

**CASINO CONTROL COMMISSION DECISIONS**

**JANUARY - JUNE 1984**

**PREPARED BY THE LEGAL DIVISION**

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-138  
OAL DOCKET NO. CCC 4294-83  
REGISTRATION NO. 21653-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
JOHN ADAMS, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 28, 1983, recommending that the complaint of the Division of Gaming Enforcement be dismissed with prejudice; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of January 4, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint with prejudice,

IT IS on this *23<sup>rd</sup>* day of January 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed with prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: January 23, 1984



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4294-83

AGENCY DKT. NO. 83-138

**DIVISION OF GAMING ENFORCE-  
MENT, DEPARTMENT OF LAW  
AND PUBLIC SAFETY,**

Petitioner

v.

**JOHN ADAMS,**

Respondent.

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**APPEARANCES:**

**Patricia M. Wild, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**John Adams, Pro Se**

Record Closed: October 12, 1983

Decided: November 28, 1983

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against John Adams, respondent. The Division alleged that Mr. Adams had committed a disqualifying criminal offense, for which the Division seeks revocation of the respondent's hotel employee registration, pursuant to section 129 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 10, 1983. By letter filed with the Commission on June 6, 1983, the respondent requested a hearing. On June 8, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 20, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Adams is 40 years of age, has been married 19 years, and is the father of three children, ages 11, 13 and 18. The respondent completed the ninth grade in a school in Augusta, Georgia.

The respondent was previously employed as a bellman by the Traymore Hotel for 13 years. He also operated a shoe repair shop.

On April 27, 1976, the respondent was indicted by an Atlantic County Grand Jury (Indictment number 629-75-J), which alleged two counts of violations of N.J.S.A. 2A:111-2, welfare fraud (comparable to N.J.S.A. 2C:20-4, theft by deception) (P-1). The indictment concerned conduct which occurred between January 1972 and February 1974. On July 26, 1976, the respondent pled not guilty to the charges. However, on December 21, 1976, he retracted his plea of not guilty and pled guilty to the indictment. On January 17, 1977, the respondent was sentenced to 60 days, 41 of which were suspended, and the balance of which were to be served on weekends. He was placed on probation for two years and was ordered to make restitution in the amount of \$1,000.

On June 3, 1977, the respondent was involved in an incident which led to his arrest by the Atlantic City Police Department (P-2). The respondent was charged with violations of N.J.S.A. 2A:90-1, atrocious assault and battery, and N.J.S.A. 2A:151-41, carrying weapons without permit or identification card; penalty (P-2 and P-3). An Atlantic County Grand Jury downgraded the charges to alleged violations of N.J.S.A. 2A:170-3, carrying weapon or burglar tools with intent to break and enter or assault; . . .

and N.J.S.A. 2A:170-26, assault; assault and battery (P-3). On July 12, 1977, the respondent was found guilty of the charges by the Municipal Court of the City of Atlantic City. He was sentenced to 60 days in the Atlantic County Jail on each count, which were to run concurrent. He served 45 days.

During 1979, the respondent was employed as a security guard by the Black Detective Agency.

On February 1, 1980, the respondent pled guilty to a violation of probation in regard to the incident of June 3, 1977 (P-1). The sentence imposed for the violations of N.J.S.A. 2A:111-2 was vacated and set aside, and the respondent was sentenced to one years' extended probation with restitution.

On April 3, 1980, the applicant was indicted by an Atlantic County Grand Jury (Indictment number 661-79-S) for alleged violations of N.J.S.A. 2C:21-1a(2), forgery; N.J.S.A. 2C:21-1a(3), uttering a forged instrument; and N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4, attempted theft by deception, concerning an incident which occurred on March 4, 1980, and which involved a check in the amount of \$250 (P-1). On May 2, 1980, the respondent pled not guilty to the charges. On November 19, 1980, the respondent was found guilty of a violation of N.J.S.A. 2C:21-1a(3), uttering a forged instrument. The remaining two charges were dismissed by the court. On January 23, 1981, the respondent was sentenced to 45 days and 18 months' probation.

Also on January 23, 1981, the respondent was found guilty of a violation of probation in regard to the incident of March 4, 1980, and was sentenced to 15 days and ordered to pay \$25 to the Violent Crimes Compensation Board.

The respondent completed successfully his probation in mid-1982.

From March 1981 until the present, the applicant has been employed by the Playboy Hotel and Casino. The respondent was a house attendant during the first six months of his employment. Thereafter, he transferred to the bell staff, where he currently works. His duties and responsibilities include servicing guests; more specifically, handling luggage, running errands, delivering packages and delivering mail. The respondent was "written up" once for an argument with his supervisor; however, the remainder of his employment has been satisfactory (R-1).

The respondent has coached little league baseball for the past five years in the Police Athletic League. He has also coached little league football for the past year.

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

**(B) DISPUTED FACTS**

In dispute are the circumstances underlying the respondent's indictment on April 27, 1976, his arrest on June 3, 1977, and his indictment on April 3, 1980, as well as his rehabilitation.

Mr. Adams described the circumstances underlying his indictment on April 27, 1976, for welfare fraud. The respondent and his family had been receiving aid for the working poor. When the respondent returned to work he reported it to the welfare agency; however, his grant was not reduced immediately. The respondent kept the overpayments because his family needed the money. Ultimately, the respondent was informed that he was required to repay the welfare agency for the overpayments, to which he agreed. However, the respondent lost his job and did not make the repayments as required. Thereafter, the charges were initiated. The respondent has made full restitution.

The respondent also described the circumstances underlying the incident of June 3, 1977. He had returned home after work and had been drinking alcoholic beverages. During dinner, he heard a loud commotion outdoors and went outside to check on his children. Inadvertently, he carried his steak knife with him. The respondent argued with several teenagers and then chased them for a distance. The purported victim fell and cut himself on glass; however, the respondent was in possession of the steak knife at the time of his arrest. The investigation report essentially confirms the testimony of the respondent, with the exception of how the victim was cut (P-2). The victim claimed that he was cut by the respondent, although the victim acknowledged that glass flew by his face. The report corroborates that the respondent had consumed alcoholic beverages.

The respondent also described the circumstances underlying his involvement in the incident of March 4, 1980, which led to his indictment concerning a bad check. The respondent had been drinking with a friend named "Bill." His friend asked the respondent

to take him to a drive-in bank in order to cash a check. The check was in the amount of \$250 and was payable to Albert Couplin from the account of Emma F. Green . The respondent did not know Bill's full name, and had no reason to believe that he was not Albert Couplin. The respondent took Bill to the bank. While they waited in line, Bill got out of the vehicle to run an errand. Subsequent to presentment of the check, the police appeared and arrested the respondent. The investigation report is consistent with the respondent's testimony, and furthers states that Bill could not be located (P-4).

The respondent testified that all of his problems were related to the abuse of alcohol. In July 1980 he voluntarily entered a hospital in Philadelphia, where he remained for one week. Thereafter, the respondent spent 35 days at an alcohol abuse rehabilitation center, where he completed successfully a rehabilitation program. The respondent no longer consumes alcoholic beverages.

The respondent also testified that he now has a greater appreciation for his family and is better adjusted in his dealings with other individuals. He also likes his job.

The respondent produced a letter from James P. Moon, Guest Services Manager for the Playboy (R-1). Mr. Moon stated that the respondent "has proven to be a trustworthy and dependable asset to our organization."

The credibility of Mr. Adam's testimony is essential in reaching a determination in this matter. However, the respondent's position in this matter must be recognized. As the respondent, he has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during my review of the record, and from my observations of the respondent's demeanor and my examination of the documentary evidence, that the respondent testified truthfully. The respondent's testimony was consistent with the documentary evidence, was believable and was persuasive. In the final analysis, I am persuaded to accept his testimony in all respects. Further, although I cannot look behind the several convictions for criminal misconduct and redetermine the respondent's guilt or innocence, those incidents can be considered with regard to rehabilitation.

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

1. The respondent conceded the extent of his involvement on the charge of welfare fraud and has made full restitution.
2. The respondent's behavior on June 3, 1977, was affected by the consumption of alcoholic beverages.
3. The respondent's involvement in the incident of March 4, 1980, was affected by the consumption of alcoholic beverages.
4. On March 4, 1977, the respondent had been accompanied by another person prior to his arrest. The other person initiated the attempt to cash the forged check.
5. The respondent has successfully undergone rehabilitation from the abuse of alcoholic beverages. He no longer consumes alcoholic beverages.
6. The respondent has successfully adjusted his behavior in regard to his contacts with others.
7. The respondent is well regarded by his employment supervisor.

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. The respondent's conviction for a violation of N.J.S.A. 2A:111-2 (comparable to N.J.S.A. 2C:20-4, theft by deception) is a statutory disqualifying offense 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 conviction for a violation of N.J.S.A. 2A:111-2 disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Adams is registered as a hotel employee and is employed as a bell person at the Playboy. As such, he has no responsibilities for actual gaming activities, but has substantial contact with patrons of the casino.

Second, the respondent was convicted of the following offenses:

1. On December 21, 1976, of a violation of N.J.S.A. 2A:111-2, welfare fraud, for conduct during the period from January 1972 to February 1974.

2. On July 12, 1977, of violations of N.J.S.A. 2A:170-3, carrying a weapon or burglar tools with intent to break and enter or assault; . . . , and N.J.S.A. 2A:170-26, assault; assault and battery, concerning his conduct on June 3, 1977; and
3. On February 1, 1980, of a violation of probation;
4. On November 19, 1980, of a violation of N.J.S.A. 2C:21-1a(3), uttering a forged instrument; and
5. On January 23, 1981, of another violation of probation.

Pursuant to section 86c(1) of the Act, the respondent's conviction for welfare fraud is a statutory disqualifier and, pursuant to the Act, is the most serious of the incidents listed on his criminal record history. Although any incident of criminal misconduct is serious, this offense was minimally serious. In fact, the incident of June 3, 1977, wherein the respondent had in his possession a steak knife, was the most serious of the offenses. His convictions for violation of probation were not separate offenses and are of little significance herein.

Third, the fact that the respondent lost his job and was unable to make repayments to the welfare agency in a timely manner mitigates the seriousness of his conviction for welfare fraud. With regard to the incident of June 3, 1977, the respondent's consumption of alcoholic beverages would normally enhance the seriousness of the offense, except that the respondent subsequently secured treatment for the abuse of alcohol. Again, this treatment mitigates the misconduct. The respondent's conduct underlying the incident of March 4, 1980, was not serious.

Fourth, the dates of the offenses were set forth above.

Fifth, the respondent was 29 years of age at the time he committed welfare fraud, was 34 years of age at the time of the incident of June 3, 1977, and was 37 years of age as of the incident of March 4, 1980. His misconduct was not due to immaturity.

Sixth, the respondent's misconduct involved the commission of three separate offenses over a period of eight years.

Seventh, it is apparent that the respondent's abuse of alcohol contributed to his misconduct in 1977 and 1980.

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. He acknowledged his guilt of the charge of welfare fraud, and has served his time, completed his probation and made restitution in full concerning all convictions. Further, and most significant, is the fact that the respondent has acknowledged his abuse of alcohol and voluntarily submitted himself for treatment. It appears that this treatment has been successful as the respondent no longer consumes alcoholic beverages. Further, this treatment has had a demonstrable residual benefit to the extent that the respondent has a greater appreciation for his family and is better adjusted in his dealings with other persons. In addition, although the respondent had a positive employment record prior to the incidents of his misconduct, he has established a very positive employment record in the casino industry at the Playboy since his employment on April 13, 1981, and has sought successfully to improve his position. It was established that the respondent is a responsible, reliable and trustworthy person. In the final analysis, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct. The respondent has demonstrated his rehabilitation for a sufficient period of time and, most significantly, while employed in the casino industry.

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 petition of the Division to revoke the casino employee registration of John Adams be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

November 28, 1983  
DATE

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

Receipt Acknowledged:

November 28, 1983  
DATE

Nancy D. Kelly  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

December 1, 1983  
DATE

Ronald J. Parker/x.s.  
OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 The State of New Jersey v. John Adams, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment Number I.629-75-J, filed April 27, 1976; The State of New Jersey v. John A. Adams, Judgment of Conviction for Indictment Number 629-75-J, January 25, 1977; The State of New Jersey v. John Adams, Indictment Number I.661-79-J-4, filed April 3, 1980; The State of New Jersey v. John Adams, Indictment Number 661-79-J, Judgment of Conviction and Order for Commitment, January 26, 1981; The State of New Jersey v. John Adams, Indictment Number 629-75-J, Judgment of Conviction and Order for Commitment, January 26, 1981; The State of New Jersey v. John Adams, Indictment Number 629-75-J, Judgement of Conviction, February 11, 1980 (14 pages)
- P-2 Atlantic City Police Department - Investigation Report, June 3, 1977, and Arrest Report, June 3, 1977 (2 pages)
- P-3 Letter to Patricia M. Wild, Deputy Attorney General, from Helen A. Jones, Court Clerk, September 28, 1983
- P-4 Atlantic City Police Department - Investigation Report, March 4, 1980, and arrest Report, March 4, 1980 (2 pages)
- R-1 Letter from James P. Moon, August 24, 1983

WITNESS LIST

For the Petitioner:

None

For the Respondent:

John Adams

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-M-3

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IN THE MATTER OF THE CONTRACT :  
BETWEEN SEYMOUR ALTER AND : ORDER  
RESORTS INTERNATIONAL HOTEL, INC. :

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This matter having been opened to the New Jersey Casino Control Commission upon the Chairman's Order to Show Cause why a contract dated November 7, 1983, between Seymour Alter and Resorts International Hotel, Inc., by which Alter is to "provide on an exclusive basis his services to Resorts as a general consultant on hotel matters" in return for \$36,000 annual compensation, should not be terminated pursuant to N.J.S.A. 5:12-104(b); and the parties having submitted briefs and having orally argued the matter before the Commission on April 10, 1984; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on April 18, 1984, to terminate the said contract;

IT IS on this 18th day of April 1984, ORDERED that the contract between Seymour Alter and Resorts International Hotel, Inc., be and hereby is immediately terminated pursuant to N.J.S.A. 5:12-104(b) for the reasons set forth on the record and to be amplified in the opinion of the Casino Control Commission to be issued forthwith; and



STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 84-M-3

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IN THE MATTER OF THE CONTRACT :  
BETWEEN SEYMOUR ALTER AND : OPINION  
RESORTS INTERNATIONAL HOTEL, INC.:

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NEW JERSEY CASINO CONTROL COMMISSION:

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

APPEARANCES:

For Seymour Alter:

Morgan E. Thomas, Esq.  
Leonard H. Wallach, Esq.

For Resorts International Hotel, Inc.:

Richard Weinroth, Esq.

For the Division of Gaming Enforcement:

James F. Flanagan, III, Deputy Director

For the Casino Control Commission:

Robert J. Genatt, General Counsel  
Dennis Daly, Senior Assistant Counsel

I. INTRODUCTION

This matter concerns a contract between Mr. Seymour Alter (Alter) and Resorts International Hotel, Inc., (Resorts) entered into on November 7, 1983, by which Alter is to "provide on an exclusive basis his services to Resorts as

a general consultant on hotel matters" in return for \$36,000 annual compensation. The ultimate question is whether Alter, who had been denied a casino key employee license in May 1980, should be allowed to engage in such a contractual relationship with a casino licensee or whether such contract should be terminated by the Commission pursuant to its authority under the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.<sup>1</sup> For the reasons hereafter stated, we hold that the contractual relationship must be terminated by reason of Alter's prior disqualification under the criteria of Section 86(c).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Alter was associated with Resorts or the parent company from 1965 through 1978. Although he served as a consultant for part of that period, he became employed as Director of Real Estate and Retail Sales for Resorts in connection with its venture into casino gaming in Atlantic City. Following Resorts' application for a casino license, the Division of Gaming Enforcement (Division) conducted the required background investigation. In its report on Resorts' qualifications, the Division raised the issue of the propriety of Resorts' relationship with Alter based upon his involvement in bribery of State Liquor Authority officials in New York and his alleged involvement in procurement of prostitutes for Bahamian customs officials during a visit to Las Vegas. In response to the Division's concerns, Resorts suspended Alter without pay in December 1978. Resorts was licensed with the understanding that it would have no association with Alter until such time as he was licensed as an employee.

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

Alter had applied for a casino key employee license on March 7, 1978. The Division objected to his licensure and an administrative hearing was conducted by the Office of Administrative Law (OAL) which issued an Initial Decision recommending that Alter's application be denied. By Final Decision dated May 20, 1980, In the Matter of the Application of Seymour Alter for a Casino Key Employee License, Docket No. 79-EA-60 (1980), the Commission modified the Initial Decision and denied Alter's application for a casino key employee license based upon the findings that he had:

- (1) committed acts, although not prosecuted, constituting the statutory disqualifying offense of bribery pursuant to Sections 86(g) and (c) of the Act;
- (2) failed to prove his good character, honesty and integrity pursuant to Section 89(b)(2) of the Act based upon his participation in the bribery scheme, his participation in the procurement of prostitutes for Bahamian customs officials visiting Las Vegas and his providing deliberately false testimony regarding these matters.

The Commission's decision was affirmed in an unreported decision of the Appellate Division dated June 24, 1981.

In September 1981, Resorts informally proposed to the Commission and the Division the following terms of an agreement it had reached with Alter:

- (1) to provide him or his estate with a guaranteed annual pension of \$35,000 per annum up to a minimum of \$175,000;
- (2) to continue his health insurance coverage;

- (3) to pay the legal expenses incurred on his casino key employee license application and in connection with his testimony before the Securities and Exchange Commission;
- (4) to forgive his debt of \$21,224.03; and
- (5) to pay his relocation expenses to Florida.

On November 2, 1981, Resorts filed a petition for a declaratory ruling as to the propriety of the above "severance terms" in accordance with Sections 63(a) and (b) and 104(b) of the Act. In addition, Resorts proposed that any further charges to the company by Alter would be offset against his pension and that he would refrain from gambling in any Resorts casino. Thereafter, Alter filed a petition with the Commission seeking approval of the same proposal, denominated by him as a "retirement plan."

By order dated January 5, 1982, the Commission permitted Resorts to reimburse Alter for certain legal expenses and to continue his health coverage. All other provisions of the proposal were denied.

On April 15, 1983, Alter filed a petition to make early reapplication as a casino hotel employee pursuant to N.J.A.C. 19:41-8.8(g). The Division strongly opposed the petition in a letter dated June 20, 1983. The matter was argued at the Commission's meeting of July 27, 1983, but following numerous adjournments, Alter withdrew the petition by letter dated October 18, 1983, prior to a ruling thereon by the Chairman.

By letter dated September 26, 1983, Alter's counsel advised Chairman Read of Alter's desire to be placed on the Master Vendor List as a consultant to Resorts. In response, the Chairman, by letter dated October 25, 1983, advised counsel "...it will not be necessary to place this matter down for decision at a public hearing at this time." The Chairman also directed a letter dated October 25, 1983, to Robert Peloquin, President of Intertel, an affiliate of Resorts, advising "that the Casino Control Commission, at this time, will not object to Mr. Alter's entering such a relationship with Resorts...." Thomas R. O'Brien, Director of the Division of Gaming Enforcement, issued a letter dated October 14, 1983, to Mr. Peloquin to the same effect, reserving "the right to file objections should current circumstances change."

A copy of the consulting agreement dated November 7, 1983, between Resorts and Alter was filed with the Commission on November 15, 1983. In pertinent part, the agreement requires Alter to provide his services as a general consultant on hotel matters to Resorts for a term of one year. In exchange, Alter is to be compensated \$36,000 per annum, payable monthly, plus expenses. Under the contract, Alter continues to receive health insurance coverage. The agreement specifically recites that Alter is an independent contractor rather than an employee of Resorts and that the consultancy agreement is subject to review and approval pursuant to the New Jersey Casino Control Act.

On November 17, 1983, Resorts filed a Vendor Registration form with the Commission on behalf of Alter.

By letter dated January 23, 1984, Chairman Read advised Resorts and Alter that, despite his informal approval of the consultancy contract, the validity and propriety of the agreement were rendered doubtful due to both the events leading to the denial of his casino key employee license application and the Commission's disposition of Alter's "retirement" petition. The Chairman ordered the parties to show cause before the Commission on February 1, 1984, why the contract should not be terminated immediately.

By letter dated January 24, 1984, Alter's counsel sought to adjourn the return date of the order to show cause until March. His request for an extension was denied by the Commission. Thereafter, Alter's counsel appealed the Commission's denial and filed a motion for stay. On January 27, 1984, the Honorable John W. Fritz, P.J.A.D., denied the motion for stay.<sup>2</sup> Alter's counsel then applied to the New Jersey Supreme Court for a stay of the return date of the order to show cause. On January 30, 1984, the Honorable Alan Handler, J., orally ordered the Commission to refrain from hearing the matter until no earlier than March 1, 1984, conditioned upon the immediate and continued suspension of the contract until completion of proceedings before the Commission.<sup>3</sup>

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2 The appeal was subsequently dismissed with prejudice by order dated March 22, 1984.

3 Alter's counsel consented to the suspension of the contract by Justice Handler and accepted the suspension as a condition of the order.

On February 3, 1984, a prehearing conference was held and several legal issues were identified. Without prejudice to the right of the parties to raise any additional issues which they perceived, the prehearing conference order framed the following questions:

1. Whether the Commission is estopped from considering and terminating the contract by virtue of the Chairman's letters, dated October 25, 1983, to Morgan E. Thomas, Esq., and to Robert D. Peloquin;
2. Whether Mr. Alter may now relitigate the underlying events which led to the Commission's final decision and order of May 20, 1980, finding him unsuitable as a casino key employee based upon, among other things, his involvement in an attempt to bribe New York liquor authority officials;
3. Whether the regulation governing reapplications by natural persons, N.J.A.C. 19:41-8.8, applies to one, such as Mr. Alter, who has been found disqualified under Section 86 (N.J.S.A. 5:12-86) in connection with a casino key employee license application and who subsequently seeks to act as a vendor to a casino under an agreement within the purview of Section 104(b) (N.J.S.A. 5:12-104(b));
4. Assuming the reapplication regulation does apply to this case, whether the presumptive five-year bar began to run in December 1978 when Mr. Alter was suspended by Resorts without pay or from May 20, 1980, when the Commission found him unsuitable to be a casino key employee and disqualified under Section 86;
5. Assuming that the reapplication regulation does not apply or that the presumptive five-year bar has expired, whether the Commission has discretion under Section 104(b) to allow Mr. Alter to continue under the contract notwithstanding his disqualification under Section 86 and, if so, whether the Commission may consider any information other than the terms of the contract itself, the type of services to be rendered and the nature of the previous disqualification.

At the prehearing conference and by letter dated February 13, 1984, Alter's counsel sought the Commission's consent to a

modification of Justice Handler's order to permit resumption of the consultancy agreement pending resolution of the administrative proceedings. By letter dated February 17, 1984, the Commission denied the request.

On March 7, 1984, Alter filed both a petition for leave to file application for approval as a contract vendor for Resorts and a petition for leave to file early reapplication for a casino employee license.

On March 17, 1984, Alter filed a brief in response to the order to show cause. The Division filed a letter-memorandum in lieu of formal brief dated April 4, 1984. No response has been filed by Resorts.

By letter dated April 2, 1984, Alter provided the Commission with a copy of a Verified Complaint and Order to Show Cause which was filed with the United States District Court in Camden on Thursday, April 5, 1984. By order dated April 5, 1984, the District Court denied the application for an order to show cause and for temporary restraints. Alter's subsequent motion for a preliminary injunction was denied by the United States Court of Appeals for the Third Circuit by order dated April 10, 1984. The complaint remains pending.

On April 10, 1984, the Commission heard oral argument on the legal issues enumerated in the prehearing conference order and also received certain items of evidence, to wit, exhibits C-1 to C-9 which were admitted without objection. Additional documents

were received into evidence at the Commission's meeting of April 18, 1984, again without objection. C-10; A-1 to A-44. Prior to entertaining the arguments of counsel at the April 10 proceeding, the Chairman read a statement outlining the pertinent procedural history and facts of the case. T-4 to T-8.<sup>4</sup> Counsel for Alter augmented the Chairman's summary with information pertaining to his claim that the Full Faith and Credit Clause of the United States Constitution barred consideration of Alter's immunized testimony before a New York State Grand Jury in 1963, but otherwise accepted the Chairman's summary as accurate. T-17. At the conclusion of the presentations of counsel for Alter, Resorts and the Division, we reserved decision.

Having duly considered the entire record in this matter, we now conclude that the subject contract must be terminated. A discussion of the issues which lead us to this conclusion follows.

I. ESTOPPEL

Our initial inquiry is whether we are legally barred from considering, or as the respondent would have it, reconsidering the contractual relationship by virtue of the principle of estoppel. Alter argues that the Commission is equitably estopped from

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<sup>4</sup> "T" refers to the transcript of the proceedings before the Commission on April 10, 1984.

terminating the contract relying upon then Judge (now Justice) Handler's opinion in Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super 99, 109-110 (App. Div. 1975), aff'd 69 N.J. 599 (1976). He asserts that the Commission's order of January 5, 1982, and the Chairman's letters of October 25, 1983, which he characterizes as "modifications of the original denial of licensure," cannot now be "'relitigated' because no new or substantial facts or evidence have developed." Respondent's Brief at 9.

The Division suggests there is no merit to Alter's assertions, citing the qualifying language in the Chairman's October 25 letters and the Commission's inherent power to reconsider "any licensing or approval matter...." (Division memo at 1).

We agree with Alter that the Appellate Division opinion in Trap Rock v. Sagner, supra, sets forth the guiding principles:

The application of res judicata, collateral estoppel and kindred doctrines in the setting of an administrative proceeding is tempered by recognition that a particular administrative agency may have continuing regulatory responsibilities over the areas within its jurisdiction.... It is fitting, therefore, that, subject to statutory restrictions, such an administrative agency, in appropriate circumstances, have the power to reassess or reconsider its actions in order to perform fully its responsibilities as a regulatory body. [citation omitted]. In this sense, the power to reconsider, to rehear and to revise determinations may be regarded as inherent in administrative agencies. [citations omitted]. This power to

reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest and thereby to serve the ends of essential justice. [citation omitted].

It does not follow, however, that in exercising the necessary and appropriate power to reconsider [a prior ruling, the agency is] free to disregard completely issues that were fully and fairly resolved prior thereto. The power to reconsider must be exercised reasonably, with sound discretion reflecting due diligence, and for good and sufficient cause [citations omitted].

...Even in the context of a reopened hearing in an administrative agency proceeding there is a proper use of res judicata or, more precisely, collateral estoppel. These principles should be invoked discriminately to serve the ends of administrative justice [citations omitted]. A balancing of such factors as new developments or even new evidence of old developments, the advantages of repose, party reliance, the thoroughness of the earlier decision and the showing of illegality, fraud, mistake and the like should be considered [citations omitted]. [133 N.J. Super at 109-110].

Alter's claim as stated in his brief and amplified at oral argument is that the January 5, 1982, order and the Chairman's letters of October 25, 1983, so modified the Commission's 1980 decision to deny his application for licensure as to constitute a determination that he is presently qualified to do business with Resorts on a contract basis. In addition, Alter argues that the testimonial letters admitted into evidence at the original casino key license proceeding and admitted into evidence at this proceeding (A-1 to A-44) further buttress the conclusion that he is presently qualified.

The testimonial letters have no bearing on the estoppel issue. Nor, we hold, do they have any impact on any other issue we are presently called upon to decide. These letters were adequately and appropriately considered in the initial license proceeding. Indeed they, along with the passage of time since the 1962 bribery, were given "the greatest possible weight." (Final Commission Decision at 44). But, in the final analysis, they were not deemed sufficient to overcome the evidence of unsuitability. Id. at 49. Obviously, the adverse finding against Alter on his key employee license application is the root of our concern with the existing contract. It surely cannot be a bar to our present inquiry.

We also find the order of January 5, 1982, to present no obstacle to our consideration of the propriety of the subject contractual relationship. That order resulted from Resorts' and Alter's joint petition for permission to enter into an agreement whereby Resorts would make certain payments to Alter and would forgive certain debts owed it by Alter. In the order, the Commission allowed Resorts to pay for certain legal fees incurred by Alter and to maintain him on Resorts' health program, but denied all other relief, including the payment of a \$35,000 annual pension. Rather than offering any aid to Alter's estoppel claim, we view the January 5, 1982, order as a reaffirmance of Alter's unsuitability in the sense that it implicitly forbids any economic relationship between the two parties other than that expressly

permitted. Specifically, the legal fees were allowed in recognition of the fact that they were incurred at a time prior to the ultimate determination of unsuitability; the health benefits were allowed only as a gesture of humane concern for a seriously ill man. We categorically reject the suggestion that those determinations in any way mitigated the prior findings of unsuitability. In point of fact the continued disqualification was not at all contested by the parties in that proceeding, much less considered or "modified" by the Commission.

Thus, Alter's claim for estoppel rises or falls on the efficacy of the Chairman's October letters. Taken at face value, the letters do not purport to address the qualifications of Mr. Alter. To place them in proper perspective one must consider the precise request to which the Chairman was responding. In a letter dated September 26, 1983, Alter's counsel requested "approval by the Commission for [Mr. Alter's] name to be placed on the Master Vendor's List as a consultant for Resorts International Hotel." Counsel made two inquiries:

...I would like to ascertain whether or not the Commission would have any objection to Resorts International Hotel placing Mr. Alter's name on the Master Vendor's List or if the Division of Gaming Enforcement would have any objection to this request.

I would also like to know if this matter requires a decision at a public hearing and if so, I would appreciate your immediate advice of the time and place for a hearing if one is required.

In his response to Alter's counsel, the Chairman advised "...it will not be necessary to place this matter down for decision at a public hearing at this time." In the letter to Resorts the Chairman stated that "The Casino Control Commission, at this time, will not object to Mr. Alter's entering such a relationship with Resorts, but it is my understanding that the Division of Gaming Enforcement has reserved its right to file objections with us in the future should current circumstances change. We will, of course, entertain such objections if they are ever filed with us."

In stating that it was not necessary for the question of the propriety of the proposed contractual relationship to be decided at the public hearing and that the Commission would not object pending a response from the Division, the Commission, through the Chairman, was essentially rendering an opinion on the issue of whether the reapplication regulation (N.J.A.C. 19:41-8.8) applies to requests from one previously found not qualified for licensure who subsequently seeks to act as a vendor under Section 104(b). The thrust of this informal opinion, though not expressed in those terms, was that the reapplication regulation did not apply. Upon reflection, we now unanimously find that this view is erroneous. For reasons to be stated in more detail later in this opinion, we hold that the reapplication regulation does apply in the circumstances presented here.

The question we must first resolve is whether this mistake raises an insurmountable barrier to the full Commission's formal consideration of the propriety of the consultancy contract.

Considering our purpose as regulators of a sensitive industry, the paramount public policy declarations expressed in the Act, the unique circumstances of this case and the weight of legal authority, we are convinced that it does not.

In point of fact, the letters constituted an erroneous interpretation of Commission regulations and procedures and nothing more. But, even if we assume arguendo that those letters constituted a determination of the Commission to the effect that Alter was presently qualified to contract with Resorts, no claim of estoppel should preclude further review by the full Commission. It is beyond cavil that this Commission, like any administrative agency with continuing regulatory responsibilities, has the inherent authority to reconsider and revise such determinations. Trap Rock, supra, 113 N.J. Super. at 109. This authority, however, must be exercised reasonably, with sound discretion and due diligence for good and sufficient cause. Ibid.

In this instance, we are concerned with an individual whose qualifications for licensure were thoroughly explored at a three-day contested-case hearing in August 1979. In its final decision, the Commission painstakingly laid out the reasons for its conclusion that Alter was disqualified. It is important to bear in mind that the bases for disqualification were not limited to acts which occurred many years prior to the hearing. Rather, the Commission found that Alter had "in many instances given deliberately false testimony in the hearing," indicating Alter

had not, as of 1979, "purged himself of the cavalier and manipulative attitude toward government processes...." (Final Commission Decision at 48). Thus, we are concerned with a man whose unsuitability is predicated upon conduct as recent as August 1979. The possibility of an individual found plainly unsuitable in May 1980, now doing business with a casino licensee gives abundant good cause for our reconsideration. But it must readily be conceded that no new developments or new evidence has been presented to warrant this action. Rather, it was the Chairman's subsequent doubts concerning the validity and propriety of the consultancy contract which was the genesis of the January 23, 1984, letter directing the parties to show cause why the contract should not be terminated immediately.

Of the factors cited in Trap Rock, supra, 133 N.J. Super. at 110, only repose and party reliance offer any possible support for estoppel. Conceivably Alter could assert that but for the letters indicating that neither the Commission or the Division would oppose any objection, he would not have entered into the contract with Resorts and would not have expected to obtain income under it. However, the weight attributable to these factors is minimal for no such claim has been advanced by Alter, nor has Resorts claimed its operations will be in any way hindered were we to now terminate the contract. Similarly, no allegation of any substantial change in Alter's economic position or lost opportunities in anticipation of completing the contract has been made. Moreover, Alter, and presumably Resorts, have benefited

from the performance of the contract to the time of its suspension.

Any weight to be given the policies of justifiable reliance and repose is further diminished in this instance by consideration of the "thoroughness of the earlier decision." Ibid. It cannot be seriously contended that the Chairman's informal resolution of the questions posed constitutes a full and fair treatment of the issues raised. Those letters were issued without benefit of briefing, argument or formal deliberations, much less a plenary factual hearing with attendant due process considerations. One need only contrast the prior proceeding which resulted in the denial of Alter's application for licensure to realize that the Chairman's October letters did not constitute such a complete and thorough decision as should serve to estop our reconsideration. Surely, too, the parties were aware that the letters were not of the same force and thoroughness as a final Commission decision. Indeed, the contract itself was made expressly dependent on Commission approval. Moreover, it is fair to expect that persons employed in this highly sensitive and closely regulated business will recognize, as we do, that the central public policy provisions of the Act proscribe unsuitable persons from participating in the casino industry. See, e.g., N.J.S.A. 5:12-1(b), (6), (7), (9); see also, N.J.S.A. 5:12-64, 86 and 104.

Considering all of these factors, we conclude that the balance overwhelmingly favors rejecting the principle of estoppel.

in this instance. To do otherwise would impair our ability to respond to the legislative command to assure that there be no material involvement, directly or indirectly with licensed casino operation by disqualified or unsuitable persons. See, N.J.S.A. 5:12-64. Therefore, we conclude that estoppel poses no bar to our reconsideration of Alter's ability to contract with Resorts.

## II. THE NEW YORK GRAND JURY TRANSCRIPT

Alter argues that the Commission should not have considered the transcript of his testimony before a New York Grand Jury given under a grant of immunity in the original license hearing and further, we infer, that this proceeding is somehow tainted by that prior utilization of compelled, immunized testimony. His attack is predicated upon the lack of authentication of the grand jury transcript and upon the full faith and credit clause of the U.S. Constitution.

The issues of admission and use of the transcript were fully considered and disposed of by both the ALJ and the Commission and we see no reason to permit relitigation of them now (Initial Decision at pp. 5-6, Final Commission Decision at 3).

This situation presents the classic case for application of res judicata. "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." United States v. Utah Construction & Mining Co.,

384 U.S. 394, 421-22 (1966). See, also, Hackensack v. Winner, 82 N.J. 1, 31 (1980); Hinfey V. Matawan Regional Board of Education, 77 N.J. 514, 532 (1978); N.J. State Parole Bd. v. Woupes, 184 N.J. Super 533 (App. Div. 1981); 4 Davis, Administrative Law Treatise, §21:2 at 49-51.

In Winner, supra, the Court stated the policy reasons supporting res judicata, collateral estoppel and the like: "...finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness..." and noted that these judicial doctrines have an important place in the administrative field. 82 N.J. at 32-33. Alter had a full and fair evidentiary hearing replete with due process protections at every stage of the proceedings. He was represented by an attorney of considerable ability and renown. He had notice of the reasons for the Division's objection to his licensure. He exercised his right to a hearing and had the opportunity to testify, call witnesses and present evidence on his behalf. He was entitled to and, indeed did, file exceptions and objections to the Initial Decision rendered by the OAL. His counsel argued his position before the Commission's final action on Alter's application for licensure. Moreover, Alter exercised his right to appeal and the Commission decision was affirmed by the Appellate Division. In view of these procedural protections, we find no basis to disturb this decision almost four years later. See, New Jersey State Parole Board v. Woupes, supra; Davis, supra,

§21:2 at 49. Moreover, with respect to Alter's claim that full faith and credit was never raised or considered in the prior proceedings in connection with the use of the grand jury transcript, our review of the record reveals that this is not so. That argument was, in fact, advanced by Alter's then counsel, refuted by counsel for the Division and considered by the ALJ. (See transcript of proceedings dated August 20, 1979 at pp. 29-30; 33-34; 44.) Similarly, the lack of authentication of the transcript was also considered and rejected by the ALJ. (See transcript of proceedings dated August 21, 1979 at p. 328.) Indeed, though Alter's counsel maintained an objection to the admissibility of the transcript on other grounds, its accuracy was stipulated. (See transcript of proceedings dated August 23, 1979 at pp. 622-624.) The fact that neither the ALJ nor the Commission expressly mentioned these matters in their respective written opinions is of no moment. The claims were implicitly rejected by the admission of the transcript into evidence. Although not required to do so, we note in passing that we are in complete accord with the Commission's earlier disposition of this issue.

We therefore conclude that any attack on the underlying basis of Alter's disqualification is foreclosed by res judicata.

III. APPLICABILITY OF THE REAPPLICATION REGULATION

N.J.A.C. 19:41-8.8 provides in pertinent part:

- (a) Any natural person required to be licensed, qualified or approved under the provisions of the Act or regulations of the Commission whose licensure, qualification, or approval is...denied...on the basis of that person's failure to satisfy the affirmative qualification criteria of the Act, or due to a Commission finding that such person is disqualified under the criteria of Section 86 of the Act, or both, may not, except as otherwise provided in subsections (b)(f) and (g) of this section, reapply for licensure, qualification or approval until five years have elapsed from the date of said denial....

As previously indicated, we are of the unanimous view that this regulation applies to the situation at hand. Alter was denied a casino key employee license in May 1980, for having engaged in conduct equivalent to bribery and for otherwise failing to demonstrate that he possessed the requisite good character, honesty and integrity, principally by virtue of his deliberately false testimony. N.J.S.A. 5:12-86(c) and (g) and 89(b)(2). Therefore, as a natural person, Alter is prohibited from seeking any licensure, qualification, or approval for five years from the date of denial unless he is granted permission to make early

reapplication pursuant to subsection (g) of the regulation.<sup>5</sup> In our opinion, the "approval" language contained in the reapplication regulation governs this case. Whether he seeks licensure or registration as an employee or approval as a vendor, it is his individual qualifications which are at issue and which have previously been found lacking by this Commission. Section 104(b) envisions the review of every contract that fits within the ambit of the statute. The contract between Alter and Resorts is plainly one which concerns "the realty of, or any business or person doing business with or on the premises of, [the] casino hotel facility." N.J.S.A. 5:12-104(b). Of course, given the number and varied nature of the contracts between casino

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5 N.J.A.C. 19:41-8.8(g) provides:

Any natural person whose licensure, qualification or approval has been denied or revoked and who is barred from reapplication for five years by subsection (a), (b)5 or (b)7 of this section may petition the Chairman to permit early reapplication at any time. The petition shall be verified and supported by affidavits and shall include written argument for the relief sought. It shall state with particularity any grounds upon which revocation or denial was based, and the facts and circumstances which warrant early reapplication. Upon receipt of such petition, the Chairman shall offer the Division an opportunity to state its position in writing. Based upon the petition and any written submission from the Division, the Chairman may either:

1. Summarily deny the petition; or
2. Grant the petition if he finds that there exist extraordinary facts and circumstances warranting early reapplication.

licensees and the multitude of vendors, actual Commission review of every such contract is physically impossible. This realization, arrived at in the earliest days of the Commission, gave rise to the concept of the master vendor list and related measures designed to accomplish review of specific contracts as the need arose. In any event, the crux of the matter is that any contract within 104(b), including the one at issue here, is subject to Commission approval, and the qualifications of the persons involved in such contracts, like Alter, are subject to Commission review. Therefore, denial of Alter's application for a casino key employee license requires that he first comply with the reapplication procedures before he seeks Commission approval of the consultancy contract.

We find no merit in the suggestion, which was deemed acceptable by the Division and adopted by Alter at the hearing (T29-30), that the five-year restriction be deemed to have been triggered by Alter's suspension without pay by Resorts in December 1978 and has therefore run its course. The regulation expressly states that a disqualified person may not reapply for approval "until five years have elapsed from the date of said denial." In this instance, the five year restriction will expire on May 1, 1985. Until that date, Alter may not seek licensure, qualification or approval from this Commission unless he first obtains permission for early reapplication pursuant to N.J.A.C. 19:41-8.8(g).

Alter presently has two petitions for early reapplication pending before the Commission.<sup>6</sup> As was indicated at oral argument, those petitions will be acted upon after we receive the position of the Division of Gaming Enforcement in accordance with the procedure established by the regulation. N.J.A.C. 19:41-8.8(g).

IV. THE EXISTING CONTRACTUAL RELATIONSHIP

Having determined that Alter cannot gain approval of this or any other contract with a casino licensee unless and until he has complied with the terms of the reapplication regulation, the only remaining question is whether there exists any reason why we should not exercise our discretion to terminate the contract pursuant to Section 104(b) of the Act. Section 104(b) provides:

Each casino licensee shall be required to present to the commission any written or unwritten agreement regarding the realty of, or any business or person doing business with or on the premises of, its casino hotel facility. Such agreement shall be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the person involved in the agreement with the casino licensee, which qualifications shall be reviewed according to the standards enumerated in section 86 of this act. If the commission does not approve such an agreement or association, the commission may require its termination.

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<sup>6</sup> As previously noted, a prior petition for early reapplication was withdrawn in October 1983.

Every agreement with a casino hotel shall be deemed to include a provision for its termination without liability on the part of the licensee, if the commission shall disapprove of the business or of any person associated therewith, by reason of a finding that said business or person is unsuitable to be associated with a casino enterprise in accordance with the regulations promulgated under this act. Failure expressly to include such a condition in the agreement shall not constitute a defense in any action brought to terminate the agreement. If the agreement is not presented to the commission in accordance with commission regulations, or the disapproved agreement or association is not terminated, the commission may pursue any remedy or combination of remedies provided in this act.

Alter's claim of rehabilitation since the 1980 finding of disqualification would be relevant here. But the claim is unsubstantiated due to the absence of any evidentiary proceeding subsequent to the prior determination of unsuitability. This follows from the fact that Alter must first obtain approval for early reapplication in order to assert that he is now fit for the contractual relationship in question. Thus, any determination of his present fitness must await the outcome of the petitions for early reapplication.

Alter further asserts that, in contemplating termination of this contract with Resorts, we should consider the impact of the constitutional prohibition against impairing the obligation of contracts, citing Article I, §10 of the United States Constitution. We note that the essentially identical provision in the New Jersey Constitution is equally relevant. N.J. Const. (1947), Art. IV, §VII, par. 3. However, we find neither to constitute cause for staying our hand in this instance.

To the extent that invocation of these provisions is an attack on the constitutionality of Section 104(b) which expressly authorizes termination of such contracts as are not approved by the Commission, we have often noted and always followed the principle that administrative agencies are without authority to overturn their own enabling acts. See, e.g., Montana Chapt. of Ass'n of Civ. Tech. Inc. v. Young, 514 F.2d 1165 (9 Cir. 1975); Finnerty v. Cowen, 508 F.2d 979 (2 Cir. 1974); In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger [sic], Docket No. 81-LO-1 (Commission decision September 28, 1982); In the Matter of the Application of Martin et al. For Relief, Docket No. 78-EA-21 (Commission decision June 16, 1980), mod. In Re Martin, 90 N.J. 295 (1982).

Notwithstanding the limitations on our power, we do think appropriate to do as Alter requests, i.e., consider the impact of the constitutional provisions in the exercise of our discretionary authority to terminate the contract in question.

The contract clause, a significant constitutional check on state legislation in the early years of our nation, "receded into comparative desuetude with the adoption of the Fourteenth Amendment," only to be "revived" in recent years. Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978); Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 286-87 (1981). Although the clause appears literally to proscribe any impairment, the courts have consistently recognized that the prohibition is not absolute. United States Trust Co.,

New York v. New Jersey, 431 U.S. 1, 21 (1977); Home Building and Loan Ass'n. v. Blaisdell, 290 U.S. 398, 428 (1934); Berkley Condo. Ass'n v. Berkley Condo. Residences, 185 N.J. Super. 313, 319 (Ch. Div. 1982). "First of all, it is to be accepted as a commonplace that the Contract Clause does not operate to obliterate the police power of the States." Allied Steel, supra, 438 U.S. at 241. The Casino Control Act and the vast regulatory authority vested in this Commission is an exercise of the legitimate police powers, i.e., the sovereign right of the government "to protect the lives, health, morals, comfort and general welfare of the people." Ibid.

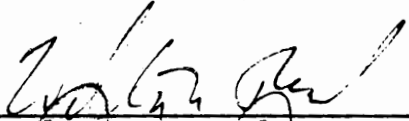
Yet even the exercise of valid police power is subject to some limitations under the contract clauses. As with many such matters, the extent of the limitations is a matter of balancing the respective interests of the parties on the one hand and the public interest on the other. Ibid; see also, Freedom Fin. Co. v. N.J.B.T. Co., 123 N.J. Super. 255, 260 (Cty. Dist. Ct. 1973).

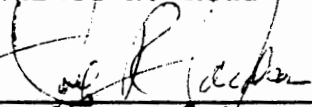
In this instance, we believe no balancing of interests is required because the subject contract expressly provides that it is "specifically subject to review and approval pursuant to the [N]ew Jersey Casino Control Act." But even if we were to engage in a balancing of the competing interests, Alter's are clearly inferior to the interests of the public as expressed in the Casino Control Act. The Legislature unequivocally proclaimed its concern over unsuitable persons conducting business with casino licensees. See Sections 64, 86 and 104(b) of the Act. For the reasons we have already discussed, Alter is a disqualified person by virtue of the prior findings of this Commission which remain in full


force and effect. In view of all the circumstances, we find it appropriate to terminate the contract immediately and we so order.


CONCLUSION

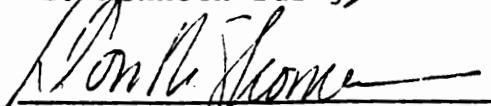
In summary, we find no bar to our reconsideration of the contract between Alter and Resorts by reason of estoppel. Further, any claim that the May 1980 determination of Alter's disqualification was improper by reason of the admission and use of the New York State Grand Jury transcript is barred by res judicata. We also find that the reapplication regulation applies to Alter's proposed contractual relationship with Resorts, and that the five-year restriction from reapplication will not expire until May 1, 1985. Prior thereto, unless and until he successfully petitions for early reapplication and is thereafter found presently qualified, Alter cannot enter into any contract with a casino licensee that is subject to our approval. The existing agreement between Alter and Resorts is terminated.

  
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Walter N. Read

  
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Joe R. Jacobson

  
\_\_\_\_\_  
Carl Zeitz

  
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E. Kenneth Burdge

  
\_\_\_\_\_  
Don Thomas

April 18, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-CSI-23  
OAL DOCKET NO. CCC 10944-82  
APPLICATION NO. 857-70

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APPLICATION OF AMERICAN WAY  
COACH, INC., FOR A CASINO  
SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 9, 1984, recommending that the casino service industry license application of American Way Coach, Inc., be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on January 27, 1984; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 22, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 24th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the casino service industry license application of American Way Coach, Inc., be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 10944-82

AGENCY DKT. NO. 82-CSI-23

**AMERICAN WAY COACH, INC.,**

Applicant

v.

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

Respondent.

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**APPEARANCES:**

**Raymond M. Brown, Esq.,** for the applicant (Brown, Brown & Furst, P.C., attorneys)

**Stephen D. Schrier,** Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 22, 1983

Decided: January 6, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of American Way Coach, Inc. (American Way), applicant, to the Casino Control Commission (Commission) for licensure as a casino service industry, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that Frederick Forte, the sole owner/operator and qualifier of American Way, does not possess the good character, honesty and integrity as required under Section 89b(2) of the Casino Control Act (Act), and, accordingly disqualifies the corporation from licensure.

PROCEDURAL HISTORY

American Way filed its application with the Commission, which consisted of a Business Entity Disclosure Form-3 (BEDF-3) and a Personal History Disclosure Form-4 (PHDF-4) completed by Mr. Forte, both documents dated December 17, 1980 (J-2 and J-4). By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated October 26, 1982, there was a "substantial possibility" the Commission would deny the application and that American Way had a right to a hearing. By letter dated December 2, 1982, the applicant requested a hearing. On December 8, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 29, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Frederick W. Forte is 47 years of age, is a high school graduate and is a lifelong resident of New Jersey (J-4). He is also the President, Chairman of the Board and sole owner of American Way (J-2).

Mr. Forte's father, Joseph Forte, Sr., was involved in the oil business from 1926 until his death in 1963. He established his own business, Forte Oil Co., which was involved originally in the sale of residential heating oil. The business was expanded into the gasoline and motor oil sales.

In approximately 1950 Mr. Forte's father employed him as a truck driver. Mr. Forte was promoted to supervisor of a repair crew, became a dispatcher and, in 1955, became a salesman. Mr. Forte's two older brothers, Joseph F., Jr., and Edward F., were also employed by their father.

Following the death of Mr. Forte's father in 1963, the three brothers operated the company. After several years of negotiations, the business was sold to the Texaco Oil Company in 1970. The brothers shared equally in the proceeds. Edward Forte repurchased a portion of the company, which he operated as E. Forte Oil Company.

Following a period of reflection, Mr. Forte decided to return to the oil business, which he did under the name of Berlin Enterprises, the predecessor of Star Fuel Oil, Co. (Star Fuel), which was incorporated in 1973. Mr. Forte first opened a retail service station in Berlin, New Jersey. Thereafter, he purchased additional retail stations and branched into the wholesale portion of the oil business. The businesses now involve all facets of commercial and residential oil sales, trucking companies, asphalt companies and quarry operations, operated under Quarry Service, Inc., which was commenced in 1975.

In 1979, Mr. Forte became bored with his then existing business enterprises and perceived an opportunity to become involved in the bus industry, specifically in regard to the advent of casino gambling in Atlantic City. Mr. Forte purchased operating rights from a carrier certificated by both the New Jersey Department of Transportation and the Interstate Commerce Commission. American Way commenced intrastate and interstate charter and special operations to the casino hotels in Atlantic City in September 1979. American Way has had an average gross income of \$300,000 per year. The company has not been the subject of any disciplinary actions by any regulatory authorities.

