was sentenced on May 9, 1983, to six months in the Gloucester County Jail with work-release participation, five years probation and a fine of \$100 for the Violent Crimes Compensation Board (R-2).

Mr. Sanders has nine other arrests dating back to 1963, and several convictions for theft and nonpayment of support.

By way of mitigation, Mr. Sanders states that he has been successfully employed by the Showboat Hotel, Casino and Bowling Center since March 2, 1987 (P-1). Since his marriage to Betty Sanders in 1981, they have adopted a son, Brian, who is seven years old. According to Mr. Sanders, his goal is to provide a stable, loving atmosphere for his family. He acknowledges his less than savory past; however, it is Mr. Sanders' testimony that he did not knowingly participate in the receipt of stolen automobiles. He stated that people would bring automobiles to him to be used for parts and would promise to deliver the titles. Unfortunately, the titles were never forthcoming and the automobiles were, in fact, stolen.

In 1986, Mr. Sanders participated in a job training program offered by the Cumberland County Board of Freeholders. Mr. Sanders received a certificate of achievement on December 12, 1986 (P-2). Prior to employment with the Showboat Hotel, Casino and Bowling Center, Mr. Sanders was employed as a truck driver. Mr. Sanders works part-time for Mansfield Builders as a truck driver on his days off from Showboat.

Mr. Sanders appears to have led a law-abiding existence since December 1982.

The above is uncontroverted, documented, and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on March 3, 1983 to receiving stolen property, in violation of N.J.S.A. 2C:20-7. Based upon the Judgment of Conviction and petitioner's testimony, I CONCLUDE that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Sanders is an applicant for a casino employee license in maintenance and cleaning. As such, he would have no responsibilities for actual gaming activities and would have limited contact with patrons of the casino.

Second, the petitioner was convicted of the following disqualifying offense:

On March 3, 1983, a violation of N.J.S.A. 2C:20-7, receiving stolen property.

Under section 86c(1) of the Act, receiving stolen property is a statutory disqualifier.

Third, the petitioner's misconduct has been mitigated somewhat by his explanation of his 1983 conviction.

Fourth, the petitioner committed his last offense in 1982, approximately five years ago.

Fifth, the petitioner committed offenses until he was 44 years of age. It is unlikely that his misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved the commission of various offenses over a period of 19 years.

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

Eighth, Mr. Sanders is successfully employed by the Showboat Hotel, Casino and Bowling Center. He is highly regarded by his immediate supervisor, Jack Mason (P-1). Mr. Sanders' completion of an advanced specialized training program in 1986 demonstrates a substantial commitment towards self-improvement. His obvious concern and affection for his family and his willingness to accept responsibility for their well-being persuade me that Mr. Sanders has made substantial efforts toward rehabilitation. It is also significant that petitioner's last criminal act occurred almost five years ago, a marked improvement over his egregious criminal past.

For the above reasons, I am persuaded that the petitioner has met his statutory burden to establish his rehabilitation by clear and convincing evidence. It is apparent that petitioner has a commitment to a total abstinence from misconduct. Furthermore, the petitioner's responsibility for his family and adopted son are positive factors toward rehabilitation.

I **CONCLUDE** from the totality of the circumstances that the petitioner has established, by clear and convincing evidence, his rehabilitation pursuant to section 90h of the Act.

(C) N.J.S.A. 5:12-89b(2) as
incorporated within Section 90b

Under section 89b(2) as incorporated within section 90b, Mr. Sanders is required to demonstrate by clear and convincing evidence his good character, honesty and integrity. In the Matter of the Application of Reports International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that the individual's actual character and attributes of good character, honesty and integrity are the key.

Although Mr. Sanders' proofs were far from overwhelming, it appears that Mr. Sanders is sincere in his commitment to an abstinence from further criminal conduct.

I **CONCLUDE** that Maix Sanders 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.

ORDER OF DISPOSITION

It is **ORDERED** that the application of Maix Sanders, Jr., for a casino employee license (DGE 70163-22) in maintenance and cleaning 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

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter from Jack Mason, Public Area Manager, Showboat
Hotel, Casino and Bowling Center**
- P-2 Certificate of Achievement, dated December 12, 1986**

For the Respondent:

- R-1 Superior Court of New Jersey, Law Division (Criminal),
Gloucester County , September 1982 Term , Indictment No. I-0022-1-83**
- R-2 Certified copy of Judgment of Conviction dated March 3, 1983**

WITNESS LIST

For the Petitioner:

**Betty Sanders
Maix Sanders, Jr.**

For the Respondent:

Maix Sanders, Jr.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-111
OAL DOCKET NO. CCC 670-87
APPLICATION NO. 63718-21
ORDER NO. 87-35-8

APPLICATION OF WILLIAM D. :
SAUNDERS 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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

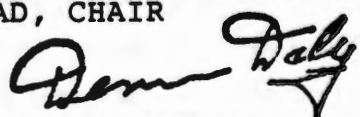
IT IS on this 28th day of September 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The Commission finds that the respondent demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h) from the disqualifying offenses of theft by unlawful taking (third degree) in violation of N.J.S.A. 2C:20-3 and receiving stolen property in violation of N.J.S.A. 2C:20-7 and the the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the application of William D. Saunders, Jr. for a casino employee license is granted.

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 670-87

AGENCY DKT. NO. 87-EA-111

WILLIAM D. SAUNDERS, JR.,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

William D. Saunders, Jr., petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: June 2, 1987

Decided: July 16, 1987

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (DGE) objects to the issuance of a casino employee license to William D. Saunders, Jr., petitioner, because of his arrest and indictment for larceny and receiving stolen property, as well as misleading statements allegedly made by him to Division investigators concerning the offense. Petitioner Saunders was admitted to the pretrial intervention (PTI) program after indictment. The issues are (1) whether DGE has proven that petitioner Saunders has committed acts constituting a statutory disqualifier under N.J.S.A. 5:12-86c, notwithstanding that he was not prosecuted; and (2) whether Saunders has established by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89, or his rehabilitation pursuant to N.J.S.A. 5:12-90h. For the reasons set forth below, I agree with DGE that no casino employee license should be issued in this instance.

The procedural history is as follows: DGE's letter of objection was filed with the Casino Control Commission on November 17, 1986, and the matter was transferred as a contested case to the Office of Administrative Law on February 3, 1987. A prehearing conference was held on April 6, 1987, and the hearing was held on June 2 in Egg Harbor City, at the conclusion of which the record was closed.

The facts reflected in that record are not in dispute. Saunders stipulated that he was arrested on June 15, 1985, and charged with theft and receipt of stolen property under N.J.S.A. 2C:20-3, 7. He acknowledged that the stolen property consisted of fiberglass ladders taken from the Cable Entertainment Company in Vineland, which were worth over \$1,000. Following indictment on the charges in Cumberland County, Saunders was admitted to the pretrial intervention program under N.J.S.A. 2C:43-12 on November 21, 1985, and the charges against him were dismissed on June 6, 1986, following his successful completion of the program.

Saunders admitted at the hearing that he was a willing participant in the theft and receipt of stolen ladders, but maintained that the crime was concocted by David Carroll, an acquaintance of his. He also acknowledged that he had deliberately and falsely stated to the arresting officers that he was not involved in the crime and was just riding in a friend's car at the time of the arrest. No charges resulted from these false statements.

Saunders duly disclosed his arrest (which was his first) on his Personal History Disclosure Form (PHDF), but during the course of his personal interview with a DGE investigator on June 16, 1986, he repeated his false statement that he had merely been riding in a friend's car when stopped by the police and that he was unaware that the ladders were stolen. As indicated, there is no dispute that Saunders not only knew that the ladders were stolen but had, in fact, helped in the theft. He explained his action in lying to the DGE investigator about his arrest by stating that he was embarrassed by the incident and was merely repeating a story he had told a number of people because he had difficulties "owning up to" and "facing up to" to the charges (T-25). Saunders made no effort to advise DGE that he had deliberately provided false information about his arrest.

Petitioner, who is currently unemployed and seeks licensure as a casino employee in a security capacity, testified that he had previously worked as a security guard at the

Cumberland County Mall between October 1985 and May 1986, but had been dismissed after having a dispute with the security chief as to the number of personnel needed to do the job. Recently, he had worked as a truck driver in Vineland, New Jersey, and as a boxer. His last employment was in Ventnor as a maintenance man at a Shop Rite, which he left to seek better employment.

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

DGE argues that Saunders committed an offense constituting a statutory disqualifier, notwithstanding his completion of PTI, and further, that he has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity, or his rehabilitation. Petitioner characterizes his arrest and false statements to the arresting officers and to a DGE investigator as "little errors" which should not be held against him as he is now "owning up to" his deeds and is trying to get on with his life in a constructive and productive fashion. While I am sympathetic to petitioner's desire to better his life by obtaining a casino license and employment in the security area, I am also persuaded that he should not be allowed to do so because of the nature of the offense and his failure to clearly and convincingly demonstrate the requisite good character, honesty and integrity, or rehabilitation. I first note and **CONCLUDE** that the offenses for which he was arrested are disqualifying under N.J.S.A. 5:12-86c(1), notwithstanding the fact that he was allowed to enter PTI and had those charges dismissed. See, N.J.S.A. 5:12-86g. I am further convinced and **FURTHER CONCLUDE** that the petitioner has failed to show by clear and convincing evidence his reputation for good character, honesty and integrity required for licensing under N.J.S.A. 5:12-89, 90. Both the nature of the offense and the fact that petitioner lied to the arresting officers and DGE investigators concerning it compel me to conclude that he has failed to show the required good character, honesty and integrity. I note that this was his first arrest and further that he was not apparently the instigator of the crime. Nonetheless, he has offered no convincing explanation for twice repeating his cock-and-bull story to the authorities.

I **FURTHER CONCLUDE** that petitioner has failed to affirmatively demonstrative his rehabilitation. I note first that he seeks a position in the sensitive area of casino security, notwithstanding his arrest for larceny and receipt of stolen property in 1985, when he was 21 years of age. Although he has no other criminal record and the offense was therefore an isolated incident, he was an active participant in the crimes, and

twice denied being so when questioned by the authorities. He also cites no special social conditions which may have contributed to the offense. He has successfully completed the pretrial intervention program and maintains that he has been on good conduct in the community. Notwithstanding that, the nature of the offense and his attempt to conceal it, as well as the duties of the position applied for, compel me to conclude that he has failed to demonstrate his rehabilitation.

On the basis of the above findings of fact and conclusions of law, I **ORDER** that the petitioner'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 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.

7/16/87
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7-17-87
DATE

Alfred J. Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 21 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESSES

William D. Saunders, Jr.

Dwaine Keith Brooks, DGE Investigator

EXHIBITS

- P-1 Indictment of William D. Saunders, Cumberland County, Law Division (Criminal)
- P-2 Vineland Police Arrest Report, William D. Saunders, June 15, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-80
APPLICATION NO. 67205-22
REGISTRATION NO. 66122-40
OAL DOCKET NO. CCC 8917-86
ORDER NO. 87-35-10

APPLICATION OF SCOTT C. SHUSTER
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 (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 September 16, 1987,

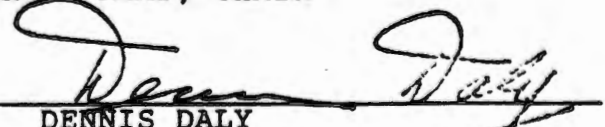
IT IS on this 10th day of November, ORDERED that the initial decision is modified as follows:

The Commission finds that the applicant attended an advanced placement program run by Cornell University during his junior year in high school for eight weeks rather than one week as stated by the administrative law judge.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision as modified which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY

SENIOR ASSISTANT COUNSEL

1348



FILED

JUL 06 1987

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 8917-86

AGENCY DKT. NO. 87-EA-80

SCOTT C. SHUSTER,

Petitioner,

v.

**DIVISION OF GAMING
ENFORCEMENT, DEPARTMENT
OF LAW AND PUBLIC SAFETY,**
Respondent.

Donald M. Kaplan, Esq., for the petitioner (**David Arrajj, Esq.,** at the prehearing conference) (**Horn, Kaplan, Goldberg, Gorny & Daniels, P.C.,** attorneys)

Ralph L. Fusco, Deputy Attorney General, for the respondent (**W. Cary Edwards,** Attorney General of New Jersey, attorney)

Record Closed: May 12, 1987

Decided: June 25, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Scott C. Shuster, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee-nongaming (food and beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application by reason that

the petitioner had committed disqualifying criminal misconduct, under section 86c(3) of the Casino Control Act (Act), and, accordingly, that the petitioner lacked the requisite good character, honesty and integrity, under section 90b, which incorporates section 89b(2) by reference. The petitioner acknowledged his prior misconduct; however, he claimed that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Mr. Shuster filed his Personal History Disclosure Form-2A (PHDF-2A), with the Commission on May 7, 1986 (J-1). By letter, the Commission advised the petitioner that, based upon a report received by the Division dated October 21, 1986, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By submission of Form A dated December 2, 1986, Mr. Shuster requested a hearing. On December 18, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 6, 1987, before Administrative Law Judge Edgar R. Holmes. The matter was heard before the undersigned on May 12, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Shuster is 25 years of age (J-1). He currently resides in Brigantine, New Jersey. The petitioner is the adopted child of Renee and Sylvan Shuster. Ms. Shuster is a guidance counselor employed by Franklin Township High School, Somerset County. Mr. Shuster is a CPA, who is employed in New York state.

Various facts concerning the petitioner's childhood were in dispute and will be discussed, infra. Nevertheless, as a result of a violent attack made against the petitioner during junior high school, the family relocated and the petitioner entered a new school.

During the ninth grade and apparently as a result of his involvement with the varsity swim team, the petitioner became involved with alcohol and drug abuse. Initially, the petitioner used alcohol and then marijuana on a recreational basis. His use of marijuana increased to a daily basis. Ultimately, it became abusive, i.e., he smoked 20 marijuana cigarettes per day, a few times per week. The petitioner purchased marijuana in large quantities. Eventually, the petitioner began to use "hard" drugs, such as hallucinogens, including LSD (R-7). The petitioner and his friends would share drugs. Nevertheless, the petitioner continued to succeed in school and was enrolled in the honors program. The petitioner characterized his behavior by describing that he was an honors student in the morning and a drug abuser in the afternoon. On an unspecified date, the petitioner was charged as a juvenile with a drug offense, for which he was found guilty.

After the petitioner's junior year in high school, he attended the Cornell University Advanced Placement Program for a period of one week. Thereafter, he became bored by high school and enrolled in the early graduation program. In December 1978, the petitioner graduated, at age 16, from Bridgewater West High School.

In the spring of 1979, the petitioner attended Somerset County College for one semester. During this period he continued his drug use.

In the fall of 1979, the petitioner enrolled in Sullivan County Community College (Sullivan) in Loch Sheldrake, New York. While at Sullivan, the petitioner became actively involved in a variety of student activities, including his election to various student committees. He continued his drug use, although to a lesser degree and on a recreational basis. The petitioner graduated from Sullivan in June 1982 with a degree in restaurant management.

In October 1979, shortly after Mr. Shuster had left for college, his parents separated. Their separation subsequently ended in a divorce. Between 1981 and 1984, the petitioner had minimal contact with his mother; however, contact has been renewed. The petitioner maintained contact with his father, who provided financial support for the petitioner's education and living needs.

On January 20, 1980, and while he was home during a break between semesters, the petitioner was arrested by the Bridgewater Township Police Department and was charged with various offenses (R-1). On October 27, 1980, the petitioner was indicted by a Somerset County Grand Jury and was charged with violations of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance—marijuana in excess of 25 grams, and N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(3), possession of a controlled dangerous substance—marijuana with intent to distribute (R-2). On November 7, 1980, the petitioner pled not guilty (R-3). On June 10, 1981, a jury verdict of guilty was entered on both counts. On July 17, 1981, the petitioner was sentenced to an indeterminate term on each count, which sentences were suspended, and probation of three years imposed on each count, to run concurrently; the petitioner was also required to complete a drug program (R-3). The sentencing judge cited the petitioner's misconduct, his prior juvenile conviction, his unstable home and his status as a college student as reasons for the sentence.

The petitioner acknowledged that he had purchased approximately one-half pound of marijuana, which he intended to take back to school and to share with his roommate. He anticipated that the marijuana would last for the entire semester. The petitioner characterized his purchase of the marijuana as a reward for himself for having done well at school during the preceding semester.

The petitioner's probation was transferred to New York state while he attended college, where he apparently complied without difficulty.

From June 1982 until June 1983, the petitioner served in the elected position of Vice President of Community Colleges with the State University of New York, Central Administration. He was elected to this position as an undergraduate. During this period, the petitioner took additional courses of study at the State University of New York (SUNY) at New Paltz.

The petitioner relocated to Albany, New York, in September 1982. His probation was transferred to Albany. Difficulties arose immediately between the petitioner and his probation officer. The petitioner testified that he was unreasonably offended by his probation officer and characterized his own attitude as arrogant and foolish. After approximately one year, the petitioner's probation was retransferred to Somerset County, in New Jersey.