Joseph Esposito, a builder from Turnersville, New Jersey, has been a close personal friend of Mr. Forte for the past 15 to 20 years. Their relationship was business oriented at first, but became personal and social. The applicant and Mr. Esposito have frequently referred customers to each other and continue to do so. Mr. Esposito's wife is the niece of the late Angelo Bruno. Mr. Forte was aware of this familial relationship, which was once the subject of friendly kidding between Mr. Esposito and his wife.

At the commencement of the hearing, the parties agreed to the following stipulations of fact:

1. Angelo Bruno was reputed to be the head of a career offender cartel in the Philadelphia-Southern New Jersey area by law enforcement authorities. He was identified by the Pennsylvania Crime Commission in its 1980 report as follows:

Angelo Bruno, whose full name is Angelo Bruno Annaloro, has been the boss of the Philadelphia Family from approximately 1959 to 1980. Bruno, who was born in Villalba, Caltanissetta, Sicily, was 69 when he was killed. Although one of the nation's most powerful Cosa Nostra bosses, Bruno portrayed himself as a mere commission salesman for a tobacco products firm, John's Wholesale Distributors.

2. John's Wholesale Distributors was a cigarette distributor licensed by the State of New Jersey. This license was not subject to revocation prior to March of 1978. Since 1973, John's Wholesale Distributors has been alleged by law enforcement authorities to be a company closely associated with organized crime in Philadelphia and South Jersey. The company was owned by John Martorano and Evelyn Martorano, wife of Raymond "Long John" Martorano. Raymond "Long John" Martorano was reputed to be a close associate of Angelo Bruno and a member of a career offender cartel in the Philadelphia-South Jersey area. John's Wholesale Distributors purchased Penn-Jersey Vending Co. from Angelo Bruno's wife and, from 1976 to 1980 employed Angelo Bruno and Raymond "Long John" Martorano as commissioned salesman. According to State of New Jersey Commission of Investigation, in its 1977 Report and Recommendations, John's Wholesale Distributors was linked to organized crime and tripled its sale of cigarettes in Southern New Jersey during 1976, the year that the gambling referendum was passed by the voters of the State of New Jersey.
3. Since 1976, Vincent "Al Pajamas" Pagano, Frank Jock, Michael Grasso and Roxy Allen have been reputed to be associates of a career offender cartel or members of a career offender cartel, specifically the Angelo Bruno Crime Family in the Philadelphia-South Jersey area, according to law enforcement authorities. [J-1]

Mr. Forte testified that, as of 1970, he had heard of Angelo Bruno and associated the name with organized crime. The applicant also testified that he knew that organized crime operated various illegal enterprises and was responsible for the commission of crimes. The applicant then described two meetings he had with Angelo Bruno.

First, during 1970, the applicant accompanied Mr. Esposito, who was inspecting undeveloped property located in Wenonah, New Jersey. The applicant had accompanied Mr. Esposito on such forays previously. During the excursion, Mr. Esposito informed the applicant that they were going to stop at "Ange's" house in Stone Harbor,

and that Mr. Esposito would introduce the applicant to Angelo Bruno. This was not the subject of a prior discussion or plan. They stopped at the house, where they remained for approximately one hour. During their visit, the applicant was introduced to Angelo Bruno and his wife, they had a drink and they shared conversation, which did not include business.

Second, in late 1975 and while the applicant was again in the company of Mr. Esposito in Philadelphia, they stopped at Angelo Bruno's house so that Mr. Esposito could pick up presents for his children. The applicant observed Angelo Bruno seated in a chair. The entire visit took approximately ten minutes and there were no business discussions.

The applicant also testified that on occasion he had observed Angelo Bruno in various restaurants in Philadelphia, but that they had not spoken to each other.

During the mid-1970's, retail gasoline stations used loss leaders as a means of attracting customers. The loss leaders consisted of various giveaways, including trading stamps. Ultimately, New Jersey prohibited such practices. During 1976-1977, Mr. Forte's primary competitor, Puritan Oil Co., began selling cigarettes and soda at inexpensive prices in order to attract customers. The applicant decided to follow suit. In 1977 and based upon information provided by an employee of Puritan, Mr. Forte began to purchase cigarettes from New Jersey Tobacco Co. (New Jersey Tobacco).

During 1978 and while he was in the applicant's office, Mr. Esposito suggested that the applicant purchase cigarettes from John's Wholesale Distributors (John's) for whom Angelo Bruno was a salesman. The applicant had never heard of John's previously. The applicant favorably considered the suggestion because he and Mr. Esposito had frequently referred business to each other. The applicant instructed Mr. Esposito to have John's contact him. Per a telephone conference, Mr. Forte arranged to meet with representatives of John's.

On March 14, 1978, the applicant, in the hopes of securing a more favorable purchase price, met with Angelo Bruno, John Martorano, "Little Joe" Esposito (no relationship to Joseph Esposito) and Roxy Allen at Lucien's Tavern in Berlin, New Jersey, where the applicant ate his lunch on a daily basis. The applicant had never met John Martorano or "Little Joe" Esposito previously. He had known Roxy Allen since the

1950's-60's through business. The applicant also knew that Roxy Allen went by the name Rocky Auletto, although the applicant did not know which was his real name. The applicant had no knowledge that John Martorano, "Little Joe" Esposito or Roxy Allen were purportedly members of organized crime.

Mr. Forte discussed his prospective purchase of cigarettes from John's with Angelo Bruno. Angelo Bruno offered to sell cigarettes at a price higher than that which the applicant purchased them from New Jersey Tobacco. The applicant indicated that he was not willing to pay more. Angelo Bruno agreed to match the price of New Jersey Tobacco, and the applicant agreed to make his purchases from John's. During the conversation, the applicant inquired if John's was licensed by the State of New Jersey and was advised that it was. The applicant made the inquiry because he was required to report all cigarette purchases to the State. The applicant stated that he agreed to switch suppliers based upon the initial recommendation of Joseph Esposito.

During the lunch, the applicant was followed into the men's room by John Martorano. Mr. Martorano advised the applicant that he should not speak directly to Angelo Bruno, but should speak to Mr. Martorano, who, in turn, would relay the applicant's statements. The applicant responded that he would not comply because he did not know Mr. Martorano and because he had no intention of relaying messages through a third party to someone with whom he was doing business and who was seated next to him.

On the day of the meeting, Lucien's Tavern was unusually heavily patronized. When the meeting ended and Angelo Bruno left Lucien's, most of the rest of the patrons also left the premises. As a result, the applicant suspected that the other patrons were law enforcement officials who were following Angelo Bruno.

At or about this time, the applicant's brother Edward was encountering financial difficulties which threatened the fiscal stability of E. Forte Oil. The applicant supplied his brother with approximately one-half million dollars of oil product in order to establish a positive cash flow. When this proved unsuccessful, the applicant ceased providing assistance. Thereafter, the applicant observed oil product being supplied to his brother by Park Oil Co. and Jock Oil Co. trucks. Edward Forte advised the applicant that the suppliers were from Delaware. The applicant later learned that his brother had become 50% partners with Mr. Jock. The applicant believed this was a positive step for his brother.

However, during March 1978, representatives of the Federal Bureau of Investigation (FBI) began to meet with the applicant on a friendly and almost daily basis. The subject of their conversations were Edward Forte's relationship with Jock Oil. Ultimately, the FBI advised the applicant that Mr. Jock and his associates were members of organized crime. The applicant then advised his brother not to consummate his business agreement with Jock Oil and to go bankrupt, which he did.

Also during the FBI's friendly meetings with the applicant, they discussed his purchase of cigarettes from John's. Although the FBI acknowledged that John's was licensed by the State of New Jersey and was legally involved in the sale of cigarettes, they advised the applicant that John's was a front for organized crime and that Angelo Bruno was a member of organized crime. Nevertheless, the FBI did not advise the applicant to cease purchasing from John's. The applicant testified that he felt caught between his participation in a legal agreement to purchase cigarettes from John's and his own convictions of not having any business relationship with organized crime. In July 1978, the applicant voluntarily stopped purchasing cigarettes from John's. Mr. Forte made this decision based upon the information provided by the FBI, the aggravation of the FBI constantly being in his office and his own belief that he should not do business with organized crime. The applicant directed his dispatcher to advise John's that no more purchases would be made.

From mid-March to early July 1978, Star Fuel purchased less than \$7,000 in cigarettes from John's (P-2A and P-2B). During this period and unbeknownst to the applicant, his dispatcher continued to purchase cigarettes from New Jersey Tobacco (P-1A and P-1B). Star Fuel has an annual gross income of \$20 million.

The applicant has had no further business dealings with John's or Angelo Bruno.

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

#### (B) DISPUTED FACTS

In dispute were the extent of Mr. Forte's knowledge of Angelo Bruno's purported reputation as a member of organized crime, Mr. Forte's credibility, and his good character, honesty and integrity.

The only evidential source of the extent of the applicant's knowledge of Angelo Bruno's purported reputation as a member of organized crime came from the applicant's own testimony. More specifically, Mr. Forte testified that he had generally heard of Angelo Bruno's reputation as a member of organized crime from the news media, but that he had no specific knowledge of Angelo Bruno's purported roles as a member of organized crime or as the head of an organized crime family, nor that Angelo Bruno had a reputation among law enforcement agencies as such. Also, the applicant testified that he had no knowledge prior to his conferences with the FBI in 1978 that John's was reputed to be a front for organized crime. Further, the applicant stated that he had never discussed Angelo Bruno's purported role in organized crime with Joseph Esposito. The applicant also had no knowledge of any business relationship between Joseph Esposito and Angelo Bruno.

The Division offered nothing to establish that Mr. Forte's testimony in this regard was not true and accurate. However, the Division argued that the applicant's testimony was not plausible or otherwise worthy of belief and, therefore, such is reason to believe that he had greater specific knowledge of Angelo Bruno's reputation. Both premises are based upon the close relationship between the applicant and Joseph Esposito, together with the familial relationship between Mr. Esposito's wife and Angelo Bruno, and the fact that the applicant conceded that he had general knowledge of Angelo Bruno's reputation as a member of organized crime. The resolution of this issue depends entirely upon Mr. Forte's credibility.

Initially, Mr. Forte's position in this matter must be recognized. He is the qualifying officer of the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was obvious both during the hearing and during the review of the record that, from my observations of the applicant's demeanor, the plausibility of his testimony, my examination of the documentary evidence, and the witnesses, that the applicant testified truthfully. The applicant's testimony was extraordinarily candid, consistent, supported by the documentary evidence, sincere, believable and most persuasive. The applicant responded fully and completely to each and every question asked. He also had a very detailed recollection of the various incidents which were the subject of inquiry. The few discrepancies between his testimony during a sworn interview by the Division and his testimony in this hearing were of no significance. His testimony was plausible in every respect. Further, his testimony comported fully with

human experience. There was no witness offered to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept his testimony in all respects. Accordingly, there was no basis upon which to conclude that the applicant's testimony was untrue or inaccurate. Therefore, the Division's contentions appear to be purely speculative.

The applicant called two witnesses to testify on his behalf. First, Dr. Frank Hunter Guinn, D.O., is a self-employed physician. Dr. Guinn has known the applicant for the past ten to eleven years. The witness, while he was an intern, met the applicant during the course of treatment of the applicant's son. While the witness was a student, he was the guest of the applicant for dinner four to five nights per week. Further, the applicant provided Dr. Guinn with a gasoline credit card, which was to be repaid when able. The witness has paid his obligation in full. Dr. Guinn does not now have a medical relationship with the applicant. The witness also observed the applicant purchase foodstuffs, which was distributed by his employees to the poor in Camden County. Dr. Guinn was of the opinion that the applicant is an honest and a positive member of the community. Further, the witness testified that the applicant enjoys a unanimously high reputation in the community.

Walter Johnson, the applicant's second witness, is the general manager of Abdul Oil Co. and has been acquainted with Mr. Forte since late 1970. The witness was employed by Texaco when he first met the applicant, whose company made purchases from Texaco. During 1974, the witness was employed by Pedroni Fuel Company in Vineland, of which the applicant was also a customer. Mr. Johnson testified that during the first oil shortage in late-1973/early-1974, he negotiated a verbal agreement with Mr. Forte for the purchase of oil by Star Fuel from Pedroni for a fixed volume at a fixed price. When the market loosened up and the price of oil dropped substantially, Mr. Forte, to his financial detriment, honored his verbal agreement, while several other customers did not. Further, Mr. Forte conducted himself in the same manner with Puritan Oil Company during the 1978 product shortage. The witness also testified that as a competitor of the applicant he was unable to take away a customer from Star Fuel even though he offered a lower price, because the prospective customer remained loyal to Mr. Forte as a result of the applicant's support during the customer's financial difficulties. Accordingly, the witness was of the opinion that Mr. Forte maintains the highest degree of character and business ethics, and enjoys a strong reputation for integrity within the oil community.

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

1. The applicant's testimony was credible, believable and persuasive in all respects.
2. As of 1970, the applicant had a general understanding that Angelo Bruno was reputed to be a member of organized crime.
3. The applicant had no knowledge or understanding of Angelo Bruno's purported role as a member of organized crime or as the head of an organized crime family, of Angelo Bruno's reputation among law enforcement agencies or of the reputation of John's as a front for organized crime.
4. The applicant never discussed Angelo Bruno's reputed involvement in organized crime with Joseph Esposito.
5. The applicant enjoys a very high reputation for good character, honesty and integrity among close friends and business associates.

DISCUSSION OF LAW AND CONCLUSIONS

All entities which do business with casino hotels, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to Section 92c of the Act. N.J.A.C. 19:41-1.3(c)1. Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of Section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. 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.

It is well settled that the character and responsibility of a corporate entity can be judged only by that of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 31 L.Ed. 2d 796 (1972). Therefore, in order to determine the fitness of the applicant business entity, Mr. Forte, although not required to be licensed, was required to establish his qualifications under Section 86 of the Act and to establish his good character, honesty and integrity.

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

The Casino Control Act established a comprehensive scheme of regulation over the casino industry and its attendant businesses. Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to a most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328, app. dismiss., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as modified, 90 N.J. 361, app. dismiss., 103 S.Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions...are designed to extend strict State regulation to all persons. . .practices and associations related to" casinos and that "comprehensive law-enforcement supervision. . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

Further, it has been recognized that one of the primary goals of the enactment of the Act was "to guard against any danger of infiltration by organized crime." In Re Boardwalk Regency Casino License Application, 180 N.J. Super. at 340. Accordingly, Mr. Forte's association with Angelo Bruno must be scrutinized closely in reaching a determination of the fitness of American Way for licensure.

In Resorts, the Commission held that a qualifier's business, professional and personal associations are appropriate for consideration in a determination of qualifications for licensure. Further, the Commission set forth the means by which such associations are to be evaluated in determining their significance upon the application for licensure:

Such associations are not themselves a standard of qualification. In this context, associations are relevant only to the extent that they may reflect upon actual character and present fitness to either hold a casino license or participate in gaming operations.

Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of its associates, termination of the association and the reasons for termination. Only after all the significant circumstances are taken into account can it be determined whether an association casts an unfavorable light upon the applicant or person to be qualified. The mere fact that some innocent relationship may have existed with persons of unsuitable character would not alone indicate a failure to meet the standard of good character, honesty and integrity. Of course, it is incumbent on the applicant to demonstrate either that it had no involvement with notorious or unsavory persons or that such involvement indicates no lack of good character, honesty and integrity.

The three incidents involving Mr. Forte's meetings with Angelo Bruno must be evaluated individually and collectively in order to determine their significance, if any.

First, the applicant initially met Angelo Bruno in 1970. This meeting was brought about spontaneously by Joseph Esposito. The meeting lasted approximately one hour and was purely social in nature. Independently, this meeting has no significance.

Second, there was a meeting in 1975. Again, this was a per chance meeting brought about by Joseph Esposito which lasted approximately ten minutes. Independently, this meeting has no significance.

Third, concerns the circumstances surrounding the applicant's purchase of cigarettes from John's in the spring of 1978. This contact was also initiated at the suggestion of Joseph Esposito. The applicant agreed to the meeting solely for business purposes, i.e., an attempt to purchase cigarettes at a cheaper price. Mr. Forte stated candidly that he knew generally of Angelo Bruno's purported reputation as a member of organized crime; however, he did not consider it, nor did he associate that purported reputation with John's. Similarly, the applicant had no knowledge of Angelo Bruno's reputation within the various law enforcement authorities. Certainly, the applicant had no reason to believe that John's was anything other than a legitimate business. Further, the applicant had no knowledge of the purported reputation of the other individuals present at the lunch meeting as being members of organized crime. The meeting itself consisted primarily of business discussions together with the exchange of the customary non-business courtesies. Prior to reaching an agreement, the applicant inquired if John's was licensed by the State of New Jersey and determined that it was. As a result of the discussions, Mr. Forte entered into a lawful agreement negotiated at arm's length to purchase cigarettes from John's. Because he was obtaining the cigarettes at the same price which he was already paying, the motivating factor for doing business with John's was that he would be doing business with a friend of a friend. The applicant testified that it was his frequent practice to do business with friends of friends, which is customarily accepted in the private sector. Accordingly, the applicant had no reason to believe that he had entered into a business arrangement with organized crime or that the agreement was otherwise improper. Subsequently, Mr. Forte received a substantial and continuing volume of information from the FBI regarding business associates of his brother Edward and regarding Angelo Bruno and John's. In response to this information, the respondent

advised his brother to cease doing business with his brother's associates, which he did. Further, the applicant voluntarily terminated his lawful business relationship with John's. He has had no subsequent business dealings with John's, Angelo Bruno or any other purported member of organized crime. The extent of the cigarette purchases from John's was economically insignificant to the total revenues of the businesses operated by Mr. Forte. In addition, his relationship with John's and Angelo Bruno was purely business and was not social.

This very limited business relationship between the applicant and John's through Angelo Bruno does not reflect negatively upon Mr. Forte's good character, honesty and integrity. Even if the applicant's conduct could be uncharitably characterized as an error in business judgment, it is without any measurable significance.

Even accepting, arguendo, the Division's contention that Mr. Forte's stated reason for doing business with John's, i.e., a friend of a friend, was untrue, and there is no evidence thereof, the incident still has no measurable negative significance. A simple evaluation of the applicant's conduct upon receipt of information from the FBI regarding the true character of Angelo Bruno and John's and the applicant's conduct since that time only serve to emphasize that the incident is insignificant.

The fact that Joseph Esposito is a common thread between all contacts between the applicant and Angelo Bruno is not sufficient to establish a cumulative, negative inference to be drawn against the applicant. The applicant's long-standing business and personal relationship with Joseph Esposito bears no relationship to Joseph Esposito's relationship, by marriage, to Angelo Bruno. The Division made no suggestion that Joseph Esposito was a person of ill repute.

It was clearly established that the applicant is well regarded for his integrity in the community and his industry. Such a reputation is not easy to achieve in a highly competitive, risky and demanding industry such as the oil business. Further, the applicant established himself to be a person of high standards and tremendously strong character. The applicant appears to be a person who can be believed and who will stand behind his commitment not to conduct business with persons of ill repute. The applicant presents no

risk to the public and the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Mr. Forte 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. Forte has established, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

Therefore, I **ORDER** that the application of American Way Coach, Inc., for licensure as a casino service industry, under N.J.S.A. 5:12-92c, be **GRANTED**.

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

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

January 6, 1984  
DATE

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

Receipt Acknowledged:

January 9, 1984  
DATE

Walter D. Smith  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

Jan. 11, 1984  
DATE

Ronald S. Packer  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Stipulations of Fact, October 31, 1983 (3 pages)
- J-2 Business Entity Disclosure Form-3, American Way Coach, Inc., December 17, 1980 (20 pages)
- J-3 Affidavit of H. Charles Hess, October 31, 1983 (2 pages)
- J-4 Personal History Disclosure Form-4, Frederick W. Forte, December 17, 1980 (11 pages)
  
- P-1A Star Fuel Oil, Inc., Accounts Payable Ledger Card for New Jersey Tobacco Co. from January 31, 1978 to May 11, 1979 (2 pages)
- P-1B Star Fuel Oil, Inc., Invoices from New Jersey Tobacco Co., from January 26, 1978 to December 20, 1978
- P-2A Star Fuel Oil, Inc., Accounts Payable Ledger Card for John's Wholesale Distributors, from March 23, 1978 to July 3, 1978
- P-2B Star Fuel Oil, Inc., Invoices from John's Wholesale Distributors, from March 16, 1978 to June 29, 1978 (7 pages)
  
- R-32 Transcript of the Interview of Frederick W. Forte, In Re: American Way Coach, Inc., May 10, 1982 (159 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-1Id. Article published by the Courier Post on May 23, 1977.
- R-2Id. Article published by the Courier Post on March 25, 1978
- R-3Id. Article published by the Courier Post on June 30, 1977
- R-4Id. Article published by the Philadelphia Inquirer on August 9, 1977
- R-5Id. Article published by the Philadelphia Inquirer on August 9, 1977
- R-6Id. Star Fuel Oil, Inc., Accounts Payable Ledger Card for John's Wholesale Distributors (See P-2A)
- R-7Id. Article published by the Philadelphia Inquirer on March 19, 1971
- R-8Id. Article published by the Courier Post on February 17, 1978
- R-9Id. Article published by the Philadelphia Inquirer on August 10, 1977  
(2 pages)
- R-10Id. Article published by the Trenton Times on August 11, 1977
- R-11Id. Article published by the Philadelphia Inquirer on August 11, 1977.
- R-12Id. Article published by The Press - Atlantic City August 12, 1977  
(2 pages)
- R-13Id. Article published by the Philadelphia Bulletin on August 14, 1977  
(2 pages)
- R-14Id. Article published by the Philadelphia Inquirer on January 2, 1978  
(4 pages)
- R-15Id. Article published by the Philadelphia Inquirer on January 10, 1978
- R-16Id. Article published by The Press - Atlantic City on January 13, 1978
- R-17Id. Article published by The Press - Atlantic City on January 25, 1978 (2 pages)
- R-18Id. Article published by The Press - Atlantic City on January 27, 1978
- R-19Id. Article published by the Philadelphia Evening Bulletin on January 28, 1978

- R-20Id. Article published by The Press - Atlantic City on February 4, 1978
- R-21Id. Article published by The Press - Atlantic City on February 18, 1978
- R-22Id. Article published by The Press - Atlantic City on March 21, 1978 (2 pages)
- R-23Id. Article published by the Courier Post on August 5, 1977
- R-24Id. Article published by the Philadelphia Inquirer on December 20, 1970 (2 pages)
- R-25Id. Article published by the Philadelphia Inquirer on March 16, 1971 (8 pages)
- R-26Id. Article published by the Philadelphia Evening Bulletin on December 16, 1977.
- R-27Id. Article published by the Philadelphia Inquirer on August 24, 1969
- R-28Id. Article published by the Philadelphia Inquirer on October 19, 1969
- R-29Id. Article published by the Philadelphia Inquirer on January 20, 1970
- R-30Id. Article published by the Philadelphia Inquirer on January 22, 1970
- R-31Id. Article published by the Philadelphia Inquirer on February 3, 1970.

WITNESS LIST

FOR THE APPLICANT:

Nicholas DePalma, Sr.

Frederick W. Forte

Frank Hunter Guinn

Walter Johnson

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-COI-2  
OAL DOCKET NO. CCC 5556-82  
APPLICATION NO. 49-70

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APPLICATION OF ASH/LeDONNE, INC.,  
FOR A CASINO SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 20, 1984, recommending that the casino service industry license application of Ash/LeDonne, Inc., be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 22, 1984, to affirm and adopt the said Initial Decision and to grant the application,

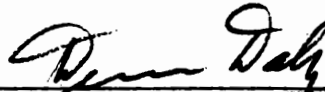
IT IS on this 28th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the casino service industry license application of Ash/LeDonne, Inc., be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5556-82

AGENCY DKT. NO. 82-CSE-2

**ASH/LeDONNE, INC.,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**David F. Norcross, Esq.,** for petitioner (Myers, Matteo, Rabil and Norcross, attorneys)

**R. Lane Stebbins,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 28, 1983

Decided: January 19, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Ash/LeDonne, Inc., for licensure as a casino service industry, pursuant to section 92 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino service industry has demonstrated, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3c, and within the meaning of section 89b(2), as incorporated in section 92 of the Casino Control Act.
2. Whether the four alleged business practices of the petitioner enumerated in the February 1, 1982 letter of objection from the Division of Gaming Enforcement to the Casino Control Commission, are individually or in combination of such a nature as to prevent petitioner from demonstrating, by clear and convincing evidence, its reputation for good character, honesty and integrity.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated February 1, 1982. Subsequently, the petitioner requested a hearing on its license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law 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 an advertising agency located in New York City, New York. Specializing in providing advertising services for the entertainment industry, it was founded by Jeffrey Ash and Peter LeDonne, Jr., in 1975. The petitioner began as a subsidiary of Kelly, Nason, Inc., primarily to avail itself of the parent corporation's business management experience. While the petitioner remained a subsidiary of Kelly, Nason, Inc., its billing and payroll were handled by the parent corporation.

In 1979, the petitioner became an independent entity. Peter LeDonne's role since the inception of the petitioner had been on the creative side of the advertising business, and his role remained essentially the same when the petitioner became independent. However, the petitioner brought some of the business oriented people to it from Kelly, Nason, Inc., to handle the business procedures.

Prior to becoming the advertising agency of record for Resorts International Hotel, Inc., the petitioner dealt almost exclusively with providing advertising services for New York area live entertainment. In this regard, an account executive would be assigned to manage the day-to-day operation of an advertising client's account, providing direct advice to the client. The account executive would serve as the liaison between the client and the creative aspects provided by the petitioner's art department. The petitioner would respond to the client's overall advertising needs with an on-the-premises creation of an advertisement, including art work, typesetting, newspaper insertion orders and other arrangements. When an advertisement was created, it would be given to the account executive to obtain the approval of the client. If the approval was not obtained, changes necessary for obtaining the approval would be made. In addition, it was necessary for the petitioner to be responsive to the daily needs of its client by providing advertisements concerning cast changes, performance cancellations and other similar information.

When the petitioner became the advertising agency for Resorts International, it assumed responsibility for preparing advertising campaigns, placing advertising in the various media, arranging billboard advertising, and for billing Resorts International for services arranged by the petitioner which were rendered on Resorts' behalf by other companies. According to Mr. LeDonne, it was a new experience for the petitioner to be providing advertising for a gaming industry client. Among the challenges facing the petitioner were the decisions concerning the content of the advertisements and determining where the market for the gaming industry would be found.

The investigation of the petitioner conducted by the Division of Gaming Enforcement included a review of the business relationship between the petitioner and Resorts International. The petitioner's performance in regard to four specific aspects of its relationship with Resorts caused the Division of Gaming Enforcement to question the efficacy of the petitioner's financial management and to doubt the petitioner's business integrity. The first area of performance concerned the petitioner's billing of Resorts for the rental of billboard space (Exhibit R-1). In 1977, Abner Gelula Associates, on behalf of its client, Resorts International, entered into a contractual relationship with R.C. Maxwell Company for the leasing of billboard space for advertising. This contract was renewed annually through March 15, 1980, even though Resorts terminated its arrangement with Gelula in approximately October 1978; thereafter retaining the petitioner as its exclusive advertising agency. Until December 1978, Abner Gelula and Associates had been responsible for billing Resorts on behalf of Maxwell. After that time, Maxwell itself assumed the responsibility for billing Resorts.

The petitioner did not participate in the negotiations which resulted in the contract with Maxwell for billboard space. However, from December 1978 until February 1980, the petitioner sent monthly invoices to Resorts, billing it for the rental space of Maxwell billboards, much as Abner Gelula and Associates had done prior to December 1978, even though the petitioner never received from Maxwell any invoice or other request to so bill Resorts. Unfortunately, Maxwell was also billing Resorts for the same billboard rental during this period.

Between December 1978 and February 1980, the petitioner received and retained from Resorts a total of \$10,360 in satisfaction of the invoice billings for the Maxwell billboard rentals. At some time prior to February 1980, Resorts complained to the petitioner about being billed for the Maxwell billboards. Following an internal review, the petitioner concluded that it had improperly billed Resorts and, by invoice dated February 29, 1980, the petitioner advised Resorts that it was being given a credit in the amount of \$10,360.

The second area of the petitioner's performance which was questioned by the Division of Gaming Enforcement concerned billboard space at Yankee Stadium in New York City, New York, which was owned by Foster and Kleiser Company. In 1979, the petitioner executed a contract with Foster and Kleiser, on behalf of Resorts International, for a seven-month rental of the billboard space, commencing in April 1979 (Exhibit R-2). The contract for billboard space required monthly rental payments from Resorts International in the amount of \$3,500. Foster and Kleiser Company would send an invoice to the petitioner, and the petitioner would then bill Resorts. When the petitioner received the payment from Resorts, it would deduct its commission and forward the balance to Foster and Kleiser.

For a four-month period following the expiration of the seven-month contract, the petitioner continued to send billing invoices to Resorts for the billboard rental and Resorts continued to send its payment. The petitioner continued to send the invoices to Resorts even though it had not received invoices from Foster and Kleiser during the four-month period. As a result, the petitioner received excess payments from Resorts totaling \$14,000, none of which was forwarded by the petitioner to Foster and Kleiser. Following receipt of a complaint from Resorts, the petitioner reviewed the situation and, by invoice dated February 29, 1980, the petitioner advised Resorts that it would receive a credit in the amount of \$14,000.

The third area of the petitioner's performance which was questioned by the Division of Gaming Enforcement concerned a billboard owned by Allied Outdoor Advertising, Inc., which was located on the New Jersey Turnpike (Exhibit R-3). By letter, dated June 4, 1979, the petitioner's Account Executive for Resorts International, Thomas Wells, advised Suzanne Epps of Resorts that the billboard was available for rental at a possibly negotiable price of \$4,000 per month. On July 6, 1979, the petitioner, acting on behalf of Resorts, executed two contracts with Allied Outdoor Advertising, Inc., one requiring a monthly payment of \$2,750 and the other requiring a payment of \$1,250. Both contracts concerned the same billboard and both contained essentially identical provisions, including the condition that the board be painted twice a year. However, only one of the contracts indicated that it included "art work and painting for art work submitted." The Division of Gaming Enforcement, during its investigation, questioned why it was necessary to execute two contracts which contained essentially identical provisions. During the course of a sworn interview conducted by the Division of Gaming Enforcement (Exhibits 1a and 1b), Thomas Wells advised that one contract pertained to the rental of the space and the other contract pertained to the cost associated with the construction required for the billboard.

The final area of the petitioner's performance which was questioned by the Division of Gaming Enforcement concerned its placement of advertising in newspapers on behalf of Resorts International (Exhibit R-4). Between June 1979 and June 1980, the petitioner billed Resorts for advertising which the petitioner had created and had allegedly placed in over 100 newspapers. During its investigation of the petitioner, the Division of Gaming Enforcement conducted a limited audit of 16 newspapers in which the advertisements were to have appeared. The audit revealed that the petitioner had billed Resorts for advertisements which had not actually appeared in the newspapers and that the petitioner had also failed to properly bill Resorts for advertisements which had been placed. From the sample audited, it was calculated that the petitioner had overbilled Resorts in the amount of \$14,137.64 with respect to advertising which was to have been placed in the audited newspapers, but which, in fact, had not been placed. According to Peter LeDonne, credit was given to Resorts for newspaper billing.

Testifying on behalf of the petitioner, Peter A. LeDonne stated that Resorts International was a big account for the petitioner, with billings between two and three million dollars per year. The volume and nature of the work required by the Resorts account strained the petitioner's financial management systems. According to Mr.

LeDonne, the petitioner prepared and placed between 75 and 100 ads every week for Resorts. In addition, the petitioner was responsible for numerous billboards on behalf of Resorts, and Resorts requested frequent changes on these boards. Although weekly billboard changes were unusual in the advertising industry, they were requested by Resorts to reflect weekly performance changes.

In addition to the volume of work generated by the Resorts account, it was necessary for the petitioner to work with a large number of people from Resorts. It was the testimony of Mr. LeDonne that many of these Resorts employees had the authority to change ads and often did so, requiring the petitioner to make many last-minute changes. Mr. LeDonne stated that the petitioner also experienced problems as a result of the insistence by Resorts that backup verification for all billing be provided prior to payment being sent. As a result, the petitioner would be out of pocket several hundred thousand dollars in expenses while Resorts waited for further verification on what might be only a very small portion of the billing.

At a meeting, Resorts personnel asked that the petitioner remove Thomas Wells as the account executive for the Resorts account. The petitioner agreed to remove Mr. Wells and he was replaced with Ronald Pine. However, problems with the Resorts account continued to plague the petitioner. By memo, dated November 9, 1981, (Exhibit P-4), Mr. Pine detailed many examples of difficulties which the petitioner had experienced with the Resorts account. Mr. LeDonne determined that it would be in the best interests of the petitioner to sever its relationship with Resorts and, by a letter to Resorts International President Jack Davis, dated November 12, 1981, Mr. LeDonne formally resigned the Resorts International advertising account.

Mr. LeDonne candidly acknowledged that the petitioner's financial management systems were not adequate to deal with the problems created by the Resorts account. Mr. LeDonne explained that the petitioner's billing operation and its paying operation were conducted as two separate and distinct functions. The failure to sufficiently coordinate these functions led to the petitioner's unintentional overbilling of Resorts for the R.C. Maxwell and Foster and Kleiser billboard advertising space. According to Mr. LeDonne, these mistakes cannot be repeated by the petitioner because it has drastically improved its financial management. The petitioner has changed its accounting firm and accounting procedures, and has added a partner for financial management.

Mr. LeDonne also testified concerning the execution of two essentially identical contracts by the petitioner, on behalf of Resorts, for the rental of billboard space from Allied Outdoor Advertising. According to Mr. LeDonne, one of the contracts was for the billboard space itself, and the other contract was for billboard construction and painting. These are considered to be two different items in the advertising business. Although they could have been treated in the same contract, they were not. In regard to the petitioner's overbilling of Resorts for newspaper advertising which did not actually appear in newspapers, Mr. LeDonne stated that many of the newspapers were not available in the New York area, and thus, were not checked to determine whether the ads had actually been run.

Also testifying on behalf of the petitioner was Rodney E. Starmer, who was formerly President of RCA Direct Marketing. Mr. Starmer became actively involved as the petitioner's management consultant in October 1982. His analysis revealed that the petitioner had no logical business plan and an inadequate financial management system. As a result, Mr. Starmer devised and implemented new systems and procedures for the petitioner, including a job jacket system and a purchase order system. Client billing is now centralized and controlled by the job jacket and purchase order systems. In addition, the placement of all newspaper advertisements is now verified, so that clients are billed only for the advertisements which are actually run in the newspapers. Mr. Starmer must be personally informed of all commission arrangements for the petitioner's clients and his approval must be obtained. It is the intention of the petitioner to implement a computerized system to record all transactions.

Mr. Starmer offered his opinion that the petitioner is now financially stabilized and on the verge of substantial growth. With the financial management system improvements implemented, including a monthly systematic review of accounts payable and receivable, any billing errors would be discovered and corrected within 30 days.

Certified Public Accountant Anthony J. Dimun also testified on behalf of the petitioner. Mr. Dimun is a partner in the firm of Goldstein, Gallup and Kessler, providing audit, accounting, internal control, tax and other business consultation services for advertising agencies and other clients.

In 1980, Mr. Dimun was engaged as a consultant to perform a management survey of the petitioner, reviewing its complete financial operation (Exhibit P-5). Mr.

Dimun discovered that the petitioner had an inadequate organizational structure and that financial management was conducted by individuals with insufficient experience in dealing with the day-to-day financial matters of the business. A business plan was created which encompassed budgeting and forecasting as a means for controlling cost and providing direction for the business.

Mr. Dimun also discovered that the petitioner lacked proper measurement and evaluation of the profitability of its clients. He recommended that the organizational structure be strengthened with the creation of an executive committee, a finance committee, a client managing and marketing committee, a credit and collection committee and a personnel and administrative committee. Also recommended were improvements in the internal control and integrated record keeping systems of the petitioner. It was the opinion of Mr. Dimun that the arrival of Rodney Starmer has created a discipline for proper record keeping, review and supervision. It was Mr. Dimun's testimony that the most significant changes which have been recommended for improving the financial management of the petitioner have already been implemented. It was his opinion that the petitioner's financial management is now significantly improved and that it functions accurately and efficiently, with excellent controls. According to Mr. Dimun, the financial management demonstrated by the petitioner now compares very favorably with that shown by other advertising agencies, and the business integrity of the petitioner is the finest.

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

#### CONCLUSIONS OF LAW

Pursuant to Section 92c of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and N.J.A.C. 19:43-1.3(c), an applicant for a casino service industry license which offers goods or services not directly related to casino gaming activities must establish, by clear and convincing evidence, its reputation for good character, honesty and integrity. As issue in this proceeding is whether the petitioner's performance in regard to its relationship with its advertising client, Resorts International, was of such a nature as to prevent the petitioner from establishing its qualifications for licensure.

It is undisputed that the petitioner lacked adequate financial management controls while it served as the advertising agency for Resorts International. The lack of such controls resulted in instances of overbilling which were subsequently credited when reviewed by the petitioner.

It is also undisputed that the petitioner has acknowledged its past financial management mistakes and has taken substantial efforts to implement the necessary systems changes to prevent the recurrence of such mistakes. These efforts include the implementation of recommendations by the petitioner's new financial officer and accounting firm. As a result of the improved financial management systems, the petitioner is able to undertake its business functions accurately and efficiently.

The petitioner's successful efforts to achieve a substantial improvement in its financial management systems indicate a significant degree of business integrity. Based upon the undisputed facts in this matter, the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner has affirmatively demonstrated, by clear and convincing evidence, that it possesses the degree of good character, honesty and integrity requisite for licensure as a casino service industry, within the meaning of N.J.S.A. 5:12-92(c) and N.J.A.C. 19:431.3(c).

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ash/LeDonne, Inc., for a casino service industry license be **GRANTED**.

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

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

January 19, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

20 JAN 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Jan. 24, 1984  
DATE

Mailed to Parties:  
Ronald L. Packer  
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

**Joint Exhibits:**

**J-1 Stipulations of Fact, with attachment**

**For the petitioner:**

- P-1a Interview of Thomas W. Wells, dated March 27, 1981**
- P-1b Continued Interview of Thomas W. Wells, dated April 6, 1981**
- P-2 Total of 1981 Proposed Advertising Budget**
- P-3 Letter, dated November 12, 1981**
- P-4 Memo, dated November 9, 1981**
- P-5 Management Survey, dated November 1980**

**For the respondent:**

- R-1 Packet of Documents concerning the Rental of Billboard space from R.C. Maxwell Company**
- R-2 Packet of Documents concerning the Rental of Billboard space from Foster and Kleiser**
- R-3 Packet of Documents concerning the Rental of Billboard space from Allied Outdoor Advertising**
- R-4 Newspaper Analysis Summary, dated January 27, 1981**

WITNESSES

For the petitioner:

Peter A. LeDonne  
Rodney E. Starmer  
Anthony J. Dimun

For the respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-163  
OAL DOCKET NO. CCC 8898-83  
REGISTRATION NO. 14960-40

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

Complainant, : FINAL ORDER

v. :

LUIS A. AVILES, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 3, 1984, recommending that the respondent's casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting of May 2, 1984, to modify the said Initial Decision and to revoke the respondent's casino hotel employee registration,

IT IS on this 22nd day of May 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

The Administrative Law Judge's conclusion that "the offenses for which respondent was convicted are specifically enumerated disqualifiers pursuant to N.J.S.A. 5:12-86c" (Initial Decision at 2) is modified to reflect that only the respondent's conviction on August 7, 1978, for grand larceny contrary to N.J.S.A. 2A:119-2, equivalent to N.J.S.A. 2C:20-2b(2)(a) and his conviction on March 5, 1982, for possession of a controlled dangerous substance (heroin) with intent to distribute, contrary to N.J.S.A. 2A:21-19(a)(1) are disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1).

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

IT IS FURTHER ORDERED that, Luis A. Aviles, 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.S.A. 19:41-8.8; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8898-83

AGENCY DKT. NO. 82-163

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**LUIS A. AVILES,**

Respondent.

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**APPEARANCES:**

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

**Luis A. Aviles, respondent, pro se**

Record Closed: February 23, 1984

Decided: April 2, 1984

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

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

The basic facts are undisputed. In February 1978, respondent was indicted for breaking and entering with intent to steal, contrary to N.J.S.A. 2A:94-1, equivalent to N.J.S.A. 2C:18-2; conspiracy to break and enter, contrary to N.J.S.A. 2A:98-1, equivalent

to N.J.S.A. 2C:5-2; grand larceny of goods valued in excess of \$500, contrary to N.J.S.A. 2A:119-2, equivalent to N.J.S.A. 2C:20-2b(2)(a); and two counts of possession of stolen property, contrary to N.J.S.A. 2A:139-1, equivalent to N.J.S.A. 2C:20-7. Respondent entered a plea of guilty to breaking and entering with intent to steal, conspiracy to break and enter, and grand larceny. On August 7, 1978, he was sentenced to a nine-month suspended term in the Atlantic County Jail and was placed on three years' probation.

On November 5, 1981, respondent was indicted for possession of heroin, contrary to N.J.S.A. 24:21-20a(1), and possession of heroin with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). He entered a plea of guilty to possession with intent to distribute and on March 5, 1982, was sentenced to a three-year term in prison. Respondent was also convicted at this time of violation of his 1978 three-year probationary term. He was freed on March 22, 1983.

The offenses for which respondent was convicted are specifically enumerated disqualifiers pursuant to N.J.S.A. 5:12-86c, and the only open question is whether respondent can establish rehabilitation pursuant to N.J.S.A. 5:12-91.

Detective William E. Prato, of the New Jersey State Police testified concerning the circumstances surrounding the drug conviction. He was the arresting officer. The Detective Bureau had been led to believe that respondent and a Mr. Lopez were engaged in heroin trafficking in the Hammonton area, and a search warrant was obtained for both of their automobiles. At approximately 1:25 a.m. on the morning of September 11, 1981, respondent and Mr. Lopez met in one of these automobiles and were arrested. Heroin in the amount of 50.85 grams was found in a canvas bag belonging to respondent and, additionally, 26 clear plastic bags were found.

Investigator William E. Frasco also testified on behalf of petitioner. He filled in the detail that the 1977 arrest and conviction arose out of a liquor store robbery.

Respondent is 29 years old. He testified in his own behalf. He maintained that he had not started out to rob a liquor store but was intoxicated at the time, and it just developed that way. With respect to the drug conviction, he testified that he had been a heroin addict and was selling to pay for his own use. He is no longer on drugs and has not been in any trouble since his release from custody in March 1983. He has been employed since that time in a few jobs, most recently by Ocean Yachts where he repairs boat hulls.

This is the substance of the record. Respondent was involved in the commission of two serious crimes, and the distribution offense was not an isolated incident. He has been out of custody for a year and the record reveals no further incidents. However, there is little affirmative evidence of rehabilitation beyond the passage of this relatively short period. That is not enough. One must show through indicia like long-term employment history, community service, counseling, or schooling that attitude and behavior have improved. Absent such a showing there is no tangible basis for the conclusion that respondent has been rehabilitated.

Based on the foregoing, it is **ORDERED** that respondent's registration be and hereby is **REVOKED**.

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

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

4/2/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

April 3, 1984  
DATE

*Bernadette T. Friga*  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 5, 1984  
DATE

*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Detective William E. Prato, New Jersey State Police  
Investigator William E. Frasco, Division of Gaming Enforcement  
Respondent, Luis A. Aviles

EXHIBITS

- P-1 Indictment for breaking and entering with intent to steal: conspiracy to break and enter with intent to steal: grand larceny: possession of stolen property.
- P-2 Judgment of Conviction, August 7, 1978
- P-3 Judgment of Conviction on violation of probation ordered March 5, 1982
- P-4 Indictment for possession of controlled dangerous substance: possession of controlled dangerous substance with intent to distribute
- P-5 Judgment of Conviction and Order for Commitment, dated March 5, 1982
- P-6 Certification of Atlantic County Clerk's Office in State v. Aviles
- P-7 FBI Identification Record

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 82-18 and 82-64

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, DIVISION : ORDER  
OF GAMING ENFORCEMENT, v. BALLY'S :  
PARK PLACE, INC. :

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This matter having been brought before the New Jersey Casino Control Commission upon the filing of two complaints, Dockets Nos. 82-18; 82-64, by the Division of Gaming Enforcement with the Commission against Bally's Park Place, Inc., alleging violations of the Casino Control Act concerning the sale and storage of alcoholic beverages; and prehearing conferences having been held on February 3, 1983 and April 26, 1983, before Carl Zeitz, hearing examiner; and a hearing having been conducted on June 2, 1983, during which a Stipulation of Facts was entered into evidence; and an Initial Decision having been filed by Commissioner Zeitz with the Commission on November 17, 1983, incorporating the Stipulation of Facts and finding that Bally was in violation of all counts of the two complaints and recommending civil penalties totaling \$41,500 and a 90-day suspension of a casino hotel alcoholic beverage license for the Sidewalk Cafe, a Bally establishment; and Bally having filed exceptions to the Initial Decision on December 13, 1983, to

which the Division of Gaming Enforcement responded by letter dated December 30, 1983; and the Commission having considered the entire record of these proceedings; and the Commission having resolved at the Commission's public meeting of February 22, 1984, to affirm and adopt the Initial Decision except to modify the Initial Decision's recommended civil penalty of suspension with respect to Count II of Docket No. 82-18 and to impose a 90-day suspension of the casino hotel alcoholic beverage license for the Sidewalk Cafe, all but 30 days of the suspension to be vacated, said suspension of the license to take effect 30 days from the date of this Order; and Commissioner Don M. Thomas having dissented from that portion of the Commission's decision to impose any suspension of the casino hotel alcoholic beverage license; and Commissioner Carl Zeitz having dissented from that portion of the Commission's decision to modify the Initial Decision,

IT IS on this 23<sup>rd</sup> day of February, 1984, ORDERED that the Initial Decision of Carl Zeitz, hearing examiner in this matter, is hereby modified to impose a 90-day suspension of the casino hotel alcoholic beverage license for the Sidewalk Cafe, all but 30 days of the suspension to be vacated, said suspension of the license to take effect 30 days from the date of this Order.

IT IS FURTHER ORDERED that the Initial Decision be affirmed and adopted in all other respects.

NEW JERSEY CASINO CONTROL COMMISSION

By Walter N. Read  
Walter N. Read, Chairman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 82-18; 82-64

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
Charging Party, :  
v. :  
BALLY'S PARK PLACE, INC., :  
Respondent. :

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INITIAL DECISION

Appearances for Respondent:

Stanley Tannenbaum, Esq.  
Steven H. Joseph, Esq.

For the Division of Gaming Enforcement:

Fredric E. Gushin, Deputy Attorney General

For the Casino Control Commission:

Steven M. Ingis, Assistant Counsel

### PROCEDURAL HISTORY

- This matter emanates from two Complaints filed by the Division of Gaming Enforcement (Division) against Bally's Park Place, Inc. (Bally) for various alleged violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq, involving the sale and storage of alcoholic beverages. More specifically, Complaint No. 82-64 charges Bally with offering its patrons two drinks for the price of one in the special "two-for-one" promotion conducted from May 1, 1982, to June 25, 1982, in violation of N.J.S.A. 5:12-103(f)(2) and N.J.A.C. 13:2-23.16(a)(2).

Complaint No. 82-18 charges Bally with the following: Count I, conversion of an alcoholic beverage storage area located adjacent to the Casino Service Bar No. 1 into a pump room to service the Lobby Lounge Bar without Commission approval; Count II, expanding the Sidewalk Cafe and serving alcoholic beverages in this area without Commission approval; Count III, expansion of Storage Area No. 19 and its conversion to a service bar without Commission approval, and Count IV, utilizing the North Meeting Room storage area as a storage area for alcoholic beverages without having obtained an appropriate license from the Casino Control Commission, all in violation of N.J.S.A. 5:12-103(f).

On December 22, 1982, the parties signed a proposed Stipulation of Settlement of the above-referenced complaints. The following terms and conditions were set forth in the

proposed Stipulation of Settlement: (1) Bally elected not to contest the allegations; (2) Bally represented that it had sufficient controls to ensure that the alleged violations would not recur; (3) Bally acknowledged its obligation to comply with all of the provisions of the Casino Control Act and implementing regulations applicable to the alleged violations; (4) a fine of \$7,500 would be imposed, and (5) the complaints would be dismissed with prejudice upon approval by the Casino Control Commission of the settlement and payment of the aforementioned fine.

The prehearing conference was conducted on February 3, 1983, at which time the proposed Stipulation of Settlement was presented for my consideration. I advised the parties that the settlement was deficient in several respects, particularly in that it lacked the requisite specificity and factual detail to enable the Commission to render judgment concerning the reasonableness of the settlement. Moreover, Bally's representation that it had sufficient controls to ensure that violations would not recur was insufficient to demonstrate that such violations had ceased. See Prehearing Conference Order, dated March 16, 1983, page 3. The parties agreed to confer in an attempt to revise the settlement proposal and to present the modified agreement on a subsequent date. At the conference, Bally was advised that it had the option of proceeding with

the initial settlement offer before the full Commission for its consideration.

The parties attempted to negotiate a settlement of this case in accordance with the recommendations and suggestions offered at the prehearing conference. On April 26, 1983, a second prehearing conference was held during which the parties advised that they were unable to agree upon a revised Stipulation of Settlement. It was determined that the matter would proceed to an evidentiary hearing before a duly appointed hearing examiner.

The case was scheduled for a June 2, 1983 hearing date before me as hearing examiner. On May 20, 1983, Bally requested that the case be transferred to the Office of Administrative Law (C1).<sup>1</sup> The Division filed responding papers on June 2, 1983, objecting to this application (C2). On June 2, 1983, Commission Chairman Walter N. Read denied Bally's motion (C3).

The hearing was conducted on June 2, 1983. A Stipulation of Facts was entered into evidence (J1). At the conclusion of the hearing, the parties were requested to submit briefs regarding the applicability of the Alcoholic Beverage Control's (ABC) penalty formula to the within matter. The

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1. The referenced notations may be found in the appendix of exhibits which is attached to this Opinion.

hearing was officially concluded on June 20, 1983, upon receipt of these briefs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Division has the burden of proving the charges contained in the within complaints by a preponderance of evidence. After reviewing the totality of evidence presented at the hearing, I conclude that the Division has sustained that burden with respect to each of the charges brought against Bally. In this regard, it should be emphasized that by virtue of the Stipulation of Facts, a copy of which is attached to this Initial Decision (J1), Bally has conceded the pertinent factual allegations of the two complaints and I accept these undisputed facts as established for purposes of this proceeding.

Docket No. 82-18 - Count I

Casino Service Bar No. 1 and the adjacent small storage area are located approximately thirty feet off the casino floor. This area was licensed for the sole purpose of serving the casino floor with alcoholic beverages. On or about June 25, 1980, the Commission authorized the issuance of a Class IV Pub License for an area known as the Lobby Lounge. In conjunction with the licensure of the Lobby Lounge, Bally represented that alcoholic beverages would be served from a portable bar located within the licensed area. However, during May 1981, Bally converted the small storage area located adjacent to Casino

Service Bar No. 1 to serve the Lobby Lounge. This modification to the storage area was made without Commission approval. Bally was advised by Commission personnel that an appropriate application was necessary to amend the license to reflect the fact that the storage area was being used to support the Lobby Lounge, and shortly thereafter, an amendment application was filed. The remodeled storage area requires a Class VII license. The conversion of the storage area without Commission approval violated N.J.S.A. 5:12-103(f) which states that:

It shall be unlawful for any casino licensee, or any of its lessees, agents or employees to expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, or about any portion of the premises of a casino hotel, unless said person possesses an appropriate Casino Hotel Alcoholic Beverage License.

Bally's actions also violated N.J.A.C. 19:50-1.6(g):

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 written permission therefore.

#### Count II

On or about December 29, 1979, the Sidewalk Cafe was issued a Class III casino hotel alcoholic beverage (C.H.A.B.) license which allows liquor to be served as part of restaurant

activities.<sup>2</sup> At the same time, Bally proposed that a Class III liquor license be issued for the promenade area surrounding the fourth floor escalator. The Commission denied a Class III C.H.A.B. license for the promenade area because it had direct access onto the casino floor and was not an enclosed room, and instead granted a Class IV license for this area to function as a pub room. Class IV licensees are not permitted to provide meals for consumption to the public, N.J.A.C. 19:50-1.10(a). In September 1981, Bally expanded the Sidewalk Cafe into the promenade area and into an unlicensed adjacent corridor. As a result of this expansion, Bally utilized a Class IV licensed area as part of its Class III licensed premises. In addition, Bally served alcoholic beverages from an unlicensed location.

This expansion of the Sidewalk Cafe was made without filing for a change in the C.H.A.B. license and without Commission approval. During December 1981, Scott Silver, Esq., of the Commission staff, advised Dennis Venuti, Esq., Bally's Counsel, that the Sidewalk Cafe had been expanded outside of its licensed area without Commission approval. It should be emphasized that this expansion was made despite the Commission's prior ruling with respect to licensure for the area in question.

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2. Prior to the amendment of section 103 of the Act, effective in May 1983, separate licenses were issued for each liquor outlet of the casino hotel premises. These areas were given different license designations depending on the principal use for the locations, e.g., a Class III license is a restaurant. After the amendment, P.O. 1982, c.148, one license may be issued to a casino licensee for all designated locations in the facility. However, liquor service or consumption is still limited to the locations and uses described in the license.

On or about December 22, 1981, Bally filed an amended application to expand the Sidewalk Cafe.

Based on the foregoing facts, I find that Bally's activities were clearly in contravention of N.J.S.A. 5:12-103(f) and N.J.A.C. 19:50-1.6(g). It is also noteworthy that the Sidewalk Cafe was not returned to its original configuration within the confines of its C.H.A.B. license until May 4, 1983.

Count III

On or about December 29, 1979, the Upstair's in the Park Cocktail Lounge was licensed as a Class IV Pub area. Under this license the area could be used to dispense alcoholic beverages to patrons for consumption therein, and as a service bar for the "By the Sea" and "Prime Place" restaurants. Storage Area No. 19, located on the fourth floor restaurant level in the back of the Upstairs in the Park Lounge, was licensed on or about December 29, 1979, as a Class VII storage area to supply alcoholic beverages to the Upstairs in the Park Cocktail Lounge and the By the Sea and Prime Place restaurants. During December 1981, Bally expanded this storage area into a service bar and began providing liquor to the above restaurants. Thus, beverages for the By the Sea and Prime Place restaurants were being distributed from this expanded storage area as opposed to the Upstairs in the Park Cocktail Lounge. Bally did not seek Commission approval to implement this change to the license for the storage area. On January 7, 1982, the Commission staff

advised Bally to file an appropriate application and on January 21, 1982, such application was filed to modify the Upstairs in the Park license. Based on the foregoing, I find that Bally's conversion of this storage area without Commission approval violated N.J.S.A. 5:12-103(f) and N.J.A.C. 19:50-1.6(g).

Count IV

On or about November 23, 1981, Bally filed an application with the Commission seeking a Class VII Storage Area license for the North Meeting Room Storage Area. This license was issued on April 20, 1982. Prior to obtaining the requisite license, however, Bally utilized the North Meeting Room Storage Area for storing alcoholic beverages on two different occasions. On December 31, 1981, New Year's Eve, Bally stored alcoholic beverages therein during a large banquet in the North Meeting Rooms. Shortly thereafter, Bally represented to the Commission that the North Meeting Room Storage Area would not be so used until licensed. Contrary to that representation, Bally used the area to store liquor on February 6, 1982, for a banquet being held in the Main Ballroom. These activities constitute violations of N.J.S.A. 5:12-103(f).

Docket No. 82-64 - Count I

On May 1, 1982, three unions went on strike against Bally and set up picket lines at each entrance to the premises. On that same day, Bally began a special "two-for-one" promotion, offering patrons two drinks for the price of one at any lounge

in the facility. Scott Silver advised Bally by letter dated May 3, 1982 (D4) that, in the opinion of Commission staff, this promotion was in violation of applicable A.B.C. regulations and bulletins. A formal Notice of Violation (D3) was served upon Bally on May 4, 1982. Bally subsequently modified the promotion to read two "beverages" rather than two "drinks." Thereafter, on June 9, 1982, Mr. Silver informed Bally that in the opinion of Commission staff, this two-for-one "beverage" promotion was still in violation of the applicable regulations (D5). The promotion concluded on June 25, 1982, a few days after the strike ended.

N.J.S.A. 5:12-103(d) provides that all C.H.A.B. licensees shall be subject to the regulations and bulletins promulgated by the Division of Alcoholic Beverage Control. N.J.A.C. 13:2-23.16(a)(2) prohibits any practice or promotion that: "...offers to a patron or consumer a free drink, gift, price or anything of value conditioned upon the purchase of an alcoholic beverage or product..." (Emphasis added). The ABC issued a bulletin, dated December 12, 1980, No. 2381, declaring that two-for-one promotions violated the above regulation. Such promotions were found to condition the receipt of a "free drink" upon the purchase of an alcoholic beverage or, alternatively, to mandate the prepurchase of more than one drink as a condition of service at a reduced price.

I concur with the above construction of the pertinent regulation and conclude that the two-for-one promotion conditioned the receipt of a free drink upon the purchase of an alcoholic beverage. I find it irrelevant that a select patron may arguably have purchased nonalcoholic beverages following the revision to the promotion. The option of purchasing alcoholic beverages clearly persisted. Moreover, I conclude that the obvious intent of this promotion was to encourage patronage at Bally during the strike by offering alcoholic beverages at discounted rates. The change in terms of the offer from drinks to beverages is purely semantic and does not alter the fact that alcoholic beverages were available on a two-for-one basis. Bally's attempt to circumvent the regulation must fail. Accordingly, the Division has sustained its burden of proof with respect to the complaint and I find Bally to be in violation of the within charge.

PENALTY

Bally contends that the terms of the original Stipulation of Settlement are binding upon the Commission insofar as the imposition of a penalty is concerned. I find this argument to be specious. In the Stipulation of Settlement, the parties specifically stated that the settlement was subject to Commission approval, thereby recognizing the well settled principle that the Commission, in its discretion, can accept the settlement or reject it.

N.J.A.C. 1:1-17.1 states that in deciding whether to approve a settlement, a regulatory official must determine

whether the settlement is voluntary, consistent with the law, fully dispositive of all issues in controversy and in furtherance of the public interest. In this instance, the proposed Stipulation of Settlement was devoid of any factual detail to enable the undersigned to determine whether the terms of the settlement were reasonable and promotive of the public interest. In addition, the absence of any reference in the settlement to whether the violations had ceased or were of a continuing nature was clearly inadequate to serve the public interest. Accordingly, the parties were advised to attempt to revise the settlement, and to set forth the particular factual matters with greater clarity and specificity.

At the second prehearing conference, the parties advised me that they were unable to agree upon a modified settlement and that the matter should proceed to a hearing on a contested basis. Thus, no settlement was ever formally presented for my consideration at the hearing. On the contrary, the Stipulation of Settlement was effectively withdrawn from consideration by the parties who elected to proceed on a contested basis. The decision to withdraw the settlement proposal was made despite my declaration to Bally that it retained the option of presenting the settlement before the full Commission for its consideration. Having voluntarily abandoned the settlement prior to the hearing, Bally cannot legitimately argue that this Examiner is bound by its terms.

A determination of the appropriate sanction to be imposed for any given violation of the Casino Control Act requires consideration of various factors including 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. N.J.S.A. 5:12-130.

I do not agree with Bally's assessment that these violations regarding the sale and storage of alcoholic beverages were merely technical in nature and therefore not of a serious character. On the contrary, I conclude from the evidence presented that serious infractions of the Act have occurred. Preliminarily, I note that 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.

Moreover, the nature of these violations characterizes them as anything but technical or trivial. Bally's purposeful conduct reflects a cavalier attitude towards applicable regulations governing the sale and storage of alcoholic

beverages. These actions were undertaken for selfish economic motives without regard to established regulatory procedures. It is no justification to contend, as Bally does, that such alterations to its licensed premises were made prior to Commission action with the expectation of subsequently receiving a favorable ruling. Bally's conscious decision to presume upon the Commission's authority demonstrates a light regard for the regulatory process that cannot be tolerated.

The most flagrant violation in Complaint No. 82-18 is Count II, involving the unauthorized expansion of the Sidewalk Cafe. This conduct is particularly offensive in that it defied an earlier Commission ruling that prohibited the modification of the C.H.A.B. license in the manner desired by Bally. Moreover, and of paramount importance, Bally delayed remedying this violation until May 3, 1983, shortly before the hearing in this matter was scheduled to begin and approximately six months after the issuance of the complaint. In the proposed Stipulation of Settlement, Bally acknowledged its responsibility to ensure that such actions would not recur. It also made repeated assurances to the staff that corrective action would be taken promptly. Notwithstanding these assurances, Bally took no action to restore the Sidewalk Cafe to its proper configuration. Bally has been unable to satisfactorily explain this dilatory behavior. I cannot find any justification for such conduct.

By declaring this to be the most serious of the violations, I do not intend to minimize the significance of the remaining infractions. I believe, however, that this particular violation warrants a greater penalty due to the pronounced degree of defiance and the prolonged nature of the proscribed conduct. Similarly, the two-for-one promotion, because of the continuing nature of the violation, deserves a more substantial penalty.

In each instance, Bally followed a course of action of expediency rather than legitimacy as it determined that it was economically advantageous to proceed without Commission authorization. This policy and the underlying attitude it reflects must be abandoned in favor of adherence to proper procedure as established by the Commission. The penalty to be imposed is intended to provide a sufficient deterrent to prevent further episodes of noncompliance. N.J.S.A. 5:12-129(5).

N.J.S.A. 5:12-103(e) states that:

The Commission may promulgate any regulations and special rulings and findings as may be necessary for the proper enforcement, regulation and control of alcoholic beverages in casino hotels when the Commission finds that the uniqueness of casino operations and the public interest require that such regulations, rulings and findings are appropriate.

The assessment of fines or penalties for violations is one of many enumerated subjects for possible Commission action contained in this section. Bally suggests that the uniqueness

of casino operations mandates against applying the penalty formula devised by the Division of Alcoholic Beverage Control which provides for suspensions of licenses and fines in lieu thereof based on such factors as gross receipts, overhead expenses and length of violations. Bally argues that more lenient treatment should be extended in the context of casino gaming.

I emphatically reject any notion that the statutory language concerning the uniqueness of casino operations was intended to reflect a more lenient approach toward enforcement of alcoholic beverage controls. On the contrary, this language merely recognizes the Commission's authority to approve variations from State ABC rules and regulations whenever it is deemed appropriate to accommodate the unusual nature of the casino business. This statutory provision is not a recognition of leniency or lax enforcement. Indeed, the 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 requirements of regulatory governance.

I find the criteria utilized by the Division of Alcoholic Beverage Control to be a useful tool in assessing the appropriate penalty to be imposed and have considered it in conjunction with those factors enumerated in N.J.S.A. 5:12-130. I also recognize that penalties must be of a sufficient magnitude to eliminate the possibility that a penalty represents the cost of doing business in this State. See Second Interim

Report, Staff Policy Group, (1977) at 54-55. Accordingly, after considering all of the factors required to assess penalties as enumerated in N.J.S.A. 5:12-130, I recommend the following penalty:

Docket No. 82-18

Count I - a fine of \$500

Count II - a fine of \$20,000 and suspension of the C.H.A.B. License for Sidewalk Cafe for 90 days commencing 30 days from the date of final decision

Count III - a fine of \$500

Count IV - a fine of \$500

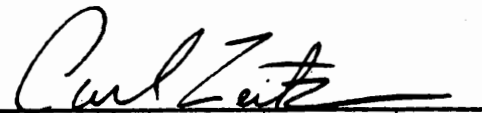
Docket No. 82-64

Count I - a fine of \$20,000

The total fine is \$41,500. It must be stated that the recommended penalty for these various offenses would have been more severe if not for Bally's previous unblemished record in this area.

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.



Carl Zeitz, Vice-Chairman

DATED: November 16, 1983.

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IRWIN I. KIMMELMAN  
ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF GAMING ENFORCEMENT  
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Atlantic City, New Jersey 08401  
BY: Stephen H. Joseph, Esquire

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STATE OF NEW JERSEY,	:	CASINO CONTROL COMMISSION
DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	DOCKET NO. 82-18 and
DIVISION OF GAMING ENFORCEMENT,	:	82-64
	:	
Charging Party,	:	CIVIL ACTION
	:	
vs.	:	STIPULATION OF FACTS
	:	
BALLY'S PARK PLACE, INC.	:	
	:	
Respondent.	:	
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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 Charging Party, by Fredric E. Gushin, Deputy Attorney General, representing the Charging Party, State of New Jersey, Division of Gaming Enforcement and Stephen H. Joseph, Esquire, of the law firm of Sills Beck Cummis Zuckerman Radin & Tischman, PA, attorneys for Respondent, Bally's Park Place, Inc. , and the parties agree to the following Stipulation of Facts:

DOCKET NO. - 82-18

AS TO COUNT I - LOBBY LOUNGE PUMP ROOM

1. - On or about December 29, 1979, the small storage area adjacent to Casino Service Bar #1 was licensed as part of Bally's Class I Casino Alcoholic Beverage License.
2. Casino Service Bar #1 and the adjacent small storage area are located approximately 30 feet off the casino floor in the main elevator bank of the proposed Phase II tower.
3. Casino Service Bar #1 and the adjacent small storage area were licensed for the sole purpose of servicing the casino floor with alcoholic beverages.
4. On or about June 25, 1980, the Commission authorized the issuance of a Class IV Pub License for an area known as the Lobby Lounge.
5. At that time, Bally represented that alcoholic beverages would be served from a portable bar contained therein.
6. From approximately June 25, 1980 to May, 1981, service to patrons of the Lobby Lounge emanated from a portable bar located within the licensed premises.
7. During late May 1981 Bally purchased certain automated liquor dispensing equipment. This equipment was installed in the small storage area adjacent to Casino Service Bar #1 for the purpose of servicing the Lobby Lounge area. Said equipment has been in use from that time to the present.
8. At the time this new equipment was purchased and installed, Bally neither sought Commission nor Division approval nor did they seek to amend the license for Service Bar #1 to permit the additional servicing of the Lobby Lounge.
9. On January 7, 1982, the Commission Staff advised Dennis Ven Esquire, Bally's General Counsel, that Bally should file an amendment to its C.H.A.B. License to reflect the fact that the small storage area adjacent to Casino Service Bar #1 was being used as an area for service to the Lobby Lounge.
10. On January 21, 1982, Bally filed the appropriate amendment application and supporting blueprint.
11. Bally has been informed by Commission Staff that its amendment application will not be placed on the Commission agenda until these complaint proceedings are resolved.
12. To date, the Commission has not acted on or approved Bally's amendment application.

1. The Sidewalk Cafe was initially licensed on or about December 29, 1979 as a Class III Restaurant consisting of 2,390 square feet.
2. At approximately the same time, Bally proposed that a Class III, A.B.C. license be issued for an area to be known as the Promenade located on the fourth floor surrounding the escalator.
3. The Commission voted 4 to 0 to deny a Class III C.H.A.B. license to the Promenade area because it had direct access onto the casino floor but unanimously granted Bally's application for a Class IV C.H.A.B. license for this area.
4. From March 6, 1981 to April 24, 1981 on Friday evenings only, Bally offered patrons a buffet at the Sidewalk Cafe. The Sidewalk Cafe was expanded to provide for an additional fifty seats. The expanded Sidewalk Cafe, consisting of approximately 558 square feet, utilized 186 square feet of the Promenade Area and 372 square feet of the adjacent corridor unlicensed for the purpose of serving alcoholic beverages. Thereafter, between April 24, 1981 to approximately September 13, 1981, the Sidewalk Cafe remained in its original configuration within the confines of its license.
5. Beginning on or about September 14, 1981, Bally re-expanded the Sidewalk Cafe as described in paragraph 4.
6. During December, 1981, Scott Silver, Esquire advised Dennis Venuti Esquire of Bally that the Sidewalk Cafe had been expanded to an area outside its licensed area without Commission approval.
7. Under cover letter dated December 22, 1981, Dennis Venuti, Esquire filed with the Commission an amended application for renewal of the C.H.A.B. license covering the Sidewalk Cafe, to the size as described in paragraph 4.
8. On March 30, 1982, Scott Silver, Esquire, wrote to Dennis Venuti Esquire requesting that Bally brief the following issue:

"Is the Sidewalk Cafe, as presently configured and defined, an 'enclosed room' within the meaning of N.J.S.A. 5:12-103g."
- The Division was invited to brief the same issue.
9. Bally and the Division submitted briefs on April 27, 1982 and May 10, 1982, respectively. Bally filed a reply to the Division's brief on June 11, 1982.
10. On May 4, 1983, Bally returned the Sidewalk Cafe to its original configuration within the confines of its C.H.A.B. license.
11. Bally has been informed by Commission Staff that its amended renewal application will not be placed on the Commission agenda until these complaint proceedings are resolved.
12. The Casino Control Commission has not acted on or approved Bally's amendment application.

AS TO COUNT III - UPSTAIRS IN THE PARK

1. On or about December 29, 1979, Upstairs in the Park was licensed as a Class IV Pub Area.
2. Upstairs in the Park was licensed to serve alcoholic beverages for consumption therein and in the "By the Sea" and "Prime Place" restaurants.
3. On or about December 29, 1979, storage area #19 was licensed as a Class VII storage area.
4. Storage area #19 consisted of a refrigerator and a small storage room located on the fourth floor restaurant level in the back of the Upstairs in the Park Lounge.
5. The sole purpose of storage area #19 was to supply alcoholic beverages for distribution in the "Upstairs in the Park", "By the Sea", and "Prime Place" restaurants.
6. During December, 1981, Bally installed a service bar in the area immediately adjacent to the small storage room located in back of the Upstairs in the Park Lounge. From that time until the present, Bally has utilized the service bar in the area immediately adjacent to the small storage room to service the restaurants previously mentioned.
7. At the time this new equipment was installed, Bally neither sought Commission nor Division approval to implement this change to the license for the storage area.
8. On January 7, 1982, Commission Staff advised Mr. Venuti that Bally should file an amendment to its C.H.A.B. license to reflect the fact that the area located in back of Upstairs in the Park was being used as a service bar and not as a storage area.
9. On January 21, 1982, Bally filed the appropriate amendment application and supporting blueprint.
10. Bally has been informed by Commission Staff that its amended renewal application will not be placed on the Commission agenda until these complaint proceedings are resolved.
11. To date, the Commission has not acted on or approved Bally's amendment application.

AS TO COUNT IV - NORTH MEETING ROOM STORAGE AREA

1. On or about November 23, 1981, Bally filed an application with the Commission seeking a Class VI Storage Area license for the North Meeting Room Storage Area.
2. On December 31, 1981, New Year's Eve, Bally catered a large banquet in the North Meeting Rooms.
3. During the banquet, the North Meeting Room Storage Area was used to store alcoholic beverages even though not licensed for that purpose.
4. Shortly thereafter, Bally management represented to the Commission that the North Meeting Room Storage Area would not be used until licensed.
5. On February 6, 1982, a barporter was found using the North Meeting Room Storage Area to store liquor used for a banquet that was going on in the Main Ballroom.
6. Other than the two incidents referred to above, the North Meeting Room Storage Area was not used by Bally until it was licensed.
7. On April 20, 1982, the Commission approved Bally's application to license the North Meeting Room Storage Area as a Class VI area.

DOCKET NO. 82-64

AS TO COUNT I - "TWO-FOR-ONE" PROMOTION

1. On May 1, 1982, three unions went on strike against Bally and set up picket lines at each entrance to the Bally facility. On May 1, 1982, Bally began a two-for-one promotion to help remedy the perceived threat of the strike against patrons of Bally.
2. By letter dated May 3, 1982, Scott Silver, Assistant Counsel of the Casino Control Commission, advised Bally that "in the opinion of Commission Staff" Bally's promotion was in violation of A.B.C. Bulletin No. 2381, Item 2.
3. On May 4, 1982, a formal Notice of Violation, irregularity and/or discrepancy was served on Bally by Commission Principal Inspector Rochelle J. Jefferson.
4. Bally thereafter modified the offer to read "beverages" instead of "drinks" in a written response to Inspector Jefferson. Under Bally's revised offer, the patron had the option of selecting a number of non-alcoholic beverages.

5. During the period from May 4, 1982 to June 9, 1982 Bally received no communication from the Commission Staff with respect to Bally's position on the alleged violation.

6. By letter of June 9, 1982, Mr. Silver offered the opinion of the License Division Staff that Bally's promotion continued to be in violation of the applicable A.B.C. Bulletin.

7. The strike against Bally ended on June 21, 1982.

8. The two-for-one promotion was ended by Bally on June 25, 1982.

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



FREDRIC E. GUSHIN,  
Deputy Attorney General  
Attorney for Charing Party

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STEPHEN H. JOSEPH, ESQUIRE  
Sill Beck Cumis Zuckerman  
Radin & Tischman, PA,  
Attorneys for Respondent

New Jersey Casino Control Commission  
Hearing on Docket no. 82-18 and 82-64  
Bally's Park Place, Inc.  
Division of Gaming Enforcement Exhibits

<u>Number</u>	<u>Entered</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
D-1	6-2-83	Complaint, DGE v. Bally, Docket No. 82-64, re: "Two-For-One" Promotion		X
D-2	6-2-83	Complaint, DGE v. Bally, Docket No. 82-18 re: Lobby Lounge, Sidewalk Cafe, Storage Area #19, North Meeting Room Storage Area		X
D-3	6-2-83	CCC Notice of Violation dated 5-4-82, re: "Two-For-One" Promotion		X
D-4	6-2-83	Letter dated 5-3-82 to Dennis Venuti, Bally, from Scott Silver, CCC, re: "Two-For-One" Promotion		X
D-5	6-2-83	Letter dated 6-9-82 to Dennis Venuti, Bally, from Scott Silver, CCC, re: "Two-For-One" Promotion		X
D-6	6-2-83	Memo dated 7-6-82 to DSG Jay Wolf, DGE, from Inv. James Atkinson, DGE, re: "Two-For-One" Promotion		X
D-7	6-2-83	Memo dated 12-6-79 to Joseph Fusco, CCC, from Scott Silver, CCC, re: Bally's Applications for C.H.A.B. Licenses		X
D-8	6-2-83	Letter dated 12-22-81, to Scott Silver, CCC, from Dennis Venuti, Bally, re: Amended Applications for Promenade Pub and Sidewalk Cafe		X
D-9	6-2-83	Letter dated 3-30-82 to Dennis Venuti, Bally, from Scott Silver, CCC, re: C.H.A.B. License Requirements - Sidewalk Cafe and Lobby Lounge		X
D-10	6-2-83	Letter dated 5-10-82 to Don Thomas, CCC Acting Chairman, from DAG Fredric Gushin, DGE, re: Lobby Lounge and Sidewalk Cafe C.H.A.B. Licensure Renewal		X
D-11	6-2-83	Memo dated 4-20-83 to DSG Jay Wolf, DGE, from Agent James Atkinson, DGE, re: Inspection of Sidewalk Cafe		X

Bally's Park Place, Inc.  
 Division Exhibits - Continued  
 Page 2

<u>Number</u>	<u>Entered</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
D-12	6-2-83	Letter dated 5-4-83 to Scott Silver, CCC, and DAG Fredric Gushin, DGE, from Stephen Joseph, Esq., re: Sidewalk Cafe		X
D-13	6-2-83	Memo dated 1-20-82 to All Food and Beverage Supervisors from Barry Fein, Bally re: Attached Memo of Dennis Venuti		X
D-14	6-2-83	Memo dated 1-20-82 to Barry Fein, Bally, from Dennis Venuti, Bally, re: Use of Unlicensed C.H.A.B. Areas		X
D-15	6-2-83	Memo dated 2-8-82 to David Arrajj, CCC, from Scott Silver, CCC, re: Inspection of Banquet Storage Area		X
D-16	6-2-83	Memo dated 2-9-82 to Barry Fein, Bally, from Granville McManus, Bally, re: Inspection of Storage Area Behind North Meeting Rooms		X
D-17	6-2-83	Letter dated 2-24-83 to Carl Zeitz, Commissioner, from DAG Fredric Gushin, DGE, re: Attached letter from ABC dated 2-16-83 re: Penalties		X
D-18	6-2-83	Letter dated 3-3-83 to DAG Fredric Gushin, DGE, from Dennis Venuti, Bally, re: Sales and Expense Figures for Sidewalk Cafe and "Two-For-One" Promotion		X
D-19	6-2-83	Letter dated 4-28-83, to Stanley Tannenbaum, Esq., Dennis Venuti, Bally, DAG Fredric Gushin, DGE, from Steven Ingis, CCC, re: Attached letter from ABC dated 3-1-83 re: Penalties		X
D-20		Due to the pre-marking process, this number will not be used		
D-21	6-2-83	Handwritten chart listing Beverage/Revenue for Bally's Park Place, Inc. for 1982		X

New Jersey Casino Control Commission  
Hearing on Docket No. 82-18 and 82-64  
Bally's Park Place, Inc.  
Commission Exhibits

<u>Number</u>	<u>Entered</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
C-1	6-2-83	Letter to Walter N. Read from Stanley Tannenbaum dated May 20, 1983 re: State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement vs. Bally's Park Place, Inc. (Docket No. 82-18 and 82-64)		X
C-2	6-2-83	Letter to Walter N. Read from Fredric Gushin dated June 2, 1983 re: State of New Jersey, Department of Gaming Enforcement v. Bally's Park Place, Inc. (Docket No. 82-18 and 82-64)		X
C-3	6-2-83	Letter to Stanley Tannenbaum, Esq.; Dennis Venuti, Esq. and Fredric E. Gushin from Walter N. Read dated June 2, 1983		X

New Jersey Casino Control Commission  
Hearing on Docket No. 82-18 and 82-64  
Bally's Park Place, Inc.  
Bally's Park Place, Inc. Exhibits

<u>Number</u>	<u>Entered</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
P-1	6-2-83	Stipulation of Settlement, dated December 22, 1982 re: Docket Numbers 82-18 and 82-64		X
P-2		- Purposely omitted -		
P-3	6-2-83	Letter Brief of Respondent, Bally's Park Place, Inc. dated April 27, 1982 in response to Scott Silver's letter dated March 30, 1982		X
P-4	6-2-83	Letter Brief of Respondent, Bally's Park Place, Inc. dated June 11, 1982 in response to the Division's correspondence dated May 10, 1982		X
P-5	6-2-83	Letter dated October 28, 1982 from Jeffrey N. Cohen of the Commission enclosing ABC Bulletins (Nos. 2354, 2381 and 2424)		X
P-6	6-2-83	Affidavit of Jeffrey Novak		X
P-7		- Purposely Omitted -		
P-8	6-2-83	Pictures of Sidewalk Cafe (lettered a-g)		X
P-9	6-2-83	Sidewalk Cafe patron reply cards (lettered a-q)		X
P-10	6-2-83	Letter from Max S. Mayer dated July 27, 1982		X
P-11	6-2-83	Letter from Joan P. Balletta dated September 10, 1982		X
P-12	6-2-83	Letter from Carmen M. DeNardo (undated)		X
P-13	6-2-83	Floor diagram of Sidewalk Cafe		X

New Jersey Casino Control Commission  
Hearing on Docket No. 82-18 and 82-64  
Bally's Park Place, Inc.  
Joint Exhibits

<u>Number</u>	<u>Entered</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
J-1	6-2-83	Stipulation of Facts in the matter of State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Bally's Park Place, Inc.		X

WITNESS LIST

Scott N. Silver

Richard Norton

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-52  
OAL DOCKET NO. CCC 5193-83  
REGISTRATION NO. 34148-40

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

FINAL ORDER

Complainant, :  
v. :  
DIDIO BANQUERO-GARCIA :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on March 2, 1984, recommending that Respondent's casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of April 4, 1984, to modify the said Initial Decision and to revoke Respondent's casino hotel employee registration,

IT IS on this <sup>25<sup>th</sup></sup> day of April, 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified by the Commission as follows:

1. Mr. Banquero-Garcia's conviction for the offense of false swearing contrary to N.J.S.A. 2C:28-2, requires disqualification pursuant to N.J.S.A. 5:12-86(c)(1), not N.J.S.A. 5:12-86(c)(2).
2. The conclusion that licensure of an illegal alien who is subject to deportation is inimical to the policy of the Casino Control Act requiring disqualification under N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary in view of the findings of disqualification pursuant to N.J.S.A. 5:12-86(b) and (c)(1).
3. That portion of the Initial Decision which finds that Mr. Banquero-Garcia has failed to demonstrate his good character, honesty and integrity pursuant to N.J.S.A. 5:12-86(d) is rejected. Casino hotel employee registrants are no longer required to affirmatively demonstrate good character, honesty and integrity. N.J.S.A. 5:12-91 as amended, L. 1981, c. 503, §12, effective February 15, 1982.

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5193-83

AGENCY DKT. NO. 83-52

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner

v.

**DIDIO BANQUERO-GARCIA,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr., Esq., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Jose B. Velez, Esq., for respondent (Reuss & Cavagnaro, attorneys)**

Record Closed: January 17, 1984\*

Decided: March 2, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement seeks to revoke the hotel registration of respondent by authority of N.J.S.A. 5:12-91(d). Mr. Banquero-Garcia requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

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\* Date of receipt of presentence report from counsel for respondent.

Mr. Banquero-Garcia was born and raised in Colombia, South America. In 1981, at the age of 24, he obtained a visa to the Bahama Islands and traveled there on the first leg of his journey to the United States. He then embarked on a journey from the Bahamas to Miami, traveling in a sporting boat with five others. He came without a visa as an illegal alien to the United States. On May 30, 1981, he landed in Miami, Florida, where he came ashore on a beach and found his way into downtown Miami. Shortly thereafter, he traveled to New York, where he purchased a false social security card. He then went to Atlantic City, at which time acquaintances helped him fill out a Personal History Disclosure Form. On that form, the names of previous employers in the United States were fabricated. The false social security number was also used on that form. The form was explained to Mr. Banquero-Garcia, and he knowingly swore to the truth of the contents of the form. It was signed on July 9, 1981. Mr. Banquero-Garcia ultimately entered a guilty plea to the charge of false swearing, in violation of N.J.S.A. 2C:28-2, a crime in the fourth degree. A warrant for removal or deportation has been issued by the Immigration and Naturalization Service of the United States Government. Mr. Banquero-Garcia was, in fact, arrested on this warrant immediately following the close of the hearing.

Mr. Banquero-Garcia apparently had a reputation in Colombia as having come from an honest family. In the United States, he worked as a dishwasher in Harrah's Casino for approximately one year, and he was terminated because of the current investigation. He has since found employment elsewhere as a kitchen utility man. On January 11, 1982, he married an American citizen and has applied, on that basis, for permanent resident alien status. No action has yet been taken on that application, although, as I noted above, Mr. Banquero-Garcia was arrested on his deportation warrant at the close of the hearing in this case.

I am required to find by clear and convincing evidence that Mr. Banquero-Garcia has a reputation for good character, honesty and integrity. N.J.S.A. 5:12-86(d). I cannot make that finding. Mr. Banquero-Garcia knowingly entered this country illegally, obtained a false social security card, and committed the crime of false swearing. All of these events took place relatively recently, and the false swearing occurred as part of the application process to the Casino Control Commission. The evidence of good character that was offered was not sufficient to base a finding, by clear and convincing evidence, that Mr. Banquero-Garcia has the requisite good character, honesty and integrity. I CONCLUDE that he does not.

I further **CONCLUDE** that Mr. Banquero-Garcia has been convicted of an offense, namely N.J.S.A. 2C:28-2, false swearing, a crime in the fourth degree, which requires disqualification pursuant to N.J.S.A. 5:12-86(c)(2). Because the offense was recent and part of the application process, I further **CONCLUDE** that Mr. Banquero-Garcia has failed to demonstrate rehabilitation affirmatively under N.J.S.A. 5:12-90(h).

I further **CONCLUDE** that licensure of an illegal alien who is subject to deportation is inimical to the policy of the Casino Control Act requiring disqualification under N.J.S.A. 5:12-86(c)(4). See, Bastas v. Bd. of Review, Dept. of Labor and Industry, 155 N.J. Super. 312 (App. Div. 1978).

Finally, I **CONCLUDE** that Mr. Banquero-Garcia provided false information as to a material fact, namely, his prior employment. This requires disqualification by reason of N.J.S.A. 5:12-86(b).

For all of the foregoing reasons, the hotel registration of Mr. Banquero-Garcia 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.

2/28/84  
DATE

N D S  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

20 MAR 1984  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

March 6, 1984  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESSES

As set forth in transcript.

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-47  
OAL DOCKET NO. CCC 5983-83  
APPLICATION NO. 21684-21

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APPLICATION OF JOHN A. BELL  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 17, 1984, recommending that the casino employee license application of John A. Bell be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 22, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 28th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5983-83

AGENCY DKT. NO. 82-EA-47

**JOHN A. BELL,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW AND PUBLIC**

**SAFETY,**

Respondent.

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**APPEARANCES:**

**John A. Bell, petitioner, Pro Se**

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

Record Closed: December 1, 1983

Decided: January 17, 1984

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

The matter concerns the recommendation by the Division of Gaming Enforcement (hereinafter referred to as "Division") that the petitioner, John A. Bell, not be licensed as a casino employee - security officer. Mr. Bell requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference on September 1, 1983, the parties agreed that the issues in this matter are:

- (A) Whether the petitioner intentionally misrepresented the circumstances regarding the termination of his services as a police officer with the police department of Conshohocken Borough, Pennsylvania, in his written application for a casino license and during his interview with an investigator employed by the Division of Gaming Enforcement. If there had been any such intentional misrepresentation, whether the petitioner's actions warrant his disqualification from licensure.
- (B) Whether the petitioner can meet the requirement for good character, honesty and integrity as set forth in N.J.S.A. 5:12-89(b)2.

At the hearing held on December 1, 1983, Mr. Bell stated that he had received a letter from Mr. Daley of the Casino Control Commission advising him that there was a substantial possibility that his application would be denied based on the information contained in the February 23, 1982 report of the Division, but he denied receiving a copy of the Division's report even though Mr. Daley's letter states that a copy of this report was attached. Mr. Bell was given the opportunity to read the report, and I then proceeded with the hearing since Mr. Bell was familiar with the reasons given by the Division for recommending the denial of his licensure. I indicated to Mr. Bell that I would give him time after the hearing to submit additional documents regarding the allegations contained in the Division's report. At the conclusion of the hearing, Mr. Bell indicated that he did not want to submit any additional information; therefore, the record closed on December 1, 1983.

It was recognized by the parties that Mr. Bell is not a resident of New Jersey and if he is successful in this matter, that the petitioner will have to establish New Jersey residency.

Based on the testimony, I find that the undisputed facts are:

- (1) Mr. Bell was employed as a patrolman by the police department of Conshohocken, Pennsylvania, from August 1970 through June 1980.

- (2) While he was a police officer, Mr. Bell informed a number of law enforcement agencies, including the Pennsylvania Crime Commission and the FBI, about alleged criminal actions by employees of the Conshohocken Police Department, and no action was taken by these agencies.
- (3) Around February 9, 1980, Mr. Bell became aware that he was personally under investigation for the alleged unlawful use of police department gasoline.
- (4) On April 9, 1980, Mr. Bell consulted Richard W. Rogers, a Pennsylvania attorney, regarding the criminal investigation being conducted against him.
- (5) Mr. Rogers contacted the District Attorney's office and obtained copies of certain written statements relating to the alleged criminal activities of Mr. Bell as well as Mr. Bell's written statement of February 9, 1980.
- (6) The District Attorney's office offered to terminate the criminal investigation if Mr. Bell submitted his resignation. Mr. Rogers discussed the alternatives with Mr. Bell, including the effect of a criminal proceeding on his wife and family. At the request of Mr. Bell, Mr. Rogers submitted an estimate of his fee (\$15,000) to represent Mr. Bell if criminal charges were filed against him.
- (7) The fact that there was a criminal investigation regarding Mr. Bell was reported in the local newspaper.
- (8) Initially, Mr. Bell decided not to resign and Mr. Rogers informed the District Attorney's office of Mr. Bell's decision.
- (9) At this juncture, it was Mr. Roger's understanding that a written complaint against Mr. Bell had not yet been prepared, and that when the written complaint was prepared he would be notified so that he and Mr. Bell could go to the District Attorney's office rather than having police officers arrest Mr. Bell.

- (10) After further consideration, Mr. Bell changed his mind and agreed to submit a resignation. It was the understanding of Mr. Bell and Mr. Rogers that when the petitioner resigned, the investigation would be terminated and that there would be no adverse ramifications because of the criminal investigation.
- (11) In his letter dated May 22, 1980, Mr. Bell stated that he was resigning for personal reasons (P-4).
- (12) Mr. Bell was never arrested, nor was he ever served with any criminal complaints as a result of the 1980 criminal investigation against him. On one occasion, however, while he was in the District Attorney's office, reference was made to written criminal complaints against him.
- (13) Mr. Bell was informed by the Chief of Police of the Conshohocken Police Department that the Police Chief would give the petitioner a good reference if he were contacted by a potential employer.
- (14) The first time Mr. Bell saw the criminal complaints against him was when they were presented to him by Mr. Fusco as part of the discovery in this matter. The first time Mr. Rogers saw the written criminal complaints was on December 1, 1983.
- (15) Mr. Bell applied for a casino employee license in August 1980 (R-1).
- (16) In his Personal History Disclosure Form, Mr. Bell stated that he had resigned from the Conshohocken Police Department for "personal reasons—left with excellent record" (R-1, Part VII).
- (17) In response to Question No. 33 on the Personal History Disclosure Form, Mr. Bell denied that he had ever been discharged or asked to resign from any employment (R-1). Also, in response to Question No. 34 which deals with disciplinary actions by any employer, Mr. Bell disclosed only that after he shot William Balkiewicz while on duty as a police officer he had been charged with involuntary manslaughter and a civil suit had been brought against him (R-1).

- (18) In the Personal History Disclosure Form, Mr. Bell gave a negative response to Question No. 46, which states, "Have you or has any member of your immediate family, (as defined on Page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or any other jurisdiction?" (R-1). Also, Mr. Bell gave a negative response to Question No. 50, which states: "To the best of your knowledge, have you ever been the subject of an investigation conducted by a governmental investigatory agency for any reason?"
- (19) A Division representative obtained from the Montgomery County District Attorney's office the following complaints:
- (a) A criminal complaint, dated May 21, 1980, by Detective Edward B. Williamson and Detective John B. Lukins before District Justice John T. Sachaczanski, alleging that the petitioner unlawfully took gasoline belonging to Conshohocken Borough and that he permitted Paul D. Knauner to also take some gasoline (R-2).
  - (b) A criminal complaint, dated May 21, 1980, against John A. Bell signed by Detective Edward B. Williamson before District Justice John T. Sachaczanski, alleging that the petitioner had unlawfully taken parking meter money (R-3).
  - (c) A criminal complaint, not dated, against Paul D. Knauer, apparently signed by Sergeant Douglas R. Forsythe, alleging that Mr. Knauer had illegally taken gasoline belonging to Conshohocken Borough and stating that Mr. Knauer had told the arresting officers that Officer John A. Bell and Officer Joseph Amici of the Conshohocken Police Department had told him that he could take the gasoline (R-4).
- (20) Mr. Bell admits that when he spoke to a representative of the Division about his casino license application, he did not admit, until the matters were brought up by the Division's representative that he was the subject of a criminal investigation in Conshohocken or that he was asked to resign from the Conshohocken Police Department.

- (21) For the last three years, Mr. Bell has been employed by the Norristown State Hospital as a psychiatric aid. Three of his supervisors submitted affirmative letters of recommendation (P-1, P-2, P-3).
- (22) George E. Gunning, President of Pilot Mortgage Co., stated in his letter that he has known Mr. Bell for many years and considers him to be a person of good character and good moral integrity and that in his opinion, Mr. Bell will do an honest and good job (P-5).
- (23) By letter dated September 1, 1983, Sergeant Francis D. Ruggiero of the Conshohocken Police Department stated that he had worked with Mr. Bell and considered Mr. Bell to be "an energetic, resourceful and enthusiastic person" and that Mr. Bell "would be an asset" to any employer who might hire him.

On his own behalf, Mr. Bell testified that he was innocent of any wrongdoing while he was employed by the Conshohocken Police Department and that he did not mention either the request to resign or the investigation in his casino license application since it was his understanding that once he had resigned, the Conshohocken Police Department would consider the matter closed—obliterated—as if it had never occurred. Mr. Bell admitted a reluctance to reveal the facts that surrounded his resignation but emphasized that at no time had he ever denied that there had been an investigation and that he had been asked to resign. Additionally, Mr. Bell stated that he did not mention the investigation or the request for resignation in his application because he was confident, based on his discussion with the Conshohocken Police Chief, that the police department would not reveal this information.

Based on the facts in this matter, I accept Mr. Bell's explanation of his responses on the Personal History Disclosure Form except for his answers to Question 33 (request to resign) and Question 50 (subject of criminal investigation). Also, I cannot accept Mr. Bell's explanation as to why he did not reveal this information to a representative of the Division until he was confronted with the documentation. Specifically, I reject Mr. Bell's representation that he believed that the submission of his resignation would somehow "expunge" the record of the criminal investigation or the fact he was asked to resign. Therefore, the only legal issue in this matter is whether this nondisclosure of certain pertinent information warrants the license disqualification of the petitioner.

Pursuant to the Casino Control Act, an applicant for licensure is required to provide the Casino Control Commission with all pertinent information and the failure to disclose material information is grounds for disqualification, N.J.S.A. 5:12-86(b). This disqualification is clearly set forth on page 2 of the Personal History Disclosure Form (R-1).

The obvious purpose for N.J.S.A. 5:12-86(b) is to insure that the Casino Control Commission is provided with all the information necessary to make a decision on an application for licensure, In the Matter of Harl Lee Cooper, OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified by Casino Control Commission (February 7, 1980). It was recognized by the Casino Control Commission that not every nondisclosure necessitates disqualification and that there is a difference between mere inadvertence or ignorance and an intentional and willful omission done in bad faith. It is clear that if the nondisclosure resulted from a genuine misunderstanding of the nature of the criminal action or from forgetfulness, disqualification is not required. On the other hand, if the applicant fails to disclose information out of fear that a license would be denied, then disqualification is warranted, Cooper, supra.; In the Matter of the Application of Steven M. Cohen, OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified by Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales, OAL DKT. CCC 685-82 (July 17, 1980), modified by the Casino Control Commission (September 5, 1980).

In order to determine whether the nondisclosure results from inadvertence or ignorance, it is necessary to look at the surrounding circumstances in each case, In the Matter of the Application of Ted's World of Flowers, Inc., OAL DKT. CCC 706-81 (Jan 22, 1982), adopted by Casino Control Commission (March 15, 1982).

Based on the facts in this matter, I **FIND** that Mr. Bell understood Questions 33 and 50 on the Personal History Disclosure Form and that he failed to reveal the fact that there had been a criminal investigation against him and the fact that he had been asked to resign his position because he felt that these were adverse facts and could have an impact on his application. The fact that the nondisclosure information does not give rise to a statutory disqualification does not excuse Mr. Bell's failure to reveal.

Therefore, I **CONCLUDE** that the Division has established that Mr. Bell is  
134 disqualified for licensure, pursuant to N.J.S.A. 5:12-86(b), for his failure to fully and properly respond to certain questions contained in the Personal History Disclosure Form.

Further, I **CONCLUDE** that Mr. Bell's failure to properly respond to the questions contained in the Personal History Disclosure Form shows a lack of good character, honesty and integrity and therefore I **CONCLUDE** that the Division has established that Mr. Bell has not met the requirement of N.J.S.A. 5:12-89(b)1.

Therefore, I **ORDER** that the application of John Bell 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.

January 19, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

Jan 19 1984  
DATE

Maureen Conroy  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 19, 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Respondent:

R-1 Personal History Disclosure Form filed by John Arthur Bell

R-2 Pennsylvania Criminal Complaint against John A. Bell

R-3 Pennsylvania Criminal Complaint against John A. Bell

R-4 Pennsylvania Criminal Complaint against Paul D. Knauer

For the Petitioner:

P-1 Letter from Laura Leeds Brobyn, dated August 31, 1983

P-2 Letter from Eleanor Y. Figueroa to John Bell, dated August 30, 1983

P-3 Letter from Ruth Martella, dated August 30, 1983

P-4 Letter from John Arthur Bell to the Borough Council of Conshohocken, dated May 22, 1980

P-5 Letter from George E. Gunning, Jr., dated September 1, 1983

P-6 Letter from Francis D. Ruggiero to Jenson & Jenson Pool Company, dated September 1, 1983

WITNESSES FOR THE PETITIONER:

John A. Bell

Richard W. Rogers

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-248  
OAL DOCKET NO. CCC 9482-83  
REGISTRATION NO. 16126-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. :  
MARSHA D. BIRTS, :  
Respondent. :

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 24, 1984, recommending that the respondent's casino hotel employee registration be revoked; and no exceptions or objections having been filed thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of June 6, 1984, to affirm and adopt the said Initial Decision and to revoke respondent's casino hotel employee registration,

IT IS on this 11th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Marsha D. Birts be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 9482-83

AGENCY DKT. NO. 83-248

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**MARSHA D. BIRTS,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Marsha D. Birts,** respondent, pro se

Record Closed: March 8, 1984      Decided: April 23, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on July 29, 1983, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) The issue to be determined in this matter is as follows:

Whether the respondent, with specific reference to her January 29, 1983, arrest for possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1), has committed an offense which indicates that her casino hotel employee registration is inimical to the policies of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the Casino Control Act, thereby requiring revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the act.

#### PROCEDURAL HISTORY

On August 12, 1983, the respondent filed with the Casino Control Commission her request for a hearing on the complaint of the Division of Gaming Enforcement. On December 2, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 6, 1984, and the hearing was held on March 8, 1984.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 28-year-old resident of Pleasantville, New Jersey. She holds casino hotel employee registration No. 16126-40, issued by the Casino Control Commission on October 15, 1980.

In 1980, the respondent began employment at the Sands Hotel and Casino as a reservationist. Subsequently, she was promoted to front desk clerk and then to guest service manager.

On January 29, 1983, the respondent was terminated by the Sands Hotel and Casino for "unprofessional activities." At that time, the respondent was serving in a probationary period as housekeeping supervisor, and her duties included supervision of five employees and their cleaning of three floors of the hotel facility.

The incident which resulted in the respondent's termination on January 29, 1983, occurred shortly after noon, while the respondent was checking the supply of linens on the 19th floor. The linen supply closet on that floor also serves as a housekeeping supervisor's office. When the respondent entered the closet, she observed houseman Donald Williams seated in the supervisor's chair. After a few minutes, the respondent

observed that Williams had a plastic bag in his lap which appeared to her to contain what she thought was cocaine. Williams also held a straw in his hand. According to the testimony of the respondent, she then told Williams to go back to work. It was her intention to report the incident to her employer's security personnel after Williams had left.

As Williams was leaving, Director of Housekeeping Donald Tobe approached and asked Williams what he was holding. After recognizing what he believed to be cocaine in the plastic bag held by Williams, Tobe entered the linen closet and demanded an explanation from the respondent. According to the respondent, she replied, "What do you mean?" Tobe then left the linen supply closet, telling the respondent that he would take care of the incident that very day.

Later that day, Mr. Tobe returned to the respondent and handed her a document bearing the title Employee Warning Notice (Exhibit P-1). This notice informed the respondent that she was "being discharged for unprofessional activities and a possible connection of an controlled drug" (sic). At Mr. Tobe's instruction, the respondent then went to the Division of Gaming Enforcement office at the Sands Hotel and Casino. After Mr. Tobe spoke with Division personnel, the respondent was interviewed.

The respondent told the Division of Gaming Enforcement detective that she had observed Williams with a plastic bag containing what she believed was cocaine. According to the detective's investigation report (Exhibit P-2), the respondent stated that she only used cocaine when she was off duty and at home. At the hearing, the respondent did not deny that she had ever used cocaine. However, she did state that she had never used an illegal drug while on the job at the Sands.

At the request of the Division of Gaming Enforcement detective, the respondent emptied her handbag. Among its contents was a plastic bag containing a metal spoon, a razor blade, and a straw. Also contained in the plastic bag was a smaller plastic bag containing a residue of a white powder. The respondent was fingerprinted and photographed and she signed an agreement to be barred from coming onto the Sands property.

It was the testimony of the respondent that she had not been intending to share a line of cocaine with Williams. The respondent stated that she was surprised to

find that her handbag contained a plastic bag with a residue of white powder. However, she admitted that she was not surprised to find that her handbag also contained drug paraphernalia. According to the respondent, she shared several handbags with her six sisters, and one of her sisters must have put the drug paraphernalia in the handbag.

It was the testimony of the respondent that she did not realize that she had been charged with a criminal offense until she received a copy of the charges in the mail (Exhibit P-3). The respondent was charged with possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). On September 30, 1983, the complaint against the respondent was amended to charge her with use or possession with intent to use drug paraphernalia, in violation of N.J.S.A. 24:21-47. It is undisputed that the respondent was convicted of this offense, upon her plea of guilty, in November 1983, and that she received a six-month conditional discharge. Pursuant to the conditional discharge, the respondent must undergo periodic drug testing.

The respondent is presently employed as a clerk at a J.C. Penny department store. Since her termination from the Sands Hotel and Casino, the respondent has been unsuccessful in her attempts to obtain employment in the casino industry. According to the respondent, she has no other arrest and conviction record and it is her desire to work in the casino industry if possible.