From September 1983 to June 1984, the petitioner was employed as a student organizer and lobbyist by the Student Association of SUNY (SASU). During this period, the petitioner took courses of study at Albany State University.

On May 18, 1984, the Somerset County Probation Department charged the petitioner with a violation of conditions of his probation, pursuant to N.J.S.A. 2C:45-3 (R-4). More specifically, it was alleged that the petitioner had failed to report to the probation department between January 3, 1984 and April 17, 1984, and that he had failed to attend a drug program. On June 8, 1984, and following a trial, the petitioner was found guilty (R-5). On June 22, 1984, the petitioner was sentenced to 60 days in the Somerset County Jail on each count, to run concurrently. The petitioner served 30 days.

The petitioner was reunited with his mother during the pendency of the charges of violation of probation.

The petitioner relocated to Atlantic City in mid-1985. Because of an illness, the petitioner was unable then to pursue anticipated employment in the casino industry. Eventually, the petitioner underwent surgery for impacted gallstones and was hospitalized.

From May 1985 through February 1986, the petitioner was employed temporarily by various restaurants in Atlantic County. In February 1986, the Commission issued casino hotel employee registration No. 66122-40 to the petitioner, which is current. From February to April 1986, the petitioner was employed as a waiter by Marina Associates, t/a Harrah's Marina Hotel Casino.

Next, the petitioner applied to GNOC Corp. (Golden Nugget) for employment as a food and beverage controller and analyst. He was hired and served in this position while holding a temporary casino employee license. The petitioner disclosed his criminal record history, i.e., convictions, on his employment application (P-6). Eventually, the petitioner was demoted to food and beverage control clerk as a result of the Division's objection to his application for licensure and the expiration of his temporary casino employee license. He continues to be employed in this position under his registration. The petitioner's employment has been positive in all respects.

In April/May 1986, the petitioner applied to the Commission for licensure as a casino employee (J-1).

The petitioner is the current president of the Food and Beverage Controller Association. He is involved in educational pursuits on behalf of the association.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's criminal misconduct, the circumstances underlying his violation of probation, his rehabilitation from drug abuse, and his current good character, honesty and integrity.

The petitioner's parents described his childhood through high school. In his early childhood, the petitioner was a loner, was bored with school, watched a lot of television and read excessively. When the petitioner entered high school, he underwent a transformation in personality and became very social. The petitioner's mother knew that the petitioner and his friends used drugs. Ms. Shuster testified that the petitioner was honest, even to a fault, because he told her what she did not want to hear. Following the juvenile incident, the petitioner was counseled once concerning drug use. The counselor advised the petitioner's parents to permit the petitioner to work out his own problems. Ms. Shuster testified that, in retrospect, this advice was erroneous. Mr. and Ms. Shuster further testified that their marital problems complicated the situation.

The petitioner testified that during his formative years he believed that he was intellectually superior yet emotionally inferior to his peers. In high school and in an attempt to assert his independence, he became involved with alcohol and drugs. The petitioner attributed his vulnerability to drugs as being primarily related to his parents' marital difficulties.

The petitioner offered certifications from Thomas M. Spine (P-1), Carol Lynn (P-8), and Marcy Chudy (P-9), each of whom was a close friend during high school,

concerning the circumstances underlying his drug use. Each cited the petitioner's immaturity and the significant domestic problems between his parents as contributing factors to his behavioral problems.

By reason of the consistency and credibility of the testimonial and documentary evidence, and in the absence of any evidence to the contrary, I am persuaded to accept this testimony.

The petitioner also described the circumstances underlying his failure to complete satisfactorily his probation. He had no difficulty with probation while he was a student at Sullivan; however, he encountered substantial difficulties when his probation was transferred to Albany. The petitioner acknowledged that he had treated his probation officer poorly. The petitioner believed that his employment with SASU and SUNY Central Administration was threatened by the probation officer, and he secured a transfer of his probation back to Somerset County. The petitioner admitted that he failed to follow up on his probationary requirements and was otherwise inattentive to his obligations following the retransmittal of his probation. Further, he erred when he represented himself during the trial concerning the probationary violations.

Given the general believability of the petitioner's testimony and the absence of evidence to the contrary, this explanation was persuasive.

Mr. Shuster also described his rehabilitative efforts. He has made three attempts to stop his drug abuse. The first occurred during his senior year in high school at the request of a girl friend. Eventually, he returned to drug use. The second occasion was upon the initiation of juvenile charges. Again, this was unsuccessful. The third, and final occasion was subsequent to his arrest in 1980. He stopped drug use during the completion of his second year at Sullivan and by the time of his trial in 1981. He claimed that his earlier failures at rehabilitation have reinforced his current success. The petitioner acknowledges that it is easy to identify the problem but that it was difficult to solve. His prior drug use was a mistake and he is now strong enough to resist the temptations. However, when he incurs temptations, he uses support mechanisms, such as friends and parents for assistance. In addition, the petitioner has consciously disassociated himself from drug users. Further, he will not repeat his misconduct because he does not want to again be incarcerated; drugs were a part of his rebellious behavior,

which no longer exists, i.e., he does not now react in the same manner which he did previously; he is now more concerned with life because of his experiences during his serious illness; and his understanding and recognition that drugs injure persons other than users.

The petitioner's parents testified that he has undergone a complete transformation in his behavior. They have observed that the petitioner is now a responsible and contributing adult. Also, they have observed no evidence of any drug use. The petitioner's parents also testified that he remains associated with only a few close friends from his past. These friends have also undergone a complete and successful transformation in their behavioral patterns and are now productive and respectable citizens.

James M. Winderl, currently the manager of registrant services and financial aid, who occasionally fills in for the Dean of Students at Sullivan, testified on behalf of the petitioner. Mr. Winderl served as a counsellor for the petitioner during his studies at Sullivan. The witness observed the growth and maturation of the petitioner and stated that petitioner now responds to problems in a far different manner than he did during college.

The petitioner also offered the certifications of Mr. Spine (P-1), Phyllis E. Hirsch (P-7) and Ms. Lynn (P-8) in this regard. Each attested to the petitioner's maturation and adjustments, his disassociation from drug use and his increased responsibility.

Again, given the general persuasiveness of the testimony and in the absence of any evidence to the contrary, I am persuaded to believe that the petitioner is rehabilitated from his prior drug abuse.

The petitioner also testified that he currently has a high self-esteem, responds well to authority, is no longer confrontational and has matured. His career goals are for advancement in the hospitality industry and a desire to professionalize this industry. He intends to pursue further education. On a personal basis, the petitioner anticipates marriage and a family in the future.

Arthur Nathan, Director of Personnel and Labor Relations for the Golden Nugget, testified on behalf of the petitioner. Mr. Nathan has observed the petitioner to be forthright, honest and open. The petitioner enjoys a good reputation among his coworkers, is a good advocate for the industry and is a valued employee.

Mr. Winderl also testified to the petitioner's good character, honesty and integrity. However, little weight was accorded Mr. Winderl's testimony because the witness acknowledged that in his role as a college counsellor he tolerated unreasonably the use of illegal drugs by students whom he counselled. Nevertheless, I do not have reason to doubt the witness's observations of the petitioner.

In addition, the respondent offered many certifications on his behalf. Mr. Spine, an engineer with Digital Equipment Corp. in Nashua, New Hampshire, who has known the petitioner since age 15, stated that the petitioner has matured and has been rehabilitated from his prior drug use (P-1). Catherine Bowman, a student at the Fuqua School of Business at Duke University, who met the petitioner in 1983 in connection with SASU activities, characterized the petitioner as "a person of the highest character, honesty and integrity" (P-2). Henry Hornbostel, vice-president and treasurer of the Golden Nugget, who has known the petitioner for approximately one year, commented most positively upon the petitioner's employment (P-3). Anthony Platanella, beverage manager for the Golden Nugget, has known the petitioner for approximately one year and characterized the petitioner as trustworthy and a loyal employee (P-4). Richard B. Childers, the hotel controller of the Ramada Renaissance Hotel in Richmond, Virginia, and a former employee of the Golden Nugget, has known the petitioner for approximately one year, during which he supervised the petitioner (P-5). Mr. Childers characterized the petitioner as "a loyal, trustworthy and industrious employee. Ms. Hirsch, a residential counsellor for the Association for Retired Citizens in Sullivan County, New York, and a friend of the petitioner since their student days at Sullivan, characterized the petitioner as honest, truthful, a hard worker and a leader (P-7). Ms. Lynn, employed by Lynn Equipment Co., a family-owned equipment company, as office manager and bookkeeper, and a friend of the petitioner since age 12, described the petitioner as dependable and sincere (P-8). Marcy Chudy, a copywriter employed by Expoconsul International in Princeton, New Jersey, has known the petitioner since age 15 (P-9). Ms. Chudy described the petitioner's sincerity and conscientious nature.

Although the Division did not offer any evidence to refute the petitioner's proofs, it is necessary to assess the credibility of the petitioner as well as the various witnesses prior to making findings of fact.

The testimonies of the petitioner's parents were completely persuasive. Although they had a direct interest in the outcome and a bias in these proceedings, their testimonies consisted of admitted failures as spouses and as parents, which failures had a serious negative effect upon their child. Being a witness on behalf of their son was a humbling experience, at best, for each. Each exhibited a sincere intent to assist the petitioner in order to remedy past errors.

The petitioner's position in this matter must be recognized. As the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the various issues was corroborated by the testimonies of the live witnesses and was consistent with the documentary evidence. Further, his testimony consisted substantially of candid and revealing admissions of his prior misconduct. It was clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and his acknowledged misconduct, the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable and persuasive. The petitioner acknowledged fully the extent of his wrongdoing and accepted full responsibility therefor. In the final analysis, I have no reason not to accept his testimony. Nevertheless, it is important to note that the petitioner's self-appraisal created concerns with the completeness of his maturation process. More specifically, the petitioner claimed a uniquely high intellect and other abilities. Nevertheless, these claimed assets have not been supported by his performance to date, i.e., his academic achievement in both high school and college as well as his limited employment history do not reflect his claimed talents (R-7). This demeanor exhibits a residual immaturity which raises some concerns. Nevertheless, the weight of the evidence supports the petitioner's assertion of rehabilitation from his drug use. Given the petitioner's youth, it is not surprising to find some residual immaturity.

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

1. The petitioner's explanation of the circumstances underlying his drug abuse and related charges was believable and persuasive, and is adopted fully as a finding of fact.
2. The petitioner's explanation of the circumstances underlying his violation of probation was believable and persuasive, and is adopted fully as a finding of fact.
3. The petitioner ceased using illegal drugs in early 1981.
4. There is little likelihood, if any, that the petitioner will repeat his prior misconduct or drug use.
5. Close friends and employment supervisors of petitioner are of the opinion that he is a person of good character, honesty and integrity.
6. Mr. Shuster was a credible witness and his testimony was candid, consistent with the testimony of others and the documentary evidence, and was persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19, be disqualified from licensure and/or registration. The Division cited the respondent's conviction for a violation of N.J.S.A. 24:21-19a(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conviction of a violation of N.J.S.A. 24:21-19a(1), disqualifies him from licensure, pursuant to section 86c(3).

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

An applicant faced with a section 86c disqualifier 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;
- (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.

First, Mr. Shuster seeks licensure as a casino employee in a non-gaming capacity in order to enhance his employment opportunities at the Golden Nugget. In this capacity he would not have direct responsibilities for actual gaming activities, but would have some contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 24:21-19a(1), possession with intent to distribute, as well as possession of controlled dangerous substances-marijuana. Because the offense is included as a disqualifier under section 86c(3), it is serious. In addition, the petitioner's drug abuse for several years preceding his arrest in 1980 enhances the seriousness of his misconduct. Similarly, the petitioner's violation of probation in 1984, which led to his incarceration, must be noted.

Third, the petitioner's drug offense occurred in 1981, approximately six years ago. The petitioner's conviction for violation of probation occurred in 1984, approximately three years ago. The circumstances underlying the respondent's drug conviction mitigate somewhat the seriousness thereof. More specifically, the petitioner was vulnerable to the negative influences of the drug culture to which he was exposed by reason of an unstable family relationship. His parents were ineffective in their limited efforts to deal with these problems. Their marital difficulties also had a substantial negative effect upon each of the participants. However, the petitioner gradually extricated himself from his drug abuse. His arrest in 1980 and conviction in 1981 appeared to have been the ultimate catalyst. Nevertheless, the petitioner continued to manifest a rebellious personality, which led to his violation of probation. It appears that his subsequent incarceration has had a tremendous positive impact upon his behavior. These factors mitigate the seriousness of the petitioner's misconduct.

Fourth, the petitioner's drug misconduct occurred in 1980 and ceased in 1981, approximately six years ago. Further, his violation of probation occurred approximately three years ago.

Fifth, at the time of his drug offense, the petitioner had just turned 18 years of age. It was also apparent that he was unusually immature. At the time he violated probation, the petitioner was 22 years of age. This indicates that his misconduct was due, in part, to immaturity and inexperience.

Sixth, the petitioner's drug abuse occurred over a period of approximately six years and was not isolated in nature.

Seventh; the home life experienced by the petitioner contributed significantly to his drug abuse. —

Eighth, the petitioner has made substantial rehabilitative efforts. He has fully acknowledged his misconduct and has accepted responsibility therefor. Although petitioner did not satisfy the terms and conditions of his probation, he did fully satisfy the sentence imposed in 1984. In addition, he now recognizes the seriousness of his misconduct and has successfully avoided a relapse for the past six years. Also, the petitioner has established a very positive, although short, employment record in the casino industry. In addition, he has been elected to a position of responsibility in a professional

association. It was well-established that the petitioner is a responsible, reliable and trustworthy person, and has earned the respect of his supervisors. The petitioner has matured substantially and has modified to a tremendous degree his behavior, which establishes a sound basis for his future. Although the petitioner cannot eliminate his past record, there is little more he could have done to establish his rehabilitation.

Nevertheless, the petitioner exhibited a residual degree of immaturity by reason of his unwarranted self-appraisal. The petitioner is warned that he is not entitled to any special consideration under the Act by reason of his self-appraisal. Nevertheless, these concerns are not of such a degree to overcome the petitioner's proofs.

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

Mr. Shuster's burden in this matter was enhanced by reason of the extent of his drug abuse and his failure to satisfy probation. However, it is apparent that his drug abuse is far in the past and that the factors which led to his probationary difficulties no longer exist. The petitioner is now a responsible and reasonably mature adult and it appears that there is little likelihood, if any, that he will repeat his prior drug abuse. The petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of licensure.

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 Scott C. Shuster for licensure as a casino employee-nongaming, be **GRANTED**.

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

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

June 25, 1987
DATE

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

Receipt Acknowledged:

June 30, 1987
DATE

Richard L. Voliva, Jr.
CASINO CONTROL COMMISSION

Mailed to Parties:

June 30, 1987
DATE

Ronald L. Parker x 5.
OFFICE OF ADMINISTRATIVE LAW

ij

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission-Personal History Disclosure Form-2A, Scott Cary Shuster, April 10, 1986 (21 pp.)

- P-1 Certification of Thomas M. Spine, March 31, 1987 (3 pp.)
- P-2 Certification of Catherine Bowman, February 27, 1987 (3 pp.)
- P-3 Certification of Henry Hornbostel, March 23, 1987 (3 pp.)
- P-4 Certification of Anthony Platanella, March 31, 1987 (3 pp.)
- P-5 Certification of Richard B. Childers, April 8, 1987 (3 pp.)
- P-6 Golden Nugget-Employment Application, Scott Cary Shuster, September 19, 1985 (7 pp.)
- P-7 Certification of Phyllis E. Hirsch, May 6, 1987 (4 pp.)
- P-8 Certification of Carol Lynn, May 10, 1987 (4 pp.)
- P-9 Certification of Marcy Chudy, May 9, 1987 (4 pp.)

- R-1 Bridgewater Township Police Department-Field General Investigation Report, prepared by Edward Dobrowski, January 20, 1980 (2 pp.)
- R-2 State of New Jersey v. Scott C. Shuster, Superior Ct. of N.J., Law Division-Criminal, Grand Jury No. 88-80-S, indictment, filed on October 27, 1980 (3 pp.)
- R-3 State of New Jersey v. Scott C. Shuster, Superior Ct. of N.J., Law Division-Criminal, Somerset County, number 88-80-S, Judgment of Conviction, July 17, 1981 (2 pp.)
- R-4 Somerset County Probation Department-Notification Concerning Charges of Violation of Probation and Summary Hearing thereon, Scott C. Shuster, May 25, 1984 (2 pp.)
- R-5 State of New Jersey v. Scott C. Shuster, Superior Ct. of N.J., Somerset County, Law Div.-Criminal, No. 88-80-S, Judgment of Conviction and Order for Commitment, June 22, 1984 (2 pp.)
- R-6 Closeout Summary, June 22, 1984
- R-7 Somerset County Probation Department-Adult Presentence Report, Scott Cary Shuster, July 7, 1981 (9 pp.)