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

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration. Pursuant to sections 91b and 86c(4) of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict the registration of any registrant disqualified on the basis of a conviction of any offense which indicates that registration would be inimical to the policy of the Casino Control Act and to casino operations.

It is undisputed that the respondent was convicted in November 1983, upon her plea of guilty, of use or possession with intent to use drug paraphernalia, in violation of N.J.S.A. 24:21-47. In order to determine whether this offense indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the application of Resorts International Hotel, Inc. for licensure as a casino, Dkt. No. 79-CL-1 (1979). Thus, the factors to be considered in determining whether an offense is inimical are substantially similar to the factors to be considered in determining whether a licensee or registrant has demonstrated his rehabilitation, pursuant to section 90h and 91d of the act, upon a finding that he has committed an automatic disqualifying offense, pursuant to section 86c of the act.

The respondent's illegal conduct occurred on the premises of her licensed casino employer, while she was performing her duties as a housekeeping supervisor. Her offense occurred approximately 15 months ago and it resulted in her termination by her employer. Since that time, the respondent has been unable to find employment in the casino industry. However, she has obtained employment as a clerk in a department store. The respondent has no other arrests or convictions.

In light of all of the circumstances, the respondent's offense, which occurred while she was employed in a licensed casino, indicates that her participation in the legalized gaming industry would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I must **CONCLUDE** that the respondent has been convicted of, and 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). Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino hotel employee registration, pursuant to sections 91b and 129 of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Marsha D. Birts 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 23, 1984  
DATE

Joseph J. Fidler  
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

April 24, 1984  
DATE

Bernadette J. Frid  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 26, 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Employee Warning Notice, dated January 29, 1983
- P-2 New Jersey State Police Report, dated January 29, 1983
- P-3 Examination request and complaint for possession of a controlled dangerous substance
- P-4 Complaint amendment

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

Marsha D. Birts

FOR THE RESPONDENT:

Marsha D. Birts

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-42  
OAL DOCKET NO. CCC 03145-83  
APPLICATION NO. 01605-11

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APPLICATION OF JOHN W. BISHOP  
FOR A CASINO KEY EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 18, 1984, recommending that the casino key employee license application of John W. Bishop be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on February 8, 1984; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 21, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this *22nd* day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 3145-83**

**AGENCY DKT. NO. 83-EA-38**

**JOHN W. BISHOP,**

Petitioner

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Alfred J. Bennington, Jr., Esq.,** for petitioner

**William E. Mountford, Jr.,** Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: December 2, 1983

Decided: January 17, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of John W. Bishop to the Casino Control Commission for a key employee license permitting him to work in a casino as a blackjack and craps pit boss. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his 1976 conviction upon a plea of guilty to a violation of the California Penal Code, Section 337a5, permitting illegal gambling on his premises, has been convicted of

or has committed an offense which is the equivalent of a New Jersey enumerated statutory disqualifier from licensure, or which would indicate that licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not or may not be prosecuted under the criminal laws of this State, within the meaning of Sections 86c and 86g of the Casino Control Act.

2. Whether the petitioner, with specific reference to his conduct while owner of a California card room, his 1978 arrest in New York City for possession of a gambling device and for promoting gambling, his sport betting, and his business dealings, from June 1979 through May 1981, in regard to Jabberwocky Stable, 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.
3. What effect, if any, should be accorded the petitioner's expungement of his 1976 gambling conviction, pursuant to California Penal Code Section 1203.4.

#### PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated July 6, 1982, the Division of Gaming Enforcement recommended that the petitioner's applications for a casino key employee and gaming school instructor license and renewal of a casino employee license be granted. The Casino Control Commission requested additional information from the Division of Gaming Enforcement concerning the petitioner's 1976 California conviction. By letter report to the Casino Control Commission, dated February 17, 1983, the Division of Gaming Enforcement interposed its objection to the application of the petitioner for a casino key employee license, based upon the results of its supplemental investigation. The Division did not object to the renewal of the petitioner's casino employee license or the granting of a gaming school instructor license.

On March 1, 1983, the Commission determined to renew the petitioner's casino employee license. By letter dated March 7, 1983, the Commission informed the petitioner that there was a "substantial possibility" that his casino key employee license application would be denied and that he had a right to a hearing on his license application. The

petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is 39 years old. He resides in Linwood, New Jersey, with his wife and her three children from a previous marriage. The petitioner's first marriage ended in divorce in 1975, and he contributes to the support of an adopted child from that marriage.

From May 28, 1978 until May 27, 1980, the petitioner was employed by Resorts International, Atlantic City, New Jersey, as a dealer, box person and floor person in blackjack and craps. From July 28, 1980 to March 13, 1981, the petitioner was employed by the Brighton Hotel and Casino in Atlantic City, as a floor person in craps and blackjack. From April 20, 1981 until approximately October 1983, the petitioner was employed by the Claridge Hotel and Casino in Atlantic City, New Jersey. When he was first hired by the Claridge, the petitioner served as a pit boss. While serving in the title of scheduling manager, the petitioner received an employee evaluation which rated him above standard in almost all categories. According to his supervisor, the petitioner was "outstanding in employee rapport," and was "well organized, very proficient in his job performance" (Exhibit P-1). According to the petitioner, he has reached the limits of advancement in the casino industry under a casino employee license. If he is able to obtain a casino key employee license, the petitioner may choose to return to the legalized gaming industry in New Jersey. As of the date of hearing in this matter, the petitioner's wife, Judith Bishop, was a casino key employee at the Claridge Casino, serving as a pit boss.

From 1962 until 1966, the petitioner attended Brown University on a Naval ROTC scholarship. Upon his graduation from Brown University, the petitioner was commissioned as an Ensign in the United States Navy. From June 6, 1966 until December 1, 1970, the petitioner was on active duty in the Navy. He received an honorable discharge following service on river patrol duty in Viet Nam, where he was awarded the Purple Heart and Bronze Star medals. Following his service in Viet Nam, the petitioner was assigned as an admiral's aid in San Diego, California.

After his discharge from the Navy, the petitioner became a licensed stockbroker in San Diego. The petitioner was not satisfied with his position as a stock broker, and in May 1971, he purchased the New Orleans Club, a card room licensed by the City of San Diego for the playing of draw poker and bridge. The card room collected a flat hourly rate from the card players.

In the summer of 1975, the petitioner's first wife announced that she was leaving the petitioner and that she was taking their newly adopted child with her. The petitioner testified that he was stunned by his wife's decision to leave and that he began to drink excessively as a consequence. In addition, he began to gamble excessively, particularly in Las Vegas, Nevada. As a further result of his poor emotional state, the petitioner would be away from his licensed card room business for weeks at a time. When this occurred, the day to day operation of the business was entrusted to his partner, Michael DeMasi, and several employees.

In September 1975, Officer Toshiaki Gillespie of the San Diego Police Department was assigned to work undercover in the petitioner's card room (Exhibit R-1). On many occasions between September 20 and December 5, 1975, Officer Gillespie frequented the petitioner's card room, participating in legal card games and placing illegal wagers with employees of the card room (Exhibits R-1 and R-2). On December 5, 1975, the petitioner was arrested by the San Diego police and charged with permitting illegal gambling on his premises, unlawfully engaging in bookmaking, and unlawfully receiving wagers, in violation of the California Penal Code, Sections 337a5, 1 and 3 (Exhibit R-4). Subsequently, the petitioner was named in three counts of an indictment issued on March 4, 1976 (Exhibit R-3).

On May 21, 1976, the petitioner pled guilty to one count of the indictment, charging him with permitting illegal gambling on his premises, in violation of the California Penal Code, Section 337a5. The petitioner was sentenced to a period of probation of two years, and ordered to pay a fine of \$500. On April 6, 1978, an order was entered by the Superior Court of the State of California terminating the petitioner's probation and expunging the petitioner's record of conviction, pursuant to the California Penal Code, Section 1203.4 (Exhibit R-5).

While the undercover investigation of the petitioner's card room was in progress, the petitioner was involved in legal sports and horserace betting, at the

racetrack and in Las Vegas, Nevada, and was also involved in illegal "headup" sports betting with other individuals. Occasionally, the petitioner would make his bets with bookmakers. The petitioner's betting depleted his assets and he returned to New Jersey, where he obtained employment moving furniture. In the interim, he had sold his interest in the card room. As he was able, the petitioner satisfied a Las Vegas casino gambling debt in the amount of \$8,000.

In order to gain gaming experience, the petitioner worked as a dealer at a "charity night" at a Jewish community center in Brooklyn, New York. According to the petitioner, the center had a license for two nights of gaming. After the license expired, the police raided the center and the petitioner was one of many dealers who was arrested. On August 10, 1978, the petitioner was convicted of disorderly conduct and a small fine was imposed.

The petitioner candidly acknowledged that he placed personal sports bets while employed as a dealer in Atlantic City casinos. According to the petitioner, he never gambled in amounts that he could not afford and he simply considered the sports betting an intellectual challenge. He last placed a bet with a bookmaker over one year ago and his last "head to head" bet with another individual was placed over six months ago. The petitioner also testified credibly that he no longer has a drinking problem and that he may go without having an alcoholic beverage for a period of three or four months at a time.

From June 1979 through May 1981, the petitioner was a co-investor in Jabberwocky Stable, a group formed for the purpose of purchasing a race horse. The petitioner participated in this activity as a hobby. According to the petitioner, he applied for a thoroughbred owner license in 1979 (Exhibit R-6). The petitioner acknowledged that he failed to disclose his arrest and convictions on this application, but he explained in a credible manner that this was simply an oversight.

Finally, a number of letters were introduced into evidence (Exhibits P-2 through P-7) attesting to the petitioner's reputation for good character, honesty and integrity. The letters from the petitioner's superiors at the Claridge Casino (Exhibits P-2 through P-4) praise his intelligence, attitude and work performance. In addition, these letters commend the petitioner for his honorable character and recommend him highly for advancement in the legalized gaming industry.

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

The material factual dispute in this matter concerns the nature of the petitioner's conduct which led to his conviction in 1976 for permitting illegal gambling on his premises, in violation of the California Penal Code, Section 337a5. The Division of Gaming Enforcement presented no witnesses at the hearing. Rather, the Division relied upon documentary evidence, including investigative reports from the San Diego Police Department (Exhibits R-1 and R-2). However, it is apparent from these investigative reports that undercover officer Gillespie placed his illegal wagers with employees of the petitioner and never with the petitioner directly. In fact, on most of the occasions of illegal wagering reported by officer Gillespie, there is no indication that the petitioner was even present. On the occasions that the petitioner was reported to be present, it is not apparent from the investigative reports that the petitioner was aware that illegal wagering was taking place. Finally, the investigative reports indicate that certain items were seized from the person of the petitioner at the time of his arrest on December 5, 1975, including a football "line" sheet and football game betting registrations involving a number of bettors.

Testifying on his own behalf, the petitioner stated that he was at no time aware that bookmaking was taking place on his cardroom premises. According to the petitioner, the undercover officer had repeatedly asked him to accept wagers but the petitioner had always refused. The petitioner also explained that the record of betting which was on his person when he was arrested was his own list of his own personal betting. These were wagers which he had made with individuals and with bookmakers and were not wagers which he had accepted as a bookmaker. Finally, the petitioner testified that the only illegal betting he was aware of in his licensed premises occurred between card players who would bet against each other on the outcome of a sports event. When the petitioner was aware that this was taking place, he would tell his patrons to please make their bets outside the cardroom. The petitioner testified in an entirely straight forward and credible manner that he knew of no illegal gaming in his cardroom other than the "head-to-head" individual bets which he tried to prevent. Having reviewed and given fair weight to the testimony and other evidence offered in this matter, I additionally **FIND AS FACT** that the petitioner did not participate in nor intentionally permit illegal gambling in his cardroom.

CONCLUSIONS OF LAW

Pursuant to section 89 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 89 incorporates by reference 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 an enumerated statutory disqualifier from licensure. Pursuant to Section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under Section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

It is the position of the Division of Gaming Enforcement that the petitioner's conviction under the California Penal Code, Section 337a5, permitting illegal gambling on his premises, is equivalent to the enumerated New Jersey disqualifier of maintenance of a gambling resort, pursuant to N.J.S.A. 2C:37-4. The petitioner contends that his California conviction is not the equivalent of conviction under N.J.S.A. 2C:37-4, and that, in any event, his California conviction is the subject of a valid California order of expungement and, thus, cannot be used as grounds for automatic rejection of his license application.

Section 337a5 of the California Penal Code provides, in part, that the owner of any room who permits the same to be used or occupied, whether for gain or gratuitously, by another for bookmaking or recording or registering any bets or wagers or holding any bets or wagers, has committed an offense punishable by imprisonment in the county jail for a period of time not more than one year. N.J.S.A. 2C:37-4b provides:

A person is guilty of a crime of the fourth degree if, having substantial proprietary or other authoritative control over premises open to the general public which are being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation. . . .

It is undisputed that the petitioner permitted bookmaking and illegal wagering to occur in his licensed card room, within the meaning of California Penal Code Section 337a5. It is also undisputed that the petitioner entered a guilty plea to the charge of violating Section 337a5. It must be noted, however, that the California statute, unlike the

New Jersey statute, does not require that the owner of the premises have knowledge that the premises are being used for purposes of illegal gambling activity. Thus, I **CONCLUDE** that Section 337a5 of the California Penal Code is not the equivalent of N.J.S.A. 2C:37-4b. Therefore, I further **CONCLUDE** that the petitioner has not been convicted of an offense which is the equivalent of a statutory disqualifier from licensure under Section 86c of the Casino Control Act.

An essential element for conviction under N.J.S.A. 2C:37-4b is the intention to permit illegal gambling activity at a defendant's premises. I have specifically found that the petitioner did not intentionally permit gambling in his licensed card room, and, therefore, I must **CONCLUDE** that the petitioner has not committed the offense of maintenance of a gambling resort, in violation of N.J.S.A. 2C:37-4b. Therefore, I further **CONCLUDE** that the petitioner has not committed an enumerated disqualifier from licensure, pursuant to Sections 86c and 86g of the Casino Control Act.

It is apparent from the findings of undisputed and disputed facts in this matter that the petitioner's conduct was not of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. In addition, the petitioner has been employed with distinction in several New Jersey casinos since 1978. Based upon the foregoing, I must **CONCLUDE** that the petitioner has not committed any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operation. Based upon the relevant and credible evidence in the record, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of Section 89b(2) of the Casino Control Act. As a result of the foregoing conclusions, it is unnecessary to reach the petitioner's contention concerning the effect of the petitioner's California expungement of his 1976 conviction for permitting illegal gambling on his premises.

#### ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, John W. Bishop, for a casino key employee license, permitting him to work in a casino as a blackjack and craps pit boss, 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 17, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 18, 1984  
DATE

Bernard H. P. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan 20, 1984  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

Joint Exhibits: -

- J-1 Sworn Interview, dated June 27, 1982
- J-2 Sworn Interview, dated February 7, 1983
- J-3 Letter Report of the Division of Gaming Enforcement, dated July 6, 1982
- J-4 Letter Report of the Division of Gaming Enforcement, dated February 17, 1983
- J-5 Personal History Disclosure Form I
- J-6 Letter, dated March 15, 1983
- J-7 Letter, dated April 25, 1983

For the petitioner:

- P-1 Employee Evaluation, dated October 6, 1982
- P-2 Letter, dated October 13, 1983
- P-3 Letter, dated October 13, 1983
- P-4 Letter, dated October 14, 1983
- P-5 Letter, dated October 18, 1983
- P-6 Letter, dated October 20, 1983
- P-7 Letter, dated October 21, 1983

For the respondent:

- R-1 San Diego Police Department Report, dated December 11, 1975
- R-2 San Diego Police Department Report, dated December 17, 1975
- R-3 Indictment, Guilty Plea, Probation Order and Termination of Probation
- R-4 Probation Officers Report
- R-5 Termination of Probation and Expungement
- R-6 Thoroughbred Owner Application

WITNESSES

For the petitioner:

John W. Bishop

For the respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-124  
OAL DOCKET NO. CCC 6417-83  
LICENSE NO. 08214-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
MARIA C. BOSQUEZ, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 26, 1984, recommending that the respondent's casino employee license and casino hotel employee registration be revoked; and neither party having filed exceptions of objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of June 13, 1984, to modify the said Initial Decision and to revoke respondent's casino employee license,

IT IS on this 19th day of June 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. That portion of the Initial Decision which orders that Ms. Bosquez's casino hotel employee registration be revoked is rejected as unnecessary because Commission records indicate that Ms. Bosquez does not hold a casino hotel employee registration pursuant to N.J.S.A. 5:12-91.

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6417-83

AGENCY DKT. NO. 82-124

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**MARIA C. BOSQUEZ,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)  
**Maria C. Bosquez,** respondent, pro se

Record Closed: March 12, 1984

Decided: April 24, 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 and casino hotel employee registration, 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.

Certain basic facts are undisputed. On or about June 16, 1982, respondent was arrested and charged with credit card theft in violation of N.J.S.A. 2C:21-6c(5) and credit card fraud, in violation of N.J.S.A. 2C: 21-6d(1), for which she was subsequently indicted. She was also charged with possession of two hypodermic syringes without a

valid perscription, in violation of N.J.S.A. 2A:170-77.5 and possession of a controlled dangerous substance (hashish), under five grams, in violation of N.J.S.A. 24:21-20a(4). There are additional charges set forth in petitioner's complaint which arise out of incidents alleged to have occurred on October 6, 1979, but these were not pursued at the hearing. On September 30, 1982, respondent was enrolled in a pretrial intervention program and on April 5, 1983, all charges stemming from the June 16, 1982 incident were dismissed. Petitioner proceeds against her here based on the underlying nonprosecuted conduct, pursuant to N.J.S.A. 5:12-86g.

Petitioner's case was presented through the reports of the arresting officers. A report of J. Cardwell, Security Officer at the Claridge/Hotel Casino was placed in evidence. It is as follows:

At 03:46 a.m. . . I received a call by radio to report to the Bond Street Gift Shop in regards to a possible stolen credit card. When I arrived at the gift shop, I spoke with Lisa Matuszek employee with the Bond Street Gift Shop. Lisa informed me that she had received a call from Resorts Hotel Gift Shop . . . to watch for 2 (two) suspects trying to use a Visa card number 4366 070 948 329. Lisa Matuszek I.D. the two suspects as soon as they came into the gift shop and called security right away. I notified the D.G.E. of situation and DET. Richard Rementer arrived at approximately 04:20 a.m. and took over the entire investigation.

The report of Detective R. A. Rementer of the New Jersey State Police was also placed in evidence and is as follows:

June 16, 1982: This date, approximately 03:55 hours, undersigned detailed to the security office of Claridge/Hotel-Casino regarding the detainment of two persons with a possibly stolen Visa card.

At 04:20 hours, arrived at security and interviewed Joseph Cardwell, Claridge Security Supervisor. He advised at 03:46 hours, he was detailed to the Bond Street Gift Shop, Claridge Hotel, regarding the attempted use of a possibly stolen credit card. Upon arrival, Cardwell detained two subjects, who identified themselves as Donna G. Hayward and Charles Harmon. After detainment, he contacted D.G.E.

Interviewed Ms. Lisa Matuszek salesperson, Bond Street Gift Shop, Claridge Hotel. She advised that prior to the 03:46 hour incident, Dorothy (last name unknown) from Resorts Hotel Gift Shop phoned to advise that two (2) female subjects had just attempted to use Visa card number 4366 070 948 329. Dorothy advised the subjects did not possess any additional identification and could not properly sign the cardholder's signature. Ms. Matuszek stated that at approximately 03:40 hours the detained subjects entered the gift shop. The female subject attempted to purchase a gold bracelet with Visa card issued to Donna G. Hayward 4366 070 948 329.

Ms. Matuszek directed her co-worker, Martha Balcano to call security. Security arrived and took the subjects to their office.

...

Interviewed Ms. Dorothy Murphy, salesperson, Resorts Gift Shop, via telephone. She advised, sometime after midnight (exact time unknown) two (2) female subjects entered the gift shop and started looking at charms. The one (1) female identified herself as Donna G. Hayward and attempted to purchase a \$250 gold bracelet with Visa card 4366 070 948 329. Ms. Murphy stated that she requested additional identification and was informed by Donna Hayward that her purse was just stolen in the slot area and it contained all of her identification. Ms. Murphy then called the Visa hotline and was informed that the card was not listed as stolen. She then requested Donna Hayward to sign her name for comparison with the signature on Visa card. After comparing the signatures, Ms. Murphy refused to accept the card because the signatures were different. Ms. Murphy states the females departed the gift shop and she phoned area gift shops to advise of the incident.

Both detained subjects were escorted up to the D.G.E. office for further investigation. Subject #1 was identified as Charles Harmon . . . subject #2 possessed no identification except the Visa card she was attempting to use, issued to Donna G. Hayward. Subject #2 stated her name was Donna G. Hayward, address 112 North Second Street, Pleasantville, New Jersey. . . .

...

At 04:50 hours, this writer advised subject of her constitutional rights . . . interrogation of subject was started to determine her true identity and the origin of the Visa Card. During interrogation, subject #2 maintained that she was in fact Donna G. Hayward. She stated all of her identification was in her purse when an unknown black male stole it from the slot area of Resorts Casino. She further stated she did not report the theft to Resort's security or to D.G.E. Subject stated that she was unemployeed and moved often between New York, New Jersey and Delaware. Subject stated that none of her family had telephones and no one this writer could call would verify her identity. She further stated her New Jersey driver's license was stolen with her purse.

...

At 07:30 hours after this writer had disproved all aspects of the subject's story, she admitted Donna Hayward was not her real name and the credit card was stolen. The subject now stated her true identity was Maria Carmen Bosquez . . . she further stated the Visa card was given to her by Toni Isley. She stated Isley stole the card from an unknown location during the evening of 6-15-82. Bosquez stated she did not know any other information about Isley and could not provide any other identifiers.

Undersigned requested Security Officer Debra Cook, strip search the accused. The search revealed two (2) hypodermic syringes and a brown substance (suspected hashish) in her right coat pocket. Nothing else of evidential nature was located during search.

Bosquez stated the above items were given to her by a friend earlier in the evening. She stated that she does not use drugs. She refused to give any information about the person she claims gave her the contraband items. . .

Respondent testified in her own behalf. On the morning in question she had met an old friend, Toni Isley, while walking with her sister and brother-in-law, Charles Harmon. Together they all went to the Claridge where they entered the Bond Street Gift Shop. She and Toni were looking at various items. Toni decided to purchase one and took out a Visa card which she gave to respondent asking her to buy the item for her while she went to the bathroom. The card bore the name Donna Hayward, who Toni said was her cousin. Respondent attempted to use the card, and was taken into custody. Toni never returned. Respondent testified that she continued to maintain that she was Donna Hayward after being taken into custody because her sister was out looking for Toni. At about 7:30 a.m. her sister returned and told her that she had been unable to locate Toni. Respondent then provided her true identity.

Respondent testified additionally, that Toni Isley had asked her to carry a paper bag in her coat pocket while they walked because Toni had not been wearing a jacket. Respondent was unaware of the contents of the bag.

This is the substance of the record. One count of the indictment charged respondent with falsely making, embossing or uttering a falsely made or embossed credit card, in violation of N.J.S.A. 2C:21-6c(5). There is no evidence in the record that the card used was forged or altered, and as that is the nature of the crime charged, petitioners proofs here fail. Respondent was also indicted for a violation of N.J.S.A. 2C:21-6d(1). That section provides:

A person who with intent to defraud . . . (1) uses for the purpose of obtaining money, goods, services or anything else of value a credit card obtained or retained in violation of subsection c of this section... is guilty of the fourth degree.

The Subsection C referred to above is N.J.S.A. 2C:21-6c. That subsection creates six separate categories of credit card offense, at least one of which is appropriate here. N.J.S.A. 2C:21-6c(1) provides:

A person who takes a credit card from the person, possession, custody or control of another without the card holder's consent or who with knowledge that it has been so taken, receives the credit card with intent to use it . . . is guilty of a crime of the fourth degree.

Thus, though there is no evidence that the credit card used here was forged, the evidence is sufficient to establish that respondent used a credit card which did not belong to her with intent to defraud. Her defense is not credible. Neither Mr. Harmon or respondent's sister, who were with her that evening, testified in her behalf. Detective Rementer's report in evidence gives no indication that a female third person was present during the incident although two females had apparently sought to use this same card earlier in the evening at Resorts. Respondent could not provide any information leading to the whereabouts of her friend, Toni Isley.

As to the charges involving syringes and hashish, I do not believe that these have been established. The record reveals only that a search of respondent yielded certain paraphernalia and a substance which Detective Rementer concluded was "suspected" hashish. No report was presented to indicate what the paraphernalia or substance was. The only other reference in the record to this aspect of the case comes from respondent who indicated that she was given a bag to hold by Toni Isley but did not know its contents.

As respondent maintained throughout that she did not commit any crimes on the morning in question, no particular emphasis was placed on the question of rehabilitation. Nothing in the record would indicate that there is a basis for such a claim.

The question then is whether the knowing use of a lost or stolen credit card undermines the conclusion initially reached when respondent was licensed to the effect that she was a person of good character, honesty, and integrity. N.J.S.A. 5:12-90. I believe that it does. She committed a serious offense within the casinos which goes directly to trustworthiness. Further, the conduct as well as her testimony in the instant matter, going as they do to trustworthiness, cuts through the licensee/registrant distinction, and in my view renders her continued employment inimical to the policies of the Act, and casino operations. N.J.S.A. 5:12-86c.(4).

Based on the foregoing, it is my conclusion that respondent's casino employee license and casino hotel employee registration should be revoked, and 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.

4/24/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

26 APR 1984  
DATE

Receipt Acknowledged:  
*Donald McDonald*  
CASINO CONTROL COMMISSION

MAY 17 1984  
DATE

Mailed to Parties:  
*Ronald J. Parker pro*  
OFFICE OF ADMINISTRATIVE LAW

bm

EXHIBITS

- P-1 Incident Report of J. Cardwell
- P-2 State Police Report of Detective R.A. Rementer
- P-3 Indictment
- P-4 Approval For Enrollment in PTI
- P-5 Court Ordered Dismissal of Charges Against Respondent.

WITNESSES

Maria Bosquez, respondent, pro se

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-5  
OAL DOCKET NO. CCC 4990-83  
APPLICATION NO. 40980-21

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APPLICATION OF TOMASINA R. BOYD  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on February 22, 1984, recommending that the casino employee license application of Tomasina R. Boyd be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 21, 1984, to affirm and adopt the said Initial Decision and to grant the application,

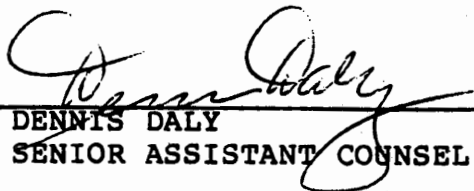
IT IS on this *26<sup>th</sup>* day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4990-83

AGENCY DKT. NO. 83-EA-5

**TOMASINA R. BOYD,**

Petitioner

v.

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

Respondent.

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**APPEARANCES:**

**Tomasina R. Boyd, petitioner, Pro Se**

**Patricia M. Wild, Deputy Attorney General, for the respondent (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

Record Closed: January 5, 1984

Decided: February 21, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Tomasina R. Boyd, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had committed and had been convicted of disqualifying criminal offenses and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Ms. Boyd filed her Personal History Disclosure Form-2 (PHDF-2), with the Commission on March 30, 1982 (C-1). By letter, the applicant was advised by the Commission that, based upon information received in a report from the Division, dated January 6, 1983, there was a "substantial possibility" that it would deny her application and that she had a right to a hearing. By letter filed with the Commission on the same date, Ms. Boyd requested a hearing. On June 30, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 11, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Ms. Boyd is 27 years of age (C-1). She has resided in Atlantic City, New Jersey, for her entire life. The applicant is the mother of three children, ages ten, six and two, who reside with her. In 1974, the applicant left high school. In 1977, she earned a Graduate Equivalency Degree.

The applicant currently holds a casino hotel employee registration, although she has not been employed by any of the casino hotels.

In February 1978 the applicant and her first two children resided with the applicant's brother, her mother and her mother's boyfriend in Atlantic City. On the afternoon of February 20, 1978, the Atlantic City Police Department executed a search warrant at the premises (R-1 and R-3). The applicant, the applicant's two children, the applicant's brother and another individual were present at that time. The police found narcotics and drug-related paraphernalia. The applicant was arrested and was charged with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine, and N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana under 25 grams (R-1 and R-2). On May 4, 1978, the applicant was indicted by an Atlantic County Grand Jury for an alleged violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine (R-4). On August 2, 1978, the applicant received a conditional discharge from the indictment. On August 28, 1978, the charge of a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana under 25 grams, was dismissed by the Atlantic

City Municipal Court. On October 16, 1981, the conditional discharge was revoked because of the applicant's failure to appear for her last probationary appointment. On May 6, 1982, the applicant was arrested on a bench warrant. On May 7, 1982, the violation of probation charge was dismissed by the Superior Court - Law Division, Atlantic County. The applicant was 21 years of age at the time of the offense.

On July 25, 1978, the applicant was arrested by the New Jersey State Police and was charged with two counts of violations of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, heroin (R-5 and R-8). The arrest and charges resulted from an undercover narcotics investigation conducted by the State Police (R-6, R-7, R-9, R-10, R-11, R-12, R-13 and R-14). On July 31, 1978, the applicant was indicted by an Atlantic County Grand Jury for alleged violations of two counts of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, heroin, two counts of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance, heroin, with intent to distribute, and two counts of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, heroin (R-15). On January 8, 1980, the applicant pled guilty to two counts of a violation of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, heroin (R-16). The remaining counts were dismissed. On February 1, 1980, the applicant was sentenced to a 364-day custodial term at the Atlantic County Jail, with all but 90 days suspended, placed on an 18-month period of probation and fined \$900 on each count, sentences to run concurrently (R-16). The applicant served 90 days and was released in April 1980.

At the time of her release, the applicant and her two children went to live with her aunt and uncle in Atlantic City.

Thereafter, the applicant began to live with a man, by whom she has had another child. Prior to the birth of her last child, the applicant was employed for a period of six months by World International Hotel in a housekeeping capacity. She left this position for maternity reasons. She returned to work following the birth of her last child for a period of two weeks. The applicant left the position because of personality conflicts. Since that time, the applicant has remained at home with her children.

In May 1982, the applicant successfully completed a craps course at Casino Schools, Inc. The applicant also attended South Jersey Professional School of Business and has completed two-thirds of a estate course.

Ms. Boyd testified that prior to her initial arrest, she had come in contact with some "bad people." Included was an old boyfriend who told her she could make money by selling drugs. Nevertheless, the applicant did not use drugs.

The applicant testified that she would not repeat her prior misconduct because she recognized that it was wrong, she now feels sorry for the victims, she lost job offers, she lost friends and she regrets her behavior. The applicant now wants the opportunity to be a contributing citizen. Also, the applicant now receives public assistance but does not want to continue in this regard. The applicant's two older children are of school age and attend school on a daily basis.

Although the Division did not offer any rebuttal to the applicant's affirmative presentation, it is essential to assess the applicant's credibility. Initially, Ms. Boyd's position in this matter must be recognized. She is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of her testimony, the consistency between her statements of her conduct and the documentary evidence and my examination of the documentary evidence that the applicant testified truthfully. In the final analysis, I am persuaded to accept the applicant's testimony.

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

#### DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(3) of the Casino Control Act (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. It was established that the applicant's conviction for two violations of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, heroin, is a disqualifying offense.

I **CONCLUDE** that the applicant's conviction of a violation of N.J.S.A. 24:21-19a(1) mandates that she be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(3).

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

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (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. Boyd is registered as a hotel employee and has applied for licensure as a craps dealer. As a craps dealer, she would have responsibilities for actual gaming activities and would have substantial contact with patrons of the casino.

Second, the applicant's criminal record history reflects the commission of very serious, indictable offenses regarding the possession and sale of heroin to prospective users. Such an offense necessarily involves a victim. Although the offense may not be classified as a violent crime, it is, nevertheless, equally serious.

Third, the applicant sold narcotics to victims for profit. Although the other individuals with whom she resided may have been the catalyst for her misconduct, such does not mitigate the nature of her acts. I am persuaded to believe that the applicant was not a drug abuser.

Fourth, the incidents of misconduct occurred during 1978.

Fifth, at the time of the offenses, the applicant was 21 years of age; however, it did not appear that her misconduct was due to immaturity.

Sixth, although the dates of the applicant's arrests were close in proximity, it is apparent that her misconduct involved the commission of repeated drug sales over several months. The misconduct was extensive enough to be the subject of an undercover investigation.

Seventh, there were no social conditions which contributed to her misconduct.

Eighth, the applicant has demonstrated the essential elements of rehabilitation. She admitted her misconduct both in response to the various charges filed against her and at the hearing. She served her time in prison. Although the lenient sentence imposed upon the initial charges did not dissuade the applicant from repeating her misconduct, it appears that her incarceration following the second charges has had the desired effect because the applicant has not repeated her misconduct or committed any other offenses during the past five and one-half years. Although the applicant has not established an employment record, she has spent the past five and one-half years being a mother to her children. It appears that she has performed this role in a responsible and reliable manner. Further, the applicant has pursued vocational education in order to prepare herself to enter the work force. Unfortunately, the applicant did not produce any witnesses or statements from persons on her behalf. Nevertheless, this shortcoming in proofs may be explained by the fact that the applicant represented herself. In any event, the applicant has satisfied her sentences, has not repeated her misconduct, has fulfilled satisfactorily her role as a mother and has prepared herself to enter the work force. Therefore, I am persuaded that the applicant has established, by the slimmest of margins, her rehabilitation under the Act.

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

(c) N.J.S.A. 5:12-98b(2)

Under section 89b(2) of the Act, Ms. Boyd was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of the 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 criteria for licensure. Rather, the individual's actual character and attributes of 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 Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here, the Division raised issue regarding the applicant's criminal record history.

The burden carried by Ms. Boyd was significant by reason of the seriousness of her misconduct. However, absent any repetition of this misconduct for the past five and one-half years, together with the applicant's apparently sincere expressions of remorse and commitment not to repeat her misconduct, I am persuaded to believe that there is little likelihood that the applicant will commit any unlawful acts in the future. Although the applicant has not established an employment record, her commitment to and performance in her role as a mother during the past five and one-half years is very positive evidence of her sincerity and responsibility. The applicant presents no risk to the public or to the integrity of casino gaming in this State. An examination of the "whole man" concept clearly and convincingly establishes that Ms. Boyd is a person of good character, honesty and integrity, and is suitable for licensure in this State. Boardwalk Regency Corporation, supra, at 51, 52.

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

DISPOSITION

It is **ORDERED** that the application of Tomasina R. Boyd for licensure as a casino employee (craps dealer) 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 21, 1984  
DATE

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

Receipt Acknowledged:

2/22/84  
DATE

Mary Ann Torczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

February 24, 1984  
DATE  
bm

Ronald J. Parkes, Jr.  
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS ADMITTED INTO EVIDENCE

- C-1 Personal History Disclosure Form - 2, Tomasina Renee Boyd, filed March 30, 1982 (27 pages)
  
- R-1 Atlantic City Police Department - Investigation Report, Case Number 78-874, February 20, 1978 (2 pages)
  
- R-2 Atlantic City Police Department - Arrest Report, Case Number 78-874, February 20, 1978
  
- R-3 Atlantic City Police Department - Supplementary Investigation Report, Case Number 78-874, May 17, 1978
  
- R-4 State of New Jersey v. Tomasina Boyd, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, file number 47108-78, Indictment Number 454-77-J, April 20, 1978; together with Statement of Proceedings (5 pages)
  
- R-5 New Jersey State Police - Arrest Report, Case Number 78-32, July 26, 1978
  
- R-6 New Jersey State Police - Investigation Report, Case Number 78-32, June 13, 1978
  
- R-7 New Jersey State Police - Supplementary Investigation Reports, Case Number 78-32, July 26, 1978, July 31, 1978, January 26, 1979, November 2, 1979, January 10, 1980 and July 21, 1980 (6 pages)
  
- R-8 New Jersey State Police - Arrest Report, Case Number 78-22, July 26, 1978
  
- R-9 New Jersey State Police - Investigation Report, Case Number 78-22, April 20, 1978 (2 pages)

- R-10 New Jersey State Police - Supplementary Investigation Report, Case Number 78-22, July 31, 1978
- R-11 New Jersey State Police - Supplementary Investigation Report, Case Number 78-22, July 26, 1978
- R-12 New Jersey State Police - Supplementary Investigation Report, Case Number 78-22, January 26, 1979
- R-13 New Jersey State Police - Supplementary Investigation Report, Case Number 78-22, November 2, 1979
- R-14 New Jersey State Police - Supplementary Investigation Report, Case Number 78-22, July 21, 1980
- R-15 State of New Jersey v. Tomasina Boyd, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, file number 47914-78, Indictment Number 644-77-M, July 31, 1978 (7 pages)
- R-16 State of New Jersey v. Tomasina Boyd, Indictment Number 644-77-M, Judgment of Conviction and Order for Commitment, February 20, 1980 (2 pages)

WITNESS LIST

For the Petitioner:

Tomasina R. Boyd

For the Respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 81-EA-357;  
83-L-27  
OAL DOCKET NO. CCC 7-82  
APPELLATE DIVISION A-4252-82T3  
APPLICATION NO. 20385-21

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APPLICATION OF CHESTER R. BRATHWAITE  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

The Appellate Division of the New Jersey Superior Court, upon an appeal from the Final Order and Decision of the Casino Control Commission dated June 1, 1983, by which the application of Chester R. Brathwaite was granted, having issued a decision dated January 23, 1984, reversing said Commission decision on the grounds that there is "insufficient competent evidence in the record to support the Commission's conclusion [that Brathwaite had satisfactorily demonstrated his rehabilitation from his conviction in 1977 of the disqualifying offense of armed robbery]",

IT IS on this *9<sup>th</sup>* of February 1984, ORDERED that the Commission's Order in this matter dated June 1, 1983, be and hereby is vacated; and

IT IS FURTHER ORDERED that the Commission's Decision in this matter dated June 1, 1983, be and hereby is modified consistent with the decision of the Appellate Division dated January 23, 1984; and

IT IS FURTHER ORDERED that the casino employee license application of Chester R. Brathwaite be and hereby is denied based upon the applicant's failure to demonstrate

by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90(h) from his 1977 conviction for a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that, Chester R. Brathwaite deliver his casino employee license card to the offices of the Casino Control Commission, Arcade Building, Tennessee Avenue and Boardwalk, Atlantic City, New Jersey within 72 hours upon receipt of this order; and

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

IT IS FURTHER ORDERED that, for purposes of applying the reapplication regulation (N.J.A.C. 19:41-8.8), the operative date of disqualification is April 20, 1983; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Chester R. Brathwaite, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-4252-82T3

IN THE MATTER OF THE APPLICATION  
OF CHESTER R. BRATHWAITE FOR  
LICENSURE AS A CASINO EMPLOYEE.

ORIGINAL FILED  
JAN 23 1984  
ELIZABETH McLAUGHLIN  
Clerk

Argued January 5, 1984 - Decided  
Before Judges Furman and Deighan.

JAN 23 1984

On appeal from the Casino Control  
Commission.

Katherine A. Smith, Deputy Attorney General,  
argued the cause for appellant State of New  
Jersey, Department of Law and Public Safety,  
Division of Gaming Enforcement (Irwin I.  
Kimmelman, Attorney General of New Jersey,  
attorney).

Dennis Daly, Senior Assistant Counsel,  
argued the cause for respondent New Jersey  
Casino Control Commission (Robert J. Genatt,  
General Counsel, attorney; Mr. Genatt and  
Mr. Daly, of counsel; Mr. Daly and Nancy Q.  
Schickler, Assistant Counsel, on the brief).

PER CURIAM

This appeal pits two branches of state government  
against each other, appellant Division of Gaming Enforcement  
and respondent Casino Control Commission. The Commission  
granted a license to Chester R. Brathwaite as a casino craps  
dealer despite a disqualifying criminal conviction for armed  
robbery in 1977 and an extensive further criminal record  
including violent offenses, the most recent in December 1980;

**RECEIVED**

JAN 23 1984

CASINO CONTROL COMMISSION  
LEGAL DIVISION

it determined pursuant to N.J.S.A. 5:12-90(h) that Brathwaite had demonstrated his rehabilitation by clear and convincing evidence. The division, which opposed Brathwaite's application, appeals.

Other than evidence of his attaining a General Equivalency Degree and successfully completing vocational courses in tractor-trailer driving and craps dealing, the only support in the record for a determination of Brathwaite's rehabilitation was a letter from his most recent employer attesting to his creditable work performance and his own unsworn, self-serving assurances to the commission without cross-examination at its public meeting of April 20, 1983. The latter predominated in the commission determination. In ruling in his favor, two of the commissioners referred to his appearance before them, one of them stating: "However, I have been impressed this morning by his demonstration that he had been aware of the impact of his conduct during those difficult days . . . I believe him when he says that he's determined to succeed in the future."

We are satisfied that there is insufficient competent evidence in the record to support the Commission's conclusion that, because of Brathwaite's rehabilitation, he was eligible for licensure as a casino craps dealer. In our view the license disqualification based on his armed robbery conviction could not be overcome by Brathwaite's ex parte unsworn, self-serving assurances. Any doubt regarding Brathwaite's rehabilitation

should have mandated denial of his licensure for the protection of the public interest in the integrity of casino operations.

In re Boardwalk Regency Casino License Application, 180 N.J.

Super. 324, 337 (App. Div. 1981), mod. 90 N.J. 361 (1982).

We reverse.

-3-

I hereby certify that the foregoing  
is a true copy of the original on file  
in my office.

*Elizabeth W. Langille*

Clerk

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-357  
OAL DOCKET NO. CCC 7-82  
APP. NO. 20385-21

---

IN THE MATTER OF THE APPLICATION:

OF CHESTER R. BRATHWAITE FOR :

FINAL ORDER

LICENSURE AS A CASINO EMPLOYEE :

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This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed with the Commission on March 15, 1983, recommending that the casino employee license application of Chester R. Brathwaite be denied; and no exception or objections to the initial decision having been filed; and the Commission having considered the entire record and having resolved at its public meeting on April 20, 1983, to reject the said initial decision and to grant, for good cause shown, the casino employee license application of Chester R. Brathwaite,

IT IS on this *15<sup>th</sup>* day of June 1983 ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is rejected; and

IT IS FURTHER ORDERED that the casino employee license application of Chester R. Brathwaite be and hereby is granted based upon the findings and conclusions as set forth in the

Commission's final decision in this matter, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon the applicant and the Division of Gaming Enforcement and the authorized agents of all currently operating casino's within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: *Dennis Daly*  
Dennis Daly  
Senior Assistant Counsel

DATE: June 1, 1983

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-357  
OAL DOCKET NO. CCC 7-82  
APP. NO. 20385-21

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IN THE MATTER OF THE APPLICATION:

OF CHESTER R. BRATHWAITE FOR :  
LICENSURE AS A CASINO EMPLOYEE :

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FINAL COMMISSION  
DECISION

Chester R. Brathwaite, appeared Pro Se.

William R. Mountford, Jr., Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter arises out of the application of Charles R. Brathwaite<sup>1</sup> ("Applicant") for licensure as a casino employee (craps dealer). See, N.J.S.A. 5:12-7, -90. Mr. Brathwaite's application was filed on July 11, 1980. Thereafter, on December 22, 1981, the Division of Gaming Enforcement ("Division") issued its report to the Commission regarding the Division's investigation of the Applicant's qualifications for licensure. See, N.J.S.A. 5:12-76. In that report, the Division posed an objection to the Applicant's licensure.

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1. Throughout the proceedings the Applicant's surname has been incorrectly spelled. The correct spelling of his surname is "Brathwaite," not "Braithwaite."

On December 29, 1981, pursuant to the Applicant's written request for a hearing, the Commission transmitted this matter to the Office of Administrative Law in accordance with N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on August 16, 1982, and the matter proceeded to a formal hearing before the Honorable Richard L. Voliva, Administrative Law Judge, on November 4 and 15, 1982, and on January 27, 1983.

On March 15, 1983, the Administrative Law Judge ("ALJ") filed his Initial Decision with the Commission, recommending that the application for licensure be denied. A copy of this Initial Decision is appended hereto at A-1 to A-17 for convenience of reference. The Initial Decision was forwarded to the Applicant and the Division on March 18, 1983. The parties were afforded ten working days from receipt of the Decision within which to file written exceptions or objections. No exceptions or objections were filed.

Upon review and consideration of the Initial Decision in this case and the entire record of the proceedings, the Commission determined at its public meeting of April 20, 1983, to reject said Initial Decision and to grant the casino employee license application of Chester R. Brathwaite. More specifically, the Commission adopts all the findings of fact contained in the Initial Decision. However, the Commission rejects Judge Voliva's legal analysis of N.J.S.A. 5:12-86(c)(2), and finds, consistent with its analysis in In the Matter of the

Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (1981), that because the Applicant filed his Personal History Disclosure Form after the effective date of N.J.S.A. 2C:1-1 et seq., the list of disqualifying offenses that should be applied is found in N.J.S.A. 5:12-86(c)(1). The Commission also finds that the Applicant has been convicted of N.J.S.A. 2A:141-1 and 2A:151-5, and that the equivalent offense under the New Jersey Code of Criminal Justice is N.J.S.A. 2C:15-1, robbery in the first degree, an offense listed in N.J.S.A. 5:12-86(c)(1). Thus, the Applicant has sustained a conviction for a disqualifying offense. The Commission nevertheless finds that the Applicant has demonstrated his rehabilitation from disqualification by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h) and has further demonstrated by clear and convincing evidence, his good character, honesty and integrity. See, In the Matter of the Application of Charles Clenthscale for Licensure as a Casino Employee, Docket No. 79-EA-113 (1980). The Commission now sets forth its reasons for rejecting the Initial Decision and for determining that a casino employee license should issue.

The Applicant is 27 years old and a native of the Atlantic City area. For a period of nine months during 1974 he was a member of the United States Army and received an honorable discharge. During most of 1975, the Applicant was employed by the Black Int. Detective Agency.

On December 31, 1975, the Applicant and another individual decided to rob a 7-Eleven store in Northfield, New Jersey. Both went to their respective homes and obtained weapons. The Applicant, who was intoxicated, utilized a 45-caliber automatic handgun to perpetrate the robbery of the store. Approximately \$135 in cash and some food stamps were stolen. Over a year later, in February 1977, the Applicant was arrested for the commission of this crime. He pled guilty to the charge of armed robbery, was sentenced to an indeterminate term at the Yardville Correctional Center, served approximately one year and was released on parole.

The licensing criteria for casino employee license applicants is found in Section 90 of the Casino Control Act.<sup>2</sup> Further, N.J.S.A. 5:12-90(e) provides that 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 the Casino Control Act.

The ALJ correctly found that the Applicant was convicted of robbery while armed with a weapon in violation of N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5. Thereafter, the ALJ noted that N.J.S.A. 2A:141-1 was listed in Section 86(c)(2) of the Act

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2. Throughout this final decision, sections of the Casino Control Act are sometimes cited by section number only. The full citation is found by adding the prefix N.J.S.A. 5:12-\_\_\_.

as a disqualifying offense and that licensure ought thus be denied. (A-9) However, the ALJ's construction and application of the pertinent provisions of Section 86 appear to be inconsistent with the approach previously endorsed by this Commission.

As we held in the Ferrin case, supra, the Commission should apply the criminal law of New Jersey extant at the time the application is filed with the Commission. Under that thesis, the task is first to determine whether pertinent provisions of Title 2A or Title 2C of N.J.S.A. were in effect at the time the application was filed and then to refer initially to the appropriate list in Section 86(c), as amended. If the application was filed before September 1, 1979, the Title 2A list, i.e., Section 86(c)(2) should be consulted. If the conviction or conduct at issue fits the definition of an offense set forth in the Section 86(c)(2) Title 2A list, the applicant is nevertheless afforded the opportunity by Section 86(c)(4) of the Act to escape disqualification as follows:

...provided, further however, that, any applicant ... who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant ... 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;

\* \* \*

Thus, conduct constituting an offense on the Title 2A list of Section 86(c)(2) is not a disqualification if it is shown not to constitute an offense on the Title 2C list of Section 86(c)(1). If, as in the present case, the application was filed after September 1, 1979, the Title 2C list, i.e., Section 86(c)(1), is controlling.

Here, the Applicant filed his Personal History Disclosure Form in July 1980, nearly one year after the effective date of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., L. 1978, c. 95 (September 1, 1979).

At the time the Applicant filed his application for a casino employee license, the equivalent offense to N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5 was, and still is, N.J.S.A. 2C:15-1 (robberies). This Title 2C offense is listed in Section 86(c)(1) as a disqualifying offense. Hence, at the time of Mr. Brathwaite's application, his offense would have resulted in a conviction under N.J.S.A. 2C:15-1. As a result, we agree with the ALJ's conclusion that the Applicant suffered from a disqualifying offense but we reach our finding based on the analysis indicated by Ferrin rather than the ALJ's approach. To this extent, then, the ALJ's opinion is hereby modified.

We note that the ALJ further found that the same 1977 armed robbery conviction constituted an offense which would render the Applicant's licensure inimical to the policies of the

Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4). (A-9 and 10). In light of our finding that this conviction is a disqualifying offense specifically enumerated in Section 86(c)(1) and our conclusion as set forth below that the Applicant is rehabilitated, it is unnecessary to the disposition of this case to address this issue.

The Legislature has determined that the casino gaming industry and those that wish to participate in it must be strictly regulated. The Casino Control Act contains extensive, detailed regulation of every aspect of the industry. See, Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 169 (1982). However, the Legislature has tempered the restrictive effect of this regulatory scheme for individuals seeking certain types of employee licenses. By a January 9, 1980, amendment to the Casino Control Act, L. 1979, c. 285, §§ 25 and 26, a mechanism was created by which an applicant for a casino employee or casino hotel employee license<sup>3</sup>, who would otherwise be disqualified from licensure pursuant to the criteria contained in Section 86(c), could overcome that disqualification. The procedure, as outlined in Sections 90(h) and 91(d), requires an applicant to affirmatively demonstrate by clear and convincing evidence his rehabilitation. The factors to be considered by

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3. By an amendment effective February 15, 1982, casino hotel employee licenses were converted to casino hotel employee registrations. See, L. 1981, c. 503, §12.

the Commission in determining whether any applicant has satisfied his burden on this issue are as follows:

- (1) The nature and duties of the position applied for;
  - (2) The nature and seriousness of the offense;
  - (3) The circumstances under which the offense occurred;
  - (4) The date of the offense;
  - (5) The age of the applicant when the offense was committed;
  - (6) Whether the offense was an isolated or repeated incident;
  - (7) Any social conditions which may have contributed to the offense;
  - (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.
- [N.J.S.A. 5:12-90(h); See also, N.J.S.A. 5:12-91(d)].