WITNESS LIST

For the Petitioner:

Arthur Nathan

Renee Shuster

Scott C. Shuster

Sylvan Shuster

James M. Winderl

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-208
OAL DOCKET NO. CCC 856-87
REGISTRATION NO. 13450-40
ORDER NO. 87-48-10

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
ARLENE S. SMITH, :
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 Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 30th day of December 1987, ORDERED that the initial decision is rejected on the grounds that the respondent's conviction for possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1) on the premises of a licensed casino renders her continued registration inimical to the policy of the Casino Control

ORDER NO. 87-48-10

Act and to casino operations pursuant to N.J.S.A.
5:12-86(c)(1); and

IT IS FURTHER ORDERED that for the reasons stated on
the record, the respondent's disqualification is waived
pursuant to N.J.S.A. 5:12-91(e) to permit her to retain her
casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 856-87

AGENCY DKT. NO. 86-208

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ARLENE S. SMITH,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Michael M. Land, Esq., for respondent

Record Closed: August 31, 1987

Decided: October 15, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Respondent holds casino hotel and employee registration no. 13450-40 and works at Ballys Park Place Casino Hotel (Bally's) as a baker. The Division of Gaming Enforcement (DGE) seeks to revoke that registration because respondent was indicted for a drug offense and conditionally discharged in January 1986. She denies that the offense occurred and claims rehabilitation. The issue is (1) whether respondent committed acts that are inimical to the policies of the Casino Control Act and Casino operations and (2) whether her registration should be revoked on that basis. For the reasons discussed below, I recommend that respondent be allowed to retain her registration notwithstanding her offense.

By way of procedural history, DGE filed a complaint seeking revocation on May 15, 1985, following respondent's indictment on April 3, 1985, on drug charges. She requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case on February 11, 1987. A prehearing conference was held by telephone before Administrative Law Judge Stephen W. Thompson on April 9, 1987, and the matter was scheduled for hearing before me on May 29, 1987, which was continued until August 31, 1987, to allow DGE additional time to produce witnesses. The record was closed at the end of the August hearing.

There is no dispute as to the following facts.

Arlene Smith was indicted by an Atlantic County Grand Jury on April 3, 1985, on charges of possession of a controlled dangerous substance (CDS) (methamphetamine), possession within intent to distribute, and distribution of a CDS in violation of N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1). She was accused of selling twenty dollars worth of speed to an undercover law enforcement officer on or about November 28, 1984, at the Park Place entrance to Bally's. She was conditionally discharged by order of Superior Court pursuant to N.J.S.A. 24:21-27, on January 31, 1986, and placed on one-year supervisory treatment, with no reporting, and mandatory drug testing. An order for a presentence investigation completed before the conditional discharge states that Ms. Smith entered a retraxit plea of guilty to one count of possession, with the remaining charges dismissed. There is no dispute as to the above facts, and I so **FIND**.

Respondent, who has worked for Bally's for seven and one-half years, denies committing the offense, notwithstanding her acceptance of the conditional discharge and the evidence of her retraxit guilty plea. She claims that on November 28, 1984, she received a call at work from someone waiting to meet her downstairs at Bally's. She denies leaving the building, but admits that she went downstairs and outside the grainery door met with a person later identified as Detective Lieutenant Barry Grasso of the Atlantic City (AC) Police Department, as well as a confidential informant whom she knew. She stated that the two asked her if she could sell them methamphetamine, but denies having done so. Another AC police officer, Detective William J. McKnight, testified that he was watching the scene from approximately 100 yards away in a police van. Although he did not hear any of the conversation and was too far away to positively identify the respondent, McKnight claims that he observed the meeting and saw something

passed between the respondent and Detective Grasso, who was not available to testify. Based on his police experience, McKnight concluded that a drug transaction was underway. He further stated that he had shown Grasso a photograph of the respondent, which he positively identified, and further had been advised by him that she sold him approximately \$20 of a white powder, subsequently identified as Methamphetamine. Grasso's reports after the drug transaction, as well as a laboratory report confirming the presence of CDS, were introduced (P-2 and P-3). Respondent was arrested on April 5, 1985.

She denies selling drugs to Grasso and claims that she accepted the conditional discharge only to get the matter over with and hold on to her job, which she needs to support her son. She denies having left the building to talk to Detective Grasso and the informant, and states that she was prohibited from doing so by Bally's rules with regard to cleanliness of the bakery. She also claims to have asked the guard at Bally's after the incident not to allow entry of other persons seeking to bother her. She produced photographs taken of the darkened Bally's entrance in which the drug transaction allegedly took place.

Notwithstanding respondent's denial, I note her retraxit guilty plea and FIND that she was involved in a drug transaction as charged on or about November 28, 1986. Ms. Smith offers several letters from her supervisors at Bally's attesting to her work performance in the last seven and one-half years. Michele Ellenbart, executive chefs secretary, commented that she was "very dependable, flexible and conscientious. She's always willing to lend an extra hand when needed for any reason. She is an asset to our establishment" (R-3). She was also described as an asset to Bally's by assistant pastry chef Grace Cassel, who further commented on her conscientiousness and unusually hardworking effort, as well as her innovativeness (see, R-1). Smith also stated that she had had no further run-ins with the law in over two years since her indictment, and had remained drug-free during that period.

Respondent argues that her conditional discharge does not amount to an admission, much less a conviction, of the drug offense, and thus does not constitute a statutory disqualifier under N.J.S.A. 5:12-86c. She denies the offense ever took place and contends that the hearsay regarding Detective Grasso is insufficient evidence of the offense. In the alternative, she claims rehabilitation under N.J.S.A. 5:12-91d. The

Division defends its reliance on hearsay under N.J.S.A. 5:12-107a(6) and notes that respondent entered a retraxit plea of guiltity to possession of a CDS. DGE also argues that respondent is statutorily disqualified because of the acts committed by her, notwithstanding the fact that she was conditionally discharged. The Division also emphasizes the inimical nature of the offense in that it occurred on or near casino premises.

With respect to the question of whether respondent is statutorily disqualified under N.J.S.A. 5:12-86(c), I **CONCLUDE** that she has not been convicted of one of the enumerated offenses and thus has no affirmative duty to show rehabilitation under N.J.S.A. 5:12-91d.

With respect to inimicality, N.J.S.A. 5:12-86 provides that:

The commission shall deny a casino license to any applicant who is disquaified on the basis of any of the following 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 under New Jersey law at the time application of violation of any one of the following provisions of law:

...

- (4) Any other offense which indicates that licensure of the applicant will be inimical to the policy of this act and the casino operations. . . .

N.J.S.A. 24:21-27, authorizing conditional discharge, provides:

- a.) Whenever any person who has not been previously convicted of any offense under the provisions of this act, or subsequent to the effective date of this act, under any law of the United States, this state or of any other state, relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under section 20 of P.L. 1970, c. 226 (C. 24:21-20), the court, upon notice to the prosecutor and subject to subsection c of this section, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of such person after reference to the State Bureau of Identification Criminal History Record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of such person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law. [Emphasis added.]

In this case, respondent was conditionally discharged after her retraxit plea of guilty and no judgment of conviction was entered. The Casino Control Act does not expressly address the question of whether a conditional discharge under N.J.S.A. 24:21-27 is to be treated as a conviction for the purposes of disqualification pursuant to N.J.S.A. 5:12-86c. N.J.S.A. 5:12-86g does provide, however, that disqualification may be found based on inimical acts even when not prosecuted:

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 this, even if such conduct has not or may not be prosecuted under the criminal laws of this state. . . . [Emphasis added].

Under this section, acts which have not resulted in judgments of conviction or even prosecution may still provide the basis for denying a license or registration if inimical. Certainly, the sale or possession of controlled dangerous substances on casino premises qualifies as something inimical to the policy of the Casino Control Act and to casino operations. The fact that respondent was conditionally discharged and no judgment of conviction was entered does not prevent the Casino Control Commission from denying registration, because the acts in question were clearly inimical within the meaning of N.J.S.A. 5:12-86, and thus could provide the basis for denial under N.J.S.A. 5:12-86g. On that basis, I **CONCLUDE** that the Casino Control Commission has the authority in this instance to revoke respondent's casino hotel employee registration because she committed acts which were inimical to the policy of the act, notwithstanding that the indictment was conditionally discharged and not reduced to a judgment of conviction.

The more troubling issue is whether that authority to revoke should be exercised in this instance. Because the respondent was not convicted of any offense enumerated in the act as disqualification criteria, she is not required to affirmatively demonstrate her rehabilitation within the meaning of N.J.S.A. 5:12-91d. Notwithstanding, the factors set forth in that section may be of some guidance in this instance. In order to find rehabilitation, the Commission must consider:

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

Respondent has worked for over seven years as a baker at Bally's, a non-managerial position which does not involve responsibility for funds. According to all accounts, she has performed this job successfully and is considered an asset to Bally's. Against this long and otherwise unblemished work record must be weighed the offense of possession of a controlled dangerous substance which is alleged to have occurred on casino premises. Even though this offense was an isolated not repeated incident and involved a small quantity of drugs, it was serious in nature and took place on casino premises. Respondent was over 30 years of age at the time of the offense, and has not claimed any contributing social conditions which led her to this act. She has, however, presented evidence of a very positive work record in the casino industry of over seven years, including three years after the offense. She also cites her responsibilities as a mother and great desire to continue her career in baking with the casino industry. In light of her

overall performance record within that industry, I recommend that the Casino Control Commission not revoke her registration for what was an isolated offense involving possession of a small amount of a controlled dangerous substance. I cannot conclude on the evidence before me that the casino industry would be better off without Arlene Smith.

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

Oct. 15, 1987

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

DATE

October 15, 1987

Receipt Acknowledged:

Nelores Zappo
CASINO CONTROL COMMISSION

DATE

OCT 19 1987

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Detective McKnight
Arlene Smith

EXHIBIT LIST

- P-1 (Withdrawn)
- P-2 Investigative report of November 28, 1984, by Detective Lieutenant Barry Grasso
- P-4 Indictment no. 85-04-0570B

- R-1 Letter of September 10, 1986, from Grace Cassel
- R-2 Undated letter from Grace Cassel
- R-3 Letter of May 26, 1987, from Michele Ellenhart
- R-4 Photograph of respondent in uniform with ruler
- R-5 Photograph of the entrance of Bally's

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-59
OAL DOCKET NO. CCC 481-87
REGISTRATION NO. 63377-40
ORDER NO. 87-30-6

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	<u>ORDER</u>
v.	:	
	:	
BRIAN K. STITELER,	:	
	:	
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 (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of August 5, 1987,

IT IS on this 17th day of November 1987, ORDERED that the initial decision is rejected for the following reasons:

- (1) The ALJ recommended that disqualification of the respondent be waived pursuant to N.J.S.A. 5:12-91(e). Given the then pending appeal in State v. David Hannah, Docket No. 85-371, App. Div. Docket No. A-5399-85T6, OAL Docket No. CCC 6368-85, concerning the applicability of waiver pursuant to N.J.S.A. 5:12-91(e), the Commission had determined not to grant waivers until the Appellate Division had issued its opinion.

ORDER NO. 87-30-6

- (2) Pursuant to Commission action taken in State v. Benjamin H. Waters, Docket No. 87-174 and Application of Benjamin H. Waters, Docket No. 87-EA-151 (order dated June 12, 1987) and State v. Mark Bisciotti, Docket No. 86-130 and Application of Mark Bisciotti, Docket No. 87-EA-118 (order dated June 12, 1987), the Commission finds that Mr. Stiteler has demonstrated his rehabilitation by clear and convincing evidence based upon the following reasons:

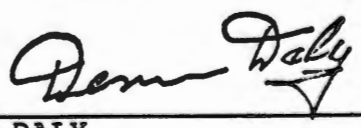
(a) Mr. Stiteler is employed as a kitchen worker. This position has limited exposure to the public and gaming activities, factors which weigh heavily in favor of a finding of rehabilitation for a casino hotel employee registrant.

(b) In assessing rehabilitation, the ALJ gave undue weight to Mr. Stiteler's criminal record prior to his 1985 disqualifying theft offense. The ALJ appears to have treated the respondent's prior record almost as a basis for disqualification rather than as a factor to consider in the rehabilitation analysis.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Brian K. Stiteler is dismissed based upon the reasons stated herein.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

FILED

JUN 07 1987

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 481-87

AGENCY DKT. NO. 87-59

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

Petitioner,

v.

BRIAN KEITH STITELER,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Brian Keith Stiteler, respondent, pro se

Record Closed: June 25, 1987

Decided: June 30, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Brian Keith Stiteler, respondent. The Division alleges that Mr. Stiteler is statutorily disqualified from holding casino hotel registration number 63377-40 by virtue of his plea of guilty to theft by unlawful taking, third degree, in violation of N.J.S.A. 2C:20-3a, on August 5, 1985. The respondent contends that he is rehabilitated pursuant to section 91d of the Casino Control Act (Act).

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on August 26, 1986. The respondent requested a hearing on January 14, 1987. On January 16, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 2, 1987, and the matter was scheduled for hearing. The hearing was originally scheduled for June 19, 1987, but was adjourned until June 25, 1987, at the request of the Deputy Attorney General. The matter was heard on June 25, 1987, at the Office of Administrative Law, Atlantic City Civil Court House, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

On June 7, 1985, respondent was employed by Warren W. Steelman Enterprises as a heating and air-conditioning installer. While installing air-conditioning at 8300 Salem Road, Margate, New Jersey, Mr. Stiteler removed six items of jewelry from the premises with an aggregate value of \$2,235 (P-3). On June 13, 1985, Detective Lieutenant Raymond Walsh of the Margate Police Department interviewed the respondent concerning the missing jewelry. After initially denying the theft, Mr. Stiteler subsequently admitted the theft.

On June 27, 1985, an Atlantic County grand jury indicted Mr. Stiteler for theft by unlawful taking in violation of N.J.S.A. 2C:20-3a (P-1).

On August 5, 1985, the respondent pled guilty to theft by unlawful taking, third degree. Mr. Stiteler was sentenced to 90 days in Atlantic County Jail and was ordered to pay \$25 to the Violent Crimes Compensation Board (VCCB). Respondent was released at the end of 60 days because of good behavior.

During the period from 1975 to 1978, Mr. Stiteler was arrested and convicted on various charges ranging from possession of marijuana to attempted larceny. Mr. Stiteler explained that he was married at the age of 18, and a daughter was born shortly thereafter. In 1975, he and his wife separated. At that time Mr. Stiteler started drinking heavily and became involved in drugs. According to Mr. Stiteler, his drinking and drug use were responsible to some degree for his criminal behavior during the period of 1975 to 1978. After he reconciled with his wife in 1980, Mr. Stiteler testified that he committed himself to total abstinence from drugs and alcohol. Mr. Stiteler stated that his family is of paramount importance to him. The respondent did not offer any explanation for his behavior in 1985, other than to indicate that the temptation was apparently too great.

Since his release from incarceration, the respondent has been steadily employed as a quality control inspector at Harrah's Marina Casino Hotel. However, from December 12, 1986 through January 16, 1987, Mr. Stiteler's registration was suspended because of his failure to provide the Casino Control Commission with a forwarding address.

Mr. Stiteler presented six letters of reference which seem to indicate that he is a conscientious and dedicated worker. He testified that Donald S. McGlynn (R-2), Richard E. Schneider, executive chef (R-3), and Susan Vetri (R-4 and R-6) are all aware of his criminal behavior in 1985.

The above is undisputed, documented and is thus FOUND AS FACT.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's conviction on August 5, 1985, of a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking, third degree, is a statutory disqualifier listed under section 86c(1) of the Act. I agree.

Therefore, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 2C:20-3a disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mr. Stiteler is a casino hotel employee registered as a quality control inspector. As such, he has extremely limited contact with patrons of the casino.

Second, the respondent was convicted on August 5, 1985, of a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking, third degree. Under section 86c(1) of the Act, theft by deception, third degree, is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, I am concerned about the circumstances under which the offense in 1985 occurred. There does not appear to be any explanation for respondent's criminal behavior other than the temptation appeared to be too great. However, there have been no further reoccurrences of respondent's criminal behavior since 1985.

Fourth, respondent's last offense occurred approximately two years ago. Although respondent is on probation until September 9, 1987, there have been no problems with his probation.

Fifth, the respondent committed the offenses at age 30. It is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in 1985. Prior to that, respondent had been involved in the criminal justice system from 1975 to 1978. Respondent attributes that prior misconduct to his extensive use of alcohol and drugs.

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

Eighth, the respondent did not present the strongest proofs for rehabilitation; however, it is evident that the respondent has made some rehabilitative effort. He pled guilty to the charge in 1985, and accepted fully his responsibility for his misconduct. He served time in the Atlantic County Jail. During his incarceration, the respondent volunteered to work in the kitchen, resulting in his early release. After his release from incarceration, he returned to employment with Harrah's Marina Casino Hotel. Respondent has established a very positive employment record in the casino industry and has sought to improve his position. He has earned the respect of his past and present supervisors. The respondent appears to have successfully reentered his community.

However, after considering all of the factors listed in N.J.S.A. 5:12-91d, including the respondent's good work record, I find that the mitigating circumstances do not outweigh the serious nature of the respondent's offense, in light of the fact that his last offense occurred on June 7, 1985, and that respondent's parole does not terminate until September 27, 1987.

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

(C) N.J.S.A. 5:12-91e

Pursuant to N.J.S.A. 5:12-91e, the Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of the Act and upon a finding that the interests of justice so require. The proofs offered by the respondent were insufficient to establish rehabilitation by clear and convincing evidence; however, respondent's efforts at rehabilitation are commendable and should be encouraged.

I am convinced that the public policy of the Act and the interest of justice would be served by granting a waiver to respondent, pursuant to N.J.S.A. 5:12-91e.

ORDER OF DISPOSITION

Therefore, it is **RECOMMENDED** that respondent be permitted to retain his casino hotel employee registration, pursuant to N.J.S.A. 5:12-91e.

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.

6-30-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

7-1-87
DATE

Alfred Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 1 1987
DATE

Ronald L. Parker *5
OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Superior Court of New Jersey, Law Division, Atlantic County, Criminal Indictment 85002122, dated June 27, 1985
- P-2 New Jersey Superior Court Judgment of Conviction and Order for Commitment, dated August 4, 1985
- P-3 Arrest Report of the Margate City Police Department, dated June 13, 1985
- P-4 United States Department of Justice Criminal Record of respondent Brian Keith Stiteler, dated December 18, 1985
- P-5 New Jersey State Police Investigation Report, dated June 14, 1976
- P-6 New Jersey State Police Investigation Report, dated October 6, 1977
- P-7 Egg Harbor City Police Department Arrest Report, dated July 15, 1978
- P-8 Atlantic County Superior and County Court Criminal Record, dated August 21, 1978
- P-9 Township of Hamilton Police Department Investigation Report, dated May 2, 1978
- P-10 Atlantic County Superior and County Court Criminal Record, dated August 21, 1978
- P-11 Certification of Record, dated June 5, 1987

For the respondent:

- R-1 Letter from David P. Hanlon, President, Harrah's Marina, dated April 3, 1987
- R-2 Letter from Donald S. McGynn, Quality Control Supervisor, dated January 13, 1987
- R-3 Inter-office correspondence from Richard E. Schneider, Executive Chef, dated September 17, 1986
- R-4 Letter from Susan Vetri, Kitchen Administrator, dated January 12, 1986
- R-5 Letter from Ron Lenczyki, Senior Vice-President and General Manager, dated July 8, 1986
- R-6 Letter from Susan Vetri, Kitchen Administrator, dated January 21, 1987

WITNESS LIST

For the petitioner:

Brian Keith Stiteler

For the respondent:

Brian Keith Stiteler

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-EA-68
OAL DOCKET NO. CCC 2401-87
(8137-86 ON REMAND AND
4873-86 ON REMAND)
APPLICATION NO. 61360-22
ORDER NO. 87-38-4

APPLICATION OF DAVID L. SWAIN :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 15th day of October 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The Administrative Law Judge's determination that the respondent knowingly and intentionally failed to disclose his criminal record on his Personal History Disclosure Form-2A and that this conduct disqualifies him from licensure pursuant to N.J.S.A. 5:12-86(b) is supported by sufficient credible evidence in the record. However, the ALJ erred in applying the rehabilitation criteria listed in N.J.S.A. 5:12-90(h) to this disqualification because the rehabilitation provisions may only be applied to offenses enumerated in N.J.S.A. 5:12-86(c). The Casino Control Act does not permit rehabilitation from an intentional nondisclosure.

ORDER NO. 87-38-4

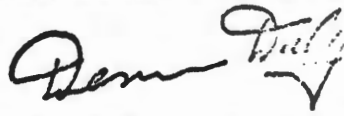
2. Considering the significant overlap between the issues of an intentional nondisclosure and character, the Commission finds that in view of the applicant's disqualification under N.J.S.A. 5:12-86(b), he has failed to demonstrate by clear and convincing evidence the good character, honesty and integrity required of a casino employee pursuant to N.J.S.A. 5:12-89(b) and 90(b).

IT IS FURTHER ORDERED that the application of David L. Swain for a casino employee license is denied; and

IT IS FURTHER ORDERED that this action shall not affect the current status of David L. Swain as a casino hotel employee registrant; and

IT IS FURTHER ORDERED that David L. Swain 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2401-87
(ON REMAND FROM OAL DKT.
NO. CCC 8137-86 --
ON REMAND FROM OAL DKT.
NO. CCC 4873-86)
AGENCY DKT. NO. 86-EA-68

DAVID L. SWAIN,

Petitioner,

v.

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

Respondent.

David L. Swain, petitioner, pro se

**R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: August 25, 1987

Decided: August 31, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, David L. Swain, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (maintenance and cleaning person), 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 Division further opposed the issuance of the license by reason of its contention that the petitioner is disqualified pursuant to section 86b for failure to disclose material information. 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. By letter to the Commission, dated May 6, 1986, the Division objected to the application of the petitioner for licensure as a maintenance and cleaning person, asserting that the petitioner had committed Theft by Deception in excess of \$500, which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this state. The Division also objected pursuant to section 89(b)2. Finally, the Division objected pursuant to section 86b alleging that the petitioner failed to disclose material information on his application for licensure regarding a material fact pertaining to the qualification criteria. Based upon the report, the Commission notified the petitioner on June 4, 1986, that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated July 10, 1986, which was received by the Commission on July 15, 1986, the petitioner requested a hearing. On July 21, 1986, the Commission transmitted the matter to the Office of Administrative Law, which was received on July 23, 1986, 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 29, 1986, the petitioner was notified that a prehearing conference would be held on September 8, 1986, at the Office Of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The petitioner failed to appear at the prehearing conference scheduled for September 8, 1986, and on September 12, 1986, the petitioner was sent a letter requesting that he provide reasons for his failure to appear. The petitioner failed to respond to the letter, and on October 16, 1986, Administrative Law Judge Jeff S. Masin found that the petitioner had abandoned his case and ordered that the case be dismissed.

On November 19, 1986, the petitioner requested a new hearing. The Commission considered the petitioner's request at their public meeting held on November 18, 1986. On November 21, 1986, the Commission granted the petitioner's request and ordered the matter be remanded to the Office of Administrative Law for a hearing.

On December 24, 1986, the petitioner was notified that a prehearing conference would be held on January 15, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The petitioner failed to appear at the prehearing conference scheduled for January 15, 1987, and on January 28, 1987, the petitioner was sent a letter requesting that he provide reasons for his failure to appear. The petitioner failed to respond to the letter, and on March 10, 1987, Administrative Law Judge Lillard E. Law found that the petitioner had abandoned his case and ordered that the petitioner's application for licensure be denied.

The petitioner requested a third opportunity to proceed to a hearing. The Commission considered the petitioner's request at their public meeting held on April 1, 1987. On April 3, 1987, the Commission granted the petitioner's request and ordered that the matter be remanded to the Office of Administrative Law for a hearing.

On May 8, 1987, the petitioner was notified that a prehearing conference would be held on June 2, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The petitioner failed to appear at the prehearing conference scheduled for June 2, 1987. As a result of the petitioner's failure to appear at the prehearing conference on June 2, 1987, Administrative Law Judge Stephen W. Thompson considered the matter abandoned. On June 5, 1987, the petitioner contacted the Office of Administrative Law and indicated that he went to the wrong location on June 2, 1987. He indicated that he went to the Casino Control Commission's offices rather than to the Office of Administrative Law. The matter was rescheduled to be heard on June 15, 1987.

A prehearing conference was held on the matter on June 15, 1987, before Administrative Law Judge Edgar R. Holmes. 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 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: 2C:20-3 in the third degree, UIB theft while employed at the Mount Royal Hotel.

- B. 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: 2C:20-3 in the third degree, UIB theft while employed at the Golden Crest.
- C. 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 86b.
- D. 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).
- E. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

A hearing was held on August 18, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record remained open until August 25, 1987, in order to provide the Division time to submit documents on behalf of the petitioner which were in the Division's possession.

FACTS

The petitioner, David L. Swain, applied to the Commission for the issuance of a casino employee license. Agent Daniel Keitt of the employee licensing section of the Division of Gaming Enforcement was assigned to investigate the petitioner's background. Agent Keitt reviewed the petitioner's file which contained a Personal History Disclosure Form-2A (R-1), an FBI report, and SBI Criminal History Summary Record (R-2), and a credit check. Agent Keitt noticed that the petitioner indicated "no" and "D.N.A." (or does not apply) in response to question 16 on his Personal History Disclosure Form-2A (R-1), which asked if the petitioner had ever been arrested or charged, even if not convicted, of a crime or other offense. The SBI Criminal History Summary Record (R-2), however, indicated that the petitioner had been arrested twice; once for a violation of N.J.S.A.

2C:39-5, unlawful possession of a weapon, and once for a violation of N.J.S.A. 2C:39-3e, possession of a loaded firearm without a permit.

Because of this inconsistency, Agent Keitt telephoned the petitioner in order to "update" the application. Agent Keitt reviewed the entire Personal History Disclosure Form with the petitioner. When Agent Keitt got to question 16, he read the petitioner the instructions contained on the form defining "arrest," "charge" and "offense". The petitioner indicated that he understood the definitions of the applicable words. Agent Keitt then read the petitioner question 16 asking him if he had ever been arrested or charged, even if not convicted, with having committed an offense. The petitioner answered "no." Agent Keitt then informed the petitioner that he had a SBI report indicating that the petitioner had been arrested twice, and he informed the petitioner of the dates of the arrest and the charges. The petitioner hesitated, and stated, "O.K. I've been arrested." The petitioner then told Agent Keitt about the two arrests. At the conclusion of the interview, Agent Keitt asked the petitioner why the petitioner had not disclosed his arrest on his Personal History Disclosure Form and why he indicated that he had not been arrested when questioned by Agent Keitt. The petitioner responded he was afraid that if he disclosed the arrests, it would interfere with his getting a casino license.

Agent Keitt noticed another possible disqualifier in the petitioner's file. The Credit Profile Update indicated that a judgment had been filed by the Department of Labor, Division of Unemployment and Disability Insurance. From September 1981 until November 3, 1981, the petitioner was receiving unemployment benefits. From September 10, 1981 until November 3, 1981, the petitioner was employed at the Mt. Royal Motel in Atlantic City. During this period, the petitioner worked five weeks during which time he also received unemployment benefits. The petitioner earned \$580.39 (R-4 & R-5). The petitioner failed to notify his local unemployment office of his employment and as a result he received unemployment benefits to which he was not entitled in the amount of \$585.00 (R-5).

The Department of Labor conducted a hearing on March 25, 1983, concerning the unemployment benefits the petitioner had received for the week ending September 26, 1981 through the week ending October 24, 1981. On July 20, 1983, the Department determined that the petitioner had received unemployment benefits in the amount of \$585.00, which he was not entitled to receive, and it imposed a fine of \$100.00 for a total

claim of \$685.00 (R-5). The Department then filed a Certificate of Debt for \$685.00 in the Superior Court of New Jersey on October 14, 1983, and a judgment was entered and docketed on November 15, 1983 (R-6).

From February 26, 1982 until March 11, 1982, and from June 10, 1982 until July 15, 1982, the petitioner worked at the Golden Crest Convalescent Center in Atlantic City (R-7). During these periods of employment, the petitioner worked five weeks during which time he also received unemployment benefits. The petitioner earned \$458.80 (R-7 & R-8). The petitioner failed to notify his local unemployment office of his employment and as a result he received unemployment benefits to which he was not entitled in the amount of \$585.00 (R-8). The Department of Labor has not reduced this overpayment to a judgment.

The petitioner was only 20 years old in 1981 and 1982 when he received the unemployment overpayments. At the time, he knew he was required to tell his local unemployment office of his employment, but he was making only approximately \$95.00 per week, which was not enough to support two minor children. The petitioner admits that what he did was wrong and he is remorseful about it. He is attempting to repay the Department of Labor, but he states he needs a license so he can get a better job so as to be able to support his family and repay his debt.

The petitioner is currently 25 years old. He attended, but never graduated from, high school. He states he now has a better job than he did in 1981 and 1982 and is better able to support his family. He has changed over the last five years. He holds a casino hotel employee registration, and he currently works in the linen room at Harrah's. He has been employed at Harrah's since February 5, 1985. He is seeking a casino employee license so he can become employed as a carpet shampoo person and a floor waxer.

The petitioner submitted two letters from individuals as character references. Sandra Fonte, Supervisor, Linen Room Attendants, wrote that the petitioner:

has been employed by Harrah's Hotel/Casino since February 5, 1985. Due to losing his non-gaming license, he was transferred to our linen room on April 2, 1986, where he is permitted to work with a hotel license only.

Since commencing in my department, he has proven to be a reliable and dependable worker for the most part. He has had somewhat of an attendance problem in the past, but seems to have overcome this impediment as of date.

He is a hard worker and will undertake whatever is asked of him, and is able to perform quite satisfactorily with minimum supervision. [P-1]

Not being familiar with hearing procedures, Mr. Swain submitted the originals of both letters to Deputy Attorney General (DAG) Stebbins prior to the hearing as part of the discovery process. At the hearing, DAG Stebbins acknowledged the existence of the letters, and he indicated he would attempt to locate the letters and forward them to me for inclusion in the record. By letter dated August 24, 1987, DAG Stebbins informed me:

[A]s I stated at the hearing, Mr. Swain did forward two letters to me as part of the discovery process. Further, as I stated, I did not have the documents with me as I had no objection to their admission into evidence. You directed that I forward the letter to you. I have diligently searched my office and I am unable to locate the letters. I would stipulate, however, that I did see such a letter and that it recites, in essence, that Mr. Swain was a competent and hard-working employee and that he presented no problems to his employer. My recollection is that it was signed by an individual appearing to be in a supervisory position with the Centerton Nursing Home. I regret that I am unable to produce a copy of the letter and that I can be no more specific than as described above.

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 expressed humiliation and remorse regarding the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am further 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 overriding difficulty in dealing with a problem of enormous proportions. At the time when the petitioner obtained the job and failed to disclose this fact to his local unemployment office, he was in an extremely vulnerable situation. Although his actions were clearly and admittedly wrong, the underlying circumstances do mitigate substantially the seriousness of the misconduct. He was solely concerned with providing a home for his two minor children.

FINDINGS OF FACT

1. The petitioner was arrested on December 30, 1983, and was charged with having violated N.J.S.A. 2C:39-5, unlawful possession of a weapon. The petitioner was also arrested on March 15, 1984, and was charged with having violated N.J.S.A. 2C:39-3e, possession of a loaded firearm without a permit.
2. The petitioner failed to disclose these two arrests on his Personal History Disclosure Form when applying for his casino employee license, and he failed to disclose these two arrests when questioned by the Division's agent.
3. The petitioner failed to disclose the arrests as he was afraid, that if he disclosed the arrests, it would interfere with his getting a casino employee license.
4. The petitioner began receiving unemployment benefits in late September 1981 through mid-June 1982.
5. From September 10, 1981 until November 3, 1981, the petitioner was employed at the Mt. Royal Motel in Atlantic City. The petitioner failed to disclose his employment to his local unemployment office and he wrongfully received unemployment benefits in the amount of \$585.00 to which he was not entitled.

6. The Department of Labor obtained a judgment against the petitioner in the amount of \$685.00, reflecting the \$585.00 overpayment and a \$100.00 fine.
7. From February 26, 1982 until March 11, 1982, and from June 10, 1982 until July 15, 1982, the petitioner worked at the Golden Crest Convalescent Center in Atlantic City. The petitioner failed to disclose this employment to his local unemployment office and he wrongfully received unemployment benefits in the amount of \$585.00 to which he was not entitled.
8. At the time of the false claims, the petitioner was 20 years of age and was supporting two minor children.
9. The petitioner is now 25 years of age.
10. The petitioner works in the linen room at Harrah's.
11. The petitioner is remorseful.

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,

or any offense in any jurisdiction which would be under New Jersey law at the time of application . . . a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to 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 and third degrees);

. . . .

- 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; and

. . . .

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 reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, 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.

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.
- 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 or the offenses enumerated in this act as disqualification criteria; 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;
 - (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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed two violations of N.J.S.A. 2C:20-4, Theft by deception - third degree, which constitutes a violation of section 86c(1), and that the petitioner's nondisclosure on his Personal History Disclosure Form - 2A constitutes a violation of section 86b, and that, accordingly, he is disqualified from 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 Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed 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. 5:12-76 (b)(8); 80(a) and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission, 78-EA-8 (Jan. 30, 1980) at 19. Although an

inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

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

There was no doubt that the respondent fully understood his obligation to disclose his criminal record history on his Personal History Disclosure Form-2A; however, he did not. Further, his failure to disclose was knowing and intentional. The respondent acknowledged that his nondisclosure was the direct result of his apprehensions that disclosure would negatively affect his opportunities for licensure and employment. Therefore, the failure to disclose constitutes a violation of section 86b.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of section 86b, which disqualifies him from licensure.