The ALJ correctly recognized that Mr. Brathwaite, as an applicant for a casino employee license, could overcome the effect of his disqualifying conviction by demonstrating his rehabilitation pursuant to Section 90(h). The ALJ concluded, however, that the Applicant had failed to affirmatively demonstrate his rehabilitation. We disagree, and find, based on the following credible evidence in the record, that the Applicant has met his burden of demonstrating his rehabilitation sufficient to surmount his disqualification pursuant to Sections 86(c)(1) and 90(e) of the Act.

The Applicant seeks licensure as a casino employee in the position of craps dealer. A craps dealer works in the casino room, is directly involved in gaming activity and has regular contact with casino patrons. Anyone who is licensed as a casino employee must be a person whom the Commission can be reasonably assured will not erode public confidence in the regulatory apparatus.

It is undisputed that the Applicant was convicted for the offense of armed robbery. The ALJ noted that armed robbery is a very serious and disqualifying offense. (A-11) We agree with this statement. Any person who comes before this Commission for licensure with this kind of conviction in his or her background requires close scrutiny and will not be granted the privilege of participating in the extremely sensitive casino industry unless rehabilitation has been clearly and convincingly established.

The date and circumstances of the robbery offense are clear. In December 1975, almost seven and one-half years ago, the Applicant participated with another in an armed robbery. It is evident from the record that the Applicant was neither the instigator nor the prime mover in the commission of this crime. (T15-15 to T16-4; T17-18 to T18-19; T68-10 to T68-22).<sup>4</sup> While a plainly dangerous situation was created, no one was injured during the robbery.

The Applicant admits that he had been drinking just prior to committing the offense. We concur with the ALJ's finding that the Applicant's intoxication does not in any way mitigate

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4. "T" refers to the transcript of the hearing held before ALJ Richard L. Voliva in this matter on November 4, 1982.

or excuse his conduct. (A-11) However, we reject the conclusion that in light of his intoxication, his conduct should be regarded as more serious than it otherwise would be. The Applicant's participation in this crime remains of grave concern to us, but other factors in his background place this 1975 offense in its proper prospective.

The age of the Applicant at the time of the offense is significant. The Applicant was only 19 when he committed the robbery. He admitted at the hearing before the ALJ to his immature and irresponsible attitude during that period of his life. (T16-6 to T16-15; T17-15 to T18-17). The record is devoid of evidence that the Applicant had engaged in any criminal conduct prior to this incident. In fact, he had served honorably in the United States Army and also had been regularly employed. (R-1, in evidence). The Applicant voluntarily surrendered himself to police in 1977. He pled guilty to the crime and successfully completed both his prison sentence at a minimum security facility and his four year parole.

The armed robbery offense is the Applicant's most serious conviction. We recognize that the Applicant has had subsequent contact with the criminal justice system. We find, contrary to the ALJ's conclusions, that these contacts are of a relatively minor nature. In 1977 the Applicant was charged with breaking and entering, N.J.S.A. 2A:94-1, threats to kill, N.J.S.A. 2A:113-8 and malicious damage to property, N.J.S.A. 2A:170-36. These charges arose out of a domestic dispute with his girlfriend. (R-4, in evidence; T22-2 to T26-17). The first two charges were no-billed by a Grand Jury and the remaining charge was dismissed by the Pleasantville Municipal Court. These events occurred prior to the Applicant's incarceration for the armed robbery charge.

The Applicant was arrested on April 13, 1980, shortly after he and his young son had departed from a Jamesway store. A Middle Township police officer detained the Applicant in the parking lot on a charge of shoplifting a pair of sunglasses. A scuffle ensued when the Applicant attempted to free himself. They both fell to the ground. The Applicant was charged with shoplifting, N.J.S.A. 2C:20-4, resisting arrest, N.J.S.A. 2C:29-2, and assault on a police officer, N.J.S.A. 2C:12-1(b)(5)(a). (R-5, in evidence). The shoplifting charge was dismissed and the Applicant was found guilty on the remaining two charges and fined \$100, plus \$25 court costs. (Ibid.) The ALJ was persuaded that the Applicant had not shoplifted the item in question. (A-6). We agree. Moreover, we concur in the ALJ's conclusion that based upon the Applicant's testimony as to his conduct and the minimal penalty imposed, these charges are not "overly serious." (Ibid.)

The Applicant's remaining arrest, in December 1980, was for possession of an offensive weapon, N.J.S.A. 2C:39-4. This charge was later downgraded to harassment, a petty disorderly persons offense, N.J.S.A. 2C:34-4a. The Applicant accompanied his friend, Vincent Brown, to a private home. There, Mr. Brown confronted one of the occupants, who allegedly had struck Mr. Brown's girlfriend on an earlier occasion. The Applicant testified that "it wasn't my fight" but he was there to ensure his friend's safety. (T84-3 to T86-24). After a verbal confrontation and a shoving exchange between Mr. Brown and one of the occupants of the house, the Applicant and Mr. Brown fled. (T40-25 to T41-25). On February 11, 1981, the Applicant was found guilty of the downgraded charge of harassment, sentenced to a one year probationary term and assessed fines and costs totaling \$125. (R-6) The ALJ found credible and believable the Applicant's testimony on the critical issue of whether he

possessed a weapon at the time he confronted the residents of the house. The ALJ concluded, contrary to the police report, that the Applicant did not have a weapon. (A-6). We concur in that conclusion.

However, we disagree with the ALJ's characterization of these two post-incarceration convictions as indicative of "the repetitive nature of [the Applicant's] misconduct" and in "disregard of the criminal laws of this State." (A-13,14). These offenses, by their type, number or circumstances, do not evidence a continuation of the Applicant's prior criminal conduct, i.e., the armed robbery. They were not initiated by the Applicant nor did they involve the use of a weapon. The convictions were for disorderly persons offenses which resulted in minimum penalties. Moreover, two and one half years have passed since his last arrest. Therefore, we do not find the Applicant's petty criminal record subsequent to his most serious offense, armed robbery, to be demonstrative of a pattern of misconduct by the Applicant.

As noted earlier, the Applicant served his prison sentence for armed robbery at a minimum security facility during which time he was employed as a cook in the New Lisbon School, a school for retarded men, and ultimately secured a cook's certificate. (T49-18 to T50-17). There is no indication in the record of any problems while incarcerated. Additionally, he successfully completed his parole. (T18-25 to T19-12).

After his release, in 1978, the Applicant satisfied the requirements for, and was awarded, a General Equivalency Degree (G.E.D.). (R-1, in evidence). He also attended a C.E.T.A. funded training program for tractor-trailer driving and received a certificate evidencing successful completion of the course. (T63-5 to T63-13). Further, he attended the Casino Career institute in 1980 and successfully completed a course on craps dealing. (T46-25 to T47-22).

While the Applicant has not been continuously employed since his release, he has actively sought employment. He has striven to improve his skills and prospects for employment as reflected by his completion of the educational and vocational training programs noted previously. Transportation and child care difficulties have, however, hampered his employment in the past. (T55-24 to T58-4). The Applicant has the unqualified recommendation of his most recent employer, Lance Rogers of Atlantic Human Resources, Inc., who found the Applicant's work habits to be "exceptional" and indicated employment would again be available to the Applicant if future funding for the program was obtained. (P-1, in evidence).

Additionally, the Applicant's employment by Bally's Park Place Hotel and Casino and Harrah's Marina Casino Hotel bear positively on his qualifications to work in the casino industry. The Applicant worked as a parking lot attendant at Bally's for eight months, from March to November 1980, while attending dealer's school. (T52-15 to T53-13). There is no evidence to suggest that the Applicant's job performance was anything other than satisfactory.

The Applicant left the Bally job when he was placed on Harrah's payroll as a dealer-trainee. Because he had not been issued a casino employee license by November 1980, when Harrah's temporary casino permit was approved, he was unable to work as a dealer on the casino floor. He left Harrah's voluntarily, a result of his frustration with being unable to procure a license from this Commission. (T53-12 to T54-7; T66-16, to T67-8). No negative inference may be permissibly drawn from this departure.

The Applicant is now 27 years old. More than seven years have passed since his most serious offense occurred. Subsequent convictions for violations of the law have been minor. He has expressed contrition concerning his prior criminal actions (T17-11 to T17-14; T58-17 to T59-11) and has not had any difficulties with the law for almost two and one half years. As a consequence of his experiences, the Applicant is now a more mature individual. He has acknowledged his responsibilities as an adult, particularly his support obligations to his children. (T58-17 to T59-11; T60-10 to T61-6; T62-9 to T62-24). He has improved his educational and vocational skills in order to be better able to provide for his family, and he has worked without incident in the casino hotel industry in Atlantic City. In light of these considerations, we find sufficient credible evidence to conclude that the Applicant has demonstrated his rehabilitation pursuant to the criteria set forth in Section 90(h).


The ALJ found that the Applicant had failed to establish by clear and convincing evidence his good character, honesty and integrity. That conclusion was based in large measure upon his finding that the Applicant had not demonstrated his rehabilitation. While the proofs necessary to establish rehabilitation and a reputation for good character, honesty and integrity are not necessarily coextensive, there is, in most instances, significant overlap. See, In the Matter of the Application of Charles Clenthscale for Licensure as a Casino Employee, supra at 22. The facts in this case substantiate this principle. The factors that support our finding of rehabilitation are equally supportive of a demonstration of good character, honesty and integrity. Hence, in light of our findings and conclusions on the issue of rehabilitation, we

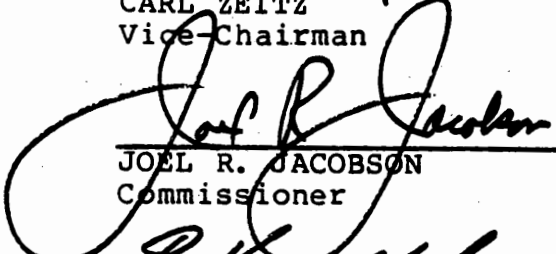
conclude that the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence.

-For the foregoing reasons, we find the Applicant, Chester R. Brathwaite, to have established by clear and convincing evidence his rehabilitation from a disqualifying conviction listed in N.J.S.A. 5:12-86(c)(1). See, N.J.S.A. 5:12-90(h). He has further established by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b). Therefore, based on those findings, we grant the casino employee license application of Charles R. Brathwaite.

NEW JERSEY CASINO CONTROL COMMISSION

BY:

  
CARL ZEITZ  
Vice-Chairman

  
JOEL R. JACOBSON  
Commissioner

  
E. KENNETH BURDGE  
Commissioner

  
DON M. THOMAS  
Commissioner

DATED: June 1, 1983



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 0007-82

AGENCY DKT. NO. 81-EA-357

**IN THE MATTER OF THE APPLICATION  
OF CHESTER BRAITHWAITE FOR  
LICENSURE AS A CASINO EMPLOYEE  
(CRAPS DEALER)**

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**APPEARANCES:**

**Chester Braithwaite, Pro Se**

**William E. Mountford, Jr., Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Record Closed: January 27, 1983**

**Decided: March 14, 1983**

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

**STATEMENT OF THE CASE**

This matter concerns the application of Chester Braithwaite, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Oivision), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a statutory disqualifier and had committed a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity for licensure.

PROCEDURAL HISTORY

Mr. Braithwaite filed his Personal History Disclosure Form - 2 (PHDF-2) with the Commission on July 11, 1980. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated September 3, 1981, 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 December 22, 1981, the applicant requested a hearing. On December 29, 1981, 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. and N.J.S.A. 52:14B-1 et seq. After procedural difficulties were resolved, a prehearing conference was held on August 16, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) Undisputed Facts

Mr. Braithwaite is 27 years of age. He has resided in Pleasantville, New Jersey, for his entire life.

The applicant was a member of the United States Army from March 22, 1974 to December 20, 1974, when he received an honorable discharge. The applicant earned a GED degree in 1978.

From January 1975 to January 1976, the applicant was employed by the Black Int. Detective Agency.

On the evening of December 31, 1975, the applicant was involved in an incident at a seven-eleven food store in Northfield, New Jersey. The applicant and a friend decided to rob the store. Each then went to his respective home and secured a weapon. The applicant had a 45-caliber automatic handgun. At approximately 8:27 p.m., they entered the store and committed the robbery. The applicant's accomplice threatened to shoot the manager of the store, while the applicant demanded money. They stole \$135 in cash and some food stamps (R-3). The applicant was arrested on February 12, 1977. He was charged with violations of N.J.S.A. 2A:141-1, larceny; N.J.S.A. 2A:151-1, assault with a dangerous weapon; N.J.S.A. 2A:98-1, conspiracy; N.J.S.A. 2A:151-5, armed robbery;

N.J.S.A. 2A:151-57, carrying a concealed weapon; and N.J.S.A. 2A:151-56, unlawful use of a dangerous weapon. The applicant pled guilty to armed robbery, and, the remaining charges were dismissed. The applicant was sentenced to an indeterminate term at the Yardville Correctional Center. From September 28, 1977 to August 3, 1978, the applicant served his sentence at the New Lisbon State School, where he was a cook. On August 3, 1978, the applicant was paroled. He recently completed his probation. The circumstances underlying the applicant's involvement in the incident were in dispute and will be discussed, infra.

On the evening of August 17, 1977, the applicant went to the home of his former girlfriend, who would not admit him into her home (R-4). The applicant broke in through the front door. When the police arrived he broke out through the back door. The applicant was arrested by the Pleasantville police and was charged with violations of N.J.S.A. 2A:170-36, malicious damage to property, and N.J.S.A. 2A:94-1, breaking and entering. The charges were not billed by an Atlantic County Grand Jury on September 29, 1977. On October 6, 1977, the Pleasantville Municipal Court dismissed the charge. The circumstances underlying the applicant's involvement in the incident were in dispute and will be discussed, infra.

From August 1978 to August 1979, the applicant was employed as a Laborer/Driver for the Sanitation Department of the Atlantic County Department of Public Works.

From October 1979 to March 1980, the applicant was employed as a Truck Driver by the Woodbine State School. He was unable to maintain this employment because of a tardiness problem.

On April 13, 1980, the applicant was involved in an incident at a shopping center in Middle Township, Cape May County. The applicant was at the shopping center with his girl friend, Karen Beachamp, and her two children. At approximately 12:20 p.m. and after the applicant had been in a nearby Jamesway store, a Middle Township police officer attempted to arrest the applicant in a parking lot on a charge of shoplifting merchandise with a value of \$5.99 (R-5). There was a scuffle between the applicant and the officer. The applicant was charged with violations of N.J.S.A. 2C:20-11, shoplifting; N.J.S.A. 2C:12-1(b)(5)(a) causing bodily injury to a police officer; and N.J.S.A. 2C:29-2, resisting arrest. The Cape May County Prosecutor's Office returned the matter to the

municipal court. On August 20, 1980, the shoplifting charge was dismissed (R-8). On June 11, 1980, the applicant was found guilty of the remaining two charges by the Municipal Court of Middle Township (R-9). The applicant was fined \$50 for each offense. The circumstances underlying the incident were in dispute and will be discussed, infra.

During 1980, the applicant successfully completed a craps dealer program of study at the Casino Career Institute. During his course of studies the applicant was employed as a parking lot attendant for approximately one month by Bally's Park Place Casino.

The applicant filed his PHDF-2 form with the Casino Control Commission on July 11, 1980.

From November 3, 1980 to February 5, 1981, the applicant was employed as a dealer-trainee by Harrah's Marina Hotel Casino. He quit this position without notice because of his difficulty in securing a license.

At approximately 11:33 p.m. on the evening of December 15, 1980, the applicant and a friend, Vincent Brown, went to the home of another person in Pleasantville. Their purpose was to confront another person because that person had hit a girl they knew. A confrontation occurred, wherein Mr. Brown struck an occupant of the home (R-6). On December 16, 1980, the applicant was arrested by the Pleasantville Police Department, and was charged with a violation of N.J.S.A. 2C:39-4, possession of an offensive weapon. On January 19, 1981, the Atlantic County Prosecutor's Office remanded the matter to municipal court and downgraded the charges to alleged violations of N.J.S.A. 2C:12-1a(1), assault - attempted bodily injury; N.J.S.A. 2C:12-1a(3), assault - by physical menace; and N.J.S.A. 2C:33-4a, harassment (R-10). On February 18, 1981, the applicant was found guilty of a violation of N.J.S.A. 2C:33-4a, harassment, by the Pleasantville Municipal Court. The applicant was fined \$100 and \$25 costs. The applicant was found not guilty of the remaining charges. The circumstances underlying the incident were in dispute and will be discussed, infra.

From April 18, 1982 to August 31, 1982, the applicant was employed as an installer by the Energy Department of the Atlantic Human Resources, Inc. This position was terminated because of a lack of funding (P-1).

Other than the employment stated herein, the applicant has been unemployed.

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

**(B) DISPUTED FACTS**

In dispute were the applicant's conduct underlying the four occasions on which he was arrested and charged with violations of criminal laws and his good character, honesty and integrity.

Mr. Braithwaite described his conduct during the incident of December 31, 1975. The applicant stated that he was intoxicated and did not recognize the seriousness of his acts. He went along with his friends because he was an only child and wanted to be part of the group, and he did it for fun. The applicant admitted his guilt after his arrest.

Assuming, arguendo, that the applicant was intoxicated, this cannot serve to mitigate the nature of his involvement in the incident. His state of intoxication was voluntary, and he must be held accountable for his actions thereafter. In addition, the applicant testified that he and his accomplice returned to their respective homes to secure a weapon. It is apparent that the applicant had the presence of mind to formulate the plan, to commit the crime, to return to his home in a neighboring town in order to secure a weapon, to return to the store and to commit the crime. Whatever state of intoxication the applicant may have been in, he was fully capable of and had complete recollection of the events leading up to and including the commission of the crime. Accordingly, I am not persuaded that the applicant's state of intoxication exculpates him from his responsibility for the commission of the offense. The fact that he may have admitted his guilt at the time of his arrest, is of little significance given the fact that the arrest occurred 14 months after the crime.

The applicant also described his conduct on the evening of August 17, 1977. Because a friend of his had been killed in a car crash that evening, he and mutual friends were so upset that they drank to forget their sorrows. The applicant did not feel that he could return to his own home due to his state of intoxication. Therefore, he went to his former girl friend's house. Although the applicant admitted breaking into and out of the home, he attributed his conduct to excessive drinking.

Again, there was no evidence offered to refute the explanation offered by the applicant. Nevertheless, the applicant voluntarily became intoxicated and must be held accountable for his actions. It is further noted that the applicant had a full recollection of his conduct.

With regard to the incident of April 13, 1980 in Middle Township, the applicant testified that he had had made a purchase of a hat and two other small items at the Jamesway store. The applicant tried on the hat that he subsequently purchased in front of a mirror in the sunglasses department, because it was the only mirror available. He paid for his purchases and he did not shoplift any item. The applicant returned to the laundromat where his girl friend was washing clothes. The applicant was approached by the police officer, who requested his sunglasses. The applicant claimed that the sunglasses were old, scratched and broken. The officer grabbed him by the throat and he was unable to breathe. As he tried to release himself from the officer's grasp, they fell to the ground. This incident precipitated the charges against him. The applicant claimed that he did not resist arrest. The applicant also stated that his assigned public defender did not appear on his behalf at the municipal court hearing.

I am persuaded to believe the applicant's testimony to the effect that he did not shoplift any merchandise. With regard to the remaining charges, I am bound and compelled by the principles of res judicata and collateral estoppel not to go behind the convictions. Nevertheless, I am persuaded to believe that the applicant's conduct, although it was sufficient for a finding of guilty on the two charges, was not overly serious. This conclusion was based upon the applicant's description of his conduct and upon the minimum penalty imposed.

Last, the applicant described his conduct on the evening of December 15, 1980. Although he knew there was going to be a fight, he accompanied Vincent Brown, ostensibly to guarantee a fair fight. Nevertheless, the applicant claimed that he was surprised when Mr. Brown pushed one of the occupants of the house. Following the shoving incident, Mr. Braithwaite and Mr. Brown ran away from the residence. While retreating, the applicant picked up a stick for self-defense. The applicant stated that he was just there and didn't do anything.

Although the applicant's testimony is at variance with the description of the incident contained in the police report, I am persuaded to believe the testimony of the

applicant to the extent that he did not possess a weapon at the time of the incident. However, the applicant's explanation of the purpose for his being at that location, i.e., knowing that a fight might take place, was inconsistent with his testimony that he did not expect the shoving incident to occur. The applicant's explanation of his involvement in the incident did not diminish the significance of his conviction. I am persuaded to believe that the applicant knowingly went with Mr. Brown with the expectation that a fight would occur and with the expectation that he would be involved.

The applicant also testified regarding his character, honesty and integrity. The applicant conceded that he was not an "angel," but contended that he was not a criminal, and that he has served his time. The applicant stated that he is now a man and has fathered three children, for which he is responsible. He needs a job and the casino industry provides him the only opportunity for employment.

Aside from his testimony, the only evidence offered in support of his character, honesty and integrity was the letter from Lance Rogers, Energy Manager for the Atlantic Human Resources, Inc. (P-1). Mr. Rogers stated that the applicant's "past work habits were exceptional and he was able to handle any and all responsibilities with great ease."

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

1. On the evening of December 31, 1975, the applicant had voluntarily consumed alcoholic beverages prior to the commission of the robbery.
2. In spite of his consumption of alcoholic beverages, the applicant was fully capable of planning the crime, he returned to his home in a neighboring town to secure a weapon, he returned to the store and he committed the crime.
3. The applicant's consumption of alcoholic beverages does not excuse his conduct, for which he must be fully responsible.
4. The applicant's explanation that he participated in the crime in order to be a member of the group and for fun indicates a serious disregard for the laws of this State.

5. With regard to the incident of August 17, 1977, the applicant voluntarily consumed alcoholic beverages upon learning that a friend had been killed in a car accident.
6. The applicant, believing that he could not return to his home, broke and entered into the home of his former girl friend.
7. The applicant's consumption of alcoholic beverages does not excuse his conduct, for which he must be fully responsible.
8. With regard to the incident of April 13, 1980, the applicant did not shoplift any merchandise from the Jamesway store.
9. The applicant's conduct was mitigated substantially by his unrefuted explanation and by the minimum fine imposed.
10. With regard to the incident of December 15, 1980, the applicant's exculpatory explanation of his presence at and conduct during the incident was inconsistent and unpersuasive.
11. The applicant knowingly and willfully was present at and participated in the incident with the expectation that a fight would occur and with the expectation that he would participate in the fight.
12. Aside from the applicant's testimony and the letter from Mr. Rogers (P-1), there was no other evidence of the applicant's character, honesty or integrity.

#### DISCUSSION OF LAW AND CONCLUSIONS

##### (A) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense, which "would be under New Jersey law at the time of application violation of any of the following provisions of law" in regard to Title 2A of the New Jersey statutes be disqualified from licensure.

It was established that the applicant was convicted of a violation of N.J.S.A. 2A:151-5, additional sentence for armed criminals. However, this offense is not a listed statutory disqualifier. Nevertheless, N.J.S.A. 2A:151-5 only permits an additional sentence for persons who are convicted of the commission of an offensive or who attempt to commit other offenses when a weapon is in their possession. Given the fact that the applicant was charged with a violation of N.J.S.A. 2A:141-1, robbery, and given his concession that he was convicted of armed robbery, it is, by inference, concluded that the applicant was convicted of a violation of N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5, i.e., armed robbery. N.J.S.A. 2A:141-1 is an enumerated disqualifying offense.

I CONCLUDE that the applicant's conviction for armed robbery mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c (2).

(B) 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 criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino

gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knigh t v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons, . . . practices and associations related to" casinos and the "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contends that the applicant's conduct underlying the incidents in which he was involved on December 31, 1975, August 17, 1977, April 13, 1980 and December 15, 1980, establishes that his licensure would be inimical to the policies of the Act.

With regard to the applicant's conviction for armed robbery, a violation of N.J.S.A. 2A:151-5 is not a per se disqualifying offense. Nevertheless, it is evident that the applicant was armed with a firearm during the commission of the disqualifying offense of robbery, in violation of N.J.S.A. 2A:141-1. The fact that the applicant was armed is an aggravating circumstance and makes the robbery offense more heinous. Further, the applicant had a 45-caliber automatic handgun, which is an extremely dangerous firearm. Clearly, his conduct was far more serious than the disqualifying offense of robbery.

However, in regard to the applicant's conduct underlying the other incidents, there was no evidence that his conduct was so aggravating or otherwise serious that it would render his licensure inimical to the policies of the Act.

I **CONCLUDE** that the potential licensure of Mr. Braithwaite in regard to the incident of December 31, 1975, has been established, by the preponderance of the credible evidence, to be inimical to the policies of the Act. I further **CONCLUDE** that the applicant's conduct on August 17, 1977, April 13, 1980 and December 15, 1980, was not established, by the preponderance of the credible evidence, to be inimical to the policies of the Act.

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-80h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

Mr. Braithwaite has applied for licensure to be employed as a dealer. He would have responsibilities for actual gaming activities and would be in substantial contact with patrons of the casino and casino key employees.

In regard to the incident of the December 31, 1975, the applicant was convicted of armed robbery. Robbery alone is a serious and disqualifying offense. Further, armed robbery, especially when the perpetrator is armed with a 45-caliber automatic handgun, is a very serious offense, and establishes that there was a definite threat to the life of another person. Also, based upon the applicant's testimony it was evident that the incident was planned and premeditated. The applicant was 19 years of age at the time. There were no social conditions which contributed to the offense. The fact that applicant had consumed alcoholic beverages prior to the incident does not serve to mitigate, rather it indicates that his conduct was more serious in nature.

With regard to the incident of August 17, 1977, although there was no conviction, the applicant admitted that he broke into and out of the house of his former girl friend. However, there was no evidence that the applicant's conduct was planned or premeditated. The applicant was 21 years of age at the time of the incident. There were no social conditions which contributed to the offense.

With regard to the incident of April 13, 1980, the applicant was convicted of two offenses which involved a police officer attempting to carry out his official responsibilities. Although these offenses are not listed statutory disqualifiers, because they involved the obstruction of a law enforcement officer they are serious. Nevertheless, the applicant's explanation of his conduct and the minimal penalty imposed mitigate in favor of the applicant. There was no evidence that the applicant's conduct was planned or premeditated. The applicant was 24 years of age at the time of the offense. There were no social conditions which contributed to the offense.

Last, in regard to the incident of December 15, 1980, although the offense was not a statutory disqualifier it was serious because of the nature of the applicant's conduct. He knowingly and purposely went to the location of the incident with the expectation that a fight would ensue and with the expectation that he would be a participant in the fight. Clearly, his participation in the incident was serious. The applicant was 24 (almost 25) years of age. There were no social conditions which contributed to the offense.

The applicant has been involved in four incidents of misconduct between December 31, 1975 and December 15, 1980. Although the first incident was the most serious, there is clear evidence of a pattern of misconduct. The applicant has not committed any offense with the use of a weapon since December 31, 1975; however, it is also evident that the applicant has not avoided participation in unlawful conduct, and has participated in such misconduct even when it was planned and premeditated.

There was no evidence that the applicant has made efforts to rehabilitate himself. The mere fact that the applicant has not repeated the most serious of his criminal acts does not establish rehabilitation. Although the applicant has successfully completed a course of study at a licensed gaming school, such is not positive evidence of rehabilitation in light of the fact that the applicant quit his employment as a dealer-trainee, albeit in the face of licensing difficulties. Further, although the applicant professes a strong desire for employment, his work record is not good. In fact, his five

months of employment in 1979-80 at the Woodbine State School, which is the longest period of employment since that time, ended on unfavorable terms.

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

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

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

The applicant's conduct underlying the four incidents in which he was arrested and was charged with criminal violations has been well-documented. It is sufficient to state that such conduct reflects in an extremely negative manner upon the applicant. Clearly, the applicant has not been able to rehabilitate himself from involvement in criminal misconduct. The fact that the more recent of his offenses are less serious than the first does not overcome the repetitive nature of his misconduct. Further, it was evident that the applicant was involved in misconduct subsequent to the filing of his application for licensure, and at the time he was employed as a dealer-trainee in the casino industry. Not only does this indicate a disregard for the criminal laws of this

State, but it evidences a serious lack of recognition of the obligations which casino licensure imposes upon him.

Last, aside from the applicant's testimony, there was no evidence of his good character, honesty and integrity. The applicant's testimony was insufficient to meet his burden of proof. This absence of essential proofs mandates disqualification.

I CONCLUDE that the applicant 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).

DISPOSITION

It is ORDERED that the application of Chester Braithwaite 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.

March 14, 1983  
DATE

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

Receipt Acknowledged:

March 15, 1983  
DATE

Sam Madruel  
CASINO CONTROL COMMISSION

Mailed to Parties:

March 19, 1983  
DATE

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

plb/e

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Letter from Lance Rogers, November 12, 1982
- R-1 Personal History Disclosure Form-2, Chester Radcliffe Braithwaite, filed with the Casino Control Commission on July 11, 1980 (27 pages)
- R-2 United States Department of Justice, Federal Bureau of Investigation, Identification Division-Rap Sheet (2 pages)
- R-3 Northfield Police Department-Arrest Report, February 12, 1977, and Investigation Report, December 31, 1975 (3 pages)
- R-4 Pleasantville Police Department-Investigation Report, August 23, 1977 (2 pages)
- R-5 Middle Township-Arrest Report, August 13, 1980, and Investigation Report, August 13, 1980, with attachment (4 pages)
- R-6 Pleasantville Police Department-Arrest Report, December 16, 1980, Investigation Report, December 16, 1980, and Supplementary Investigation Report, December 17, 1980 (3 pages)
- R-8 The State of New Jersey v. Chester R. Braithwaite, Jr., Docket Number C 6026-80, Municipal Court of Middle Township, Complaint and Disposition
- R-9 The State of New Jersey v. Chester R. Braithwaite, Jr., Docket Number C 6025-80, Municipal Court of Middle Township, Complaint and Disposition (2 pages)
- R-10 Pleasantville Police Department-Arrest Report, December 16, 1980, and The State of New Jersey v. Chester Braithwaite, Docket Number C-16275, Pleasantville Municipal Court, Complaint and Disposition with attachment (3 pages)

EXHIBIT NOT ADMITTED INTO EVIDENCE

- R-7 Id. Letter to Martin B. Danzinger from Rosemary Quinn, September 3, 1981 (4 pages)

WITNESS LIST

**For the Applicant:**

**Karen Beachamp**

**Chester Braithwaite**

**For the Division:**

**Joseph Sgromolo**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-107  
OAL DOCKET NO. CCC 3986-83  
APPLICATION NO. 16675-21

---

APPLICATION OF PHILLIP D. BROWNE  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 4, 1984, recommending that the casino employee license application of Phillip D. Browne be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 8, 1984, to modify the said Initial Decision and to deny the application,

IT IS on this 14th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The ALJ failed to make any findings or conclusions on the issue of the applicant's good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b), notwithstanding the fact that the prehearing conference order dated August 23, 1983, included such issue. Based upon the record, the Commission finds that Browne has not adequately demonstrated his qualifications for licensure 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 casino employee license application of Phillip D. Browne be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 14, 1984



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3986-83

AGENCY DKT. NO. 81-EA-107

**PHILLIP D. BROWNE,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

---

**APPEARANCES:**

**Phillip D. Browne, petitioner, Pro Se**

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

Record Closed: November 17, 1983

Decided: January 3, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Phillip D. Browne to the Casino Control Commission for a casino employee license permitting him to work in a casino as a slot attendant. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his record of arrests and convictions, 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 has demonstrated his rehabilitation, within the meaning of section 90h of the Casino Control Act, thereby overcoming the disqualification from licensure, pursuant to section 86c of the act, which otherwise would result from his convictions for receipt of stolen property, contrary to N.J.S.A. 2A:139-1, and larceny, contrary to N.J.S.A. 2A:119-2.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 10, 1981. The Division clarified and supplemented its objection to licensure of the petitioner by letter to the Casino Control Commission, dated January 25, 1983 (Exhibit R-6). The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

#### FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 34-year-old resident of Woodbury, New Jersey. The petitioner is married and is the father of two children. His wife, who is employed, is expecting their third child.

The petitioner was awarded a Bachelor of Arts Degree from Glassboro State College in October 1973 (Exhibit P-4). Graduate courses were completed by the petitioner at Rutgers University in June 1974 (Exhibits P-5 and P-6). The petitioner received a Substitute Teacher's Certificate for the public schools of Gloucester County on October 14, 1980 (Exhibit P-16). He is presently employed as a substitute teacher and as a part-time exterminator. The substitute teaching is performed approximately four days per week and his exterminating business is conducted on a door-to-door basis in the evening.

The petitioner's parents died when he was a child and he was raised by his aunt. Following his graduation from college, the petitioner obtained a social worker position with the State of New Jersey, which position he held for approximately three years. This employment ended when funding ceased and, as a result, the petitioner was unemployed and on the street. Drug use which had begun in college then became a major problem for the petitioner. Despite his education and his satisfactory upbringing, the petitioner became involved in criminal activity resulting from his drug addiction.

The petitioner's record of arrests and convictions is extensive and undisputed. According to the petitioner, his addiction to heroin and cocaine was expensive and he supported his drug habit by criminal activity. It was his testimony that he was never a good thief, because he was always nervous and jittery. His associates in the criminal activity often used him as a "getaway" driver.

Of particular importance are the petitioner's convictions for offenses which are specifically enumerated in the Casino Control Act under section 86c as disqualifiers from licensure. On October 10, 1975, the petitioner was arrested and subsequently indicted for burglary, contrary to N.J.S.A. 2A:94-1 and larceny, contrary to N.J.S.A. 2A:119-2. On December 16, 1976, the petitioner was convicted on the larceny count and on a downgraded charge of receipt of stolen property, contrary to N.J.S.A. 2A:139-1. Both the receipt of stolen property offense and the larceny offense are specifically enumerated disqualifiers from licensure, pursuant to section 86c of the Casino Control Act. In September 1979, the petitioner was arrested and subsequently indicted for receiving stolen property, contrary to N.J.S.A. 2C:20-7 (Exhibit R-1). The petitioner pled guilty to this charge and was sentenced on January 5, 1982, to three months in the Camden County Jail Work Release Program. On the same day, the petitioner received a concurrent three-month sentence in the work release program for a conviction upon a plea of guilty to the charge of possession of stolen credit cards (Exhibit R-1). The offense of receiving stolen property, contrary to N.J.S.A. 2C:20-7, is specifically enumerated in the Casino Control Act as a disqualifier from licensure, pursuant to section 86c.

In July 1980, the petitioner was arrested and subsequently indicted for larceny, in the third degree, contrary to N.J.S.A. 2C:20-3 (Exhibit R-2). On November 25, 1981, the petitioner was convicted upon a plea of guilty to this offense and he was sentenced on March 5, 1982, to a period of probation of three years, on the condition that he enroll into the Discovery House Drug Program. The offense of larceny in the third degree, contrary

to N.J.S.A. 2C:20-3, is specifically identified in section 86c of the Casino Control Act as a disqualifier from licensure.

In November 1980, the petitioner was arrested and subsequently indicted for receiving stolen property, contrary to N.J.S.A. 2C:20-7 (Exhibit R-3). On November 1, 1982, the petitioner was convicted upon a plea of guilty and he was sentenced on December 3, 1982, to three years probation, with the special condition that he serve 180 days in the Gloucester County Jail. In addition, the petitioner was required to complete the Faith Farm drug rehabilitation program. The petitioner was permitted to apply to the court for a vacation of the 180-day jail term upon his successful completion of the program. In fact, Faith Farm certified the petitioner's successful completion of the drug rehabilitation program on December 6, 1982 (Exhibit P-14). As noted, the offense of receiving stolen property, contrary to N.J.S.A. 2C:20-7, is specifically identified in section 86 of the Casino Control Act as a disqualifier from licensure.

The petitioner's last arrest occurred in January 1982, when he was charged with unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5 (Exhibit R-5). On March 23, 1982, the petitioner was indicted for this offense, and on June 14, 1982, he was convicted of this offense upon a plea of guilty. On September 23, 1982, the petitioner was sentenced to a probationary term of three years and continuation in the Faith Farm inpatient drug rehabilitation program.

In setting forth her reasons for the sentence imposed upon the petitioner, Superior Court Judge Mary Ellen Talbott stated:

This defendant pleaded guilty to indictment 1701-81, charging him with unlawful possession of a weapon. The court has received and carefully reviewed his Pre-Sentence Report prepared by the Camden County Probation Department. The defendant has resided at Faith Farm for about the last five months. The court wants to remind the defendant that he is at a crossroads in his life and that he should stay away from drugs completely. In the past the defendant has used his intelligence to enrich himself at other peoples' expense. The defendant can now learn to use his education and intelligence to help himself stand on his own two feet and better himself the right way. The court accepts the plea agreement in this matter and believes it is a proper one.

It was the testimony of the petitioner that he served a total of six months incarceration for his convictions and performed in a work release program for a total of

four months. In addition, the petitioner spent approximately eight months in the Discovery House and Faith Farm rehabilitation programs. The petitioner's last drug use occurred at the end of 1981. According to the petitioner, he summons the strength to avoid the temptation of drugs on a day-to-day basis. He believes he has completely broken his drug habit and can now be a productive worker. The petitioner possesses casino employment experience. According to the personal records of the Golden Nugget Casino Hotel (Exhibit P-2), the petitioner began with the Casino in its mandatory training program in April 1980. He was moved to the permanent payroll in July 1980, working as a slot attendant. When the Division of Gaming Enforcement objected to the petitioner's licensure as a casino employee, in March 1981, he was shifted from the casino floor to the position of stage attendant in the hotel facility. The petitioner was laid off from this position in December 1981. He candidly acknowledged that he continued to be somewhat involved with drug use while he was employed at the Golden Nugget.

The petitioner had praise for his wife because she has stayed with him through his difficulties. It is his contention that he is now ready to assume a leadership role in his family. According to the petitioner, the Faith Farm program helped him to achieve a healthy mind and body. He has had no arrests since his completion of the drug rehabilitation program and he believes that he is worthy of another chance. He wishes to provide a better life for his wife and family and is willing to work hard to achieve it. The petitioner feels that his understanding of his past will make him a better person.

By letter dated November 23, 1982 (Exhibit P-1), Food and Beverage Controller W.E. Jordan, Jr., stated that he has known the petitioner for more than 14 years and that he believes the petitioner to be a man of initiative, determination, intellect and a will for survival. Mr. Jordan would recommend the petitioner for casino employment.

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

#### CONCLUSIONS OF LAW

Pursuant to Section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing

evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth at section 86. Pursuant to section 86c, the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of an enumerated statutory disqualifier from licensure.

The petitioner's 1976 convictions for larceny, in violation of N.J.S.A. 2A:119-2, and receipt of stolen property, in violation of N.J.S.A. 2A:139-1 constitute automatic disqualifiers from licensure under Section 86c(1) of the act. His 1982 convictions for receiving stolen property, in violation of N.J.S.A. 2C:20-7 and larceny in the third degree, in violation of N.J.S.A. 2C:20-3, also constitute automatic disqualifiers from licensure under section 86c(2) of the act.

Notwithstanding the undisputed fact that the petitioner has been convicted in five instances of offenses which are specifically identified as disqualifiers from licensure, he shall not be denied a casino employee license on the basis of these convictions, provided that he has affirmatively demonstrated his rehabilitation, pursuant to section 90h of the act. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the applicant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in

correction work release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner has a lengthy criminal arrest and conviction record. His first convictions for enumerated disqualifiers, receipt of stolen property and larceny, occurred in 1975, when he was 26 years old. His drug use was a significant contributor to his criminal activity. He was again convicted of larceny and receiving stolen property seven years later, in 1982. His last arrest, for unlawful possession of a weapon, occurred in January 1982, when the petitioner was 32 years old. Thus, it is clear that the petitioner's offenses were repeated over a significant period of time, and were, at least in part, the result of his drug addiction.

The petitioner successfully completed a drug rehabilitation program and has remained drug free for a period of two years. He is gainfully employed as a substitute teacher and an exterminator. He seeks licensure as a casino slot attendant, a position which he held successfully for approximately one year. He also performed successfully as a casino hotel employee for approximately eight months.

All of the petitioner's criminal convictions occurred after his graduation from college. In a thoughtful and articulate manner, the petitioner set forth how his drug dependency contributed to his criminal conduct. He presently has a constructive attitude toward his goals and responsibilities and it is likely that he will at some time in the near future be able to completely put behind him his criminal past. However, his criminal record is too extensive, too serious, with five convictions of offenses which are disqualifiers from licensure, and too recent for the petitioner to have affirmatively demonstrated his rehabilitation. He is well on his way to complete rehabilitation, but too little time has passed since his last drug use and his last arrest for unlawful possession of a weapon in 1982.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of offenses which are enumerated statutory disqualifiers from licensure, within the meaning of section 86c of the Casino Control Act. I further **CONCLUDE** that the petitioner has failed to overcome his disqualification from licensure on the basis of his convictions of offenses enumerated under section 86c of the act, by failing to meet his burden of demonstrating, by clear and convincing evidence, his rehabilitation, within the meaning of section 90h of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Phillip D. Browne, 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.

January 3, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

04 JAN 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan 6, 1984  
DATE

Ronald S. Turkenfro  
OFFICE OF ADMINISTRATIVE LAW

sc

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Letter, dated November 23, 1982
- P-2 Letter, dated November 25, 1981
- P-3 Employee Separation Record, dated November 23, 1981
- P-4 Diploma, dated October 1973
- P-5 Certificate, dated June 1, 1974
- P-6 Certificate, dated June 28, 1974
- P-7 Notification of Examination
- P-8 Application for Employment
- P-9 Letter, dated August 18, 1983
- P-10 Resume
- P-11 Statement of Earnings
- P-12 Payment records
- P-13 Letter, dated July 27, 1983
- P-14 Faith Farm Completion Certificate, dated December 6, 1982
- P-15 Substitute teacher approval, Woodbury Board of Education
- P-16 Substitute teacher Certificate, dated October 14, 1980
- P-17 Faith Farm brochure

FOR THE RESPONDENT:

- R-1 Certified Indictment and Judgment of Conviction, filed January 5, 1982
- R-2 Certified Judgment of Conviction, filed December 13, 1982
- R-3 Certified Indictment and Judgment of Conviction, filed December 21, 1982
- R-4 Certified Indictment, filed November 8, 1982
- R-5 Certified Indictment and Judgment of Conviction, filed November 8, 1982

WITNESSES

FOR THE PETITIONER:

Phillip D. Browne

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-405  
OAL DOCKET NO. CCC 7556-81  
APP. NO. 17654-21

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IN THE MATTER OF THE APPLICATION  
OF JAMES CARTY FOR LICENSURE  
AS A CASINO EMPLOYEE  
(SECURITY EMPLOYEE)

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 10, 1982, recommending that the application of James Carty for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on December 23, 1982; and the Applicant having filed a reply to the exceptions on January 20, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 23, 1983, to reject the said Initial Decision and to deny the application for licensure,

IT IS on this 25th day of February 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of James Carty be and hereby is denied based upon the reasons set forth on the record of the Commission's public meeting of February 23, 1983, and the Commission Decision which will be issued forthwith, which are incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), the Applicant may not reapply for licensure as a casino key employee or casino employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of this casino employee license application shall not prevent Mr. Carty from retaining his casino hotel employee registration pursuant to N.J.S.A. 5:12-91; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement and the authorized agents of all currently operating casino's within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER READ, CHAIRMAN

BY: \_\_\_\_\_



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 25, 1983

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NOS. 81-EA-405; 82-EA-14  
OAL DOCKET NOS. CCC 7556-81; CCC  
1114-82  
APPLICATION NOS. 17654-21; 22384-21

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IN THE MATTER OF THE APPLICATION OF  
JAMES CARTY FOR A CASINO EMPLOYEE  
LICENSE (SECURITY OFFICER)

COMMISSION DECISION

AND

IN THE MATTER OF THE APPLICATION OF  
JAMES F. CROWN FOR A CASINO  
EMPLOYEE LICENSE (SECURITY OFFICER)

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INTRODUCTION

These matters have been brought before the Commission pursuant to the applications of James Carty and James F. Crown, each of whom seeks a casino employee license for the position of security officer. The applicants are former Philadelphia police detectives, convicted in March 1978 of conspiracy to deprive certain Philadelphia citizens of their civil rights, in violation of 62 Stat. 896, 18 U.S.C.A. §241. The Division of Gaming Enforcement (DGE) contends that each of these applicants has been convicted of an offense which renders his licensure inimical to the policies of the Casino Control Act and

casino operations pursuant to section 86(c)(4).<sup>1</sup> Further, the DGE asserts that, in light of all the facts and circumstances, neither applicant has demonstrated by clear and convincing evidence his rehabilitation from this disqualification pursuant to section 90(h). Because the facts and circumstances of the convictions arise from the same setting and the legal issues to be resolved are identical, these cases were consolidated for purposes of this opinion.

#### PROCEDURAL HISTORY

##### James Carty

On May 12, 1980, James Carty filed an application for licensure as a casino employee with the Commission. The application was forwarded to the DGE for the appropriate background investigation. The DGE submitted the results of its investigation in two letter-reports dated July 21, 1981, and August 18, 1981. Based upon those investigative reports, the Commission advised Mr. Carty that there was a substantial possibility that his application for a casino employee license would be denied, but that he had the right to a hearing prior to final action by the Commission. Mr. Carty requested a hearing by letter dated October 18, 1981, and the matter was thereafter transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107(a)(1).

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1. Throughout this decision, sections of the Casino Control Act are sometimes cited by section number only. The full citation is found by adding the prefix "N.J.S.A. 5:12-"

The OAL filed its initial decision on Mr. Carty's casino employee license application on December 10, 1982. The Administrative Law Judge (ALJ) recommended the granting of Mr. Carty's application, finding that Mr. Carty's federal conviction did not render his licensure inimical to the Casino Control Act pursuant to section 86(c)(4) and that he had met his burden of establishing by clear and convincing evidence his good character, honesty and integrity pursuant to section 90(b). The DGE filed exceptions to the initial decision with the Commission on December 23, 1982. Mr. Carty filed a reply to those exceptions on January 20, 1983.

James F. Crown

On October 7, 1980, James F. Crown filed a casino employee license application with the Commission. The application was duly forwarded to the DGE, which reported the results of its investigation in a letter-report dated December 23, 1981. Based on that investigative report, the applicant was advised that there was a substantial possibility that the Commission would deny his application for licensure. The applicant requested a hearing by letter dated February 4, 1982, and the matter was thereafter transmitted to the OAL as a contested matter pursuant to section 107(a)(1) and N.J.S.A. 52:14F-1 et seq.

The OAL filed its initial decision concerning the license application of Mr. Crown with the Commission on December 3, 1982. In that decision, the ALJ recommended that

the application be granted. That recommendation was based on the ALJ's findings that Mr. Crown's federal criminal conviction did not render his licensure inimical pursuant to section 86(c)(4), and that Mr. Crown had met his burden of demonstrating his good character, honesty and integrity by clear and convincing evidence. The DGE filed exceptions to the initial decision with the Commission on December 15, 1982. Mr. Crown filed a reply to the exceptions on December 28, 1982.

#### FACTS

The applicants in these contested cases were two of six Philadelphia detectives who were convicted by a jury in United States District Court for the Eastern District of Pennsylvania in March 1978 of conspiring, under the color of Pennsylvania law, to violate the civil rights of seven persons questioned in connection with a 1975 arson murder. The police detectives appealed their convictions to the Third Circuit Court of Appeals, which affirmed the convictions in a written opinion, United States v. Ellis, et al., 595 F. 2d 154 (3 Cir. 1979). In the instant matters the ALJ rejected the applicants' assertions that they were not involved in coercive interrogations of suspects of the firebombings. However, he found their participation was limited. The ALJ drew heavily upon the factual analyses of Circuit Judge John J. Gibbons in his Third Circuit Court opinion for the findings of facts in the initial decision. Based upon our review of the federal court trial transcripts, we also find that the recitation of facts in the Ellis opinion most closely reflect the events and activities of the applicants and their co-defendants during the

criminal conspiracy. Therefore we adopt the facts as set forth in that opinion for purposes of these proceedings.

Nevertheless, in the interests of clarity and completeness, a brief summary of the facts in these cases follows.

The applicants were involved in the investigation of the fire bombing of the home of Radamas Santiago in the Feltonville section of Philadelphia in the early morning hours of October 5, 1975. The arson resulted in the deaths of five individuals: Mr. Santiago's wife, three of his children and Louis Carachini, a guest in the home. Another friend of the family, Nelson Garcia, was asleep on the front porch at the time of the fire bombing. Garcia fled the house seeking aid, and saw Robert Wilkinson in a car nearby. Garcia incorrectly identified Wilkinson as the man who was responsible for the fire bomb. Wilkinson was arrested by Philadelphia detectives and taken to the Philadelphia Police Administration Building where he was interrogated by applicant Crown and Detective William Jones.<sup>2</sup>

During his interrogation, Wilkinson, an essentially illiterate young man, maintained his innocence during repeated questioning by Crown and Jones. The detectives refused to read to Wilkinson the consent form for a polygraph test, refused to allow Wilkinson's wife to read the form for him and threatened to have his young child taken from him if Wilkinson refused to sign it. Believing their threats, Wilkinson signed the consent form. After the polygraph test, Crown and his partner began a systematic beating of Wilkinson to coerce a confession from him consistent with the facts

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2. The ALJ incorrectly identified applicant Crown's partner in the interrogation as Detective John Ellis. See, Letter to Don M. Thomas, Acting Chairman from Scott E. Becker, Esq., dated December 15, 1982.

developed from the police investigation at that time, i.e., Garcia's identification. Eventually, Wilkinson's resistance gave way and, at approximately 11 a.m., he signed a confession for a crime he did not commit. Wilkinson's injuries as a result of his beating were confirmed by prison photographs, the prison doctor, and by neighbors who observed Wilkinson at his arraignment at police headquarters. Wilkinson was wrongfully convicted of the five murders and served fifteen months in prison before the true facts became known.

Applicant Carty was involved in the interrogation of two other suspects in the arson murder investigation, Ronald Hanley and David McGuinnis.<sup>3</sup> Carty, along with a number of his co-defendants, beat Ronald Hanley over a number of hours, resulting in the laceration of Hanley's nose and causing him at one point to lose control of his bowels. Hanley was forced by the officers to remain in his soiled clothing for almost an hour and was subjected to ridicule by the officers before he was allowed to clean himself. After almost fifteen hours in police headquarters, Hanley signed a confession which dovetailed with the Wilkinson confession obtained earlier. Hanley's injuries were confirmed by prison photographs and the prison physician.

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3. McGuinnis and Hanley were later found guilty of violating the civil rights of the five victims of the fire bomb. They were responsible for the fire bombing of the Santiago home rather than Wilkinson .