(B) 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 which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 for the weeks ending September 26, 1981 through October 21, 1981, while he was employed by the Mt. Royal Motel, and for the weeks ending February 27, 1982 through March 13, 1982 and June 12, 1982 and June 19, 1982, while he was employed at the Golden Crest Convalescent Center, constitutes two violations 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

¹ N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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 from the State Department of Labor. Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes two violations of N.J.S.A. 2C:20-4. I further CONCLUDE that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offenses constitute crimes 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 disqualifying offense under section 86c(1), pursuant to section 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1).

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

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

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;

5. The age of the applicant when the offense was committed;
6. - Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Swain is applying for a position as a maintenance and cleaning person. Specifically, he wishes to obtain a job shampooing carpets and laying wax on floors. Such a job would require access to the casino floor area; however, the shampooing of carpets in the casino area usually occurs late at night when portions of the floor are closed or in the early morning when the entire casino is closed. In such a job, the petitioner will not have direct responsibility for casino gaming activities but may have some casual contact with casino patrons. Mr. Swain is currently employed as a casino hotel employee and is a reliable, dependable employee.

Second, the petitioner committed two violations of N.J.S.A. 2C:20-4, Theft by deception - third degree, one over a five-week period in 1981, and the other over a three-week and a two-week period in 1982. During these periods, the petitioner was not employed in the casino industry. The respondent also intentionally failed to disclose his arrest record when he filed his application for his casino employee license. Because the failure to disclose and the offenses are listed disqualifiers under sections 86b and 86c(1), they are very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a person not employed in the industry knowingly committed a theft of public monies to which he was not entitled. Although this factor tends to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in an extremely vulnerable position by reason of his period of unemployment prior to employment in the industry; he was the sole support for his family; he was the father of two children whom their mother had abandoned at the time; his unemployment benefits were insufficient to support his children; and his sole concern was the support of his family. These circumstances converged upon the petitioner and impaired his judgment. Accordingly, the totality of the

circumstances underlying the incident tend to mitigate substantially the seriousness of his offense. In addition, with regards to the section 86b offense, I note that if he had disclosed the arrests, those offenses are not statutory disqualifiers.

Fourth, the petitioner's misconduct occurred for five weeks in late 1981, three weeks in February and March 1982, and two weeks in June 1982, when it ceased. The failure to disclose, however, occurred in 1985.

Fifth, the petitioner was 20 years of age at the time of the theft offenses. I believe that immaturity was a factor in this case. The petitioner believes he has learned with maturity and such conduct would not occur again. In addition, it is clear that the overwhelming nature of the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time.

Sixth, the petitioner's theft offenses were isolated in nature. He did, however, have two subsequent arrests, one in late 1983 and one in early 1984, for possession of a weapon without a permit.

Seventh, because of the underlying circumstances, the petitioner was only concerned with taking care of his children. He needed to obtain suitable housing, clothing, and food for his children. His family's security was his only concern. Because of his youthfulness and limited education, he was unaware of other alternatives which he could have pursued.

Eighth, the petitioner has made rehabilitative efforts. He has been employed since 1982, the last several years in the casino industry. He has performed his jobs in a credible manner. He has accepted his parental responsibilities and is providing a home for his children. While having a limited education and lack of understanding of the hearing process, he has tried. While he did not appear at several conferences or hearings, he always did appear before the Commission in an attempt to obtain his license. The last nonappearance before the Office of Administrative Law was because he misunderstood and went to the Commission's offices rather than the OAL's offices. He fully cooperated with the Division at the hearing level, even sending them the originals of his letters of recommendation. When confronted regarding his failure to disclose his arrest, he readily and candidly admitted that he was afraid if he disclosed the arrests it would negatively impact upon his chance for licensure. To Mr. Swain, licensure is the only way he can

advance, get a better job, and thus be better able to support his family. The petitioner has expressed remorse for, and no intention of repeating, his misconduct. The petitioner has appeared to have matured, accepted responsibility, and is now a good employee.

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 cases¹ 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 petitioner is applying for a position as a maintenance and cleaning person: specifically, as a carpet shampooer and a floor waxer. He will have no responsibility for any casino gaming activity, and he will have little, if any, contact with casino patrons. Considering the nature of the position applied for, the petitioner's work record in the industry, his demeanor and candor at the hearing, his diligence and repeated efforts to obtain a casino employee license, his growth in maturity and acceptance of responsibility, and his care of his family when weighed against the eight rehabilitative criteria:

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Swain was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979)

¹ I believe these other decisions 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.

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

It is apparent that the petitioner's misconduct was aberrant and that he is basically a person of good character, honesty and integrity. The misconduct did not involve his employment in the industry, and the underlying circumstances mitigated substantially 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 several years, has cared for his family in a commendable manner, and is attempting to better himself. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state in the position applied for. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Swain basically is a person of good character, honesty and integrity, and is suitable for licensure in this state as a maintenance and cleaning person. See, Boardwalk Regency Corp.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, his current good character, honesty and integrity under section 90b.

DISPOSITION

It is ORDERED that the application of David L. Swain for 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 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.

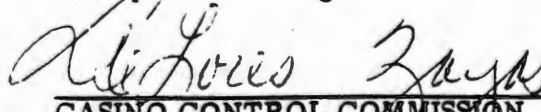
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

31 August 1987
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

September 2, 1987
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 3 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of Sandra Fonte, Supervisor, Linen Room Attendants, Harrah's Marina Hotel Casino, dated June 16, 1987
- P-2 Letter of recommendation from Centerton Nursing Home, not enclosed, as misplaced by the Deputy Attorney General

For the Respondent:

- R-1 Person History Disclosure Form- 2A, dated April 23, 1985
- R-2 Request for Criminal History Record Information and State Police Criminal History Summary record, re: David L. Swain
- R-3 State of New Jersey, Department of Labor Claimant Ledger, dated December 17, 1982
- R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant's Benefit Payment and Employment record, dated December 10, 1982, indicating employment at the Mt. Royal Motel
- R-5 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 Disqualification because of Willful Misrepresentation, re: David L. Swain, mailed July 20, 1983
- R-6 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated November 8, 1983
- R-7 Wage Information Inquiry, dated May 2, 1983, indicating employment at the Golden Crest Convalescent Center
- R-8 Schedule of overpayments
- R-9 Casino Control Commission letter, dated June 4, 1986, informing petitioner of his right to a hearing

WITNESSES

For the Petitioner:

David L. Swain, petitioner

For the Respondent:

Agent Daniel Keitt, Division of Gaming Enforcement, Employee Licensing Section

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-201
OAL DOCKET NO. CCC 8736-86
REGISTRATION NO. 62968-40
ORDER NO. 87-35-7

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

Complainant, :

v. :

ORDER

PETER A. TEREFEKO, :
Respondent. :

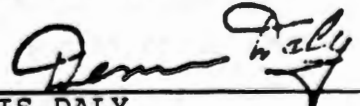
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

IT IS on this *22nd* day of September 1987, 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 and made a part hereof.

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 8736-86

AGENCY DKT. NO. 87-201

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

Petitioner,

v.

**PETER A. TEREFENKO,
Respondent.**

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Peter A. Terefenko, respondent, pro se

Record Closed: June 26, 1987

Decided: August 10, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Petitioner, Division of Gaming Enforcement, seeks the revocation of respondent Peter A. Terefenko's casino hotel employee registration because he pled guilty to possession of a controlled dangerous substance (cocaine) with intent to distribute and thereby is statutorily disqualified from holding that license under N.J.S.A. 5:12-86. The issues are (1) whether the offense constitutes an automatic statutory disqualifier under that section of the Casino Control Act and, if so, (2) whether the respondent can demonstrate the necessary rehabilitation under N.J.S.A. 5:12-91(d). For the reasons set forth below, I find rehabilitation.

The procedural history of this matter is as follows. The Division of Gaming Enforcement filed its complaint seeking revocation on November 18, 1986. Mr. Terefenko requested a hearing on December 2, 1986. The matter was transmitted to the Office of Administrative Law for hearing as a contested case on December 17, 1986 and a hearing was held in Egg Harbor City on June 26, 1987, at which time the record closed.

The facts are not in dispute. Mr. Terefenko was arrested on May 21, 1986 outside a cafe in Somers Point and subsequently charged by accusation with possession of cocaine with intent to distribute contrary to N.J.S.A. 24:21-19(a)(1). He pled guilty on June 20, 1986 and was sentenced to one year probation as well as a \$350 fine. There is no dispute as to the above facts and I so find.

There is also no dispute that the offense of possession with intent to distribute constitutes a statutory disqualifier under N.J.S.A. 5:12-86(c)(3) and I so **CONCLUDE**.¹

The real dispute here is whether the respondent can affirmatively demonstrate his rehabilitation. He claims that, at the time of the offense, he was addicted to cocaine and was an alcoholic. His drug and alcohol problems were aggravated, he feels, by divorce and difficulties with custody and visitation of his two young twin sons. This was his first offense and Terefenko claims he was led into this criminal activity by his addiction. Mr. Terefenko's father was also an alcoholic, who died of sclerosis in his son's teens, and his mother is currently a counselor of alcoholics working out of Reading, Pennsylvania. Mr. Terefenko attended a drug rehabilitation program at a related "Meadows" facility in Wickenburg, Arizona from January 13, 1987 to March 4, 1987 and testified that he has been free of both drugs and alcohol since that time. He further states that he has attended Narcotics Anonymous, as well as Alcoholics Anonymous on a daily basis in the Atlantic City area and has completed the initial 90 meetings in 90 days part of the program. He describes himself as a "recovering" addict and notes that if he had not been arrested he might not have been able to kick his habit. (T13).

¹N.J.S.A. 5:12-86 provides that "the casino shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria: . . . (c) the conviction of the applicant, 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 under New Jersey law at the time of application a violation of any one of the following provisions of law: . . . (3) any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19)". . . .

Terefenko does admit to having a relapse in drug and alcohol use after his arrest in May 1986 and prior to his entry into the Meadows rehabilitation program. He attributes this to stress during the period which was aggravated when he was approached by narcotics agents of the Division of Gaming Enforcement, seeking his assistance in purchasing drugs, apparently to further a criminal investigation. Terefenko testified he was advised by the agents that he might lose his license if he did not cooperate. He advised his lawyer and probation officer, and refused to cooperate because he wanted to separate himself from the world of drugs. He claims that this incident upset him and caused him to relapse into drug use until he went to the Meadows center to kick the habit.

Terefenko has worked in the kitchen department of Harrah's Marina since July 1985. He works in the "garde manger" (pantry) and prepares various foods for consumption by Harrah's guests. Letters from his supervisors, including the kitchen administrator (R-5), applaud his abilities, diligence, and honesty. The Meadows treatment center certified on March 4, that he was "physically stable and able to resume his position of employment." (R-1).

The issue is whether respondent has shown rehabilitation within the meaning of the Casino Control Act. In determining whether a registrant has affirmatively demonstrated rehabilitation the Casino Control Commission must consider the following factors:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;

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

The nature and duties of Mr. Terefenko's position as chef with Harrah's do not involve any responsibility for funds or management. And, by all indications, he has performed his functions in an able and dedicated manner. While the offense of possession with intent to distribute is a serious one, it did not occur on the casino premises and was a first offense, albeit a recent one. Nor was the offense part of any continuing criminal conspiracy, but rather was an isolated incident. There is evidence of adverse social conditions contributing to the offense, including alcoholism in the family, as well as difficult problems of custody and visitation following a divorce which greatly disturbed respondent, who was 25 at the time of the offense. There is much evidence of rehabilitation, including successful completion of a drug treatment program, and continuing participation in Narcotics Anonymous and Alcoholics Anonymous. I was particularly impressed by the respondent's sincerity and the extent of his efforts to be free of the dual bonds of drugs and alcohol.

Having applied the requisite statutory factors to respondent's circumstances, I **CONCLUDE** that the respondent has affirmatively demonstrated his rehabilitation and that the Casino Control Commission should therefore decline to revoke or suspend his license on the basis of his arrest for possession with intent to distribute.

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 Aug. 10, 1987

Richard J. Murphy, Jr.
RICHARD J. MURPHY, JR.

Receipt Acknowledged:

DATE Aug 10, 1987

William J. Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE AUG 12 1987

[Signature]
OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

Peter A. Terefenko

EXHIBIT LIST

- P-1 Investigation report
- P-2 Accusation and Judgment of Conviction

- R-1 Letter from Meadows, March 4, 1987
- R-2 Letter from Chef at Harrah's, January 23, 1987
- R-3 Letter from respondent of February 12, 1987
- R-4 Undated letter from Thomas McMeriam, To Whom It May Concern
- R-5 Letter of November 15, 1986 from the kitchen administrator at Harrah's, To Whom It May Concern
- R-6 Undated letter from buffet chef at Harrah's, To Whom It May Concern
- R-7 Undated letter from a chef, Joseph Tully, To Whom It May Concern



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2041-87

AGENCY DKT. NO. 83-290

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

Petitioner,

v.

MARIA ISABEL USMA-VALENTIN,

Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Maria Isabel Usma-Valentin, respondent, pro se

Record Closed: June 29, 1987

Decided: July 14, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that the respondent is disqualified from casino hotel employee registration pursuant to section 86(b) and/or 80b,d of the Casino Control Act (Act), because respondent allegedly supplied a fraudulent Social Security account number on her Personal History Disclosure Form - 4 (PHD F-4).

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on August 25, 1983. The Division filed a notice of application for suspension of casino hotel employee registration simultaneously with the filing of the complaint. On September 27, 1983, the Commission issued an order denying the application for suspension. The respondent requested a hearing on March 12, 1987. On March 23, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 12, 1987. A hearing was held on June 29, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUE

At issue is whether Ms. Usma-Valentin knowingly and intentionally provided a false Social Security number on her PHD F-4 in violation of section 86b and/or 80b,d, of the Casino Control Act.

FINDINGS OF FACT

(A) Undisputed Facts

Maria Isabel Usma-Valentin is an alien from Columbia who illegally entered the United States in May 1980, at Miami, Florida. From May 1980 until May 1981, she resided with the Roman Rolden family in Boston, Massachusetts. In addition, she obtained employment with Cricket Sportswear, 15 Kneeland Street, Boston, Massachusetts.

The respondent filed a PHD F-4 for casino hotel employee registration on April 28, 1981. Maria Isabel Usma-Valentin (then Usma) commenced employment with Caesar's Casino Hotel in May 1981, as a housekeeper. When Ms. Usma was

photographed and fingerprinted by the Division, she apparently gave them a Social Security number (P-1).

On April 27, 1982, Maria Isabel Usma -Valentin (then Usma) was arrested by the United States Immigration and Naturalization Service (I.N.S.) and charged with illegal entry into the United States. The respondent was arrested in Caesar's Casino Hotel as part of a joint effort between the Division and the I.N.S.

On April 28, 1982, an Immigration Judge granted voluntary departure of respondent on or before May 4, 1982 (P-2), in lieu of deportation.

On June 15, 1982, Maria Isabel Usma married Ramon E. Valentin, a citizen of the United States (R-2).

On August 14, 1982 the respondent started employment with the Tropicana Hotel/Casino (Tropicana) as a housekeeping helper. She is currently employed at the Tropicana.

In 1982, Maria Isabel Usma-Valentin retained Jonathan E. Forman, Esq., an immigration specialist, to file a form I-130 petition requesting status as a permanent resident. She also applied for employment authorization.

On October 4, 1982, the respondent was granted an extension until April 4, 1983, in which to voluntarily depart (P-3).

On February 11, 1986, Maria Isabel Usma-Valentin was granted employment authorization (R-1). In addition, the respondent has been granted resident alien status (R-3).

Although respondent's husband, Ramon E. Valentin, was a fact witness, he was permitted to act as an interpreter since respondent has limited command of the English language.

The Social Security number given by Maria Isabel Usma-Valentin on her PHD F- 4 was not validly issued (R-4).

The above is documented, believable and is FOUND AS FACT.

(B) Disputed Facts

Respondent supplied a Social Security number to the Division sometime during the normal photographing and fingerprinting process for a registration. It appears that there is no specific request for a Social Security number on the form itself; however, it was the normal practice of the Division to request applicants' for numbers during this photographing and fingerprinting procedure.

It is not disputed that Maria Isabel Usma-Valentin provided Social Security number 163-48-8605 to the Division. Ms. Usma-Valentin states that she believed that the number was a valid one which had been obtained lawfully and that she did not willfully or knowingly provide false or misleading information concerning a material fact in violation of section 86b of the Act.

Ms. Usma-Valentin explained that when she went to live in Boston, Massachusetts, she was told that she needed a Social Security card in order to work. Being unaware of the procedures and knowing little English, she was told that she could obtain a Social Security card from Francisco Marin, a Rolden family friend.

Based upon that information, the respondent paid between \$80 and \$130 to Francisco Marin. Within weeks the family gave her a social security card (P-4). The respondent used Social Security number 163-48-8605 until her marriage to Ramon E. Valentin on June 15, 1982. Shortly after the marriage, they went to the Social Security office to change the card to her married name. For the first time the respondent was informed that she was using an incorrect Social Security number. After the respondent was granted resident alien status by the I.N.S., the Social Security Administration issued Social Security number 144-80-8698 (R-3) to the respondent. No criminal charges were ever brought by the Social Security Administration and the respondent is attempting to have her Social Security account properly credited.

Based on the testimony presented, and giving consideration to the credibility of Ms. Usma-Valentin's explanation, I FIND that the Division has not established by the preponderance of the credible evidence that Maria Isabel Usma-Valentin knew

that the Social Security number which she presented to the Division during the fingerprinting and photographing process was not legitimate. I further FIND that Maria Isabel Usma-Valentin believed she possessed a valid Social Security card at the time of filing her PHD F-4 in 1981.

DISCUSSION

Pursuant to N.J.S.A. 5:12-86b, the Commission may deny a casino license to any applicant who is disqualified for:

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.

There is no doubt that the respondent had supplied the Commission with a Social Security number which was not validly reserved for her.

The various cases have focused upon the legislative intent as manifested in the statutes and regulations concerning the casino industry. The Casino Control Act includes an express declaration of public policy. N.J.S.A. 5:12-1b(6) provides (in relevant 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.

The Legislature's declaration of public policy in the Casino Control Act requires the strict regulation of the licensing process to preserve public confidence in its integrity. Paul v. Division of Gaming Enforcement, 2 N.J.A.R. 341 (1979).

It has been noted that the materiality of the misrepresentations made by an applicant depends upon its reflection upon the integrity of the person. See, In re Tufi Application, 182 N.J. Super. 631, 640 (App. Div. 1981), where the court held that deliberate distortions are material when they adversely reflect on the applicant's integrity. In that case, the applicant deliberately attempted to mislead the Division related to vital issues in its investigation.

The determination of whether or not the providing of a false Social Security Number constitutes a violation of N.J.S.A. 5:12-86b depends on the evidence which could establish a Social Security Number as a material fact. See, Division of Gaming Enforcement v. Berrio, OAL DKT. NO. CCC 8280-85 (June 24, 1986), adopted, Casino Control Commission (Sept. 4, 1986). The administrative law judge noted that a preliminary determination must be made as to whether the applicant had knowingly and intentionally provided a false Social Security number. This inquiry into the applicant's mens rea associated with providing the false number is in accordance with related case law.

The case law which has been generated by the passage of N.J.S.A. 5:12-86b typically includes an analysis of the intent of the applicant. The statute, however, does not expressly require intent for a violation of the statute.

One disqualification criterion under N.J.S.A. 5:12-86 relates to the supplying of any information which is untrue or misleading as to any material fact pertaining to qualification. However, not every failure to provide material information should be deemed a disqualifying event. In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979) at p. 13. The Commission's opinion provides guidance for the purposes of determining whether disqualification is warranted under the particular circumstances. The opinion provides as follows:

In evaluating such a failure, the Commissioners should consider whether the failure was willful or whether it evinced a conscious disregard for the regulatory system. Merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification. In judging such a failure, the existence of an official request for the information would be a significant factor. (Ibid.)

Where nondisclosure was inadvertent and did not demonstrate a conscious disregard for the regulatory system, an applicant was not statutorily disqualified. See, Callabrese D'Ascenso v. Division of Gaming Enforcement, 2 N.J.A.R. 92 (1980). In another case, an applicant believed that the Social Security number he submitted was a valid one which had been obtained in a valid fashion. The Commission therefore noted that he did not willfully or in conscious disregard for the regulatory process provide false or misleading information concerning a material fact, and the complaint for revocation of his casino license was dismissed. See, Division of Gaming Enforcement v. Berrio, at p. 5.

Conversely, license as a casino hotel employee has been denied where the applicant intentionally failed to disclose material information. See, Woodard v. Division of Gaming Enforcement, 2 N.J.A.R. 231 (1980), and Paul v. Division of Gaming Enforcement. These decisions indicate that intentional non-disclosure reflected adversely upon the petitioner's good character, honesty and integrity. Another case expressed the concern that an intentional failure to disclose or the provision of misleading statements would hamper the ability of the Casino Control Commission to evaluate an applicant's qualifications. See, Millet v. Division of Gaming Enforcement, 8 N.J.A.R. 561 (1986).

The Division alleges that the respondent knowingly and intentionally provided a false Social Security number. There was no direct evidence or certification that Social Security number 163-48-8605 was not issued to Ms. Usma-Valentin. However, the Division alleges that Ms. Usma-Valentin must have known that the circumstances under which she obtained the card were questionable.

Ms. Usma-Valentin impressed me as a credible witness. While it is difficult to prove what Ms. Usma-Valentin's state of mind was at the time she obtained the card, without more evidence than has been presented here, I am not convinced that the Division has met its burden. Ms. Usma-Valentin's explanation gains further credence from her unrefuted testimony. If, in fact, respondent knowingly and willfully had obtained a fraudulent Social Security number, she certainly wouldn't go to the Social Security Administration to have it changed to her married name, as is the case here.

For the reasons expressed, I **CONCLUDE** that the Division has failed to establish any grounds for revoking Ms. Usma-Valentin's registration. I further **CONCLUDE** that the explanation offered by the respondent is believable and credible. In addition, I **CONCLUDE** that the Division has failed to establish by the preponderance of the credible evidence that the respondent knowingly or intentionally provided false or misleading information pursuant to N.J.S.A. 5:12-86b or N.J.S.A. 5:12-80 b,d.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division seeking to revoke the casino hotel employee registration of the respondent, Maria Isabel Usma-Valentin (no. 29996-40), be **DENIED** and **DISMISSED**.

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

7-14-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

July 18, 1987
DATE

Receipt Acknowledged:

Nilva Zayas
CASINO CONTROL COMMISSION

JUL 17 1987
DATE
dho

Mailed to Parties:
Ronald L. Farley
OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Personal History Disclosure Form -4
- P-2 Record of Deportable Alien, dated April 27, 1982
- P-3 Request for an extension of time in which to depart from the United States, dated October 4, 1982

For the respondent:

- R-1 Request for an extension of time in which to depart from the United States, dated February 11, 1986
- R-2 Copy of Marriage Certificate, dated April 4, 1985
- R-3 Copy of Resident Alien Card and Social Security Card
- R-4 Copy of Social Security Card 163-48-8605

WITNESS LIST

For the Petitioner:

Agent John Zamroc, Division of Gaming Enforcement

For the Respondent:

Maria Isabel Usma-Valentin

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-148
AND 87-319
REGISTRATION NO. 64213-40
APPLICATION NO. 67814-21
OAL DOCKET NO. CCC 2166-87
ORDER NO. 87-48-3

APPLICATION OF SUZANNE VOLA
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

SUZANNE VOLA,

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 December 15, 1987,

IT IS on this 18th day of December 1987, ORDERED that
the initial decision is modified as follows:

1. Disqualification pursuant to
N.J.S.A. 5:12-86(c)(4) requires the
identification of a specific
offense. The record here
establishes by a preponderance of
the evidence that the respondent
committed the unprosecuted offense
of theft by failure to make
required disposition contrary to
N.J.S.A. 2C:20-9; and

ORDER NO. 87-48-3

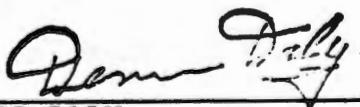
2. Upon consideration of the inimical analysis under Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 302 (1985) and given the absence of rehabilitative evidence in the record, the respondent is disqualified from licensure and registration pursuant to N.J.S.A. 5:12-86(c)(4) and (g); and

IT IS FURTHER ORDERED that the application for a casino employee license is denied and the casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that Suzanne Vola 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
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2166-87

AGENCY DKT. NOS. 87-319 AND
87-EA-148

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

Petitioner,

v.

**SUZANNE VOLA,
Respondent.**

**Ralph L. Fusco, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Richard D. Alten, Esq., on behalf of respondent (Alten, Valentine & Seltzer,
attorneys)**

Record Closed: September 22, 1987

Decided: October 21, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission objecting to respondent's licensure and seeking revocation of her 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. A hearing was held on September 22, 1987, after which the record closed.

The questions presented are whether respondent engaged in certain unprosecuted conduct during the course of her employment which, if proven, would undermine her efforts to establish good character, N.J.S.A. 5:12-90, and would make her continued employment as a registrant inimical to casino operations, N.J.S.A. 5:12-86c(4). Respondent denies wrongdoing, and no case was made with respect to rehabilitation.

Petitioner presented three witnesses. The first, Peter John Bradley, is a senior internal auditor with Caesars Hotel and Casino. He was conducting an audit of the parking area, and as part of this job, he acted as a "spotter," i.e., he posed as a regular customer entering the parking lot, taking a ticket and returning later to retrieve his vehicle. On March 14, 1986, at 10:48 a.m., he obtained a ticket from the Arkansas self-park lot, and returned to his office, making a copy of it. He returned at 5:45 p.m. and gave the ticket to the cashier. He was instructed to pay \$7, which he did, and he saw the cashier insert the ticket into the cash register and ring up the transaction. Mr. Bradley testified that a cashier is obligated to record such a transaction as either cash ("CA") or complimentary ("CHK"). The former connotes the receipt of cash; the latter indicates a complimentary transaction. The cashier knows when a transaction is to be complimentary, because a white sticker would be affixed to the ticket by whomever granted the complimentary at the hotel. The cashier maintains these tickets in separate stacks and at the end of his or her shift submits them to accounting. Mr. Bradley testified that his ticket had no such sticker and he paid the \$7.

The following day Mr. Bradley went to the accounting department and located the ticket; it had a complimentary sticker attached and had been entered on the cashier's register as "7.00 CHK." This indicates that after he gave the cashier the ticket, she recorded it in the register as a \$7 complimentary, and that either she or someone else placed a complimentary sticker on it. Mr. Bradley also checked the accounting sheets for respondent's shift which showed a correct tally; the cash received corresponded to the tickets submitted.

Mr. Bradley identified respondent as the cashier who took his money that day.

Judith Fenselau is a secretary in the Internal Audit Unit at Caesars. As part of the audit, she was also assigned as a "spotter." On March 17, 1986, at approximately 8:30 a.m., she entered the valet parking garage, took a ticket, and made a copy of it in her office. She went about her day's work, and at approximately 5:10 p.m., returned to

the valet parking booth to retrieve her car. She was charged \$8, the correct amount. Ms. Fenselau testified that the entire transaction took no more than 15 seconds and there was nothing else going on in the booth or in her vicinity to distract her. As she had been assigned to watch for anything unusual, she was focused on the cashier and the register. Ms. Fenselau testified that the cashier rang up "\$00" on the register for this transaction. She identified respondent as the cashier. The parking ticket could not be found the following day. Mr. Bradley confirmed this and stated that an accounting showed that the receipts and tickets for this shift were in agreement.

John Coffman is the parking lot supervisor. He testified that according to the hotel's records, either he or Lillian Fraser, a black woman (respondent is white), would have been available to relieve respondent on March 14, 1986, during any breaks. As certain records were missing, it was not clear where respondent had been assigned on March 17, 1986, but Mr. Coffman believed that only he or Russell Hutchinson would have been available to relieve her. After reviewing the records with counsel on cross-examination, Mr. Coffman acknowledged that a Mildred Martinez may have been the cashier at the valet parking garage during the shift when Ms. Fenselau picked up her car, although he had no specific recollection of that shift or of Ms. Martinez.

Respondent testified in her own behalf. Prior to these incidents, she had been employed by Caesars as a parking lot cashier for approximately eight months. She testified with respect to the alleged incident of March 14, 1986, that although she had no specific recollection of Mr. Bradley, the early evening is a busy time and she may have mishit a key indicating that the transaction was a complimentary. In any event, at the time she really didn't know the difference between "CA" and "CHK" on the cash register. Moreover, there are no complimentary stickers in the booth, and she has no access to such stickers. She gets a dinner break and two or three other breaks during the course of the shift and any ticket that would have been received is open to whoever relieves her. There are also other people who have access to these tickets after she brings them to accounting at the close of her shift.

With respect to the incident on March 17, 1986, respondent testified that she was working as a dispatcher in the valet parking garage that day, taking tickets from the cashier and delivering them to the parking lot attendants who then went for the patron's cars. She had no access to the cash register; Mildred Martinez was the cashier that night.

Respondent specifically denied ever taking money during the course of her employment as a parking lot attendant for Caesars.

This is the substance of the record. Both Mr. Bradley and Ms. Fenselau were credible witnesses and they offered eyewitness accounts of the March 14 and March 17 transactions, respectively. Mr. Bradley gave respondent a ticket, she rang it up, and he paid her. She recorded it as a "CHK" transaction which was incorrect. No complimentary ticket was affixed when he gave it to her. Respondent's statement that she didn't know the difference between "CHK" and "CA" is difficult to accept. She had been employed for eight months in this position, and because it was her job to separate the "CA" and "CHK" tickets before bringing them to accounting, one would expect that such lack of knowledge would have become evident quickly as any given day's receipts were tallied. Moreover, the tally from her shift on March 14, 1987 was correct, and if she had not taken the \$7, it would have been over by this amount.

Ms. Fenselau was focused on respondent and the cash register during the course of the March 17, 1986 transaction. She identified respondent as the cashier, and noted that the transaction was rung up as "\$00". The ticket could not be found the following day, and the tally was correct, indicating that the \$8 was not submitted. Though it is not clear whether respondent was assigned as the cashier or the dispatcher that evening, Ms. Fenselau placed her as the cashier for this transaction. That is sufficient.

Based on the foregoing, it is my conclusion that petitioner has established the unprosecuted conduct complained of with respect to the March 14 and March 17, 1986 incidents. As a result, respondent cannot meet the good character test necessary to licensure, and further, having stolen from her casino employer, her continued registration would be inimical to casino operations. It is **ORDERED** that respondent's application for a license be **DENIED**, and that her 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.

DATE

10/21/87

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

10/22/87

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OCT 26 1987

OFFICE OF ADMINISTRATIVE LAW

bc

WITNESSES

For petitioner:

Peter John Bradley

Judith Fenselau

John Coffman

For respondent:

Suzanne Vola

EXHIBITS

For petitioner:

P-1 Parking ticket

For respondent:

R-1A Permanent Bank Inventory Sheets

R-1B Permanent Bank Inventory Sheets

R-1C Permanent Bank Inventory Sheets

R-2 Parking Shift Report

R-3A Permanent Bank Inventory Sheets

R-3B Permanent Bank Inventory Sheets

R-5A Daily Time and Attendance Report

R-5B Daily Time and Attendance Report

R-5C Daily Time and Attendance Report

R-6 -- Parking Shift Report

R-7 Personal History Disclosure Form - 2A

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

Complainant, :

: AMENDED ORDER

v. :

THERESA VOLPE, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of September 16, 1987,

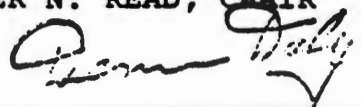
IT IS on this ^{9th} day of October 1987, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

ORDER NO. 87-35-4

IT IS FURTHER ORDERED that the Commission's amended order of August 31, 1982, suspending the casino employee license of Theresa Volpe is vacated for good cause shown.

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 1635-86

AGENCY DKT. NO. 82-69

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

Petitioner,

v.

THERESA VOLPE,
Respondent.

**Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Lorraine Gormley, Esq., for respondent

Record Closed: April 24, 1987

Decided: July 1, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on July 21, 1982 seeking to revoke the respondent's casino employee license because she was charged with violations of the Controlled Dangerous Substance Act (CDS), specifically, sales of CDS on December 1, 1981, December 3, 1981, and March 16, 1982. The respondent was indicted on these charges and on an additional charge of possession of CDS on April 28, 1982.

The respondent pled guilty to possession of CDS on April 28, 1982 and received a conditional discharge pursuant to N.J.S.A. 24:21-27. This was the result of a negotiated plea in which the remaining charges involving sales on December 1, 1981, December 3, 1981 and March 16, 1982 were dismissed. The Division seeks to disqualify the respondent from casino employee licensure on the grounds that she committed acts which, if prosecuted, would constitute an offense listed in N.J.S.A. 5:12-86c(3), pursuant to N.J.S.A. 5:12-86g, to wit: N.J.S.A. 24:21-19, and on the further grounds that the respondent lacks the good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b.