David McGuinnis was subjected to beatings from applicant Carty and co-defendant Rosborough McMillan while they interrogated him concerning the arson murders. McGuinnis eventually signed a confession to an earlier fire bombing of Radamas Santiago's automobile but his true role in the arson murders was not admitted.

The applicants had no direct role in the interrogation of the remaining individuals who were subjected to illegal detention and coercive interrogation. As stated by the ALJ in the Crown initial decision, "[t]here is no need to detail the interrogations of the other Philadelphia residents except to state that it is clear that grievous and manifold wrong was done to them." I.D. (Crown) at 5.<sup>4</sup>

At the criminal trial, both applicants maintained that the beatings did not take place. At their respective hearings, neither applicant admitted to any wrongdoing. Carty denied at his hearing that he interrogated either Hanley or McGuinnis. (2T239; 2T277). Crown denied beating Wilkinson during his interrogation. (1T129).

Both applicants, along with their co-defendants, were

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4. "I.D. (Crown) refers to the Initial Decision dated December 7, 1982, concerning the application of J.F. Crown for a casino employee license.

I.D. (Carty) refers to the Initial Decision dated December 10, 1982, concerning the application of J. Carty for a casino employee license.

1T refers to transcript of proceedings before ALJ R. Jackson Dwyer on July 15, 1982, concerning the application of James F. Crown for a casino employee license.

2T refers to transcript of proceedings before ALJ R. Jackson Dwyer on July 19, 1982, concerning the application of James Carty for a casino employee license."

found guilty of the conspiracy count of the indictment and were sentenced to an 18 month prison term (R-3 (Carty); R-2 (Crown)). Each served approximately four and a half months in a federal minimum security facility.

Mr. Carty is a 22 year veteran of the Philadelphia Police Department. He retired in September 1979 after serving his prison term. He worked briefly for Carney Smith Insurance Consultant as an investigator. On August 5, 1980, he was hired by Harrah's as a security officer, working in the hotel portion of the casino hotel on a temporary license.<sup>5</sup> His evaluations by his supervisors at Harrah's have been extremely favorable. Several co-workers, who were also former members of the Philadelphia police department, testified as character witnesses at the hearing. He has been promoted while employed by Harrah's.

Mr. Carty has had no further involvement with the criminal justice system since his 1978 federal conviction. He was granted a permit to possess firearms (P-1 (Carty)). At the hearing, Mr. Carty testified that he has not done any community work, due to the lack of available time. (2T293-6 to 2T293-8; 2T295-17 to 2T295-21).

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5. N.J.S.A. 5:12-90(f) provides that all "casino security employees" must be licensed as casino employees. At the time Messrs. Carty and Crown were hired by Harrah's, persons who had casino employee license applications pending were permitted to work on temporary licenses and, later, on hotel registrations, in the hotel portion of the casino hotel complex. This practice is no longer permitted.

Mr. Crown is a 10 year veteran of the Philadelphia police force. Aside from his federal conviction, Mr. Crown has had no other criminal problems. It was noted in the presentence report that Mr. Crown was not one of the most egregious offenders among the six co-defendants (P-1 (Crown)).

However, he was sentenced to the same 15 month prison term and served four and a half months in a minimum security facility.

After his prison release, Mr. Crown was unemployed for several months. He was hired by Harrah's in August 1980 as a security officer in the hotel portion of the casino hotel.<sup>6</sup> At the hearing, a number of character witnesses testified to Mr. Crown's present good character and his fine work performance at Harrah's. These persons included his supervisor and co-workers who were also former members of the Philadelphia Police Department. His employment evaluations were also placed into evidence (P-2 (Crown)).

Mr. Crown testified that because of child care obligations and his work schedule, he has not participated in any community activities (1T126-9 to 1T126-22).

#### INIMICAL ANALYSIS

The criteria for determining whether a conviction would render an applicant's licensure inimical to the Act and casino operations was set forth in In the Matter of the Application of

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6. See footnote 5.

Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (1979). It states in pertinent part:

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 time are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would...encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. [Id. at 15].

After reviewing the evidence concerning the applicants' involvement in the firebomb investigation, their unblemished prior record as police officers, their commendable present work record with Harrah's, and, in the case of James Carty, his strong religious beliefs, the ALJ found that, in balance, the federal convictions did not render their licensure inimical to the Casino Control Act and casino operations pursuant to section 86(c)(4).

The DGE, in the exceptions filed in both cases, urged that the ALJ's finding that the federal conviction did not disqualify the applicants be rejected. It argued that the applicants were public servants at the time of their criminal conduct. Moreover, they were acting under color of law when they conspired to deprive the suspects and witnesses of their basic civil rights while in police custody. By their actions,

the applicants betrayed the public trust and responsibilities they held as police officers. The DGE also emphasizes the fact that this betrayal involved, as the Third Circuit characterized it, "barbaric" methods of investigation U.S. v. Ellis, supra, at 157.

The DGE further noted that the applicants sought licensure in the position of security officers. The nature and responsibilities of that position are very similar to those of a police officer. In light of the applicants' prior abuse of their position as policemen, as evidenced by the federal conviction, the DGE argued that the applicants' licensure would undermine the public confidence in gaming operations. Therefore, in its view, the applicants' federal conviction renders their licensure inimical to the Casino Control Act and gaming operations.

In applying the Resorts analysis to the facts in these cases, we are required to determine whether public confidence in the integrity of gaming operations and the regulatory system would be undermined by the participation of these applicants in this sensitive and strictly controlled industry. Further, upon weighing all the facts surrounding the conviction and the applicants' subsequent conduct, we must find the applicants disqualified if, as a result of their licensure, the danger of unsuitable, unfair or illegal practices in the gaming industry would be created or enhanced. After carefully reviewing all

the evidence presented, we must conclude that each applicant is disqualified under section 86(c)(4) as a result of his federal conviction.

Whenever a public officer is found guilty of criminal conduct, the public's respect and belief in the moral authority of government is shaken. When a police officer abuses his position and mistreats those in his custody, he undermines the foundation of our governmental system. As has been said many times, we live in a society of laws, not men. When those entrusted with the enforcement of the law violate the law, for whatever ends, the essential fabric of an ordered society is torn.

It is with this understanding that we evaluate the offense and the events that surrounded it, as well as the conduct of the applicants since the convictions.

According to the indictment, while acting under color of law, these two applicants conspired with other officers in the Philadelphia Police Department to "injure, oppress, threaten and intimidate [suspects and witnesses held in their custody] in the free exercise and enjoyment of the rights secured to them by the Constitution and laws of the United States." (R-1 (Crown); R-2 (Carty)). As the Third Circuit found, "[T]here is more than ample evidence in this record of a common scheme or plan to solve a crime to the satisfaction of the conspirators by whatever means were necessary, including the violation of suspects' and witnesses' constitutional rights." U.S. v. Ellis, supra, 595 F. 2d at 160.

The methods employed by the applicants and their co-defendants are shocking. The ALJ found, and we concur, that

James Carty was a participant in the beating of suspects Hanley and McGuinnis (I.D. (Carty) at 6). Those beatings resulted in two confessions. One of those confessions, Hanley's, was completely false and implicated an innocent man, Robert Wilkinson, in the murder of five persons. The ALJ found, and we agree, that, with one of his co-defendants, Mr. Crown coerced Robert Wilkerson into a false confession, admitting to a crime he did not commit (I.D. (Crown) at 5). The ALJ found as fact in both cases that the eight suspects and witnesses taken to police headquarters were subjected by the conspiring officers to physical abuse, lengthy detainment and threats of harm to themselves and their children. (I.D. (Crown) at 4-7; I.D. (Carty) at 4-7).

In our estimation, the applicants, in their participation in the criminal conspiracy, flagrantly betrayed the public trust. An innocent man spent 15 months in prison due in large part to the "confessions" coerced by the applicants. The harm caused by the actions of the applicants goes beyond the injury inflicted on the eight citizens who bore the immediate brunt of the investigative methods utilized by the applicants. The public at large, and the law enforcement agencies in which we instill trust and confidence, were also damaged. We look to police officers for the enforcement of our law and the protection of our rights. If they, as the applicants did here, break the law in furtherance of official duties, their actions undermine the whole purpose behind the rule of law.

The conduct of the applicants since the conviction has been very good. However, it does not, in our judgment, overcome the serious negative impact of the federal conviction. The applicants appeal to this Commission to be entrusted with the powers and responsibilities of security officers within a licensed casino. There has been no regret expressed as to their past criminal conduct. There has been only the desire to place the conviction in the past and to go forward. Based on the evidence presented at the hearing, we find that licensure of the applicants, in light of the federal conviction, would undermine the public's confidence in the regulatory system and the public policies of the Act. Therefore, we find that the convictions of James Carty and James Crown for conspiracy to deprive citizens of their protected rights, in violation of 18 U.S.C.A. §247, render their licensure inimical to the Casino Control Act and casino gaming.

#### REHABILITATION

The thorny issue of the rehabilitation of a police officer disqualified under section 86 is always a difficult one for the Commission to resolve. In the Matter of the Application of Thomas Keenan for a Casino Employee License, Docket No. 80-EA-244 (1981); In the Matter of the Application of Elmer L. Jones for a Casino Employee License (Security Officer), Docket No. 80-EA-154 (1981). Since the ALJ did not find the respective applicants to be statutorily disqualified, he dismissed the rehabilitation issue without analysis. However, rehabilitation was an issue raised in the prehearing conference orders in each case and the parties had the opportunity to fully litigate it at their respective hearings.

As we stated earlier, we view the nature and circumstances of the federal offense to be extremely serious. Of particular concern is the abuse of the applicants' positions in conducting their duties as police detectives. Aside from his criminal conviction, Mr. Carty has an unblemished twenty-two year record of employment with the Philadelphia Police Department. There was no evidence presented at the hearing of any social conditions which may have contributed to the offense.

Mr. Carty produced numerous character witnesses at the hearing. Most of them were acquainted with him during his tenure with the Philadelphia police force. A number of the witnesses were members of Harrah's security force as well as former Philadelphia police officers. None of those witnesses had their opinions affected by Mr. Carty's conviction. Commendations given to Mr. Carty during his police service employment and positive evaluations from Harrah's were introduced into evidence.

The seriousness of the federal offense, Mr. Carty's abuse of his position as a police officer resulting in injury and incarceration of an innocent man for fifteen months, the failure to this day to express any regret or remorse over his conduct, the similarity in the duties and responsibilities of the position now sought by the applicant and his former position as a police officer, outweigh any finding of rehabilitation at this time. Therefore, we conclude that Mr. Carty has not demonstrated by clear and convincing evidence his rehabilitation from his disqualifying conviction pursuant to section 90(h).

Mr. Crown also produced an array of witnesses who attested to his good performance as a police officer and as an employee at Harrah's. None of the witnesses believed that his conviction had any effect on his basic good character. He had an unblemished 10-year record with the police department, aside from his federal conviction, and had been promoted during his employment at Harrah's. Aside from his work and family, Mr. Crown has not engaged in any community activities. In weighing this evidence, we find that the seriousness of the offense, the abuse of Mr. Crown's former position of trust, the serious nature and ramifications of his conduct and his continued failure to show regret and remorse for his actions outweigh, at this time, any evidence of rehabilitation from his federal conviction. Therefore, we conclude that Mr. Crown has failed to demonstrate by clear and convincing evidence his rehabilitation from his disqualifying conviction pursuant to section 90(h).

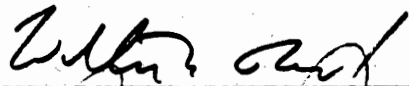
GOOD CHARACTER, HONESTY AND INTEGRITY

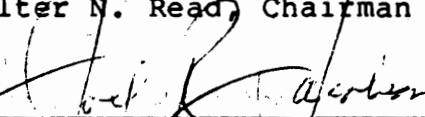
The ALJ found that both the applicants had demonstrated by clear and convincing evidence their good character, honesty and integrity as required by sections 89(b)(2) and 90(b). In light of our findings of disqualifications, we reject this finding in each initial decision. Because of our finding of disqualification pursuant to section 86(c), we do not find it necessary to make a finding on the applicants' good character, honesty and integrity.

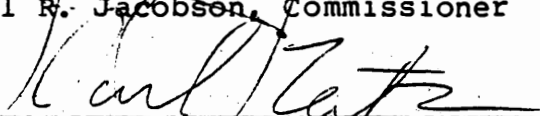
CONCLUSION

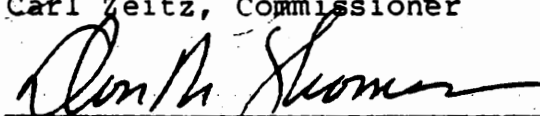
For the foregoing reasons, the initial decisions of the Office of Administrative Law are adopted in part and rejected in part as specified above. The application of James Carty for a casino employee license and the application of James Crown for a casino employee license are denied for the reasons stated herein.

NEW JERSEY CASINO CONTROL COMMISSION

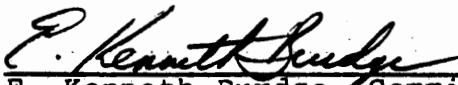
By:   
Walter N. Read, Chairman

  
Joel R. Jacobson, Commissioner

  
Carl Zeitz, Commissioner

  
Don M. Thomas, Commissioner

While I join in the Commission's decision to deny the casino employee license of James Crown, I believe that James Carty has demonstrated by clear and convincing evidence his rehabilitation from the federal conviction. Therefore, as to Mr. Carty's application, I respectfully dissent from my fellow Commissioners.

  
E. Kenneth Burdge, Commissioner

DATED: May 31, 1984



State of New Jersey

**FILED**

NEW JERSEY

DEC 10 1982

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION

**INITIAL DECISION**

OAL DKT. NO. CCC 7556-81

AGENCY DKT. NO. 81-EA-405

**IN THE MATTER OF THE APPLICATION  
of JAMES CARTY FOR LICENSURE AS  
A CASINO EMPLOYEE (SECURITY OFFICER)**

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**APPEARANCES:**

**Donald G. Targan, Esq., for applicant  
(Targan and Higbee, attorneys)**

**Rosemary Quinn, Deputy Attorney General, for respondent, Division of  
Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey,  
attorney)**

**Record Closed November 23, 1982**

**Decided December 10, 1982**

**BEFORE R. JACKSON DWYER, ALJ:**

James Carty (applicant) filed an application with the Casino Control Commission (Commission) including a Personal History Disclosure Form (PHD) No. 2 for licensure as a casino employee, security officer. The application was duly forwarded to the Division of Gaming Enforcement (Division) which conducted an investigation of the applicant. The Division submitted a letter report dated July 21, 1981 to the Commission recommending

licensure. On August 18, 1981, the Division submitted a follow-up letter report to the Commission stating in pertinent part "since the Division is not convinced that the applicant has demonstrated his rehabilitation from the civil rights violation by clear and convincing evidence, the Division cannot affirmatively recommend him for licensure and thus interposes an objection to his licensure as a casino employee." By letter dated October 13, 1981, the applicant was advised by the Commission that there was a substantial possibility that the Commission would deny his application for licensure. The applicant 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 July 19, 1982. The record was closed upon receipt of a memorandum from the applicant's counsel dated November 23, 1982.

#### UNDISPUTED FACTS

The applicant, James Carty, is 49 years old and began his employment with the Philadelphia Police Department on March 18, 1957. The applicant was assigned at various times to the patrol division, the accident investigation division, the organized crime unit and ultimately promoted to detective and assigned to the homicide unit where he spent the last seven years of his service. On March 22, 1978, the applicant and five other homicide detectives were found guilty after a jury trial of the violation of the civil rights of certain Philadelphia residents, 18 U.S.C.A. §241, and sentenced by the Honorable Donald W. Van Artsdalen on April 21, 1978 to serve a custodial sentence of 15 months at the Federal Prison Camp at Eglin Air Force Base, Pensacola, Florida. Ultimately, their sentences were reduced to six months and the applicant and the other defendants were released after having served four months of their sentence.

#### DISPUTED FACTS

The Division takes the position that the applicant's conviction of the Federal offense, conspiracy against the rights of certain Philadelphia residents, while employed as a police officer, renders his licensure inimical to the policies of the Casino Control Act and to casino operations, and that the applicant has not established the affirmative

criteria by clear and convincing evidence of his honesty, integrity and good character and/or his rehabilitation.

The applicant takes the contrary position and asserts there is nothing in his background that would create or enhance the dangers of unsuitable, unfair or illegal practice in the conduct of gaming, and the carrying on of the business or financial arrangements incidental to the gaming operations if licensed as a security officer.

The issues identified by the parties are: (a) whether the applicant's licensure would be inimical to the policies of the Casino Control Act or casino operations under N.J.S.A. 5:12-86(c)4; (b) whether the applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 as incorporated by reference in N.J.S.A. 5:12-90(b)2; (c) whether the applicant has established by clear and convincing evidence his rehabilitation under N.J.S.A. 5:12-90(h); (d) and whether the doctrine of equitable estoppel bars the Division of Gaming Enforcement from objecting to the applicant's casino employee licensure.

### INIMICAL CONDUCT

Section 86(c)4 of the Casino Control Act provides in pertinent part:

The Commission shall deny a casino license to any applicant who is disqualified on the basis of . . .

- (4) any . . . . offense which indicates that licensure of the applicant would be inimical to the policy of this Act and to casino operations . . . . N.J.S.A. 5:12-86(c)4.

To determine whether the conviction for an offense would render an applicant's licensure inimical to the policies of the act, by its very nature, requires consideration of the circumstances of each case. In the Matter of the Application of Resorts International, Inc. for a Casino License, 79-CL-1 (Feb. 26, 1979) at p. 15, sets forth the criteria to be applied when such a determination is to be made.

The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or to gaming, it would . . . encompass those offenses which, when viewed in the light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The applicant, James Carty, James Crown, John Ellis, James Curley, William Jones and Roseborough McMillan were with the Homicide Unit of the Philadelphia Police Department and they were convicted by a jury of conspiracy to deprive certain Philadelphia residents of their civil rights, a violation of 18 U.S.C.A. §241.

Radamas Santiago lived at 4419 North 4th Street in the Feltonville section of Philadelphia. In September 1975 his car was firebombed. On October 5, 1975, around 3:25 a.m., while the Santiagos were asleep in their home, their house was firebombed. Santiago's wife, three of his children, and a guest died in the fire. Nelson Garcia, a 14-year-old boy and a friend of the family, was sleeping on the front porch when the arson-murders occurred. Garcia yelled "fire" in Spanish, and fled the Santiago residence to find a garden hose and a fire alarm. Within one or two minutes of the conflagration, Garcia observed Robert "Reds" Wilkinson near the Santiago residence apparently getting into his car. Garcia, when interviewed by homicide detectives in a hospital setting, told the police that Wilkinson threw a bottle with a rag at the Santiago residence and that a heater on the front porch had blown up. Wilkinson was arrested by homicide detectives and taken to the Philadelphia Police Administration Building (PAB) where he was questioned by Detectives John Ellis and James F. Crown.

Wilkinson, who is mentally impaired, and has difficulty reading and writing well, signed a coerced confession to the arson-murders, and he was tried and convicted in State court on five counts of murder.

Eventually, David McGinnis and Ronald Hanley confessed their participation to the firebombing of the Santiago residence. Wilkinson's conviction was reversed after he had spent 15 months in prison. Garcia, the alleged eyewitness, testified falsely against Wilkinson because he had observed Wilkinson in close proximity to the Santiago residence at the time the fire started and had learned that Wilkinson had signed a confession.

Other neighborhood suspects, Ronald Hanley, David McGinnis, John and Nancy McCandless, Vincent and Judith Cucinotta and Christine Wilkinson were questioned by the six homicide detectives at PAB. The homicide detectives used coercive interrogation tactics in an effort to build a case against Wilkinson.

Ronald Hanley was beaten, his nose was lacerated, and a kick or a punch by Detective Ellis caused him to lose control of his bowels. Hanley was made to sit in soiled clothing and was not allowed to clean himself for a protracted period of time. Some 15 hours after his arrival at police headquarters, Hanley signed a confession which tied in with the confession obtained from Wilkinson. Hanley's confession related that he supplied the firebomb to Wilkinson. Hanley's confession was also false because, as previously stated, Wilkinson was a nonparticipant in the crime and David McGinnis had actually thrown the firebomb.

David McGinnis was also taken to the PAB because of certain information the police had received which tied him in with the burning of the Santiago car prior to the arson-murders. McGinnis was beaten and confessed that he had firebombed the Santiago car; however, he did not admit that he played any role in the arson-murders. McGinnis is currently serving 22 years after his confession to Federal charges stemming from the fire-bombing of the Santiago residence.

Vincent and Judith Cucinotta, who were neighbors of the Santiagos, were also taken to the PAB around noon on October 5. They were separated. Vincent Cucinotta was also administered a series of beatings by an unknown homicide detective after he was questioned about certain gasoline that he kept in his garage. Judith Cucinotta was interrogated and asked whether she and Nancy McCandless had syphoned any gasoline from a car. She maintained her innocence and denied any knowledge about the episode.

She was told she would be incarcerated "with a bunch of lessies and queers" and a homicide detective also threatened to take her children away from her and place them in an orphanage with Puerto Ricans, who would kill them. She was also told that she was going to be taken to the morgue to look at the Santiago bodies. She did not give any incriminating information and was detained at police headquarters until after the police had obtained the false statement from Hanley implicating Wilkinson.

John and Nancy McCandless, also neighbors of the Santiagos, were taken to the PAB around 10:30 a.m. on October 5. They were also separated and interrogated. They denied knowledge of the firebombing. John McCandless was also administered a beating and the homicide detectives claimed he should admit his role in the firebombings. McCandless, unable to endure the beatings, confessed to having observed Wilkinson syphon gasoline. McCandless had no involvement in the matter. The McCandlesses were kept at the PAB for approximately 16 hours until after the Hanley statement was obtained. The McCandlesses were released on the morning of October 6.

Circuit Judge Gibbons set forth the factual circumstances of this matter with unusual narrative clarity in In the United States of America v. Ellis, et al, 595 F. 2nd 154 (3rd Cir. 1979). I agree with Judge Gibbons' factual analysis that the applicant was a participant in the beatings of Hanley and McGinnis; however, the aggressive offenders in those beatings were clearly Detectives Ellis, McMillan and Jones. The jury found the applicant guilty of only the substantive count of conspiracy and acquitted the applicant of Count IV of the indictment which charged him with violating the civil rights of McGinnis; the jury was unable to reach a conclusion as to Count III of the indictment which charged the applicant with violating the civil rights of Hanley.

Assistant United States Attorney James Coleman stated to Judge Van Artsdalen at the sentencing:

Because you have stated that you consider all defendants the same, I will not state what I intended to state, which was that the government considers Mr. Carty, the evidence against Mr. Carty in this case, less than the evidence against some of the other defendants. Because of what you said I won't go into the reasons unless you ask me to.

The inferences from the Assistant Attorney's comments are that he considered the applicant's conduct less egregious than that of the other defendants.

After the applicant was released from prison, he applied to the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, for relief from Federal firearms disabilities arising from his conviction pursuant to 18 U.S.C.A. §925(c). That agency initiated a thorough investigation of the applicant's background prior to granting him permission to carry a firearm. Assistant United States Attorney John Penrose, who prosecuted the defendants in the Santiago firebombing, was contacted by the bureau to give his observations about the applicant. Mr. Penrose's comments are contained in the report of that investigation, and although hearsay, they are sufficiently trustworthy to repeat as follows:

1. That Carty was not the leader among the detectives prosecuted for the civil rights violation and was, arguably, less culpable than most of the others involved.
2. That no weapon was used as part of the crime for which he was convicted.
3. That the investigation had disclosed no evidence of mental instability on the part of Carty; and
4. That Carty's Philadelphia police personnel file had no other derogatory information about him as a police officer.

[ Report, Bureau of Alcohol, Tobacco and Firearms, at p.5]

Mr. Penrose further stated that he would have no objection to the renewal of Carty's right to possess a firearm. Finally, he stated that in the course of the trial, a number of law enforcement officials had come to him and had spoken well of Carty both as a man and a police officer, "unlike certain of the other detectives with whom he was tried."

Judge Van Arsdale clearly recognized that the applicant's involvement was more limited than that of the other defendants; however, I surmise that he imposed a 15-month custodial sentence on all of the defendants to coincide with the period of time that Wilkinson, an innocent man, spent in jail because of the conspiracy scheme. Judge Van

Artsdalen stated that the applicant and the other defendants were not in need of rehabilitation and that the custodial sentences were imposed to deter similar conduct by other law enforcement officials. Judge Van Artsdalen also stated that the applicant and the other defendants were themselves victims of a system of archaic police administration and they were following the dictates of their superiors who shared much of the blame for what had occurred.

The applicant had a prior 22-year unblemished record with the Philadelphia Police Department. The proofs clearly establish that the applicant adhered to the highest standards of professionalism during difficult and dangerous assignments and that he received numerous commendations from the Philadelphia Police Department for outstanding police work. The applicant is a religious man and has strong family ties.

The applicant has been employed at Harrah's Marina Hotel and Casino (Harrah's) for the past two years as a senior security officer. His performance evaluations speak for themselves: "You have an outstanding ability to deal with people, which is a real asset to both you and our company"; and "the quality of your work leaves nothing to be desired"; and "among your peers I view you as one of the top." No negative comments appear on any of the applicant's performance evaluations.

The applicant has also received commendations from Harrah's for a variety of thorough and competent investigations. Among other things, the applicant was cited for his investigation in uncovering wrongdoing among certain persons in one of Harrah's departments; on another occasion, he responded to a complaint of suspicious persons in the hotel which lead to the arrest of two people for theft; and, finally, the applicant was involved in a search and stakeout resulting in the apprehension for a person of a bomb threat and extortion attempt in the amount of \$750,000.

Evaluating and balancing the applicant's involvement in the Santiago firebombing, his 22-year employment history with the Philadelphia Police Department, his two-year employment history with Harrah's including his relationships with his co-employees and the public, I **FIND** that the applicant's licensure would not justifiably undermine the public

confidence and integrity in the casino regulatory process and gaming operations, nor would it create or enhance the danger of unsuitable, unfair or illegal practices or methods and activities in the conduct of gaming.

Therefore, I **CONCLUDE** that the applicant's conviction does not make his licensure inimical to the policy of the Casino Control Act under N.J.S.A. 5:12-86(c)4.

**GOOD CHARACTER, HONESTY and INTEGRITY**

Section 89(b) of the Casino Control Act, which is made applicable to the applicant by Section 90(b) of the act, provides that "each applicant . . . shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation of good character, honesty and integrity." N.J.S.A. 5:12-89(b)2.

The Commission has held that:

The clear and convincing requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Clear and convincing evidence should produce in the mind of the commissioners a firm belief or conviction as to the truth of the matter sought to be established. . . . the applicant must present clear and convincing proof of the facts upon which the commission may base a reasonable conclusion as to suitability. In the Matter of the Application of Resorts International Inc. for a Casino License, supra, at 5-6.

The applicant has applied for licensure as a security officer. Good character, honesty and integrity are paramount in such a position. The applicant produced an impressive cross section of character witnesses consisting of jurists, law enforcement officers, employees at Harrah's and personal friends and neighbors. Live testimony was elicited from James Brady, Assistant Shift Manager, Security Department at Harrah's Marina Hotel and Casino and formerly a homicide detective with the Philadelphia Police Department; Roseanne Denski, Senior Security Officer at Harrah's; James Archer, an

investigator in the Security Department at Harrah's and formerly employed by the Philadelphia Police Department; Phillip Denicola, a Scheduling Coordinator at Harrah's; Donald Lee Patterson, Assistant Director of Security at Harrah's and formerly an Inspector with the Philadelphia Police Department; Anthony J. Matthews, Director of Surveillance at Harrah's and formerly a Chief Inspector with the Philadelphia Police Department; James Richardson, a Security Investigator at Harrah's and formerly a homicide detective with the Philadelphia Police Department; Roseanne Gleeson, a security lead person at Harrah's; Kathleen Revels, senior security officer and court coordinator at Harrah's; Andrew P. Sutor, Director of Security at Harrah's and formerly a major staff inspector with the Philadelphia Police Department; Edward Valeich, a security lead person at Harrah's and a former lieutenant with the New Jersey State Police; Kenneth Cooper, assistant shift supervisor in security at Harrah's and formerly a station commander with the New Jersey State Police; Robert S. Hurst, President of the Fraternal Order of Police, Lodge No. 5, Philadelphia, and formerly a member of the Philadelphia Police Department; Michael Lutz, the present recording secretary and future president of the Fraternal Order of Police, Lodge No. 5, Philadelphia and formerly a member of the Philadelphia Police Department.

Testimonials of good character were placed into evidence from Thomas Clucas, a neighbor of the applicant in Brigantine, New Jersey; the Honorable James T. McDermott, Justice of the Supreme Court of Pennsylvania; Joseph C. Murray, Assistant District Attorney, Chief of the Homicide Unit, Philadelphia, the Honorable Lynne M. Abraham, Judge of the Court of Common Pleas in Philadelphia; the Reverend Thomas A. Murray, formerly Assistant Pastor at St. William Church, and now at St. Catherine of Siena Rectory in Philadelphia; Carl K. Lunkenheimer, Esq., formerly an assistant prosecutor in Philadelphia; Robert A. Snyder, Homicide Division, Philadelphia Police Department; Anthony Melfi, Assistant Chief of Security at Resorts International Hotel; John Dineen and William R. Bannister, National President and National Secretary of the Fraternal Order of Police; Joseph F. Woods, a neighbor of the applicant's for the past 12 years; Ed Filemyr, a friend of the applicant's for 15 years, and Richard A. Sprague, Esq.

I FIND that the un rebutted proofs establish that the applicant is a man of strong integrity, concerned about his friends and associates, and that he does possess compassion. These character traits are clearly spelled out by present and former members of the Philadelphia Police Department and by his co-workers at Harrah's who hold him in the highest respect and esteem. The applicant does not evince any bitterness about his imprisonment and simply wants to continue with his present employment at Harrah's.

I CONCLUDE that the applicant has established by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 of the act.

#### ESTOPPEL

Applicant's counsel inserted the issue of equitable estoppel at the prehearing conference. The applicant contends that the Division is estopped from objecting to his licensure based upon the fact that the Division's original letter report, dated July 2, 1981, to the Commission recommended licensure. The Division filed a subsequent report on August 18, 1981, which did not endorse the petitioner's licensure.

The Casino Control Act grants the Commission the sole discretionary authority to grant or deny employee licenses. N.J.S.A. 5:12-63(a) and 90(a). The Commission is not bound by any recommendation provided by the Division regarding licensure. The Division's sole responsibility is to report to the Commission what its investigative findings have revealed. N.J.S.A. 5:12-76.

Therefore, the issue is **DISMISSED**.

#### REHABILITATION

The parties placed the issue of rehabilitation, N.J.S.A. 5:12-90(h), in the prehearing order. Having found that the applicant's conduct is not inimical to licensure, this issue need not be addressed except to state that the rehabilitation statute provides in pertinent

part that: "notwithstanding the provisions of subsection (e), no applicant shall be denied a casino license on the basis of a conviction of any of the enumerated offenses in this act as disqualifying criteria. . . . (emphasis added). The plain meaning of that language suggests that the rehabilitation statute applies only to an enumerated per se statutory disqualifier under the act. Since the applicant was convicted of a Federal offense, a violation of 18 U.S.C.A. §241, it is clearly not an enumerated offense in the act. Furthermore, while the factors to be considered in determining whether an applicant's conduct is "inimical" to licensure, as set forth in In the Matter of the Application of Resorts International, Inc. for a Casino License, supra, may not be co-extensive with the factors in the rehabilitation statute, there is, at least, a significant overlap. All of those factors have been discussed in some detail above.

Therefore, the issue of rehabilitation is hereby **DISMISSED**.

**ORDER**

It is, therefore, **ORDERED** that the application of James F. Carty for a casino employee license, security officer, be and is hereby **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.

Dec. 10, 1982  
DATE

R. Jackson Dwyer  
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

December 10, 1982  
DATE

Nancy D. Smith  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed To Parties:

Dec. 14, 1982  
DATE  
jrp

Ronald L. Parker  
FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-192  
OAL DOCKET NO. CCC 9168-83  
APPLICATION NO. 43525-21

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APPLICATION OF MICHAEL R. CONWAY

FINAL ORDER

FOR A CASINO EMPLOYEE LICENSE

(JUNKET REPRESENTATIVE)

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 1, 1984, recommending that the application of Michael R. Conway for a casino employee license (junket representative) be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting on June 13, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 18th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 9168-83

AGENCY DKT. NO. 83-EA-192

**MICHAEL R. CONWAY,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Michael R. Conway, petitioner, pro se**

**R. Lane Stebbins, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: March 16, 1984

Decided: April 30, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Michael R. Conway to the Casino Control Commission for a casino employee license permitting him to work as a junket representative. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his bankruptcy petition filed with the United States Bankruptcy Court in June 1982, has established by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of sections 102b, 90b and 89b(1) of the Casino Control Act.
2. Whether the petitioner, with specific reference to discrepancies between his bankruptcy petition filed in June 1982 and his personal history disclosure form filed with the Casino Control Commission in July 1982, has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of sections 102b, 90b and 89b(2) of the Casino Control Act.
3. Whether the petitioner, with specific reference to business and personal loans accepted and given in 1978 and 1979, has established 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 position for which licensure is sought, within the meaning of sections 102b, 90b and 89b(3) of the Casino Control Act.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated October 4, 1983. By letter dated November 4, 1983, the petitioner requested a hearing on his license application. On November 17, 1983, 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.

#### FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is 45 years old and is married. He resides with his wife in her home in Deerfield, Illinois.

The petitioner has arranged gambling junkets since 1971. Most of these junkets have been for gamblers residing in the greater Chicago area. According to the petitioner, he has been licensed to arrange junkets to legalized gaming casinos in Nevada and the Bahamas.

Between 1971 and 1974, the petitioner arranged gambling junkets for Daves Way Tours, a company owned by David Kurzband. Between January 1974 and June 1975, the petitioner operated the Chicago office for Sahara Hotels. Then, following approximately seven months working for David Kurzband, Inc., the petitioner, in February 1976, became the sole owner and operator of Mico Tours, Inc., a gambling junket business based in Chicago, Illinois.

In October 1979, Mico Tours, Inc., ceased functioning and the petitioner went to work for V.K., Inc., another company owned by David Kurzband. In 1981, the petitioner worked for approximately five months for the Desert Inn in Nevada. The petitioner then worked for a short period of time for Resorts International.

It is undisputed that the petitioner's corporation, Mico Tours, borrowed approximately \$25,000 from the National Republic Bank in September 1978. David Kurzband assisted the petitioner in obtaining the loan and both the petitioner and Kurzband personally guaranteed repayment. It is also undisputed that in approximately June 1979, the petitioner advanced \$12,000 from Mico Tours to Kurzband. In addition, the petitioner's wife advanced Kurzband \$8,000 from her personal assets. The loan to Kurzband was unsecured and no promissory note was executed. Kurzband has never repaid the loan. According to the petitioner, the unsecured loan to Kurzband ruined Mico Tours. The petitioner's company was still obligated to the National Republic Bank for the full amount of the loan which it obtained in September 1978, and the petitioner defaulted on his personal obligation to repay the loan.

In June 1982, the petitioner filed a bankruptcy petition and statement of financial affairs (Exhibit R-2) with the United States Bankruptcy Court for the Northern District of Illinois. The bankruptcy petition, as correctly amended, revealed three debts, as follows:

1. \$30,000 owed to the Cal-Neva Casino resulting from gambling losses incurred in 1978.

2. \$4,500 owed to the Desert Inn, Las Vegas, Nevada, resulting from gambling losses incurred in 1972 and 1973.
3. \$35,475 owed to the National Republic Bank resulting from a loan to the petitioner's wholly owned corporation, Mico Tours, Inc.

In July 1982, the petitioner filed with the Casino Control Commission a Personal History Disclosure Form (Exhibit R-1A & B). It is undisputed that the debts which the petitioner sought to discharge through the bankruptcy petition filed a month earlier were not disclosed in the personal history disclosure form. The only such obligations disclosed in the personal history disclosure form were charge accounts totaling \$2,620. In connection with the bankruptcy proceeding, the petitioner also disclosed assets totaling only \$250, in cash, clothing and jewelry. On the personal history disclosure form, the petitioner claimed assets in household items and personal jewelry in the amount of \$20,000.

In the bankruptcy proceeding, the petitioner indicated that he owned no real estate. However, he disclosed an interest in real estate in his disclosure form filed with the Casino Control Commission. In a sworn interview on July 12, 1983 (Exhibit R-3), the petitioner stated that the home was transferred to a trust for the benefit of his wife in approximately 1978. At the hearing, the petitioner explained similarly that his spouse owns the residence and therefore it was not necessary to list it on his personal bankruptcy. However, when the petitioner disclosed his interest in the real estate on his personal history disclosure form, he did not indicate that his spouse shared any interest in his home.

Testifying on behalf of the Division of Gaming Enforcement, New Jersey State Police Detective Albert Kormondy stated that he investigated the petitioner's junket representative license application. According to Detective Kormondy, he spoke to the petitioner by telephone in March 1983. At that time, the petitioner did not mention his bank debt and two casino gambling debts, which had not been disclosed in his personal history disclosure form. The detective first became aware of the debts of the petitioner when he reviewed the petitioner's bankruptcy petition in May 1983.

Detective Kormondy testified that the petitioner's personal history disclosure form does not mention the loan from Mico, Inc., and the petitioner's wife to David Kurzband. When the detective became aware of this information, he handwrote on page 38 of the petitioner's Personal History Disclosure Form (Exhibit R-1B) the information concerning the loans to Kurzband. The detective also crossed out the petitioner's "no" answer and marked the answer concerning loans "yes."

The petitioner testified at the hearing that the only interest he presently had in any assets consists of his interest in some clothing and some jewelry. He has no interest in any personal financial account. According to the petitioner, family expenses are handled by his wife.

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

As noted previously, the petitioner testified that his unsecured loan to David Kurzband resulted in the ruination of the petitioner's business, Mico Tours, Inc. However, the petitioner stated that he had trusted Kurzband to pay him back without the necessity of having him sign a promissory note or offer security. Unfortunately, his formerly close personal friend did not pay him back and the petitioner then defaulted on a loan he had received from the National Republic Bank. The petitioner emphasized that he had been successful in the gambling junket business since 1971 and that this one unfortunate loan should not indicate that he does not possess sufficient business ability and casino experience for licensure.

In regard to the discrepancies between his personal bankruptcy petition and his personal history disclosure form, the petitioner testified that he was not trying to hide any information from the Casino Control Commission. According to the petitioner, he listed those assets that were required to be listed on his personal history disclosure form, but many of those items did not need to be listed on his personal bankruptcy form because they were his spouse's property. The petitioner also testified that his bankruptcy petition had already been filed at the time he prepared his personal history disclosure form, and he disclosed his filing for bankruptcy on the disclosure form. However, the petitioner did acknowledge that he did not disclose his two gambling loss debts and his debt to the National Republic Bank in his personal history disclosure form.

The petitioner's explanation for the nondisclosure of his three largest debts on his personal history disclosure form appears less than candid. This is especially so in light of the undisputed fact that his personal history disclosure form was prepared only approximately one month after he filed the petition for personal bankruptcy which listed the two gambling debts and the debt to the National Republic Bank. Thus, it is fair to infer, and I **FIND AS FACT**, that the petitioner attempted to misleadingly emphasize his assets and de-emphasize his debts on his personal history disclosure form filed with the Casino Control Commission.

CONCLUSIONS OF LAW

Pursuant to section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), a junket representative shall be licensed in accordance with the requirements for licensure of a casino employee. Such an applicant must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity, pursuant to sections 102b, 90b and 89b(2) of the act. Such an applicant must also establish, by the same burden, his financial stability, integrity and responsibility, and his business ability and casino experience, within the meaning of sections 102b, 90b and 89b(1) and (3) of the act.

Notwithstanding one unfortunate loan to a friend who was in need, the petitioner's many years of activity arranging gambling junkets since 1971 establish the reasonable likelihood of his success and efficiency as a junket representative. Thus, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he has sufficient business ability and casino experience for licensure as a junket representative.

The aforementioned unfortunate loan depleted the petitioner's former business and was the primary reason for the filing of his bankruptcy petition in June 1982. By that time, nearly all of his assets, including his interest in his residence, had been transferred to his spouse. The greatest obligations which the petitioner sought to have discharged in bankruptcy were two debts from gambling losses and a debt owed the National Republic Bank. These debts totaled \$69,975. The petitioner filed his personal history disclosure form approximately one month after filing for bankruptcy, yet he did not disclose the gambling debts nor the debt owed the National Republic Bank. I have found that the petitioner did not disclose these debts on his personal history disclosure form in an attempt to misleadingly de-emphasize his debts and emphasize his assets. Having so

found, I must **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his financial stability, integrity and responsibility, and his reputation for good character, honesty and integrity, within the meaning of sections 102b, 90b and 89b(1) and (2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Michael R. Conway for a casino employee license permitting him to work 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.

April 30, 1984  
DATE

Joseph J. Fidler  
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

May 1, 1984  
DATE

Bernadette T. Frisco  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 4 1984  
DATE

Ronald J. Parker/pho  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

R-1A & B Personal History Disclosure Form

R-2 Statement of financial affairs for debtor not engaged in business

R-3 Sworn transcript, dated July 12, 1983

WITNESSES

**FOR THE PETITIONER:**

Michael R. Conway

**FOR THE RESPONDENT:**

Albert Kormondy

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-CSI-8  
OAL DOCKET NO. CCC 6859-83  
APPLICATION NO. 957-70  
VENDOR I.D. NO. 04653

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APPLICATION OF COSMOPOLITAN  
AIRLINES, INC. FOR A CASINO  
SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission February 3, 1984, recommending that the application of Cosmopolitan Airlines, Inc. for a casino service industry license be granted; and neither party having filed exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 14, 1984, to affirm and adopt the said Initial Decision and to grant the casino service industry application of Cosmopolitan Airlines, Inc.,

IT IS on this *20<sup>th</sup>* day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino service industry license application of Cosmopolitan Airlines, Inc. be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Cosmopolitan Airlines, Inc., the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: March 30, 1984



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6859-83

AGENCY DKT. NO. 83-CSI-8

**COSMOPOLITAN AIRLINES, INC.,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Robert A. Baime, Esq.,** for petitioner (Sills, Beck, Cummis, Zuckerman, Radin & Tischman, attorneys)

**Rosemary Quinn,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: December 20, 1983

Decided: February 3, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement (Division) objected to the application of Cosmopolitan Airlines, Inc., (Cosmopolitan) to the Casino Control Commission for licensure as a casino service industry. Cosmopolitan requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

Cosmopolitan Airlines is owned by the Garrambone brothers, Peter and George. It was managed by Frank Reilly at the time the events of this case occurred. The Division of Gaming Enforcement conducted an investigation concerning the

qualifications of Cosmopolitan for licensure and, initially, recommended licensure. However, before the Commission acted on the Division's recommendation, the Division received a complaint from an executive at Tropicana, who alleged that George Garrambone had offered a bribe to a Tropicana executive on September 2, 1982, in exchange for a contract to employ Cosmopolitan's services. If such an event occurred, Cosmopolitan would have difficulty establishing its good character, honesty and integrity as required by N.J.S.A. 5:12-89. It would also have committed the crime of bribery, requiring disqualification under N.J.S.A. 5:12-86c and g.

The underlying facts of this case are not disputed. On the contrary, the witness for the Division, Charles Danner, and the two witnesses for Cosmopolitan, Frank Reilly and George Garrambone, are all in remarkable agreement concerning the facts that led up to the alleged bribe offer.

Cosmopolitan owned two Convair 440s, based at an airport in Farmingdale, Long Island. It was losing money as a scheduled commuter airline and sought to break into the newly developing casino industry in Atlantic City by providing charter flight service to casinos. Its manager, Frank Reilly, was successful in negotiating a contract for such services with Tropicana, long before the actual opening day of that hotel (P-1). The contract was exclusive for both parties. Tropicana posted a \$100,000 escrow account as security for its performance under the contract. However, because of the delays in the opening of Tropicana, the starting date of the contract was pushed back several times. Cosmopolitan, unable to service other clients because of the exclusivity clause in its contract with Tropicana, lost substantial amounts of money, which were not described in any greater detail at the hearing. Tropicana voluntarily forfeited the \$100,000 escrow account as damages and allowed Cosmopolitan to service other clients until Tropicana actually opened.

After Tropicana actually opened, it reinstated its exclusive arrangement with Cosmopolitan although terms of the contract were renegotiated (P-2). Cosmopolitan actually began servicing Tropicana in December 1981. On March 23, 1982, Tropicana cancelled the contract, although there seemed to be no legal justification, and the cancellation was most probably a breach of Tropicana's contractual obligations (P-3). Apparently, Tropicana was not profiting from the clientele being flown in by Cosmopolitan. Tropicana determined that flights out of LaGuardia Airport, rather than the airport at Farmingdale, attracted clientele more likely to spend money at the casinos.

Also, another airline, American International Airlines, was providing service superior to that of Cosmopolitan. American's planes were more modern and luxurious. They were also able to land at the smaller airfield, close to the casinos in Atlantic City, while Cosmopolitan's older planes needed the larger landing facilities at a more distant airport. Thus, Tropicana was even willing to pay a higher price for the charter flight services of American than it was paying for Cosmopolitan's services.

Cosmopolitan management discussed the possibility of suing Tropicana for breach of contract. Cosmopolitan resisted suit, fearing that it would earn a bad reputation in the casino industry and prejudice its future dealings with other hotels in Atlantic City. Frank Reilly made several attempts to renegotiate the contract with Tropicana. He received several encouraging responses, which indicated that Tropicana did not want to be sued and would try to find some service that Cosmopolitan could perform. Several communications by telephone, correspondence and personal conferences ensued.

The final meeting, on September 2, 1982, is the actual subject matter of the complaint with which this hearing is concerned. Vice-President and House Counsel of Tropicana, Steven Bolson, arranged for a Marketing Executive, Charles Danner, to meet with Cosmopolitan. The meeting took place in Danner's office at the Tropicana Hotel. Danner's responsibility did not include charter flights, and the purpose of his conducting the meeting seemed questionable. Danner himself admitted that he did not have authority to negotiate with Cosmopolitan, and he assumed that he was asked to meet with Cosmopolitan because Steven Bolson simply didn't want to attend the meeting for reasons unknown to Danner. The meeting was attended by Danner, his assistant, Richard Goldstein, George Garrambone, and Frank Reilly. During the meeting, Cosmopolitan tried to offer prices substantially lower than American's, aware that it could not provide the same quality of service as American. The discussion centered around a desire by Cosmopolitan to avoid empty legs, i.e., flights from its base at Farmingdale to LaGuardia in the morning and back from LaGuardia to Farmingdale at night, carrying no passengers. The trip from LaGuardia to Farmingdale cost approximately \$400 in fuel expense. Mr. Reilly offered to lower the cost per plane flight in the amount of \$400 if he could be guaranteed daily use of his plane. In that way, he could keep his plane at LaGuardia permanently and eliminate the empty leg from LaGuardia to Farmingdale. The result would be a savings of \$400 per flight to Tropicana. Mr. Danner politely expressed interest in various alternative proposals and said he would pass it on to his superiors who had authority to negotiate, and the meeting ended. During the meeting, George Garrambone

said nothing, relying on his manager, Frank Reilly, to present Cosmopolitan's position. Mr. Garrambone, I observed, speaks in a rough-hewn manner, while Mr. Reilly gives the appearance of a knowledgeable, competent, professional manager.

After the meeting ended, Mr. Danner left his office and went to a public men's rest room in the lobby of the Tropicana hotel. While at the urinal, he was approached by Mr. Garrambone. The men's room was crowded and open to members of the public using Tropicana's facilities. Men were milling about and coming in and out. In normal conversational tones, Mr. Garrambone said, to the best of Mr. Danner's recollection, "If you could get the program going, it could be worth three to four hundred in green to you per plane." Mr. Danner said no and left the men's room. He immediately called Steven Bolson. Bolson advised Mr. Danner that Tropicana could use this incident to convince Cosmopolitan not to sue Tropicana for breach of contract. Two days later, Danner communicated the incident to the Division of Gaming Enforcement. Danner testified that he tried to call the Division on the day of the occurrence but was unable to locate the particular agent with whom he was familiar.

Danner interpreted the comment as a bribe to him personally. Garrambone, pointing out that he makes only approximately \$600 profit on each flight, vehemently denied that he ever intended a bribe. Garrambone doesn't remember the exact words he used, but insists that he was only trying to remind Danner of the conversation that had just concluded in his office; namely, that \$400 per plane could be saved by Tropicana off the negotiated price if Reilly's conditions could be met.

I paid close attention to the appearance and demeanor of all witnesses, and all three gentlemen appeared to me to be sincere and credible. However, two questions arose concerning Mr. Danner's description of the events in the Tropicana men's room: (a) the accuracy of his recollection of Garrambone's words, and (b) the extent to which his interpretation of the words as a bribe were colored by his conversation with Steven Bolson.

Mr. Danner wrote his recollection of Mr. Garrambone's words down on a piece of paper on the day of the event. On cross-examination he said:

Q. Now, those notes consisted of your best recollection of the conversation that had occurred in the men's room; is that so?

A. That's correct.

Q. However, you cannot guarantee for us, can you, that those notes contain a verbatim description of the conversation that took place, can you?

A. No, I can't.

Q. And, as a matter of fact, you told us on direct examination that you interpreted what Mr. Garrambone said as an offer to you personally of money; is that so?

A. That's correct.

[T96-14 through T97-8]

Q...

Just so we are clear on one topic, Mr. Danner, you — in your recollection of the conversation in the men's room, you are not purporting to give us a verbatim statement of that, are you?

A. No, sir. I couldn't guarantee it was word for word, no.

Q. And as a matter of fact, in your notes when you wrote the language, similar to the language you used in court today, you said, did you not, that Mr. Garrambone said to the effect, and then you go on and quote what you recall he said?

A. That's exactly correct.

Q. So even in your notes you refer to that quote as being something to the effect of what he said?

A. Yes, sir.

[T-109-8 through 23]

Thus, we are not certain that we have the actual words used by Mr. Garrambone. Further, Mr. Danner's superior, Steven Bolson, advised him that Tropicana could make use of the conversation:

Q. And you told him [Steven Bolson] I assume, the substance of the conversation you had with Mr. Garrambone in the men's room?

A. Yes sir.

Q. Now, did he say to you anything about using that information that you had imparted to him?

A. He had indicated to me that this situation arising possibly would give us some sort of defense in the future litigation.

[T92-6 through 14]

By Mr. Danner's own testimony, the statement by Mr. Garrambone was made in the presence of many people in normal conversational tones:

Q. Now, was there anybody else in the men's room?

A. There were other people. It's a public place in the hotel lobby, so there were people present.

Q. And as a matter of fact, when Mr. Garrambone spoke to you, he didn't try and conceal what he was saying or whisper or anything of that nature, did he?

A. No sir.

[T98-11 through 19]

Q. As a matter of fact, he came to you in a manner that was up front and forthright, is that correct?

A. Yes, sir.

[T99-5 through 7]

**JUDGE SMITH:**

Mr. Danner, could you tell me how big this rest room was?

**THE WITNESS:** It's about four wide closets and four urinals. And four wash stands. Three or four, I guess.

**JUDGE SMITH:** And can you estimate how many people were there?

**THE WITNESS:** I would say just a rough number of three to five, other than Mr. Garrambone and myself.

JUDGE SMITH: Was there anybody else at the other wash stand?

THE WITNESS: I can recall a general milling of people.

JUDGE SMITH: So you could see people walking about?

THE WITNESS: Yes, sir.

JUDGE SMITH: Where were you when this conversation took place?

THE WITNESS: At the urinal.

JUDGE SMITH: Your conversation was at the urinal and not at the wash stand?

THE WITNESS: No, sir.

JUDGE SMITH: Was there anybody else at any of the other urinals?

THE WITNESS: No. I don't recollect that there were any at the other urinals.

JUDGE SMITH: And could you describe the tone of conversation, was it loud, soft, normal conversation?

THE WITNESS: The tone of voice that—picture this. I was not facing Mr. Garrambone at the time. He came over my shoulder and said, "If you can get the program going—" a normal speaking voice.

[T105-24 through T107-10]

The following facts seem to me to be determinative: The conversation had just ended between Garrambone, Reilly, Danner and Goldstein, in Danner's office, where they talked about saving \$400 per flight. Garrambone approached Mr. Danner in the men's room that was open to the public with several men milling about. He spoke in a normal conversational tone with no attempt to whisper in Mr. Danner's ear or otherwise conceal what he was saying from those about him. Cosmopolitan earns a profit of only approximately \$600 per flight. Danner was not even authorized to negotiate and could do

nothing more than report the negotiations to superiors who would make the decision. Mr. Garrambone appeared to me to be a credible witness. Prior to reporting this incident to the Division of Gaming Enforcement, Mr. Danner was advised by Tropicana's attorney, Steven Bolson, that an attempted bribe could be used to help dissuade Cosmopolitan from suing Tropicana for Tropicana's obvious breach of its contract. That threat was, in fact, communicated to Cosmopolitan, which, nevertheless, pressed its licensing application.

I FIND that Mr. Garrambone did not offer a bribe and had no intention to offer a bribe personally to Mr. Danner. Since the Division of Gaming Enforcement had previously recommended licensure, and it changed that recommendation only upon receipt of this complaint from Mr. Danner, it is hereby ORDERED that Cosmopolitan Airlines be licensed as a casino service industry.

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.

2/3/84  
DATE

[Signature]  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

February 3, 1984  
DATE

[Signature]  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

Feb 7, 1984  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-14  
OAL DOCKET NO. CCC 1114-82  
APP. NO. 22834-21

---

IN THE MATTER OF THE APPLICATION  
OF JAMES F. CROWN FOR LICENSURE  
AS A CASINO EMPLOYEE  
(SECURITY EMPLOYEE)

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 3, 1982, recommending that the application of James F. Crown for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on December 15, 1982; and the Applicant having filed a reply to the exceptions on December 21, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 23, 1983, to reject the said Initial Decision and to deny the application for licensure,

IT IS on this 25th day of February 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of James F. Crown be and hereby is denied based upon the reasons set forth on the record of the Commission's public meeting of February 23, 1983, and the Commission Decision which will be issued forthwith, which are incorporated herein by reference and made a part hereof; and


IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), the Applicant may not reapply for licensure as a casino key employee or casino employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of this casino employee license application shall not prevent Mr. Crown from retaining his casino hotel employee registration pursuant to N.J.S.A. 5:12-91; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement and the authorized agents of all currently operating casino's within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 25, 1983

FOR COMMISSION DECISION ON  
JAMES F. CROWN - SEE PAGE 234.



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 1114-82**

**AGENCY DKT. NO. 82-EA-14**

**IN THE MATTER OF THE APPLICATION  
OF JAMES F. CROWN FOR LICENSURE  
AS A CASINO EMPLOYEE (Security Officer)**

---

**APPEARANCES:**

**Scott Becker, Esq., for the applicant  
(Becker and Lands, attorneys)**

**Edward P. Busichio, Deputy Attorney General, for respondent, Division of  
Gaming Enforcement (Irwin I. Kimmelman, Attorney General of the State of  
New Jersey, attorney)**

**Record Closed October 19, 1982**

**Decided December 2, 1982**

**BEFORE R. JACKSON DWYER, ALJ:**

**James F. Crown (applicant) filed an application with the Casino Control Commission  
(Commission) including a Personal History Disclosure Form (PHD) No. 2 for licensure as a  
casino employee, security officer. The application was duly forwarded to the Division of**

Gaming Enforcement (Division) which conducted an investigation of the applicant. As a result of the investigation, the Division submitted a letter report dated December 23, 1981 to the Commission objecting to the licensure of the applicant. By letter dated January 29, 1982, the applicant was advised by the Commission that there was a substantial possibility that the Commission would deny his application for licensure. The applicant 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 July 15, 1982. By letter dated September 1, 1982, counsel agreed that the entire transcript of the applicant's criminal trial should be made part of the record and read by the administrative law judge. The record was closed on October 19, 1982.

#### UNDISPUTED FACTS

The applicant, James F. Crown, is 33 years old and began his employment with the Philadelphia Police Department on December 3, 1969. The applicant was assigned at various times to the patrol division, the accident investigation unit, the mobile crime detection unit, and ultimately promoted to detective and assigned to the homicide unit in January 1975. On March 22, 1978, the applicant and five other homicide detectives were found guilty after a jury trial of a violation of the civil rights of certain Philadelphia residents, 18 U.S.C.A. §241, and sentenced by the Honorable Donald W. Van Arsdale on April 21, 1978. The applicant had been employed by the Philadelphia Police Department ten years, ten months and four days when he was terminated. Judge Van Arsdale sentenced the applicant and the five other homicide detectives to serve a custodial sentence of 15 months at the Federal Prison Camp at Eglin Air Force Base, Pensacola, Florida. Ultimately, their sentences were reduced to six months and the applicant and the other defendants were released after having served four months of their sentence.

#### DISPUTED FACTS

The Division takes the position that the applicant's conviction of the Federal offense of conspiracy against the rights of certain Philadelphia residents, while employed as a

police officer, renders his licensure inimical to the policies of the Casino Control Act and to casino operations, and that the applicant has not established the affirmative criteria by clear and convincing evidence of his honesty, integrity and good character and/or his rehabilitation.

The applicant takes the contrary view and asserts there is nothing in his background that would create or enhance the dangers of unsuitable, unfair or illegal practice in the conduct of gaming, and the carrying on of the business or financial arrangements incidental to gaming operations of the licensee as a security officer.

The issues identified by the parties are: (a) whether the applicant's licensure would be inimical to the policies of the Casino Control Act or casino operations under N.J.S.A. 5:12-86(c)4; (b) whether the applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 as incorporated by reference in N.J.S.A. 5:12-90(b)2; and (c) whether the applicant has established by clear and convincing evidence his rehabilitation under N.J.S.A. 5:12-90(h).

### INIMICAL CONDUCT

Section 86(c)4 of the Casino Control Act provides in pertinent part:

The Commission shall deny a casino license to any applicant who is disqualified on the basis of . . .

- (4) any . . . . offense which indicates that licensure of the applicant would be inimical to the policy of this Act and to casino operations . . . . N.J.S.A. 5:12-86(c)4.

To determine whether the conviction for an offense would render an applicant's licensure inimical to the policies of the act, by its very nature, requires consideration of the circumstances of each case. In the Matter of the Application of Resorts International, Inc. for a Casino License, 79-CL-1 (Feb. 26, 1979) at p. 15, sets forth the criteria to be applied when such a determination is to be made.

The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or to gaming, it would . . . encompass those offenses which, when viewed in the light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence and the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The background facts of the applicant's conviction are as follows:

The applicant, James Crown, and John Ellis, James Carty, James Curley, William Jones and Roseborough McMillan were with the Homicide Unit of the Philadelphia Police Department and they were convicted by a jury of conspiracy to deprive certain Philadelphia residents of their civil rights, a violation of 18 U.S.C.A. §241.

Radames Santiago lived at 4419 North 4th Street in the Feltonville section of Philadelphia. In September 1975 his car was firebombed. On October 5, 1975, around 3:25 a.m., while the Santiagos were asleep in their home, their house was firebombed. Santiago's wife, three of his children, and a guest died in the fire. Nelson Garcia, a 14-year-old boy and a friend of the family, was sleeping on the front porch when the arson-murders occurred. Garcia yelled in Spanish "fire," and he attempted to flee the Santiago residence and to find a garden hose and a fire alarm. Within one or two minutes of the conflagration, Garcia observed Robert "Reds" Wilkinson near the Santiago residence apparently getting into his car. Garcia, when interviewed by homicide detectives in a hospital setting, told the police that Wilkinson threw a bottle with a rag at the Santiago residence and that a heater on the front porch had blown up. Wilkinson was arrested by homicide detectives and taken to the Philadelphia Police Administration Building where he was questioned by Detective John Ellis and the applicant, James F. Crown.

Wilkinson, who has a fifth-grade education, is apparently semi-retarded and a slow learner, and has difficulty reading and writing well, was interrogated by Detectives Ellis and Crown at the Philadelphia Police Administration Building in a room called the "roundhouse." Wilkinson signed a coerced confession to the arson-murders and he eventually was tried and convicted in state court on five counts of murder.

Subsequently, David McGinnis and Ronald Hanley confessed that they threw the fire-bomb at the Santiago residence. Wilkinson's conviction was reversed after he had spent 15 months in prison. Garcia, the only alleged eyewitness to the crime, acknowledged that he had testified falsely, and that he was influenced to do so because he had observed Wilkinson in close proximity to the Santiago residence at the time the fire started, and because he had subsequently learned that Wilkinson had confessed.

While Detectives Ellis and Crown were interrogating Wilkinson, other homicide detectives, at various times, had interrogated or were in the process of interrogating Ronald Hanley, David McGinnis, Vincent and Judith Cuccinotta and John and Nancy McCandless. There is no need to detail the interrogations of the other Philadelphia residents except to state that it is clear that grievous and manifold wrong was done to them.

Ronald Hanley was beaten, his nose was lacerated, and a kick or a punch by Detective Ellis caused him to lose control of his bowels. He was made to sit in soiled clothing and was not allowed to clean himself for a protracted period of time. Some 15 hours after his arrival at police headquarters, Hanley signed a confession which tied in with the confession obtained from Wilkinson. Hanley's confession related that he supplied the firebomb to Wilkinson. Hanley's confession was also false because, as previously stated, Wilkinson was a nonparticipant in the crime and David McGinnis had actually thrown the firebomb.

David McGinnis was also taken to the Philadelphia Police Administration Building because of certain information the police had received which tied him in with the burning of the Santiago car prior to the arson-murders. McGinnis was beaten and confessed that

he had firebombed the Santiago car; however, he did not admit that he played any role in the arson-murders. McGinnis is currently serving 22 years after his confession to Federal charges stemming from the firebombing of the Santiago residence.

Vincent and Judith Cuccinotta, who were neighbors of the Santiagos, were also taken to the Police Administration Building around noon on October 5. They were separated. Vincent Cuccinotta was also administered a series of beatings by an unknown homicide detective after he was questioned about certain gasoline that he kept in his garage. Judith Cuccinotta was interrogated and asked whether she and Nancy McCandless had syphoned any gasoline from a car. She maintained her innocence and denied any knowledge about the episode. She was told that she would be incarcerated "with a bunch of lessies and queers" and a homicide detective also threatened to take her children away from her and place them in an orphanage with Puerto Ricans, who would kill them. She was also told that she was going to be taken to the morgue to look at the Santiago bodies. She did not give any incriminating information and was detained at police headquarters until after the police had obtained the false statement from Hanley implicating Wilkinson.

John and Nancy McCandless, also neighbors of the Santiagos, were taken to the Philadelphia Police Administration Building around 10:30 a.m on October 5. They were also separated and interrogated. They denied knowledge of the firebombing. John McCandless was also administered a beating and the homicide detectives claimed that he should admit his role in the firebombings. McCandless, unable to endure the beatings, confessed to having observed Wilkinson syphon gasoline. McCandless had no involvement in the matter. The McCandlesses were kept at the Philadelphia Police Administration Building for approximately 16 hours until after the Hanley statement was obtained. The McCandlesses were released on the morning of October 6.

The six defendants were represented at their trial by one attorney who suggested to the jury that despite McGinnis' and Hanley's confessions to the firebombing and Wilkinson's subsequent release from prison, that Wilkinson had a role in the arson-murders. The purpose of the instant hearing is not to solve the firebombing but is limited to a determination of what the officers did to eight people taken to the "roundhouse" in their combined efforts to solve this heinous crime, specifically, the applicant's, James Crown's, involvement.

It seems clear from the United States Attorney Pre-Sentence Information Report and Judge Van Artsdalen's comments that the acts of the applicant and one other defendant, James Carty, were less egregious than those of the other defendants. Although the applicant's conduct cannot be condoned in this tragic affair, his participation was clearly limited. He participated in the interrogation of Wilkinson and dug his thumbnail under Wilkinson's collarbone.

Judge Van Artsdalen felt that the applicant and the other defendants were not in need of rehabilitation; however, he imposed a custodial sentence with the express purpose of deterrence in mind. Judge Van Artsdalen stated that the applicant and the other defendants were themselves victims of a system of archaic police administration, then in existence, and that the applicant and other defendants were following the dictates of their superiors, and that their superiors shared much of the blame for what had occurred. The applicant and the other defendants clearly felt they should not have been prosecuted because they were following mandated procedures under the direction of superiors, including an Assistant District Attorney, who was at the Police Administration Building during the interrogation process.

Apart from this conviction, the applicant had an unblemished ten year record as a police officer. There is nothing else derogatory about his good character in his private or professional life.

The applicant's sentence to a Federal minimum security prison appears to me to be a much harsher punishment than that ordinarily visited upon any street criminal. The applicant suffered the ruination of a ten year career and the loss of pension rights. The applicant's marriage was unable to endure the strain. His first wife divorced him and gave up custody of their four children as the applicant was about to be incarcerated. The applicant's present wife, Margaret Crown, raised the children while he was in prison.

Numerous witnesses testified that the applicant enjoys an impeccable reputation at Harrah's Marina Hotel Casino where he has been employed for the past two years as a security officer. The applicant is extremely competent in the performance of his duties as evidenced by his performance appraisals and commendations.

In evaluating the applicant's involvement and conviction stemming from the Santiago firebombing; his ten year employment history with the Philadelphia Police Department; his two year employment history with Harrah's, including his relationships with his co-employees and the public, I FIND that the applicant's licensure would not justifiably undermine the public confidence and the integrity of the casino regulatory process and gaming operations nor would it create or enhance the danger of unsuitable, unfair or illegal practices or methods and activities in the conduct of gaming.

Therefore, I CONCLUDE that the applicant's criminal conviction does not make his licensure inimical to the policy of the Casino Control Act under N.J.S.A. 5:12-86(c)4.

**GOOD CHARACTER, HONESTY and INTEGRITY**

Section 89(b) of the Casino Control Act, which is made applicable to the applicant by Section 90(b) of the act, provides that "each applicant . . . shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation of good character, honesty and integrity." N.J.S.A. 5:12-89(b)2.

The Commission has held that:

The clear and convincing requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Clear and convincing evidence should produce in the mind of the commissioners a firm belief or conviction as to the truth of the matter sought to be established. . . . the applicant must present clear and convincing proof of the facts upon which the commission may base a reasonable conclusion as to suitability. In the Matter of the Application of Resorts International Inc. for a Casino License, supra, at 5-6.

The applicant has applied for licensure as a security officer. Good character, honesty and integrity are paramount in such a position. The applicant produced a mixed and impressive array of character witnesses; some knew the applicant when he was employed by the Philadelphia Police Department, while others were acquainted with the applicant through his employment at Harrah's.

The witnesses were Walter Ertle, Assistant Director of Security and a former New Jersey State Police Captain and Commandant of the State Police Academy at Sea Girt; Arthur Matthews, Director of Surveillance at Harrah's and a former Chief and Detective in the Philadelphia Police Department; George Bush, a surveillance shift supervisor at Harrah's; James Richardson, a security investigator at Harrah's and a former homicide detective in the Philadelphia Police Department; William Drum, a security investigator at Harrah's and a former special agent with the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of Treasury; Edwina Buffert, an assistant shift supervisor at Harrah's; Edward Lichtenhan, an investigator at Harrah's and a former lieutenant of the Internal Affairs Bureau of the Philadelphia Police Department; Julie Denski, a former security person at Harrah's and presently with the Atlantic City Police Department; Roseanne Gleason, a security lead person at Harrah's and a former juvenile officer with the Philadelphia Police Department; and Richard Grunow, a security lead person at Harrah's and a former police officer with the Galloway Township and Egg Harbor police departments.

Donald L. Patterson, an Assistant Director of Security at Harrah's; William J. Shields, President of Shields Business Machines, Inc.; Frank L. Rizzo, Former Mayor of Philadelphia; Gerald J. Dugan, Esq., a former Assistant District Attorney; Andrew P. Sutor, Director of Security at Harrah's; Lou Costanzo, Manager of Personnel at Harrah's; Joseph C. Murray, an Assistant District Attorney, and John Allan, Vice President and General Manager at Harrah's, submitted written testimonials about the applicant.

I FIND that the un rebutted proofs establish that the applicant is a man of strong integrity, that he is respected by management and his co-workers at Harrah's for doing a professional job and helping others with less experience, that he enjoys an excellent reputation in the Atlantic City community, that he is a good family man, and that he does not evince any bitterness about his imprisonment.

I CONCLUDE that the applicant has established by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 of the act.

**REHABILITATION**

The parties placed the issue of rehabilitation, N.J.S.A. 5:12-90(h), in the prehearing order. Having found that the applicant's conduct is not inimical to licensure, this issue need not be addressed except to state that the rehabilitation statute provides in pertinent part that: "notwithstanding the provisions of subsection (e), no applicant shall be denied a casino license on the basis of a conviction of any of the enumerated offenses in this act as disqualifying criteria . . . (emphasis added). The plain meaning of that language suggests that the rehabilitation statute applies only to an enumerated per se statutory disqualifier under the act. Since the applicant was convicted of a Federal offense, a violation of 18 U.S.C.A. §241, it is clearly not an enumerated offense in the act. Furthermore, while the factors to be considered in determining whether an applicant's conduct is "inimical" to licensure, as set forth in In the Matter of the Application of Resorts International, Inc. for a Casino License, supra, may not be co-extensive with the factors in the rehabilitation statute, there is, at least, a significant overlap. All of those factors have been discussed in some detail above.

Therefore, the issue of rehabilitation is hereby **DISMISSED**.

**ORDER**

It is, therefore, **ORDERED** that the application of James F. Crown for a casino employee license of security officer be and is hereby **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.

Dec 2, 1982  
DATE

R. Jackson Dwyer  
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

December 3, 1982  
DATE

John A. Maxwell  
CASINO CONTROL COMMISSION

Mailed To Parties:

Dec 6, 1982  
DATE  
jrp

Ronald J. Parker  
FOR OFFICE OF ADMINISTRATIVE LAW

ADDENDUM

On or about September 1, 1982, the parties agreed that the transcript filed in the United States District Court for the Eastern District of Pennsylvania captioned "United States of America v. John Ellis, James J. Curley, Roseborough J. McMillan, Jr., James Carty, James F. Crown and William Jones" be placed in evidence as (J-1).

<u>DATE</u>	<u>TRANSCRIPT</u>
February 21, 1978	Motion to Suppress
February 22, 1978	Discussion between counsel about potential conflicts of one lawyer representing all of the defendants
March 3, 1978	Opening Statements
March 4, 1978	Robert R. Wilkinson - Direct and Cross Examination
March 6, 1978	Robert R. Wilkinson, Robert Drayton, Joseph Smith, Ruth Smith, Christine Wilkinson - Direct, Cross, Redirect, and Recross Examinations
March 7, 1978	Christine Wilkinson, Ronald Joseph Hanley - Direct, Cross, Redirect and Recross Examinations
March 8, 1978	Ronald Hanley, Nicholas J. Colosi, Steve Krolikowski - Direct, Cross, Redirect and Recross Examinations
March 9, 1978	David McGinnis - Direct, Cross, Redirect and Recross Examinations  Vincent Cuccinotta - Direct Examination
March 10, 1978	Vincent Cuccinotta - Direct and Cross Examinations  Judith Cuccinotta - Direct and Cross Examinations  John McCandless - Direct and Cross Examinations

March 11, 1978

John McCandless - Direct, Cross and Redirect and Recross Examinations

Henryetta Link - Direct and Cross Examinations

Nancy McCandless - Direct, Cross Redirect and Recross Examinations

March 13, 1978

R. A. Codario - Direct and Cross Examinations

George Kuhar - Direct and Cross Examinations

March 14, 1978

James Murray - Direct, Cross, Redirect and Recross Examinations

Joseph A. Ryan - Direct, Cross, Redirect and Recross Examinations

Gerald Boyle - Direct, Cross, Redirect and Recross-examinations

Kenneth Curcio - Direct and Cross Examinations

Ennis Mitchell - Direct, Cross Redirect and Recross Examinations

Ralph R. Rogers - Direct, Cross Redirect and Recross Examinations

March 15, 1978

Michael Conroy - Direct, Cross, and Redirect Examinations

John N. Brennan, Jr. - Direct, Cross Redirect and Recross Examinations

Raymond Moretta, Jr. - Direct, Cross, Redirect and Recross Examinations

Raymond Cramer - Direct and Cross examinations

Charles Donch - Direct and Cross Examinations

	Vincent Labrice - Direct, Cross, Redirect and Recross Examinations
	James Henwood - Direct, Cross and Redirect Examinations
	Albert Lory - Direct, Cross, Redirect and Recross Examinations
	Clifford E. Haines - Direct, Cross Redirect and Recross Examinations
	Joseph Montgomery - Direct, Cross, and Redirect Examinations
	James Carty - Direct and Cross Examinations
March 16, 1978	James Carty - Cross, Redirect and Recross Examinations
	John Ellis - Direct, Cross, Redirect and Recross Examinations
	James Joseph Conley - Direct and Cross Examinations
	Roseborough J. McMillan, Jr. - Direct and Cross Examinations
March 17, 1978	James F. Crown - Direct, Cross, Redirect and Recross Examinations
	Williams Jones - Direct, Cross, Redirect and Recross Examinations
March 20, 1978	Closing Statements
March 21, 1978	Jury Deliberations
March 22, 1978	Jury Verdict
April 21, 1978	Sentencing
December 11, 1978	Hearing on Motion for Relief under 28 <u>U.S.C.A.</u> §2255

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-39  
OAL DOCKET NO. CCC 2376-83  
(ON REMAND)  
LICENSE NO. 1088-11

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APPLICATION OF JAMES E. :  
DUCKSWORTH FOR RENEWAL OF HIS:  
CASINO KEY EMPLOYEE LICENSE :

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ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law (OAL) on December 9, 1983, recommending that the application of James E. Ducksworth (applicant) for renewal of his casino key employee license be granted; and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision on December 28, 1983, and the applicant having filed a reply to the exceptions on January 3, 1984; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of January 25, 1984, to remand this matter to the OAL,

IT IS on this 6th day of April 1984, ORDERED that this matter be and hereby is remanded to the OAL for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated July 1, 1983. Without limiting the scope of the hearing on remand, the Commission desires to have the record expanded to include:

1. The applicant's 1975-1980 federal tax return and any and all amended returns for those years.
2. The testimony of James Behe, the applicant's tax preparer, concerning, but not limited to, the supplying and receipt of information and figures used to calculate the deductions on the applicant's 1979, 1980 and 1981 tax returns.
3. The testimony of appropriate representatives from H&R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant \$826 (P2 in evidence).

The Commission leaves to the parties and the ALJ whether such testimony as may be required be adduced from a "live" witness or by affidavit, certification, deposition or other documentary means.

IT IS FURTHER ORDERED that copies of this order of remand be served upon James E. Ducksworth and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

1983

CASINO CONTROL COMMISSION

INITIAL DECISION

OAL DKT. NO. CCC 2376-83

AGENCY DKT. NO. 83-EA-39

**JAMES E. DUCKSWORTH,**

Applicant

v.

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

Respondent.

---

APPEARANCES:

Gerald F. Miksis, Esq., for the applicant (Wm. Goddard Lashman, attorney)

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

Record Closed: October 25, 1983

Decided: December 9, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps) pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the basis that the applicant had committed an offense which rendered licensure inimical to the Act, that the applicant lacked the requisite financial stability, integrity and responsibility, and that the applicant lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 7, 1983, and the matter was scheduled for a hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Ducksworth is 40 years of age. He resides in Mays Landing, New Jersey. The applicant is a high school graduate and has received employment training in the casino industry. The applicant currently holds a casino key employee license.

On December 3, 1979, Mr. Ducksworth commenced employment with Bally's Park Place Casino Hotel (Park Place) as a floorperson. At this time he relocated to New Jersey from Las Vegas, Nevada, where he had been employed by the Sands Hotel and Casino. In September 1980, the applicant was promoted to the position of pit boss. The applicant has been employed in the casino industry for the past 14 years.

During 1975, the applicant purchased a house in Las Vegas, Nevada, for a purchase price of \$44,950. During 1979, he sold the house for \$61,851. The applicant sold the house in order to avoid declaring himself bankrupt. The applicant has never filed an Internal Revenue Service Form 2119 concerning the sale of the house.

The applicant's 1979 and 1980 U.S. Individual Income Tax Returns were prepared by James W. Behe, who was then employed at the Brigantine office of H & R Block. Mr. Behe also prepared the applicant's 1981 return, although Mr. Behe was no longer employed by H & R Block (J-1). The applicant's 1981 return was the primary subject of dispute at the hearing.

The applicant is the father of three sons: Willie, who lives with his mother in Mississippi, Anthony (born in 1981), who lives with his mother in Las Vegas, and Jason, who lives with the applicant (at least during 1981). The applicant provides support for the two children who do not reside in his household. Also, the applicant has provided financial support for his niece, Regina Ducksworth, although no such support was provided during 1981.

Several errors appeared on the applicant's original 1981 return (J-1). More specifically, on line 6c, Anthony, Regina and Willie were listed as dependent children who resided with the applicant and for whom deductions were taken. Further, deductions were taken on line 32b, which emanated from Schedule A - Itemized Deductions, for real estate taxes and home mortgage interest expenses, in the amount of \$4,213, which the applicant did not incur during 1981. The applicant claimed entitlement to and received a \$516 refund as a result of the filing of his 1981 return.

As a result of an Internal Revenue Service inquiry regarding the applicant's 1980 return and as a result of the Division's objections to renewal of his license, the applicant had H & R Block review his 1980 and 1981 returns. Because errors in the returns were noted, amended returns were prepared and submitted for 1980 and 1981. It was determined that the applicant had underpaid his taxes for both years and that he owed the Internal Revenue Service an amount of \$7,404.56, which consisted of principal and interest (P-1). On July 14, 1983, the applicant entered into an Installment Agreement with the Internal Revenue Service, under which he is required to pay \$250 per month until the debt is satisfied (P-1). The applicant has made the required payments on a timely basis. Further, on December 27, 1982, H & R Block reimbursed the applicant in the amount of \$826 for Internal Revenue Service assessments of interest against him which were due to Mr. Behe's errors. The applicant has never had any other difficulties with the filing of his tax returns. Since these difficulties, the applicant has, for the first time, hired an accountant to assist him in tax matters.

On his amended 1981 return, the applicant rectified the previously cited errors (J-2). More specifically, under line 6c the applicant claimed only Jason as his child who lived with him, and under line 6d, the applicant claimed only Anthony as a dependent. Further, the applicant did not claim any deductions for real estate taxes or home mortgage interest expense. In addition, other discrepancies between the two returns were noted. More specifically, on line 8a the applicant declared no interest income on his original return (J-1), but declared \$17 on his amended return (J-2). Also, on line 38 the applicant claimed a \$50 credit for political contributions on his original return (J-1), which was not claimed on his amended return (J-2). Other discrepancies appear in the respective schedule(s) A - Itemized Deductions. More specifically, on line 1 the applicant claimed a \$150 health insurance deduction on his original return (J-1), which was not claimed on his amended return (J-2); on line 13b, the applicant claimed a deduction of \$950 for automobile sales tax on his original return (J-1), but claimed only \$650 on his amended return (J-2); on line 24, contributions, the applicant claimed \$625 on his original return (J-1), but claimed only \$205 on his amended return (J-2); and on line 31, uniforms and cleaning, the applicant claimed \$830 on his original return (J-1), but claimed only \$400 on his amended return (J-2). As a result of the filing of the amended 1981 return, the applicant had a tax liability of \$2,313, or, together with the refund previously received, a total balance due of \$2,829 (J-2).

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

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's failure to file a form 2119 with the Internal Revenue Service concerning the sale of his Las Vegas house, the circumstances surrounding the errors on his original 1981 return and his credibility.

Mr. Ducksworth testified that he did not file or cause to be filed a form 2119 concerning the property he had owned in Las Vegas because he did not believe it was necessary. Although the applicant sold the premises in 1979 for \$16,901 more than he paid for it in 1975, he contended that he did not make a profit. This contention was based upon the existence of a second mortgage on the property and the existence of loans,

the proceeds of which were used to make improvements to the property. Also, the applicant discussed the sale of this residence with Mr. Behe, his tax preparer. Mr. Behe indicated that no form had to be filed.

Similarly, the applicant explained the circumstances surrounding the errors on his original 1981 return. First concerned the deduction taken for Regina on line 6c (J-1). The applicant conceded that, although he had supported Regina in prior years, he did not do so in 1981. However, the applicant advised Mr. Behe of the changes in his tax status during 1981. Nevertheless, Regina's name was included on the return. I also note that the applicant did not claim Jason on his original return, a deduction to which he was entitled. The applicant's tax expert, Mr. McCarty, testified that an error in listing a dependent under line 6c as opposed to line 6d on a return constitutes a procedural error and has no effect upon tax liability.

The applicant further described the circumstances surrounding his claim of entitlement to deductions for real estate taxes and home mortgage interest expense on his original return. Mr. Ducksworth had incurred substantial moving expenses during 1981 and inquired of Mr. Behe as to the deductibility of these expenses. Mr. Behe replied that the expenses could be deducted and, apparently, included them as set forth above.

Although the applicant conceded that he was not entitled to the deductions described herein, he was unaware of their specific inclusion on his original return. The applicant had no specific knowledge of the tax laws. He merely provided Mr. Behe with the information that seemed to be appropriate and relied upon his tax preparer. The applicant did not supply any information to Mr. Behe which comprised the erroneous deductions. Further, the applicant has no idea of the source of the amounts claimed. The applicant did not review the completed original return; rather, he was very glad that he did not have any additional tax liability and merely signed the return and mailed it to the Internal Revenue Service. The applicant stated that this procedure was similar with his past practice and that he relied totally upon his tax preparer, whom the applicant assumed had expert knowledge of the tax laws.

There is no doubt that Mr. Ducksworth is ultimately responsible for the errors on the return. Further, it is apparent that had the applicant reviewed the return he should have recognized the errors because they concerned deductions to which he was simply not entitled. However, the issue is whether the applicant willfully filed the return with false information or whether his explanation is reasonable.

Aside from the return itself, the only evidence of the applicant's conduct at the time the return was filed came from his testimony. Therefore, it is appropriate to consider the applicant's credibility.

Initially, Mr. Ducksworth's position in this matter must be recognized. He is the applicant for continued licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was consistent, believable and persuasive. Further, his testimony comported fully with human experience. In addition, there was no witness offered to refute any fact to which the applicant testified.

Although the applicant is responsible for the errors on the return, which were extremely careless, he did not willfully or knowingly file the return with false information.

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

1. The applicant's reliance upon his tax preparer's advice, to the effect that he was not required to file a Form 2119 with the Internal Revenue Service, was erroneous but reasonable.
2. The applicant failed to review his completed original 1981 return prior to filing it with the Internal Revenue Service. This was very careless.
3. At the time the original 1981 return was filed with the Internal Revenue Service, the applicant was unaware that the return claimed deductions to which he was not entitled.
4. The applicant relied upon his tax preparer, whom he assumed to have expertise concerning the tax laws. This reliance comports fully with human experience and was reasonable.
5. The applicant's explanation of the reasons for the filing of the original 1981 return with false information was reasonable and persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86c(4) that the applicant's conduct in regard to the filing of his original 1981 return is inimical to the policies of the Act.

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions ... are designed to extend strict State regulation to all persons, ... practices and associations related to" casinos and the "comprehensive law-enforcement supervision ... is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contends that certain deductions contained on the applicant's 1981 return constitute violations of various sections of the federal tax law and, as such, establish that his continued licensure would be inimical to the policies of the Act. More specifically, the Division contends that the applicant violated 26 U.S.C.A. § 152, because he was not entitled to claim Regina Ducksworth as a dependent; 26 U.S.C.A. § 164(a), because he was not entitled to a deduction for real estate taxes; and 26 U.S.C.A. § 163(a), because he was not entitled to a deduction for home mortgage interest expense.

Although it was established, and the applicant conceded, that he was not entitled to claim these deductions, the Division did not identify that section of the Internal Revenue Code which would classify the conduct as a criminal act. Nevertheless, it would appear that the Division would argue that the applicant's conduct constitutes a violation of 26 U.S.C.A. § 7201, attempt to evade or defeat tax, which provides as follows:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than five years, or both, together with the costs of prosecution.

Elements of the offense of attempting to evade income tax are: (1) willfulness, (2) the existence of tax deficiency, *i.e.*, a tax due and owing, and (3) an affirmative act constituting evasion or attempted evasion. U.S. v. Buckner, 610 F. 2d 570, *cert. den.* 100 S. Ct. 1646, 445 U.S. 961, 64 L.Ed. 2d 235 C.A. Cal. 1979, *Cf. U.S. v. Wilkins*, 385 F. 2d 465, *cert. den.* 88 S. Ct. 1043, 390 U.S. 951, 19 L.Ed. 2d 1144, C.A. Va. 1967; U.S. v. DeNiro 392 F. 2d 753, *cert. den.* 89 S. Ct. 89, 393 U.S. 826, 21 L.Ed. 2d 97, C.A. Ohio 1968; U.S. v. Hans, 543 F. Supp. 1119, (D.Ohio 1982).

"Willfulness' as used in this section means a voluntary intentional violation of a known duty." U.S. v. King, 616 F. 2d 1034, cert. den. 100 S. Ct. 2950, 446 U.S. 969, 64 L.Ed. 2d 829, (C.A. Minn. 1980). Cf. U.S. v. Ruffin, 575 F. 2d 346 (C.A.N.Y. 1978). A concise discussion of willfulness, as applied in this section, is found in U.S. v. Anderson, 535 F. Supp. 1230, new trial denied 541 F. 2d 660 (U.C. Pa. 1982), as follows:

Requisite element of willfulness in a prosecution for criminal income tax evasion requires an awareness on the part of the taxpayer of a tax obligation; that an intentional rather than an inadvertent act or omission was involved; and that the behavior of the taxpayer was motivated by a specific intent to conceal in contrast to a genuine misunderstanding of the requirements of law or a good faith belief that the income was not taxable. Id. at 1239.

In U.S. v. Conforte, 624 F. 2d 869, cert. den. 101 S. Ct. 568, 449 U.S. 1012, 66 L.Ed. 2d 470 (C.A. Nev.1980), the court stated, "[a]lthough direct proof of the taxpayer's intent to evade taxes is rarely available, willfulness may be inferred by the trier of fact and from all the facts and circumstances of the attempted understatement of tax" Id. at 871.

Although the Division established the existence of a tax deficiency, it did not establish that the applicant's conduct was willful, nor that it was an affirmative act constituting evasion or attempted evasion. Therefore, the Division has failed to establish a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the act, pursuant to section 86c(4); and I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86g.

(B) N.J.S.A.5:12-89b(1)

Under Section 89b(1) of the Act, Mr. Ducksworth was required to establish, by clear and convincing evidence, that he possesses financial stability, integrity and responsibility. The Division raised concern regarding the applicant's filing of his original 1981 return.

There was no dispute that the applicant's original return contained deductions to which he was not entitled. However, there was no evidence which would indicate that these claims were knowing, purposeful or intentional acts. Nevertheless, the errors were obvious and should have been recognized by the applicant. However, given his explanation of the circumstances underlying the filing of the return and the manner in which he has conducted his personal financial affairs at all other times, these errors do not reflect adversely upon the applicant. Further, the applicant has clearly and convincingly demonstrated that he continues to possess the requisite degree of financial stability, integrity and responsibility for licensure.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his financial stability, integrity and responsibility.

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

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

The applicant refuted the accusations of misconduct which were raised against him. Although the applicant committed a very careless error in the filing of his original return, such does not reflect adversely upon his character, honesty and integrity. The Division has cited no conduct by the applicant which would establish a diminution of his character, honesty and integrity since original licensure. Therefore, the applicant is entirely suitable for continued licensure to conduct gaming activities in this State.

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

ORDER OF DISPOSITION

I **ORDER** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED**.

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

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

December 9, 1983  
DATE

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

Receipt Acknowledged:

December 9, 1983  
DATE

Bernadette P. Figue  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (5 pages)
- J-2 Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages)
- P-1 Department of the Treasury - Internal Revenue Service Installment Agreement, James Ducksworth, July 14, 1983
- P-2 Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H & R Block, December 27, 1982

EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-1Id. U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (6 pages)(See J-1)
- R-2Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages) (See J-2)
- R-3Id. Real Estate Settlement Agreement (2 pages)

WITNESS LIST

FOR THE APPLICANT:

James E. Ducksworth

John McCarty

FOR THE RESPONDENT:

Robert W. Latimer

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-56  
REGISTRATION NO. 43357-40  
OAL DOCKET NO. CCC 2527-83

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

FINAL ORDER

Complainant

v.

SCOTT S. EDWARDS,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on October 13, 1983, recommending that the casino hotel employee registration held by Scott S. Edwards be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of November 30, 1983, to affirm the findings of fact, but reject certain conclusions of law contained in the initial decision, and to find the respondent disqualified from holding a casino hotel employee registration; and the Commission having further resolved to waive said disqualification in the interests of justice pursuant to N.J.S.A. 5:12-91(e) and to permit respondent to retain his casino hotel employee registration,

IT IS on this 26<sup>th</sup> day of January 1984, ORDERED that the following conclusions of law contained in the initial decision be and hereby are rejected:

1. Respondent's conviction on October 4, 1982, for burglary in the third degree, contrary to N.J.S.A. 2C:18-2, is a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). [Initial decision at 6]. To constitute a statutory disqualifying offense, the Act requires that such burglaries be second degree offenses. Respondent's conviction for burglary in the third degree is not a statutory disqualifying offense.
2. The respondent has not demonstrated his rehabilitation (from his 1982 burglary offense) pursuant to N.J.S.A. 5:12-91(d). [Initial decision at 9]. Because the offense is not a statutory disqualifier, the issue of his rehabilitation from it need not be resolved.

IT IS FURTHER ORDERED that, based upon the facts as set forth in the initial decision, which are incorporated herein by reference, the Commission makes the following findings:

1. By reason of the respondent's admission that he stole gaming chips at Resorts International Hotel and Casino on July 22, 1982, a crime for which he was not prosecuted, the Commission finds that respondent's continued registration is inimical to the policies of the Act pursuant to N.J.S.A. 5:12-86(g) and (c)(4); and
2. For essentially the reasons noted in the initial decision at pp. 7-9, the respondent has failed to demonstrate his rehabilitation from this offense by clear and convincing evidence as required by N.J.S.A. 5:12-91(d).

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: JANUARY 26, 1984



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2527-83

AGENCY DKT. NO. 83-56

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

Petitioner

v.

**SCOTT S. EDWARDS,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Scott S. Edwards, Pro Se**

Record Closed: August 29, 1983

Decided: October 13, 1983

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Scott S. Edwards, respondent. The Division alleged that Mr. Edwards had committed various criminal offenses, for which the Division seeks revocation of the respondent's casino hotel employee registration, number 43357-40, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on March 2, 1983. At its meeting of March 16, 1983, the Commission denied the Division's application for a temporary suspension of the respondent's casino hotel employee registration. By letter dated March 30, 1983, the respondent requested a hearing. On April 4, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 7, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Edwards is 21 years of age and has lived in the Atlantic County area for his entire life. He currently resides with his wife in Somers Point. The respondent had a drug/alcohol problem during the time he attended high school and he participated unsuccessfully in a family counselling program.

On January 29, 1981, the respondent was arrested by the Northfield Police Department at his place of employment, The Big Car Wash, in Northfield (P-1). The respondent was charged with a violation of N.J.S.A. 2C:20-3, theft. The respondent had taken a tuning fork, with a value of \$10.50, from an Absecon Police Department vehicle which was being washed. The respondent was released on his own recognizance. On February 18, 1981, the respondent pled guilty to the charges in the Northfield Municipal Court and received a \$50 fine and \$25 court costs. The respondent testified that he committed the offense on a dare from a co-employee. The respondent was 18 years of age at the time of the offense.

As a result of an investigation of an automobile accident, on August 18, 1981, the respondent was arrested by the Northfield Police Department (P-2). The respondent was a passenger in a motor vehicle involved in a one-vehicle accident. The respondent was charged with a violation of N.J.S.A. 24:21-47, possession of narcotic paraphernalia. On September 9, 1981, the respondent pled guilty to the charge in the Northfield Municipal Court and received a \$50 fine. The respondent was 19 years of age at the time of the offense.

At approximately 1:45 a.m. on April 6, 1982, the respondent was arrested by the New Jersey State Police while he was a passenger in a motor vehicle on the Atlantic City Expressway near Hammonton, New Jersey (P-3). The respondent was charged with two violations of N.J.S.A. 24:21-20a(4), possession of controlled dangerous substance (1) marijuana under 25 grams and (2) hashish under five grams. The respondent was released on his own recognizance. On May 4, 1982, the respondent pled guilty to both charges in the Hammonton Municipal Court. The respondent was sentenced to a conditional discharge and six months' probation on each charge. The respondent was 19 years and 8 months old at the time of the offense and was employed as a stockman at the Sears Roebuck and Company facility in Northfield.

At approximately 10:13 p.m. on July 22, 1982, the respondent was arrested by the New Jersey State Police at Resorts International Hotel, Inc. (Resorts), (P-4). The respondent was charged with a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana under 25 grams. On July 23, 1982, the respondent pled guilty to the charge in the Atlantic City Municipal Court. The respondent received a 30-day suspended sentence, a \$250 fine and \$25 court costs.

The respondent described the circumstances underlying this incident. The incident immediately followed the termination of the respondent's five-year relationship with a former girlfriend and the respondent's being laid off from his first employment as a baker. The respondent gambled away his last paycheck at the casino. Thereafter, the respondent consumed a large quantity of bourbon; however, he did not use drugs that evening. The respondent attempted to steal some chips from a customer of the casino, but was caught by Resorts' Security. During a body search, the marijuana was discovered. The customer from whom the respondent had taken the chips did not press charges. The respondent attributed his misconduct to his depressed mental condition. The respondent was 20 years of age at the time of the incident.

From August 7 to October 7, 1982, the respondent was employed by Resorts as an apprentice baker. The respondent was terminated from this position as a result of the incident which occurred on July 22, 1982.

At approximately 3:45 a.m. on August 18, 1982, the respondent was arrested by the Northfield Police Department (P-5). The respondent had broken into a Wawa food market in Northfield by means of breaking the front window (P-5). The respondent was

charged with violations of N.J.S.A. 2C:18-2, burglary, and N.J.S.A. 2C:20-3, theft. The respondent was released upon the posting of bail. On August 31, 1982, the respondent was indicted by an Atlantic County Grand Jury for an alleged violation of N.J.S.A. 2C:18-2, third degree burglary. On October 4, 1982, the respondent pled guilty to the indictment in the Law Division of the Superior Court, Atlantic County. The respondent was sentenced to 30 days in the county jail, 18 months' probation, was ordered to make restitution in the amount of \$140, was ordered to pay \$25 to the Violent Crimes Commission Board and was ordered to submit to a drug and alcohol treatment program. The respondent served 20 days. The respondent was 20 years of age at the time of the offense and was then employed at Resorts.

The respondent testified to the circumstances underlying this incident. On the night in question, he was intoxicated and had an intense desire for some cigarettes. Therefore, he broke into the store to get cigarettes and also took some money. Although he acted alone, the respondent told the police that he was accompanied by three others in the hopes that he would have an opportunity to escape.

The respondent was released from the Atlantic County Jail in approximately November 1982. He was assigned to Probation Officer Heather Delmar. The respondent first reported twice per month and now reports once per month. The respondent's probation terminates on April 22, 1984. The respondent made restitution as of October 12, 1982. In compliance with the condition that he obtain drug and alcohol treatment, the respondent was discharged from the the Ocean City Resource and Family Service Center effective January 3, 1983, and completed satisfactorily the Treatment Alternatives to Street Crimes program, effective May 31, 1983. Ms. Delmar testified that the respondent first exhibited a very uncooperative attitude and did not want to work. However, she has detected a definite change in his attitude and evidence of increasing maturity. The respondent has become cooperative, has taken on more responsibility, has higher values and has married. Ms. Delmar has not detected any evidence of drug or alcohol abuse.

With the assistance of Ms. Delmar, the applicant secured employment with the Atlantic County Supported Work Program until May 1983. Since June 1983, the applicant has been employed as a baker at Michele's Pastry Shop in Margate (R-1). The respondent has a positive work record.

The applicant married a woman he met through his employment at the Atlantic County Supported Work Program and together they have purchased a house in Somers Point.

Since his discharge from drug and alcohol treatment programs the respondent has not sought any further treatment. He stated that he has no need for this treatment. The respondent testified that he drinks only an occasional beer and no hard liquor. The respondent also testified that he last used marijuana on April 30, 1983, at his bachelor party. He does not consider marijuana to be a drug. The respondent does not now use marijuana because he has too many financial obligations and cannot afford it, and because he no longer finds it necessary to use marijuana because he has disassociated himself from his prior acquaintances.

The applicant testified that his career objective is to be a baker. Further, the casino industry provides the best employment opportunities and the best compensation.

Mr. Edwards also testified to his rehabilitation. His incarceration was a turning point in his life. He also testified that his problems were the result of the termination of his relationship with a prior girlfriend, which caused him to turn to his friends, without success, after which he turned to alcohol and drugs. However, his wife has given him a purpose in life and caused him to alter his behavioral patterns.

The respondent's father, George Edwards, testified that the positive progress made by the respondent within the past six to eight months has been remarkable.

All of the preceding evidence is undisputed and believable 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. The Division contends that the respondent's conviction on

October 4, 1982, of a violation of N.J.S.A. 2C:18-2, burglary, is a statutory disqualifier listed under section 86c(1) of the Act. This contention is accurate.

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:18-2 disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Edwards is registered as a hotel employee and seeks to be employed as a baker. As such, he would have no responsibilities for actual gaming activities and would have limited contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino.

Second, the respondent was convicted of the following:

1. On February 18, 1981, a violation of N.J.S.A. 2C:20-3, theft;
2. On September 9, 1981, a violation of N.J.S.A. 24:21-47, possession of narcotic paraphernalia;
3. On May 4, 1982, a violation of N.J.S.A. 24:21-20a4, possession of a controlled dangerous substance—marijuana and hashish;
4. On July 23, 1982, a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance—marijuana;
5. On October 4, 1982, a violation of N.J.S.A. 2C:18-2, burglary.

Under section 86c(1) of the Act, the burglary conviction is a statutory disqualifier. With the exception of the first incident, each of the incidents of misconduct involved the use of alcohol and/or drugs by the respondent. Each of the incidences of misconduct was serious, and each was progressively more serious than its predecessor. This pattern of misconduct is extremely disturbing.

Third, the respondent stated that he was suffering from the breakup of his relationship with a former girlfriend, was abusing alcohol and was using drugs. However, the respondent's personal problems were not so serious as to overcome his misconduct, and they do not logically lead to the commission of the crimes. Further, the respondent's abuse of alcohol and drugs, especially in light of the very limited rehabilitative treatment undergone, indicate that there was no dependence upon these foreign substances and the use of them was not so serious as to overcome his misconduct. Accordingly, the respondent's explanations do not mitigate his misconduct to any significant degree.

Fourth, the respondent committed the offenses between January 29, 1981 and August 18, 1982, a period of approximately one and one-half years. The last offense occurred approximately two years ago. However, the respondent was released from prison approximately one and one-half years ago and is still on probation.

Fifth, the respondent committed the offenses at ages 19 and 20. It is likely that his misconduct was, in part, due to immaturity.

Sixth, the respondent's misconduct involved the commission of five separate offenses over a period of one and one-half years. Further, his misconduct ceased only upon his incarceration.

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

Eighth, the respondent has demonstrated some rehabilitation. He admitted his misconduct and pled guilty to the charges. Further, he is satisfactorily completing the requirements of his probation and has made restitution. Further, the respondent has undergone some counselling treatment for drug and alcohol abuse, although his attitude regarding such treatment appears to be indifferent. This is especially significant in light of the fact that the applicant used marijuana in April 1983, at a time during which he was enrolled in a treatment program. Also significant is the respondent's testimony that he does not use marijuana because he has too many financial obligations and cannot afford it, and that because of his content mental condition it is not necessary. Such an explanation does not establish an acknowledgement that the use of marijuana constitutes an unlawful act. This explanation is totally unsatisfactory. Also, the respondent attempted to attribute his misconduct, in part, to excessive consumption of alcoholic beverages. However, the respondent admitted that he has not stopped consuming alcoholic beverages, nor has he continued counselling; rather, he has reduced only the level of his consumption. The respondent has established a positive work record, has married and has taken on the responsibility of the purchase of a home. However, each of these events has occurred within the past six months.

I am not persuaded that the respondent has met his statutory burden to establish his rehabilitation. Although the respondent acknowledged his misconduct and accepted, for the most part, responsibility for his actions, it is clear that he does not have a complete commitment to a total abstinence from misconduct. Further, the respondent's

rehabilitative efforts have been evident only during the past six months. In light of the respondent's history of misconduct, his use of marijuana in April 1983 and the fact that he is still on probation, an insufficient period of time has passed in which to evaluate reasonably the respondent's purported rehabilitation.

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

(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 registration. Given the fact that the respondent cannot demonstrate his rehabilitation from his misconduct and there being no mitigating factors, the respondent's registration must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the hotel employee registration (registration number 43357-40) held by Scott S. Edwards be **REVOKED**.