MOTION TO PRECLUDE

The respondent moved to preclude the Division's proofs because the legislative policy of granting conditional discharges pursuant to N.J.S.A. 24:21-27 favors the rehabilitation of first offenders by, inter alia, saving them from "...disqualification or disabilities, if any, imposed by law." It was clear however, that the respondent received a conditional discharge for the possessory offense of April 28, 1982 described in the seventh count of the indictment and not for the selling offenses of December 1, 1981, December 3, 1981 and March 16, 1982, described in the first through sixth counts. Those offenses were dismissed as part of the negotiated plea and are exactly the kinds of offenses contemplated by section 86g of the Casino Control Act. They are also the offenses upon which the Division primarily relied in order to disqualify the respondent.

DISQUALIFICATION ISSUE

For reasons which will appear below, I **CONCLUDE** that the Division of Gaming Enforcement did not meet its burden of proof in establishing that the respondent committed acts which constitute sales of CDS on December 1, 1981, December 3, 1981 and March 16, 1982. That burden of proof was a simple preponderance of the evidence.

The remaining issue is more difficult of determination because there the burden is cast upon the respondent to produce clear and convincing evidence that she possesses the good character, honesty and integrity required for casino employee licensure.

SUMMARY OF EVIDENCE

DIVISION'S CASE

The Division produced two witnesses in its case in chief; the respondent and an undercover police officer. Their testimony was preceeded by a minor skirmish in which the respondent's sister was seated at counsel table in anticipation of a misidentification. There was none.

RESPONDENT'S TESTIMONY

The respondent denied selling controlled dangerous substances. She acknowledged pleading guilty to possession of controlled dangerous substances. She admitted and denied other matters which became relevant only after the undercover agent testified. For instance, she admitted that she resided for a time with a boyfriend named Joey DePopalo in the Ventnor Motel - that she used to frequent the Brajole Cafe - that she was only in the East Street Pub one time and that was during the first week of April 1982 - that she did not know Brian Kauffman - that she did know Diane Frederico - that she was arrested in a motel room on April 28, 1982 with one Stephen Silkowski - that two marijuana joints and some cocaine were found in or on her pocketbook when she was arrested - that the cocaine must have been Silkowski's - that the marijuana joints were hers - that she obtained them in Florida - that on December 1, 1981, December 3, 1981 and March 16, 1982 she neither possessed controlled dangerous substances nor saw the undercover agent, who was present in the hearing room, on those days - that she had been a cocktail waitress at Caesars.

POLICE TESTIMONY

Andrew Mastella is a Sergeant in the New Jersey State Police. On December 1, 1981 he was involved in an operation whose mission was to infiltrate the casino industry and identify persons who sold controlled dangerous substances. He was operating in an undercover capacity, i.e. he affected the pose of a petty drug dealer and drug user. He did this from 1978 until 1982.

Mastella worked with a confidential informant (CI), who introduced him to patrons of the Brajole Cafe. A surface agent, Lt. Detective Utley, sat at the bar and

observed Mastella as he worked the bar patrons with his informant, shopping for drugs.

On December 1, 1981, the C.I. introduced Mastella to a woman Mastella believes is the respondent. She led the agent to a location in South Atlantic City where she obtained, and he purchased from her, 11 suspected quaaludes for \$66. While following the woman in his car, Mastella noted the license plate on her vehicle. The agent later did a "look-up" on that tag number and identified the registrant of the vehicle as a "Mr. Kauffman from Cherry Hill."

Mastella says that the next day Utley went to the Division of Gaming Enforcement and obtained photographs of Theresa Volpe. Utley showed Mastella a "line up" card on December 2, 1981 from which Mastella says he picked Volpe's photograph as the person from whom he purchased suspected drugs on December 1, 1981.

On December 3, 1981, Mastella returned to the Brajole Cafe in the early morning hours and purchased more suspected quaaludes from the person he identifies as Theresa Volpe. He engaged her in conversation and says he learned she was a cocktail waitress at Caesars. He asked to buy cocaine from her. She said she would have to go get it. He drove her and Diane Frederico to the "same place" from which the quaaludes were obtained on December 1, 1981.¹ Mastella reports that upon arrival..."Theresa told me to come inside. And at that time, I started to get out of the car and Diane Frederico said, "No, he doesn't come in. Joey doesn't like to meet new people." On further examination the witness identified "Joey" as one Joey DePopalo, whom he gratuitously identified as the target of another drug investigation. On redirect examination Mastella said that Diane Frederico actually said "Joey DePopalo doesn't like to meet new people." This was ingenuous of Diane Frederico if in fact she said it or disingenuous of Mastella if she did not. It is an incredible statement. It would have been a little more believable if expressed on direct examination. On redirect it appeared to be blatant boot strapping. After this statement is alleged to have been made, the woman Mastella identifies as Theresa Volpe obtained from the apartment and sold to Mastella approximately \$230 or \$240 worth of suspected cocaine. (R4 and P2 are requests for examination of this evidence. The requests do not appear to have been honored).

¹ On his report of December 1, 1981, Mastella identified the location as Boston and Atlantic Avenues. In his report of December 3, 1981 Mastella identified the location as 4825 Atlantic Avenue, Ventor, New Jersey. The 1984-85 Atlantic City AAA Map and Visitors Guide indicates that these locations are not identical.

On March 16, 1981, at the East Street Pub in Atlantic City, Mastella again saw the woman he identifies as Theresa Volpe. He asked her for and received approximately four quaaludes. (Again no lab report identifies the substance as such).

On April 28, 1982, Theresa Volpe was arrested by police officers other than Mastella. Mastella says he observed her through a one way mirror being transported to a processing room in a building in Northfield on that date. According to her indictment, she possessed cocaine on that day.

The officers evidence is not compelling. I was uneasy with the identification process used in this case. Apparently the photographic line-up card used for identification is no longer in existence. This is no fault of the police officer, since the criminal portion of this case was concluded five years ago. This officer engaged in undercover operations for four continuous years. He must have made hundreds of drug buys from strange faces. But the passage of time alone blurs the image of faces.

The errors in his testimony and his attempt to link the respondent and Joey DePopalo to a drug deal through an unlikely attribution to Diane Federico are clear indicators that the officers recollection is imperfect or that he felt the need to embellish the facts.

THE RESPONDENT'S CASE

The respondent produced numerous witnesses and letters of recommendation attesting to her good character, honesty and integrity. The respondent testified again, on her own behalf. She admitted drug use. Although she maintained that she pled guilty to possession of drugs and not to the sale of drugs, because that is all she was guilty of; we learned that she obtained a favorable plea bargain (considering the charges against her,) because she used a friend to set up a drug deal for the state police. She in fact became a criminal informant. Criminal informants, who usually inform on others to save themselves, as opposed to civilian informants, who usually inform on others to save the neighborhood, or the children, are not savory characters. But this was a long time ago when the respondent did not possess good character, honesty and integrity.

The respondent experienced an emotional problem arising from a failed romance during 1981 and early 1982. This problem was exacerbated by drug use. The respondent acknowledged, and other witnesses observed, personality changes in her during this period. She behaved badly; was sullen and morose. She was neglectful of family and personal responsibilities. She consorted with drug users and abusers. She went for long periods of time without sleep. She exhibited all the classic symptoms of drug abuse.

The respondent is a member of a close knit, supportive and intelligent family. The respondent's mother noticed the symptoms of drug abuse and took action. She took the respondent to counselling sessions and she and the respondent's siblings participated in these sessions to the extent necessary. In respondent's case, therapy was successful and she has apparently been drug free since April of 1982.

Since that time, the respondent has been actively engaged in the physical and emotional care of others. When the respondent's sister broke her back and was immobilized for many months, the respondent was her nurse and constant companion.

When the respondent's aunt died of cancer 2 1/2 years ago, the respondent assumed the role of primary caretaker for her now four year old cousin. She and her cousin live with respondent's mother and sister.

The respondent designs, manufactures and repairs jewelry. She teaches jewelry design at a seniors center, but only for a few hours a week so that she has more time at home. She leads a life of quiet retirement and goes out infrequently.

Everyone who meets the respondent likes her and admires her. There is no question that she has been rehabilitated from drug use and there is no question that she now possesses the requisite good character, honesty and integrity for casino licensure.

Of course she did not possess these qualities at the time complained of, 1981, and 1982, but defects in character may be cured as some diseases may be cured. The respondent has benefitted both from her therapy and from her period of penance.

I CONCLUDE that the respondent presently possesses the good character, honesty and integrity for casino employee licensure.

1445

I ORDER that the complaint filed herein be DISMISSED.

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

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

7/1/87
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

7/2/87
DATE

Bernadette J. Figner
CASINO CONTROL COMMISSION

Mailed to Parties:

7/7/87
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESS LIST

Theresa M. Volpe
Andrew Mastella
Elizabeth O. Anderer
Susan Volpe
Donna Locke
Rhonda Volpe

EXHIBIT LIST

- R-1 Police report relating to the 12/1 incident
- R-2 Police report relating to the 12/3 incident
- R-3 Document
- R-4 Request for examination of evidence
- R-5 Examiner's report on polygraph examination of Theresa Volpe; resume' of the
 examiner, Joseph M. Brophy; and tracings from the examination
- R-6 Conditional discharge order
- R-7 Document entitled "Conditions for Adults on Probation"
- R-8 Results and receipts for urinalysis tests
- R-9 Application for Order Granting Termination of Probation
- R-10 Reference letter from Lislie's
- R-11
through
R-13 Three letters
- R-14 Letter from Pat Rosenberg
- R-15 Letter from Kevin McCarthy
- R-16 Letter from Debbie Brown
- R-17 Letter from Michael Volpe
- R-18 Letter from Winnie Miller
- R-19 Letter from Ron Giberson
- R-20 Order Imposing a Probationary Term Pursuant to N.J.S.A. 24:21-27
 (Conditional Discharge)

R-21 Letter dated February 25, 1987 from Dennis Levinson

P-1 Indictment

P-2 Request for examination of evidence

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-283
OAL DOCKET NO. CCC 1173-87
REGISTRATION NO. 10455-40
ORDER NO. 87-37-2

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
JOSEPH J. WUDZKI, :
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 (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 30, 1987,

IT IS on this 6th day of October 1987, ORDERED that the initial decision is modified as follows:

1. To find that the respondent's conduct in redeeming a discount food coupon for cash constituted the offense of theft by deception in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 5:12-86(g);
2. To note that rehabilitation factors listed in N.J.S.A. 5:12-91(d) which were considered by the ALJ on pages 4 and 5 of the initial decision are subsumed in the inimical analysis

set forth in In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1 (Commission decision February 26, 1979). See Application of Donna M. Davis for a Casino Key Employee License, 8 N.J.A.R. 31 (Commission decision December 27, 1985);

3. To change the reference on page 5 of the initial decision to N.J.A.R. 19:45-1.9 to N.J.A.C. 19:45-1.9; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

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 1173-87

AGENCY DKT. NO. 87-283

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

Petitioner,

v.

**JOSEPH J. WUDZKI,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards,
Attorney General of New Jersey, attorney) for petitioner
Gregory Imperiale, Esq., for respondent**

Record Closed: August 4, 1987

Decided: August 13, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on February 2, 1987, seeking to revoke the respondent's hotel 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. There was a prehearing

conference on May 5, 1987 and the matter was heard on August 4, 1987 at the OAL in Atlantic City, New Jersey.

STATEMENT OF THE CASE

The Division alleged that the respondent obtained a \$5. discount coupon from a "casino bus." The discount coupon was converted to cash. The respondent was charged with theft. This occurred in the Resorts International Casino Hotel. The respondent was employed at the hotel at the time. The Division alleges that as a result of this conduct the respondent's continued registration as a casino hotel employee would be inimical to the Casino Control Act (Act) and to casino operations.

FACTS

There is no dispute as to the operative facts. I **FIND** that:

1. The respondent was employed at Resorts International Hotel Casino as a buffet server on October 11, 1986.
2. The respondent took a "casino bus" home to North Jersey to visit his parents and returned via "casino bus" on October 11, 1986.
3. The respondent paid \$18 for his bus ticket to Resorts International Hotel Casino and received , in addition to his passage, a roll of quarters and a discount coupon alleged to be worth \$2.50 at the Rendezuous Restaurant in Resorts or worth \$5.00 in the Pavillion Restaurant in Resorts.
4. When the bus arrived at Resorts on October 11, 1986, the respondent went to the cashier at the Pavillion Restaurant and cashed the discount coupon.
5. He received \$5. and split the proceeds 3 to 2 with the cashier.
6. The respondent admitted his conduct, acknowledged he had done it on "a couple of other "occasions and was charged with disorderly persons theft contrary to 2C:20-4.
7. The criminal charges were dismissed for failure to prosecute.
8. The respondent was terminated from his employment at Resorts.

FACTUAL DISCUSSION

The coupons were not introduced into evidence. I assume they are what are known as complimentary items or services in the casino industry, i.e. inducements offered to prospective gamblers to lure them into casinos or to reward them for their play. The "casino bus" was not further identified. I assume it was operated by a junket enterprise, i.e. a business organization which identifies persons who are likely prospects for gaming tables and "slots" and brings these persons to the casino pursuant to a contract with the casino. Such trips and the complimentary items and services which usually accompany them are clearly not intended to enrich the recipients.

The respondent protests that he did nothing wrong. He was employed in the casino industry for 7 years when this occurred and must have known that he was not entitled to turn his coupon into cash. What the respondent did was wrong, although apparently quite common.

Resorts very properly terminated his employment.

Did he commit an offense?

LAW

The statute defining the offense that the respondent allegedly committed reads as follows:

2C:20-4. Theft by deception

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.

There is no question that the respondent was entitled to the discount coupon; he paid his fare. Apparently the coupon recited on its face that it was good at certain specified Resorts restaurants and for differing amounts depending upon the restaurant chosen. The parties agree that this was so. The clear intention of such a coupon is that it be presented to the cashier as partial payment for dinner along with the dinner check. Whether the cashier can return the change to the user in the event the dinner check does not exceed the amount of the coupon the record does not reveal. Neither does it reveal whether the coupon was redeemable for any other thing of value. Nevertheless, the respondent concedes that a violation of the statute occurred, although an unintended one, and I am not going to require production of the coupon in order to so find.

The exact thievery which is the gravamen of this complaint is that the respondent obtained cash in his pocket when all he was entitled to was food and drink in his belly less than the value of the cash received, see N.J.A.R. 19:45-1.9.

ADDITIONAL FACTS

1. The respondent is employed presently as a bus boy in a casino hotel restaurant.
- 2.&3. The offense is not serious, it was incidental to the respondents seeking the best method of traveling home to North Jersey in order to visit his parents.
4. The offense occurred on October 11, 1986.
5. The respondent was 31 years old when the offense occurred.
6. The offense occurred on two or three other occasions prior to October 11, 1986.
7. A social condition which may have contributed to the offense is the prevalent use of casino gambling chips and discount coupons in lieu of cash in the greater Atlantic City community. The respondent testified

that such coupons are often given as "tips" and are therefore seen as having cash value.

8. The respondent submitted glowing letters of recommendation. Apparently he is a well liked and capable employee. In addition he has suffered loss of income and self respect as a result of this offense. I am satisfied that he will not commit such an offense again.

I **CONCLUDE** that the respondent did not commit an offense which indicates that registration of the respondent would be inimical to the Casino Control Act and to casino operations as defined in N.J.S.A. 5:12-86(4).

ORDER AND DISPOSITION

It is hereby **ORDERED** that the Complaint filed by the Division 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 13, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

August 17, 1987
DATE

Receipt Acknowledged:

LeRoy Zapp
CASINO CONTROL COMMISSION

AUG 18 1987
DATE

Mailed to Parties:

John J. [Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Detective Pepe

For the Respondent:

Joseph J. Wudzki

EXHIBIT LIST

For the Petitioner:

P-1 State of New Jersey State Police Investigation Report, dated October 12, 1986 - 7 pages

For the Respondent:

- R-1 Employee petition in favor of Wudzki
- R-2 Letter from Mary Lou Ruffu, Garden Room Manager, dated June 24, 1987
- R-3 Letter from Pamela Pauli, Assistant Restaurant Manager, dated July 29, 1987
- R-4 Letter from Suzanne Gilmore, dated July 8, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-267
OAL DOCKET NO. CCC 1099-87
LICENSE NO. 63399-21
REQUISITION NO. 53202-40
ORDER NO. 87-38-2

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

Complainant, : ORDER

v. :

ANTHONY M. YANNELLA, :

Respondent. :

A hearing having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of October 7, 1987,

IT IS on this 30th day of October 1987, ORDERED that the initial decision is rejected for the following reasons:

1. The Commission finds that the respondent is disqualified from licensure and registration pursuant to N.J.S.A. 5:12-86(c)(3) based upon his conviction for possession of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-19(a)(1). Further, the Commission finds that the respondent failed to demonstrate by clear and

ORDER NO. 87-38-2

convincing evidence either his rehabilitation from the disqualifying offense pursuant to N.J.S.A. 5:12-90(h) and 91(d) or good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b) based upon both the insufficient evidence of rehabilitation presented and his lack of candor and credibility at the administrative hearing.

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Anthony M. Yannella be revoked; and

IT IS FURTHER ORDERED that Anthony M. Yannella be prohibited from reapplying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

SEP 3 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 1099-87

AGENCY DKT. NO. 87-267

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

Petitioner,

v.

**ANTHONY M. YANNELLA,
Respondent.**

**Ralph Fusco, Deputy Attorney General for petitioner, (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Gregory Imperiale, Esq., for respondent**

Record Closed: August 20, 1987

Decided: August 26, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on January 15, 1987, seeking to revoke the respondent's casino hotel employee registration and casino employee license because he was convicted of possession of marijuana with the intent to distribute. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on May 7, 1987 and the parties convened for a plenary hearing in Atlantic City on August 20, 1987.

1460

STIPULATED FACTS

The respondent stipulated that on April 18, 1986 he pled guilty to N.J.S.A. 24:21-19a(1) possession of marijuana with intent to distribute.

This is a crime listed at N.J.S.A. 5:12-86c(3).

I **CONCLUDE** that the respondent is disqualified from casino employee licensure and casino hotel registration pursuant to N.J.S.A. 5:12-86c(3), 90e and 91b.

REHABILITATION

Pursuant to section 90h and 91d of the Casino Control Act, disqualified persons, as a result of criminal convictions, may still be licensed or registered if they meet other criteria contained in the rehabilitation statutes listed above.

I make the following additional findings:

- (1) The respondent is a blackjack dealer and former busboy and waiter. In both positions he has close casino patron contact.
- (2) The respondent possessed a small amount of marijuana which he would have sold to a friend if asked to do so. The crime is not serious; the sentencing judge found four mitigating factors to only one aggravating factor, i.e., deterrence.
- (3) The respondent was returning from Baltimore, Maryland when he was arrested with two ounces of homegrown marijuana. He also possessed an inoperable, but nevertheless illegal, handgun (because unlicensed).
- (4) The offense occurred on December 16, 1985.
- (5) The respondent was 20 years old when the offense occurred.
- (6) This is a first conviction for the respondent.
- (7) The respondent has favorable responses from supervisors:
 - (a) His CSI instructor comments favorably on his attitude (R2).
 - (b) Bally's supervisors provide him with an excellent reference (R3).
 - (c) A friend writes of his reputable character and trustworthiness (R4).

- (d) A storekeeper with whom the respondent trades calls him honest, reliable and a hard worker (R5).
- (e) His girlfriend's father (who was aware of his marijuana conviction) writes that he is commendable and has avoided marijuana and other drugs (R6).
- (f) His grandmother, who is comforted by his presence in her home, supports his licensure (R7).
- (g) He is a "commendable employee" of Bally's (R8, R9, R10).

The respondent has paid a heavy criminal penalty for his crimes considering the fact that he only possessed two ounces of "homegrown". Therefore, he has not yet satisfied his three years probation or his \$1500. fine.

I am satisfied from the documents in evidence, the respondent's girlfriends testimony, and his demeanor under cross examination, that he no longer uses drugs. In addition, he has such a fine reputation for good character, honesty and integrity with those people who know him best that despite the fact that he has not completed his probation or entirely discharged his fine, I am satisfied that he is rehabilitated.

I **CONCLUDE** that the respondent is rehabilitated within the meaning of section 90h and 91d of the Casino Control Act.

GOOD CHARACTER, HONESTY AND INTEGRITY

The Act requires that licensed casino employee possess good character, honesty and integrity (89b(2)) and (90b).

This respondent has worked in the casino industry since May, 1984. He lives with his grandmother in Ventnor and is a nice young man. He said that while he used marijuana for the past few years, he did not take it into his grandmother's house because she "would kill" him if she found out. He has, in addition, a girlfriend who gives him moral support and who is certain he no longer uses drugs. She is entirely credible.

It is possible to possess good character, honesty and integrity and have used marijuana in the past. Everyone knows such persons. Many "drug users" in high

school or college are now responsible members of the community. In addition the major portion of marijuana is smoked in groups. It is a social drug. As a result, persons who use marijuana almost always share it with others and therefore become guilty, at least in a technical sense, of distribution of marijuana. So it was with this respondent.

One question remains. The respondent appeared to "waffle "during the deputy's examination. He acknowledged that for years , while he resided in Ventnor, that he and a friend jointly grew marijuana plants (5 or 6 pots in a closet) at his friend's house in Baltimore. He acknowledged that he frequently returned to Baltimore on weekends to visit his mother and his friend. Yet he testified under oath that he never transported marijuana from Baltimore to New Jersey before this event. It is not likely that he is telling the truth in this regard. Does this adversely affect the respondent's good character, honesty and integrity as it is required for casino employee licensure? I hold that it does not in the circumstances of this case.

To acknowledge under oath that one has committed unprosecuted and hitherto undetected crimes is not a requirement of any other employment, including judge, prosecutor, legislator or commissioner. It should not be a requirement for blackjack dealers.

I **CONCLUDE** that the respondent possesses the requisite good character, honesty and integrity for casino employee licensure.

ORDER

I **ORDER** that the complaint filed by the Division 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** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 26, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

August 31, 1987
DATE

Receipt Acknowledged:

Alfred Lopez
CASINO CONTROL COMMISSION

AUG 31 1987
DATE

Mailed to Parties:

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Anthony Yannella

For the Respondent:

Anthony Yannella
Beverly Myhre

EXHIBIT LIST

For the Petitioner:

None

For the Respondent:

- R-1 Letter from Susan Hargis, Probation Officer, Atlantic County Probation Department, dated May 6, 1987
- R-2 Letter from Beryl Tweedle, Instructor, Casino Schools, Inc., dated May 6, 1987
- R-3 Letter from Ken Davie, Director Casino Administration, Bally's Casino, dated May 6, 1987
- R-4 Letter from Richard Napier, Napier Electric Co., Inc., dated May 5, 1987
- R-5 Letter from Alan Mitchell, Ventnor Video, dated May 5, 1987
- R-6 Letter from John B. Myhre, Ktron Corp., dated May 4, 1987
- R-7 Letter from Hilda Zigler, dated May 6, 1987
- R-8 Letter from Bally Management Team, undated
- R-9 Employment Commendation Record, dated August 13, 1987
- R-10 Employee Commendation, dated August 2, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-237
OAL DOCKET NO. CCC 245-87
REGISTRATION NO. 43027-40
ORDER NO. 87-25-3

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
V. :
ORESTES ZAMORA, :
Respondent. :

A hearing having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 1, 1987,

IT IS on this ^{10th} day of July 1987, ORDERED that the initial decision is modified to:

1. Find that the Division of Gaming Enforcement failed to establish, pursuant to N.J.S.A. 5:12-86(c)(3) and -86(g) that the respondent committed the disqualifying offense of possession of a controlled dangerous substance (CDS) with intent to distribute, contrary to N.J.S.A. 24:21-19 a(1);

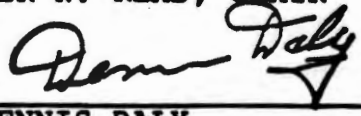
2. Find that, in addition to his false testimony at the OAL hearing and the short period which has passed since the respondent's conditional discharge in the fall of 1986, several other factors contribute to the Commission's determination that the respondent's offense of possession of CDS is inimical to the policy of the Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4) and -86(g), namely: the offense took place on the premises of a licensed casino hotel facility; the offense occurred relatively recently on May 24, 1985; the mature age of the respondent at the time of the offense; and the failure of the respondent to produce character witnesses or letters of reference; and

3. Delete the conclusion that the respondent's false testimony is an inimical action which requires the revocation of his casino employee license pursuant to N.J.S.A. 5:12-86(c)(4) since disqualification under this provision of the Casino Control Act is based upon the identification of a specific criminal offense.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Orestes Zamora is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent 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
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 245-87

AGENCY DKT. NO. 85-237

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

Petitioner,

v.

ORESTE ZAMORA,

Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Jose A. LaBoy, Esq., for respondent (Adamo, Pagliughi, LaBoy & Tonetta, attorneys)

Record Closed: May 19, 1987

Decided: May 21, 1987

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 June 10, 1985 charging that Oreste Zamora, a casino hotel employee registrant (Registration No. 43027-40), had been arrested and charged with possession of a controlled dangerous substance, specifically cocaine, a violation of N.J.S.A. 24:21-20(a)1, on or about May 24, 1985. The Division contended that Mr. Zamora's action required revocation of his casino hotel employee registration since it indicated that his continued licensure would be inimical under the standards contained in the Casino Control Act, N.J.S.A. 5:12-86c(4).

Mr. Zamora requested a hearing on the proposed revocation of his registration and the matter was transferred to the OAL. A prehearing conference was held before Administrative Law Judge Lillard E. Law on March 12, 1987 and a prehearing order was issued by Judge Law on that date. A hearing was held before Administrative Law Judge Jeff S. Masin on May 19, 1987 at the Egg Harbor City Municipal Court.

ISSUES

The prehearing order established the issues for consideration at the hearing. These were:

- 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: Possession of Controlled Dangerous Substance (Cocaine) in violation of N.J.S.A. 24:21-20A1 and the Distribution of CDS.
- B. Whether respondent's continued licensure and/or 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. 24:21-20A1, 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.
- C. Whether respondent may demonstrate rehabilitation pursuant to Sections 90h and/or 91d of the Casino Control Act.

EVIDENCE

The Division's sole witness was Detective Thomas Janicki of the New Jersey State Police, who has for eight years been a detective assigned to the Division of Gaming Enforcement. On May 5 Detective Janicki was assigned as supervisor of the Golden Nugget Casino Enforcement Unit. On that date he had occasion to be in Caesars Casino Hotel with Detective Paul. They were called to a passageway near the third floor kitchen by Division Agent S. Koenig. Koenig was observing three employees, who appeared engaged in some suspicious activity. By the time Paul and Janicki arrived at the scene, one of the individuals had left. The two remaining were ultimately identified as Jose Marquez and Oreste Zamora. The officers approached Marquez and Zamora and identified themselves. At this point Marquez fled toward the kitchen, dragged Koenig and Janicki

along. They observed him attempt to shove plastic baggies in his mouth. The officers retrieved seven bags from Marquez' mouth and a total of twenty-seven from his person. They then returned to Zamora, who was still standing in the hallway. The two men were taken to the Division office at Caesars and questioned. Marquez was given his Miranda warnings through a Spanish-speaking agent. When questioned he indicated that he had received the packages, which appeared to contain controlled dangerous substances, from an unidentified Spanish male. Marquez indicated that he and Zamora were in the business of selling drugs and had been doing so for three days in the casino. Zamora was approached, given his Miranda warnings, and asked to empty the contents of his pocket. According to Janicki, Zamora had his back to the officer as he emptied his pockets. Janicki then observed a small empty glassine bag and another one, about the size of a dime, which contained a white powder which was suspected to be cocaine. Laboratory tests on this material later indicated that the material was in fact .20 grams of cocaine.

Mr. Zamora was questioned about his activities. He refused to identify the third individual who had been observed by Koenig. He denied that the bag of suspected cocaine had been in his possession and also denied that he used cocaine or sold it.

Mr. Zamora was ultimately indicted by the Atlantic County Grand Jury in Indictment 85-08-1242-B, which charged him with possession of a controlled dangerous substance. He received a conditional discharge from Honorable Manuel Greenberg, J.S.C., on October 25, 1985. As a condition of the discharge he was placed on probation for a period of one year. After satisfying all conditions of the conditional discharge, including submission to drug tests which indicated that he was not using any controlled dangerous substance the conditional discharge was successfully completed and the charges dismissed.¹

Oreste Zamora testified in his own behalf. He indicated that he has not used drugs since the time of his arrest at Caesars. He denied that he was ever selling drugs and also continued to deny that the bag of cocaine which Detective Janicki identified as having been in his possession at the time of his arrest was his. He did admit having used drugs at or around the time of his arrest.

¹Marquez was indicted for possession and possession with intent to distribute. He pled guilty to possession and served 180 days in the County Jail.

Mr. Zamora is now employed as a porter in the housekeeping division of the Sands Casino. He was formally employed as a steward. He has been employed by the Sands for two years and previous thereto was employed by Caesars for three years. He is 28 years old, married, and has one 11 year old child. He was never arrested prior to the incident of May 24, 1985, either in this country or in his native Cuba. He arrived from Cuba in 1980.

DISCUSSION

This case presents the situation of an individual employed by a casino hotel as a casino hotel registrant who was arrested and charged with possession of cocaine while on duty at his employer's place of business. Possession of a controlled dangerous substance by a casino employee at any time is a serious offense. However, when the possession occurs during the hours of employment on the premises of the employer, the seriousness is heightened.

In determining whether Mr. Zamora actually possessed the cocaine, it is, of course, necessary to recognize that his conditional discharge did not involve a conviction for possession. Thus, an initial determination must be made as to whether he in fact was guilty of possession of cocaine. The evidence presented by Detective Janicki as to the laboratory report (which was not entered into evidence) is, for the purposes of this hearing and pursuant to Section 107 of the Casino Control Act, the type of evidence upon which reasonable men might rely in determining whether the drug was cocaine. Since no challenge to the veracity of the laboratory test was raised, there appears no reason to insist upon the production of the chemist who analyzed the substance. I **CONCLUDE** that the item purportedly possessed by Mr. Zamora did contain cocaine.

With respect to the question of whether Zamora actually possessed the baggie containing cocaine, his own testimony is that he did not. On cross-examination Janicki admitted that Zamora's back was to him when he emptied his pockets. However, the officer insisted that he did note that Zamora had removed from his pocket both the empty glassine bag and the small package containing the white powder.

The ultimate determination with respect to the question of possession rests on an analysis of the credibility of the witnesses. Although Janicki's view of Zamora while the respondent emptied his pockets was from behind the respondent's back, the officer's

testimony indicated clearly that he was able to observe what was removed. Nothing indicated any confusion as to what was removed by Zamora as compared to what was recovered from Marquez. With respect to Mr. Zamora's testimony, he admitted that he had the empty glassine bag, but denied that he had possession of the bag which contained cocaine. In light of his admission that at the time of the incident he was a user of controlled dangerous substances, including cocaine, and further in view of his having been in the company of Marquez, who was in possession of a significant amount of cocaine at the time of the arrest, I **FIND** any denial by Zamora that he possessed the baggie containing cocaine to be unbelievable. As such, Zamora is a registrant who not only possessed cocaine at the time of his arrest, a criminal violation, but also at both the time of his arrest and the time of his testimony before this tribunal, falsely denied that he possessed the cocaine. Under such circumstances, there is no alternative but to find that the continued registration of Mr. Zamora would be inimical to the policies of the Casino Control Act. While a casino registrant is not specifically required to prove good character, honesty and integrity, with respect to whether one's continued registration would be inimical, that is bad or against the interests to be furthered by the Act, it is inconceivable that a person who testifies falsely under oath in an administrative proceeding could be considered to be a worthy registrant. As such, I **CONCLUDE** that Mr. Zamora must be disqualified from registration, both on the grounds that his possession of cocaine while on duty as a casino registrant was an inimical act and further because his false testimony is an inimical action which requires revocation.

With respect to the question of rehabilitation, since the possession of controlled dangerous substances is not a statutory disqualifier under N.J.S.A. 5:12-86c3, rehabilitation is not specifically at issue. However, the same circumstances and considerations which apply to rehabilitation under Sections 90h and 91d of the Act also must be taken into account in determining whether one who has committed past wrongs of an inimical nature must still be considered as one whose continued registration would be inimical. Here, the most obvious fact is that in light of the finding that Zamora testified falsely at the hearing, it can hardly be said that since the time of his arrest he has acted in a fashion which connotes a positive change in his ways which would permit a finding that his continued registration would not be inimical. Clearly one who commits perjury cannot be considered an appropriate registrant. In addition, since Mr. Zamora only completed his conditional discharge in the fall of 1986, the passage of time since the completion of that probationary period seems too short to permit a determination that Zamora can as yet be considered an appropriate registrant.

Under all the circumstances, I **CONCLUDE** that the Division of Gaming Enforcement has established by a preponderance of the evidence that Mr. Zamora did commit an action in violation of the criminal laws of the State of New Jersey, specifically, possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 24:21-20A1 and that his continued registration would be inimical to the policies of the Casino Control Act, thus requiring revocation pursuant to N.J.S.A. 5:12-86c(4).

It is **ORDERED** that Mr. Zamora's casino hotel employee registration be **REVOKED**.

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

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

DATE

May 21, 1987

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

May 26, 1987

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

May 27, 1987

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Atlantic County Grand Jury Indictment 85-08-1242B, with attached order for presentence investigation and certification of the Clerk of Atlantic County
- P-2 APPLICATION FOR ORDER GRANTING TERMINATION OF PROBATION, dated November 20, 1986

On behalf of respondent:

- R-1 Damon Clinical Laboratories Report, dated July 15, 1986
- R-2 Damon Clinical Laboratories Report, dated October 14, 1986
- R-3 Damon Clinical Laboratories Report, dated April 7, 1986, 2 pages
- R-4 Met Path Central Laboratory Facility Report, dated January 16, 1986