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

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

October 13, 1983  
DATE

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

Receipt Acknowledged:

October 13, 1983  
DATE

Nancy O. Gull  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

October 18, 1983  
DATE

Ronald L. Parker/pho  
OFFICE OF ADMINISTRATIVE LAW

bm

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Northfield Police Department—Arrest Report, prepared by Sergeant Lewis Cullen, January 29, 1981; Northfield Police Department—Investigation Report, prepared by Sergeant Lewis Cullen, January 29, 1981; The State of New Jersey v. Scott Edwards, Northfield Municipal Court, Docket No. C-5690, Complaint and Judgment (3 pages)
- P-2 Northfield Police Department—Arrest Report prepared by Patrolman John Glasser, August 18, 1981; Northfield Police Department—Investigation Report, prepared by Patrolman John Glasser, August 18, 1981; State of New Jersey v. Scott S. Edwards, Northfield Municipal Court, Complaint and Judgment (5 pages)
- P-3 New Jersey State Police—Arrest Report, prepared by Detective Blong, April 6, 1982; New Jersey State Police—Investigation Report; prepared by Detective Blong, April 6, 1982; New Jersey State Police—Supplementary Investigation Report, prepared by Detective Blong, June 24, 1982; New Jersey State Police - -Property Report, prepared by Detective Blong, June 24, 1982; Division of State Police Request for Examination of Evidence, prepared by Detective Blong; The State of New Jersey v. Scott Steven Edwards, Hammonton Municipal Court, Docket No. C-N331 and N-332, Complaint and Judgment (7 pages)
- P-4 New Jersey State Police—Arrest Report, prepared by Detective Shuey, July 22, 1982; New Jersey State Police—Investigation Report, prepared by Detective Shuey, July 22, 1982; The State of New Jersey v. Scott Edwards, Atlantic City Municipal Court, Docket No. C-6873, Complaint and Judgment (4 pages)
- P-5 Northfield Police Department—Arrest Report, prepared by Patrolman Charles Faisst, August 18, 1982; Northfield Police Department—Investigation Report, prepared by Patrolman Charles Faisst, August 18, 1982; The State of New Jersey v. Scott Steven Edwards, Superior Court of New Jersey - Law

Division - Criminal, Indictment Number 8-240-82-B, filed August 31, 1982; The State of New Jersey v. Scott Steven Edwards, Northfield Municipal Court, Docket No. C-6457, Complaint, August 18, 1982; The State of New Jersey v. Scott Steven Edwards, Northfield Municipal Court, Docket No. C-6458, Complaint made August 18, 1982; The State of New Jersey v. Scott S. Edwards, Superior Court Law Division - Criminal, Judgment of Conviction and Order for Commitment, October 22, 1982 (13 pages)

R-1 Letter from Aaron E. Harris, August 27, 1983

WITNESS LIST

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

Heather Delmar

George Edwards

Scott S. Edwards

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-29

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

Complainant,

FINAL ORDER

v.

GREATER BAY HOTEL & CASINO, INC., t/a  
SANDS,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement on January 28, 1983, alleging that the respondent had violated N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b); and the parties having submitted a proposed stipulation of settlement on January 17, 1984, wherein the respondent admitted that on or about September 26 and 27, 1982, it mailed a certain promotional announcement to certain of its preferred customers advertising "double odds" in the game of craps in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b); and it appearing that the parties have agreed that the respondent would pay a civil penalty in the sum of \$25,000 in full settlement of the complaint; and the Commission having considered the entire record in this matter and having resolved

at its public meeting of January 25, 1984, for good cause shown, to approve the proposed stipulation of settlement and assess a civil penalty upon respondent in the amount of \$25,000,

IT IS on this 14<sup>th</sup> day of February 1984, ORDERED that the proposed stipulation of settlement in this matter be and hereby is approved; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$25,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 14, 1984

0024g  
LA/kmw  
12/01/83

FILED  
JAN 17 1984

CASINO CONTROL COMMISSION  
LEGAL DIVISION

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: Frederick E. Gushin  
Deputy Attorney General  
(609) 292-9394

NICHOLAS CASIELLO, JR., ESQUIRE  
HORN, KAPLAN, GOLDBERG & GORNY  
1300 Atlantic Avenue  
Atlantic City, New Jersey 08401  
(609) 348-4515  
Attorneys for Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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

Plaintiff, :

vs. :

DOCKET NO. 83-29

GREATE BAY HOTEL & CASINO, INC., :

Respondent. :

STIPULATION OF SETTLEMENT

The matters involved in the above captioned action, having been discussed by and among the parties concerned, 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 Frederic E. Gushin, Deputy Attorney General and Horn, Kaplan, Goldberg & Gorny, P.C., attorneys for respondent, by Nicholas Casiello, Jr.,

LA/kmw  
12/01/83

Esq., and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS, respondent presently holds a plenary casino license issued to it effective May 7, 1982, and continuing until the present date;

2. WHEREAS, on or about September 26 and 27, 1982, respondent mailed a certain promotional announcement to certain of its preferred customers advertising "double odds" in the game of craps in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b);

3. WHEREAS, it is admitted by respondent that the aforementioned conduct did in fact occur;

4. AND WHEREAS, the parties recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder, and respondent Greate Bay has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom,

It is therefore hereby agreed and stipulated by and between the parties hereto that:

(a) Respondent hereby agrees to pay to the Casino Control Commission a fine of Twenty-Five Thousand (\$25,000.00) Dollars.

(b) This settlement shall be full and final settlement for the aforementioned violations.

LA/kaw  
12/01/83


(c) The said fine of Twenty-Five Thousand (\$25,000.00) Dollars is just and equitable in light of the statutory guidelines set forth at N.J.S.A. 5:12-130 in that:

(i) Respondent contends that it did not intentionally, purposely, or knowingly violate N.J.S.A. 5:12-70(o) or N.J.A.C. 19:51-1.3(b) and plaintiff has no proof to the contrary.

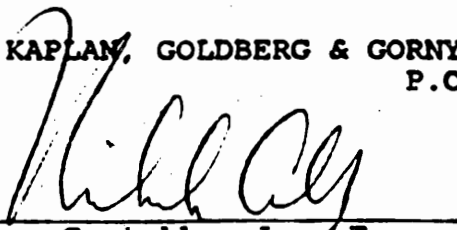
(ii) Respondent has taken corrective action to prevent such conduct in the future, in that respondent agreed not to further distribute the advertisement as soon as it became aware that the plaintiff questioned its legality, see Exhibit "A" attached hereto and made a part hereof, and respondent agrees not to advertise "double odds" in the future.

The undersigned consent to the form and entry of the above stipulation of settlement.

DIVISION OF GAMING ENFORCEMENT

BY:   
Fredric E. Gushin,  
Deputy Attorney General  
Attorney for Plaintiff

HORN, KAPLAN, GOLDBERG & GORNY,  
P.C.

BY:   
Nicholas Casiello, Jr., Esq.  
Attorneys for Respondent



HAND-DELIVERED

November 18, 1982

Mr. Jay Wolf  
Division of Gaming Enforcement  
Investigation Section  
P. O. Box 948  
Pleasantville, New Jersey 08232

Re: DOUBLE ODDS

Dear Jay:

Your investigators requested information relating to an advertising 'piece', a copy of which is attached.

The 'piece' was mailed on September 26th and September 27th, 1982. The mailing was restricted to our customer list. Approximately 10,000 were sent to No. 1 through 6 rated players, one time only.

When I asked your investigators why they were interested in this particular 'piece', I was informed that it violates Regulation 19:51-1.3(b). The section reads as follows:

"No advertising shall divulge any information concerning the size of the casino, gambling odds available or the number of games at the casino."

Had the investigators advised me that the 'die' were spotted incorrectly, I would have agreed.

The issue appears to be whether words "double odds" divulges gambling odds. The words "double odds" are used in a generic sense. The 'piece' did not contain a reference to the ratio between the amount to be paid off for a winning bet and the amount of the bet.

We are certain that the Division of Gaming Enforcement understands that the double odds concept offers different odds;

(Continued)  
Mr. Jay Wolf,  
Division of Gaming Enforcement  
Re: DOUBLE ODDS  
November 18, 1982

e.g.,

Bet on 6 - 8 can pay  $2\frac{1}{2}$  times the flat bet.  
The lay bet can pay \$700.00 to \$300.00.

or

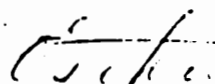
Bet on 6 - 8 can pay 2 times the flat bet.  
The lay bet can pay \$700.00 to \$350.00.

The 'piece' does not advertise which odds are available to the customer. It did not occur to me that the use of a generic term would be construed as a violation of the above statute.

If this construction is the position of the Division, please advise.

In the interim, we will not utilize the 'piece' in question.

Very truly yours,



Esther R. Sylvester  
Vice President & Corporate Counsel

ERS:toc  
Attachment

CC. William P. Weidner,  
President  
James R. Tuthill, Sr.,  
Executive Vice President  
John O'Looney,  
Vice President of Casino Operations

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-125  
OAL DOCKET NO. CCC 3985-83  
LICENSE NO. 41843-21  
REGISTRATION NO. 07811-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
PATRICIA GREVIOUS, :  
Respondent. :

---

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 8, 1983, recommending that Respondent's casino employee license and casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings; and having resolved at its public meeting of January 11, 1984, to affirm and adopt the said Initial Decision and to revoke Respondent's casino employee license and casino hotel employee registration,

IT IS on this 23<sup>rd</sup> day of January 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Respondent be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, 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; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: January 23, 1984



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3985-83

AGENCY DKT. NO. 83-125

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner

v.

**PATRICIA GREVIOUS,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Gary M. Salber, Esq.,** for respondent (Waters and Sherman, attorneys)

Record Closed: October 24, 1983

Decided: December 8, 1983

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 27, 1983, seeking judgment revoking the respondent's casino employee license and casino hotel employee registration, or some other appropriate sanction, pursuant to sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's conviction for shoplifting, on March 1, 1983, in violation of N.J.S.A. 2C:20-11. The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct constituting an offense inimical to the policies of the act, within the meaning of section 86c(4), thereby requiring revocation of licensure and registration, or some other sanction, pursuant to sections 91b and 129 of the act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b(2) of the act, thereby requiring revocation of her casino employee license, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

On May 19, 1983, the respondent filed with the Casino Control Commission her request for a hearing on the complaint of the Division of Gaming Enforcement. On May 26, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

#### FINDINGS OF FACT

The respondent is a 23-year-old resident of Vineland, New Jersey. During the summer of 1979, the respondent began employment at Bally's Park Place Casino Hotel as a food and beverage cashier. A casino hotel employee registration was issued to the respondent by the Casino Control Commission on December 31, 1981, and a casino employee license was issued to the respondent by the Commission on August 17, 1982.

On November 19, 1982, the respondent was placed under observation while she was working as a cashier at Jib's Oyster Bar, adjacent to the casino floor at Bally's. According to the New Jersey State Police Report (Exhibit P-1), Bally Plainclothes Investigator Gino Salerno had received an anonymous telephone call which stated that the respondent was stealing money as she rang up customers' meals on a cash register at Jib's Oyster Bar. The State Police Report indicates that Investigator Salerno observed the respondent on three occasions between 5:15 and 5:45 p.m., on November 19, 1982. Investigator Salerno reportedly observed that customers approached the respondent with trays of food valued at amounts in excess of \$5 or \$10 and that when the respondent rang their bill up on the cash register it was observed to register the amount of \$1. The report

further indicates that Investigator Salerno observed the respondent pocket the difference between the amount rung up on the cash register and the amount handed to her by the customers.

State Police Detective John C. Baughman was summoned to Bally's and informed of the foregoing by Investigator Salerno. The respondent was then advised of her Miranda rights and asked to offer her explanation concerning these allegations. According to State Police Detective Baughman, the respondent stated that on two occasions between 5:15 and 5:45 p.m., she had rung up \$1 on the cash register and had taken a \$5 bill from one patron and a \$10 bill from another patron and placed these bills in her pocketbook. According to Detective Baughman's report (Exhibit P-1), the respondent stated that she stole the money, "just to have some extra money." The \$15 which the respondent had stated that she had taken was voluntarily handed over by the respondent. The respondent was then advised that she was being placed under arrest for theft by unlawful taking, N.J.S.A. 2C:20-3, and a complaint was issued charging the respondent with this offense. On the same day, the respondent was terminated from her position as a food and beverage cashier at Bally's Park Place Casino.

Upon the motion of the prosecutor, the charge against the respondent was downgraded to shoplifting, a violation of N.J.S.A. 2C:20-11, and the respondent pled guilty to this offense in the Atlantic City Municipal Court on March 1, 1983. As a result of her conviction upon a plea of guilty, the respondent was assessed court costs in the amount of \$25.

For approximately three months, beginning February 23, 1983, the respondent was employed as a casino credit clerk at the Claridge Casino. She was terminated from this position following a disagreement with another employee. She has not been employed in a paying position since her termination from the Claridge. However, for approximately one year, the respondent has performed volunteer work at an Air Force recruiting office. According to the testimony of Sergeant Eddie Harris, Jr., the respondent works approximately four hours per day at the recruiting office, performing clerical and receptionist functions. According to Sergeant Harris, the respondent is honest and intelligent and her work is more than satisfactory. Wanda Willis, who had been employed as a cocktail server at Bally's, also testified on the respondent's behalf. According to Ms. Willis, she has known the respondent for approximately four years and she believes the respondent to be an honest person who made a mistake that would not be repeated. It was

the testimony of Ms. Willis that the respondent had been very upset about the incident and her termination from Bally's, and that the respondent talks about these matters constantly.

Testifying on her own behalf, the respondent stated that she regrets her conduct. She characterized her actions as a mistake which she will never repeat. According to the respondent, she feels that she has paid for her mistake and that she should be given a second chance. The respondent stated that she had performed well in her job as a food and beverage cashier at Bally's, prior to her arrest. She had never been charged with an offense or arrested before this incident, or since. Since she had never before been arrested or terminated, her arrest made her nervous and upset.

Explaining the incident which led to her arrest, the respondent stated that two fellow employees had asked her to charge them only for sodas, and agreeing to do so, the respondent rang up on the cash register less than the correct amount for which the two customers should have been charged. Thus, the respondent contends that she was depriving her employer, Bally's, of \$15 in proceeds, rather than depriving customers of their money. The respondent insisted that she did not actually pocket any money and that she had simply charged two fellow employees less than she should have for what they had purchased. However, the respondent did admit that she told the State Police detective at the time of her arrest that she had taken a \$10 bill and a \$5 bill when she had rung up only \$1 on the cash register for each of two customers.

At the hearing, the respondent acknowledged that she was under an obligation to cooperate with the Division of Gaming Enforcement and the Casino Control Commission. However, when asked for the names of the fellow employees whom she had undercharged, the respondent stated that she "would rather not say, because they still worked at the casino."

Except for the factual dispute concerning whether the respondent actually took a \$5 bill and a \$10 bill at the time she undercharged two customers, the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

The respondent contends that she did not take any money at the time she undercharged two fellow employees while she was working as a food and beverage cashier at Bally's. The respondent asserts that she was nervous and upset at the time of her

arrest and that, as a result, she lied to the arresting New Jersey State Police detective by telling him that she had taken the money. However, this testimony directly conflicts with her statement at the time of her arrest when she told the detective that she had taken a \$10 bill and a \$5 bill from two patrons and had placed the bills in her pocketbook. The respondent failed to explain at the hearing how it was that she had a \$5 bill and a \$10 bill on her person which were voluntarily given up at the time of her arrest. The respondent also failed to explain at the hearing why she would have told the arresting detective that she stole the money, "just to have some extra money," if she had not, in fact, taken any money. Having considered all of the testimony and other evidence, and having determined that the respondent's explanation is improbable and not entirely believable, I further FIND that the respondent did take a \$10 bill and a \$5 bill from customers while ringing up on the cash register a charge of only \$1 for each.

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the act authorizes the revocation of licensure or registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license or registration. Pursuant to sections 91b and 86c(4) of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict the registration of any registrant disqualified on the basis of a conviction of any offense which indicates that registration would be inimical to the policy of the Casino Control Act and to casino operations.

It is undisputed that the respondent was convicted on March 1, 1983, upon a plea of guilty, of the offense of shoplifting, in violation of N.J.S.A. 2C:20-11. It is also undisputed that the offense committed by the respondent which led to this conviction occurred while she was employed as a food and beverage cashier at a licensed casino facility in Atlantic City, New Jersey. In the commission of the offense, the respondent rang up on a cash register less than the proper amount for the purchases made by patrons, thus depriving her employer of the proceeds to which it was entitled. After underringing the charges on the cash register, the respondent kept the money which was handed to her by the patrons.

In order to determine whether this offense indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offenders conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Dkt. No. 79-CL-1 (1979). Thus, the factors to be considered in determining whether an offense is inimical are substantially similar to the factors to be considered in determining whether a licensee or registrant has demonstrated his rehabilitation, pursuant to section 90h and 91d of the act, upon a finding that he has committed an automatic disqualifying offense, pursuant to section 86c of the act.

The respondent's illegal conduct occurred on the premises of her licensed casino employer, while she was performing her duties as a food and beverage cashier. Her offense occurred slightly over one year ago and it resulted in her termination by her employer. A subsequent casino position was held by the respondent for approximately three months, and this employment ended upon her termination following a dispute with a fellow employee. Since that time, the respondent has performed approximately 20 hours per week volunteer work at an Air Force recruiting office. The respondent has no other arrests or convictions.

In light of all of the circumstances, the respondent's offense which occurred while she was employed in a licensed casino indicates that her participation in the legalized gaming industry would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I must **CONCLUDE** that the respondent has been convicted of and 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). Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino employee license and hotel employee registration, pursuant to sections 91d and 129 of the act. I also **CONCLUDE** that the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b(2) of the act, thereby requiring revocation of her casino employee license, pursuant to section 129 of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license and casino hotel employee registration of the respondent 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.

December 8, 1983  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

Dec. 8, 1983  
DATE

Burk K. Lind  
CASINO CONTROL COMMISSION

Mailed to Parties:

Dec. 12, 1983  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 New Jersey State Police Report, Property Report, Arrest Report,  
Complaint and Judgment of Conviction

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Patricia Grevious  
Eddie Harris, Jr.  
Wanda Willis

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-35  
OAL DOCKET NO. CCC 2098-83  
LICENSE NO. 15789-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, . :  
Complainant, :  
v. : FINAL ORDER  
ERNESTINE N. JACKSON, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon an initial decision filed by the Office of Administrative Law with the Commission on December 23, 1983, in which the Administrative Law Judge (ALJ) recommended that the casino employee license of Ernestine N. Jackson be revoked; and Ernestine N. Jackson having filed objections and exceptions to the initial decision on January 24, 1984, and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of March 21, 1984, for good cause shown, to modify the initial decision and to dismiss the complaint filed against Ernestine N. Jackson by the Division of Gaming Enforcement,

IT IS on this 30<sup>th</sup> day of March 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) Ernestine N. Jackson's conviction for theft by unlawful taking is presumptively inimical as it occurred during the course of her employment as a coin cashier by the Sands.Casino. Thus, it is a disqualifying offense under N.J.S.A. 5:12-86(c)(4) and one which would adversely affect her good character, honesty and integrity under N.J.S.A. 5:12-86(a) and 89(b)(2).

However, the ALJ failed to make any findings or conclusions of law on the issue of rehabilitation under N.J.S.A. 5:12-90(h), notwithstanding the fact that said issue was framed in the prehearing conference order dated May 9, 1983. Based upon the record and after consideration of the factors set forth in section 90(h), the Commission finds that Ernestine N. Jackson has sufficiently demonstrated her rehabilitation from her conviction.

(2) There being no other basis for disqualification other than the offense from which we have found Ms. Jackson rehabilitated, that portion of the initial decision ordering the revocation of the casino employee license of Ernestine N. Jackson is rejected.

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement against Ernestine N. Jackson be and hereby is dismissed.

IT IS FURTHER ORDERED that the order suspending Ernestine N. Jackson's casino employee license dated February 18, 1983, be and hereby is vacated; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 2098-83**

**AGENCY DKT. NO. 83-35**

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner

v.

**ERNESTINE N. JACKSON,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**John H. Fitzgerald, Esq., for respondent (Cape-Atlantic Legal Services, attorneys)**

**Record Closed: November 7, 1983**

**Decided: December 22, 1983**

**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 January 31, 1983, seeking judgment revoking the respondent's casino employee license, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's conviction for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. The issues to be determined in this matter are as follows:

1. Whether the respondent has been convicted of, or has engaged in, conduct constituting an offense inimical to the policy of the Casino Control Act, within the meaning of section 86c(4) of the Act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the Act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the Act.

#### PROCEDURAL HISTORY

By Order, dated February 18, 1983, the Casino Control Commission suspended the respondent's casino employee license pending final disposition of this matter, pursuant to section 109 of the Casino Control Act. On March 16, 1983, the respondent filed with the Casino Control Commission her request for a hearing on the complaint of the Division of Gaming Enforcement. On March 22, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 18, 1983, and the matter was scheduled to be heard on May 26, 1983. At the request of counsel for the respondent, the matter was adjourned from May 26, 1983 and the subsequently scheduled hearing date of June 30, 1983. The matter was heard on October 31, 1983, and the record was closed on November 7, 1983, after the Division of Gaming Enforcement had been permitted to determine whether it wished to respond to Exhibit R-1, which had not been provided to the Division until the day of hearing.

#### FINDINGS OF FACT

The respondent is a 44-year-old resident of Atlantic City, New Jersey. She is the mother of three children whose ages are 19, 21 and 22 years. She had been the sole support of these children since their birth and she continues to be the sole support of one of the children. At the time of the hearing in this matter, the respondent had been employed for approximately one month at a Rite Aide Store in Atlantic City.

From August 1, 1980 until September 1, 1982, the respondent was employed as a change person and cashier at the Sands Casino in Atlantic City, New Jersey. The respondent held this employment pursuant to a casino employee license issued by the Casino Control Commission on June 11, 1980, and renewed on August 22, 1981.

At approximately 4:15 p.m. on September 1, 1982, the respondent was working in a change booth at the Sands Casino. At that time, the respondent's supervisor and casino security personnel approached the respondent and directed that she leave her change booth and go with them. The respondent did as she was told. She was then informed by casino security personnel that she had been observed taking coins from a pencil holder in the change booth and placing them in her pocket. After denying that she had done this, the respondent consented to a search and it was revealed that she had a dollar bill, a Susan B. Anthony dollar coin and a quarter in her pocket. The respondent was terminated from her position with the Sands Casino and she was arrested and charged with theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. Specifically, it was alleged that the respondent had unlawfully taken coins rightfully belonging to the Sands Casino.

On November 12, 1982, the respondent was tried in the Atlantic City Municipal Court and found guilty by Municipal Court Judge Gennaro Consalvo. After expressly considering that the respondent had been terminated from her employment at the Sands Casino, Judge Consalvo imposed a fine of \$100 which was suspended, and \$15 court costs. The transcript of the proceedings in the municipal court was admitted into evidence as Exhibit R-1.

At the hearing, Shirley Howard and Marion Dixon testified on behalf of the respondent. Both witnesses have known the respondent for approximately 15 years and both agreed that the respondent has a reputation in the community of being honest, decent and loyal. Neither witness believed that the respondent would have taken money belonging to the Sands Casino.

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

Testifying on her own behalf at the hearing, the respondent denied that she had taken any money which belonged to the Sands Casino. According to the respondent,

on her way to work that morning, a friend had given her a dollar bill and a quarter so that she could pay her way home and so that she could buy a stamp. While taking a break that day, the respondent found a dollar coin on the floor and she put it in her pocket with the dollar bill and the quarter. The respondent testified that when she emptied the pencil holder later in the day, it was paperclips and not coins which she placed in her hand. She then took the paperclips and put them in a drawer in the change booth. According to the respondent, she would have appealed her conviction for theft by unlawful taking were it not too expensive for her to do so.

The Division of Gaming Enforcement relied upon the arrest and investigation reports and the judgment of conviction (Exhibit P-1). According to these reports, Sands Casino Surveillance Officer Patricia Kazanowitz stood on a catwalk above the respondent's change booth, and without the respondent knowing that she was being observed, Ms. Kazanowitz saw the respondent empty some coins from a pencil holder into her hand and then place the coins into her pocket. Ms. Kazanowitz and Sands Casino Surveillance Officer Timothy Kertz, who also observed the respondent empty coins from the pencil holder and place them in her pocket, both testified at the municipal court trial of the respondent which led to her conviction for theft by unlawful taking.

As previously discussed, the transcript of the municipal court proceeding resulting in the respondent's conviction was admitted into evidence as Exhibit R-1. Significantly, when the respondent testified in the municipal court trial, she did not mention that she had found a dollar coin on the casino floor while taking a break. However, this explanation for the dollar coin was offered by the respondent at the hearing in this matter. The respondent failed to explain this inconsistency in her testimony. I have considered all of the testimony and other evidence and I have noted that there is no inherent improbability or a lack of reliability in the testimony which led to the respondent's conviction, as set forth in the transcript of the municipal court trial. Therefore, there is no reason apparent from the record before me to give less than full force and effect to the respondent's conviction in municipal court for theft by unlawful taking, in violation of N.J.A.C. 2C:20-3.

#### 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 revokable

privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license. Pursuant to section 86c(4) of the Casino Control Act, the Commission may disqualify an applicant from licensure on the basis of a conviction of any offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations. Thus, under section 129(1), a person who had been so convicted would be subject to revocation of licensure.

It is undisputed that the respondent was convicted on November 12, 1983, of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. It is also undisputed that the offense committed by the respondent which led to this conviction occurred while she was employed as a cashier at a licensed casino facility in Atlantic City, New Jersey. In the commission of the offense, the respondent took a small amount of coins belonging to the casino, with the intent of depriving the casino of the coins.

In order to determine whether this offense indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Docket number 79-CL-1 (1979). Thus, the factors to be considered in determining whether an offense is inimical are substantially similar to the factors to be considered in determining whether a licensee has demonstrated his rehabilitation, pursuant to section 90h of the Act, upon a finding that he has committed an automatic disqualifying offense, pursuant to section 86c of the Act.

The respondent's illegal conduct occurred on the premises of her licensed casino employer, while she was performing her duties as a change booth cashier. Her offense occurred approximately 16 months ago and it resulted in her termination by her employer. Following a lengthy period of unemployment, the respondent has been working for a few months at a store in Atlantic City, New Jersey.

It is apparent that the respondent breached her trust as a casino employee. In light of all of the circumstances, the respondent's offense which occurred while she was performing her duties in a licensed casino indicates that her participation in the legalized gaming industry would justifiably undermine public confidence in the integrity of the

regulatory process and of gaming operations. Therefore, I must **CONCLUDE** that the respondent has been convicted of and 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). I also **CONCLUDE** that the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b(2) of the Act. Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino employee license, pursuant to section 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of the respondent 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.

December 27, 1983  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

23 DEC 1983  
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Dec. 28, 1983  
DATE

Ronald J. Parker pro  
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

**For the Petitioner:**

P-1 New Jersey State Police Arrest Report, Investigation Report and  
Judgment of Conviction

**For the Respondent:**

R-1 Transcript of Recorded Proceedings in the Atlantic City Municipal  
Court, on November 12, 1982

WITNESSES

**For the Petitioner:**

None

**For the Respondent:**

Shirley Howard  
Marion Dixon  
Ernestine N. Jackson

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 82-EL-19 &  
82-EL-20 (CONSOLIDATED)  
OAL DOCKET NOS. CCC 1807-83 &  
CCC 1809-83 (CONSOLIDATED)

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

Complainant,

v.

LAWRENCE MERLINO,

Respondent.

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ORDER

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

Complainant,

v.

PHILIP LEONETTI,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on December 22, 1983, recommending that the petitions of the Division of Gaming Enforcement seeking final orders of exclusion requiring that the names of Lawrence Merlino and Philip Leonetti remain on the Casino Control Commission's list of persons who are to

be excluded or ejected from any licensed casino hotel be denied pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1 et seq.; and the Commission having previously entered preliminary orders of exclusion against the respondents dated February 2, 1983, pursuant to N.J.A.C. 19:48-1.5(a); and the Division of Gaming Enforcement having filed exceptions to the initial decision on January 6, 1984; and the Commission having considered the entire record of these proceedings including the arguments of counsel presented at the Commission's public meeting of March 21, 1984, resolved at its public meeting of March 28, 1984, to reverse certain rulings of the Administrative Law Judge (ALJ) and to remand this matter to the Office of Administrative Law,

IT IS on this 1st day of May 1984, ORDERED that the following rulings of the ALJ be and hereby are reversed for the reasons stated on the record at the Commission's public meeting of March 28, 1984, and for the further reasons to be stated in a Commission Decision to be issued forthwith which is included herein by reference:

- (1) N.J.A.C. 1:1-15.8 applies to this proceeding;
- (2) no adverse inferences may be drawn from the respondents' invocation of the right to remain silent; and
- (3) it is entirely proper for the Office of Administrative Law to resolve constitutional challenges to N.J.S.A. 5:12-71.

IT IS FURTHER ORDERED that this matter be and hereby is remanded to the Office of Administrative Law for further

proceedings consistent with the Commission's decision.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 82-EL-19 & 20 (Consolidated)

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IN THE MATTER OF THE EXCLUSION OF :  
LAWRENCE MERLINO AND PHILIP LEONETTI : COMMISSION DECISION  
FROM CASINO HOTEL FACILITIES :

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INTRODUCTION

These matters concern the petitions filed by the Division of Gaming Enforcement (Division) seeking the exclusion of Philip Leonetti and Lawrence Merlino from the premises of the casino hotels. The Administrative Law Judge (ALJ) issued an Initial Decision finding that the Division failed to prove any basis for exclusion and ordering that the petitions be dismissed. For the reasons hereafter stated, we reverse and remand the matter to the Office of Administrative Law (OAL) for further proceedings.

PROCEDURAL HISTORY AND FACTS

On November 10, 1982, the Division filed the petitions against respondents Philip Leonetti and Lawrence Merlino for placement on the exclusion list pursuant to Section 71 of the Casino Control Act (Act), N.J.S.A.

5:12-1 et seq.<sup>1</sup> Essentially, each petition contains allegations that the respondent is a career offender, an associate of career offenders and a person whose presence in a licensed casino would be inimical to the interests of the State of New Jersey, of licensed gaming therein, or both.

A preliminary hearing was conducted in these matters on January 25, 1983. On February 2, 1983, the Commission issued preliminary orders of exclusion placing the names of both respondents on the exclusion list pursuant to N.J.A.C. 19:42-4.5 and N.J.A.C. 19:48-1.5(c). Thereafter, both respondents requested a final hearing pursuant to N.J.A.C. 19:42-4.6. On March 4, 1983, the Commission transmitted the matters to the Office of Administrative Law for determination as contested cases in accordance with N.J.S.A. 52:14B-10(c). Following separate prehearing conferences, the matters were consolidated and a plenary hearing was conducted before an ALJ on May 19, 20 and August 15, 1983.

On December 22, 1983, the ALJ filed his Initial Decision with the Commission recommending denial of the

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

petitions.<sup>2</sup> This recommendation was predicated upon the ALJ's finding that the Division failed to prove by a preponderance of the evidence that: Messrs. Merlino and Leonetti are career criminal offenders as defined in N.J.A.C. 19:48-1.1; or that they are associated with career offenders in such manner as to make their presence in a casino hotel inimical to legitimate gaming; or that their presence in a licensed casino establishment would otherwise be inimical to the interest of the State or to licensed gaming therein. N.J.S.A. 71(a) and N.J.A.C. 19:48-1.3(a) (1), (2) and (4).

These findings were in turn premised upon two significant legal conclusions. More specifically, the ALJ ruled that: (1) the residuum rule embodied in N.J.A.C. 1:1-15.8, rather than the standard established by N.J.S.A. 5:12-107(a)(6), would be applied in evaluating the evidence in these proceedings and (2) no adverse inferences would be drawn from the respondents' invocation of the privilege to remain silent. Concerning the first ruling, the ALJ maintained that "the Commission has no independent authority or discretion to impose its own evidential standard [N.J.S.A. 5:12-107(a)(6)] and, thereby, nullify the [OAL] Director's exercise of his ultimate regulatory responsibility." A-9. Regarding the second ruling, the ALJ maintained that,

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2. A copy of the Initial Decision is appended hereto as A-1 to A-30 for convenient reference.

pursuant to N.J.A.C. 1:1-15.6, the right to silence pursuant to the Fifth and Fourteenth Amendments to the United States Constitution was applicable in all administrative agency proceedings, and that Evid. R. 39 precluded the drawing of any adverse inferences from the assertion of the privilege.

As a result of these rulings, the ALJ refused to consider any evidence not admissible in a final court action to reach any ultimate finding of fact.<sup>3</sup> The only witnesses at the hearing were the respondents who were called to testify by the Division. Each respondent was asked a number of questions concerning whether he "knew" or "had business dealings with" individuals who are reputed to be members of organized crime, most of whom are presently listed on the exclusion list. In each instance the respondents invoked the Fifth Amendment right to silence. Examples of the questions

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3. The evidence of record consisted, inter alia, of numerous newspaper articles which referred to respondents Merlino and Leonetti as the perpetrators of various criminal acts and as members of organized crime, as well as transcripts of testimony given by other persons including representatives of law enforcement agencies, in another proceeding before the Commission, specifically In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, Docket No. 81-LO-1 (Commission decision Sept. 28, 1982).

asked and the answers given are set forth in the margin.<sup>4</sup>

4. Q. Mr. Merlino, do you know any of the following individuals: Nicodemo Scarfo, Saul Kane, Nicholas Virgilio -- and I would note that some of these may be deceased -- Harry Riccobene, Mario Riccobene, Joseph Bongiovani, [sic; Bongiovanni], Charles Warrington, Pasquale Spareto [sic; Spirito], Joseph Ciganelli [sic; Ciancaglino], Frank Narducci, Philip Testa, or Joseph Salerno?

A. I invoke my Fifth Amendment right.

Q. Mr. Merlino, with any of those individuals that I have just named, have you had any business dealings with them?

A. I invoke my Fifth Amendment right.

Q. Isn't it a fact, Mr. Merlino, that with some or all of those individuals, you have frequently been seen in their company and associated with various functions?

A. I invoke my Fifth Amendment right.

Q. Mr. Merlino, could you tell the Court what are the sources of income that you have?

A. I invoke my Fifth Amendment right.

Q. Mr. Merlino, isn't it a fact that sometime during the summer of 1978 you loaned to one Joseph Salerno a sum of \$10,000 on the arrangement that Mr. Salerno would be required to pay \$250 per week until such time as he was able to repay the \$10,000 loan in a lump sum?

A. I invoke my Fifth Amendment right.

Q. Isn't it a fact, Mr. Merlino, that the \$10,000 that was loaned to Mr. Salerno in the summer of 1978 was received by you from Nicodemo Scarfo?

A. I invoke my Fifth Amendment privilege. (T84-9 to T93-16).

\* \* \*

Q. Mr. Leonetti, do you know any of the individuals: Nicodemo Scarfo, Saul Kane, Nicholas Virgilio, Philip Testa, Harry Riccobene, Mario Riccobene, Joseph Ciganelli [sic], Philip Testa or Angelo Bruno?

A. I invoke my Fifth Amendment right.

Q. Mr. Leonetti, would you kindly tell the Court from what sources you derive your income?

A. I invoke my Fifth Amendment right.

Q. Isn't it a fact, Mr. Leonetti, with regard to the individuals whose names I have just read to you, you

A third ruling of Judge Voliva's, which did not affect his recommended outcome, was that the OAL has the authority to resolve constitutional challenges to statutes and regulations.

By letter dated January 6, 1984, the Division filed exceptions to the Initial Decision and requested an opportunity to file a brief. By letter dated January 30, 1984, Chairman Walter Read identified the legal issues presented and invited all parties to submit briefs addressing any or all of the issues by February 17, 1984. On February 24, 1984, a letter brief was filed by the Division. No response was filed by the respondents. Oral argument was conducted on March 21, 1984. Counsel for respondent Leonetti, whose remarks were joined by counsel for respondent Merlino, argued the validity of each of the ALJ's rulings, albeit in some respects based upon a rationale which differed from that espoused in the Initial Decision. At its public

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4. (Footnote continued)
- are in fact frequently in their company ... [or] prior to their death you were in their company?
- A. I invoke my Fifth Amendment right.
- Q. Mr. Leonetti, do you know an individual named Joseph Salerno?
- A. I invoke my Fifth Amendment right.
- Q. Mr. Leonetti, isn't it a fact that sometime during the summer of 1978, you loaned some \$10,000 to one Joseph Salerno on the requirement that he pay \$250 each week until such time as the \$10,000 was repaid in a lump sum?
- A. I invoke my Fifth Amendment right.
- Q. Isn't it a fact, Mr. Leonetti, that that \$10,000 was received by you from one Nicodemo Scarfo?
- A. I plead the Fifth. (T94-25 to T98-12).

meeting of March 28, 1984, we resolved to remand these matters to the OAL for reasons which we now undertake to explain.

Upon review and consideration of the Initial Decision in this case, the entire record of the proceedings, the written exceptions filed by the Division and the oral arguments of the parties, we conclude that the ALJ erred in applying the residuum rule as found in N.J.A.C. 1.1-15.8 to the evidence in these proceedings. Further, we find that the ALJ erred in refusing to draw any adverse inferences as a result of the respondents' failure to respond to the evidence against them, notwithstanding the fact that their silence was maintained under the Fifth and Fourteenth Amendments. Finally, we believe that the ALJ was mistaken in his contention that "[i]t is entirely proper for the Office of Administrative Law to resolve constitutional challenges to statutes and regulations, as well as the ever present issues of fact and law." A-19. Although he did not find it necessary to reach the constitutionality of Section 71 of the Act and the criteria for exclusion set forth in N.J.A.C. 19:48-1.3, his mistaken belief that the OAL possesses jurisdiction to render such a ruling should be corrected before further proceedings in this matter. Therefore, we reject the Initial Decision and remand these matters to the OAL for further proceedings consistent with this opinion.

I. N.J.S.A. 107(a)(6) AND THE RESIDUUM RULE

- The pivotal threshold issue in this case concerns the standard to be applied in evaluating the evidence; that contained in the Casino Control Act, N.J.S.A. 5:12-107(a)(6), or that which is set forth in the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-15.8, the so-called "residuum rule." The ALJ found it "clear" that the residuum rule applied, notwithstanding our previous ruling to the contrary. A-5; A-10. In In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (Commission decision May 6, 1980), aff'd in an unreported Appellate Division decision, A-4106-79 (decided June 24, 1981), we held that Section 107(a)(6) and the residuum rule were not consistent with each other; that Section 107(a)(6) was the precise antithesis of the residuum rule; that Section 107(a)(6) abrogated the court-made residuum rule; that the residuum rule was not a constitutional due process requirement, and that Section 107(a)(6) permitted findings based upon the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of whether such evidence is admissible under the rules of evidence. Alter at 5-7. Disavowing any attempt to address the merits of the Commission's decision in Alter, the ALJ posited his analysis

on developments subsequent to the Alter decision, notably the promulgation of N.J.A.C. 1:1-15.8 (effective July 1, 1980) by the Director of the OAL pursuant to N.J.S.A. 52:14F-5(e), and the opinion of the court in In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, 180 N.J.Super. 324 (App. Div. 1981), mod. 90 N.J. 361 (1982).

N.J.S.A. 5:12-107(a)(6) provides:

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. [emphasis added].

N.J.A.C. 1:1-15.8, on the other hand, provides:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.2(a) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact

to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.  
[emphasis added].

Both the statute and the OAL regulation allow for the admission of evidence, such as hearsay, which would be inadmissible under the court rules.<sup>5</sup> The obvious difference between Section 107(a)(6) and the residuum rule, and the root of the problem which confronts us, concerns the nature of the evidence upon which findings may be based. After a thorough reconsideration of the conflict between the statutory provision and the OAL regulation, as well as the subsequent developments cited by the ALJ, we reaffirm our belief that Alter was correctly decided and that the principles enunciated therein remain fully viable.

Section 107(a)(6) specifically authorizes the

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5. Throughout this discussion, reference may be made to hearsay evidence as being admissible in agency proceedings, but not sufficient alone to support a determination under the residuum rule. It is understood that such references are to hearsay which does not fit within any of the numerous exceptions to the hearsay rule applicable to court proceedings. See Evid. R. 63.

Commission,<sup>6</sup> in proceedings before it, to base factual findings upon any relevant evidence, including hearsay, regardless of the fact that such evidence may be inadmissible in a court of law, so long as it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.

On the other hand, the residuum rule precludes the judge from reaching any finding which is not supported by evidence which would be admissible in a court of law, i.e., "legally competent evidence." Section 107(a)(6) is hardly consistent with the residuum rule. Rather, as we observed in Alter, it is the precise antithesis of the residuum rule.

The residuum rule was apparently created by the New York Court of Appeals in 1916. See Carroll v. Knickerbocker Ice Co., 218 N.Y. 435, 113 N.E. 507 (1916).<sup>7</sup> It was incorporated into New Jersey administrative law in 1972 when the Supreme Court decided Weston v. State, 60 N.J. 36 (1972). In Weston, the Court, after recognizing that not all jurisdictions adhere to the residuum rule, stated:

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6. When hearing contested cases under the Casino Control Act, the ALJ assumes substantively the same power as the Commission. See Hayes v Gulli, 175 N.J. Super. 294, 302 (Ch. Div. 1980).
  7. The same court has since proclaimed that the rule "no longer obtain[s]." 300 Gramatan Ave. Associates v. State Division of Human Rights, 45 N.Y. 2d 176, 179, 379 N.E. 2d 1183, 1185 (1978).

However, in our State as well as in many other jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. [citations omitted] [60 N.J. at 51.]

Included among the jurisdictions that do not apply the residuum rule are a growing number of federal courts when construing the Administrative Procedure Act, 5 USCA §500 et seq. See, e.g., Johnson v. United States, 628 F. 2d 187, 190 (D.C. Cir. 1980); Hoonsilapa v. INS, 575 F. 2d 735, 738 (9 Cir. 1978); Wathen v. United States, 527 F. 2d 1191 (Ct. Cl. 1975), cert. denied 429 U.S. 821 (1976). See also Richardson v. Perales, 402 U.S. 387, 402 (1971). We note in passing that the federal courts' view obviously implies that the residuum rule is not a matter of constitutional due process, at least as far as the United States Constitution is concerned.

Yet, whatever the law may have been elsewhere, the residuum rule became an established precept in New Jersey.

After Weston all administrative hearings concerning the substantial rights<sup>8</sup> of parties required application of the residuum rule. However, with the advent of casino gambling in New Jersey and the adoption of the Casino Control Act, the Legislature adopted a different standard which was to be utilized in the fact-finding process. As originally enacted in 1977, this variant standard was set forth in Section 108(a)(6); L. 1977, c.110, §108, effective June 2, 1977. The Act was subsequently amended and the former Section 108(a)(6) became the present Section 107(a)(6). L. 1979, c. 282, §36, effective Jan. 9, 1980. The chronology of this amendment vis a vis the Office of Administrative Law Act, N.J.S.A. 52:14F-1 et seq., and certain other changes made by it are significant to this case as will be demonstrated later in this opinion. For present purposes, we need only point out that the amendment involved no change in the text of subsection (a)(6).

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8. We do not here decide whether exclusion from Atlantic City casinos constitutes deprivation of a "substantial right." It is unnecessary to do so in light of our determination that the residuum rule does not apply in any event.

It has been observed that the Casino Control Act provides an extraordinarily pervasive and intensive statutory scheme for regulating virtually every aspect of the casino gaming industry in New Jersey. See Uston v. Resorts International Hotel Inc., 89 N.J. 163, 168 (1982); Knight v. Margate, 86 N.J. 374, 380-81 (1981). It cannot be seriously contended that the inclusion of Section 107(a)(6) within this regulatory scheme was without purpose. We presume the Legislature knows the law and the significance of its enactments. Thus, the Legislature determined that, in the context of regulating this volatile and historically troublesome industry, a standard other than the residuum rule proclaimed in Weston, supra, was to apply to all cases arising under the Casino Control Act. The signal difference is that any relevant evidence, including hearsay, "shall be sufficient in itself" to support a finding of fact regardless of the rules applicable to civil actions, if it is the sort of evidence reasonable men would rely upon in the conduct of serious affairs.

In his Initial Decision, the ALJ contended that N.J.S.A. 52:14F-10 "specifically repealed Section 107(a)(6) to the extent it was inconsistent with the Administrative

Procedure Act" and that the adoption of N.J.A.C. 1:1-15.8, subsequent to the Commission's decision in Alter, "effectively precluded any further use of the evidential standard set forth in Section 107(a)(6) just as it did any other evidential standard employed by any other state agency which was inconsistent with the residuum rule." A-6.

In our view, the ALJ has painted with too broad a brush. We find no specific repeal of Section 107(a)(6) in N.J.S.A. 52:14F-10. The latter statute is a typical preemption clause.<sup>9</sup> It provides:

All acts and parts of acts inconsistent with any of the provisions of this amendatory and supplemental act are, to the extent of such inconsistency, superseded and repealed.

Section 107(a)(6) is not inconsistent with any provision of the APA or the OAL Act. The inconsistency arises only between Section 107(a)(6) and the OAL regulation, N.J.A.C. 1:1-15.8, which was adopted pursuant to the authority conveyed to the Director of the OAL to "[d]evelop uniform standards, rules of evidence and procedures... to regulate the conduct of contested cases and the rendering of administrative adjudications." N.J.S.A. 52:14F-5(e).

As we have already noted, Section 107(a)(6) was the creation of the Legislature, not this Commission. We do not

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9. The Casino Control Act includes a similar clause. See N.J.S.A. 5:12-133(b).

question its wisdom or its viability. On the contrary, we question the authority of the Director of the OAL to override such an express statutory provision. It is not our function to determine the extent of the OAL Director's power. We are, however, charged with the responsibility of implementing the Casino Control Act and where the Director's actions are interpreted by an ALJ to have "precluded any further use" of one of its provisions, we must exercise our decisional authority to review and modify the Initial Decision so as to preserve our enabling statute. See N.J.S.A. 52:14F-7; N.J.S.A. 52:14B-10.

The N.J. Supreme Court has addressed the principles to be applied in determining the validity of rules promulgated by the OAL pursuant to N.J.S.A. 52:14F-5. In In re Uniform Adm'n Procedure Rules, 90 N.J. 85 (1982), the Court considered the validity of several such rules. N.J.A.C. 1:1-15.8 was not among the rules reviewed but the Court did uphold the OAL Director's authority to promulgate rules necessary to promote efficiency, uniformity and impartiality in the conduct of administrative hearings, citing, inter alia, N.J.S.A. 52:14F-5(e). However, the Court indicated that this authority is not without limitation. "The OAL may not adopt rules that nullify or frustrate the essential decisional authority of the agency itself and thereby undermine its ultimate regulatory responsibilities."

Id. at 94. Insofar as the rules under review curtailed agency review or conveyed upon ALJ's the authority to grant emergency relief, they were invalidated. Where the rules posed no threat to the reserved decisional and regulatory authority of the agency, they were affirmed.

None of the rules considered by the N.J. Supreme Court purported to negate an express provision of any administrative agency's enabling act as is contended here. The Rules case is, nevertheless, instructive. The Court established that in creating the OAL the Legislature intended no alteration of the regulatory authority or basic decisional powers of administrative agencies. Id. at 921. The power to decide contested cases is reserved to the agencies. Ibid. If we retain the power to decide contested cases under the Casino Control Act, surely we are to decide them under the standard contained in the Act, namely Section 107(a)(6). The ALJ in this case was sitting in our stead. His substantive powers are derived from those granted to us by the Legislature. Hayes v Gulli, supra, 175 N.J. Super. at 302. He has no power to do what is denied to this Commission. Yet, it is too plain for argument that this Commission could not declare Section 107(a)(6) a nullity nor adopt a regulation contravening any express provision of our enabling act. See N.J. Chamb. of Commerce v. N.J. Elec. Law Enforce. Comm., 82 N.J. 57, 82 (1980). Neither, we hold, can the OAL.

Cf. Hinfey v. Matawan Reg. Bd. of Education, 147 N.J. Super. 201, 210 (App. Div. 1977), mod. 77 N.J. 514, 534 (1978).

The ALJ's contention that the chronology of passage of the OAL Act and the Casino Control Act leads to the conclusion that Section 107(a)(6) was "specifically repealed" by N.J.S.A. 52:14F-10 is erroneous. While the OAL Act [L. 1978, c. 67, approved July 6, 1978, effective in part 6 months thereafter] was adopted subsequent to the original version of the Casino Control Act [L. 1977, c. 110, effective June 2, 1977], the ALJ failed to consider the effect of the amendment by which the substantive provisions of Section 108 were transposed to Section 107 [L. 1979, c. 282, §36, effective January 9, 1980]. The amendment is significant not only because it occurred after the adoption of the OAL Act, but also because the change was specifically made in recognition of the then newly created OAL.

As previously noted, the Legislature is presumed to be thoroughly conversant with its own enactments. <sup>10</sup>

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10. It is also assumed that the Legislature is thoroughly conversant with the judicial construction placed upon its legislation. In this vein, it is interesting to note that since the Commission's ruling in the Alter case (May 6, 1980) (see discussion ante at 8), the Legislature has amended the Act in 1980, 1981, 1982 and 1983 without any attempt to make any change to the Act that would affect the Alter holding.

Barringer v. Miele, 6 N.J. 139, 144 (1951). In this instance we need not even indulge in the presumption, for awareness of the OAL Act was made manifest. Section 107(a)(1) provides:

(a) At all hearings of the Commission in contested cases, as defined in section 2 of P.L. 1968, c.410 [N.J.S.A. 52:14B-2]:  
(1) Unless the Commission hears the matter directly the chairman shall refer the matter to the Office of Administrative Law in accordance with P.L. 1978, c.67, [N.J.S.A. 52:14F-1 et seq.]; provided, however, that the chairman may, in his discretion, designate a member of the Commission to serve as hearing examiner in a particular matter;

As amended, Section 107 details the procedural requirements for the conduct of hearings under the Act. Fully cognizant of its prior creation of the OAL, the Legislature re-adopted subsection (a)(6) without change. In essence, the Legislature declared that hearings could be conducted either by the OAL or the Commission, at the discretion of the Chairman, but such hearings would be conducted pursuant to the provisions of Section 107(a)(2) et seq., including (a)(6). If the Legislature had not intended (a)(6) to apply, it could simply have added a provision to that effect. Since no such provision was adopted, we can only conclude that no such result was intended.

Further, sound principles of statutory construction not only support preference of a more recently enacted statutory provision, but also one that is more specific. Specific provisions must prevail over general provisions. Two

Guys from Harrison, Inc. v. Furman, 32 N.J. 199, 223 (1960);  
Bruck v. Credit Corp., 3 N.J. 401, 408 (1950); Sierra  
v. Mountainside, 188 N.J. Super. 134, 141-142 (Law Div. 1983);  
2A Sutherland, Statutory Construction (4 Ed. 1972) §52:05 at  
315. Applying the foregoing principle to the instant case,  
we find that N.J.S.A. 52:14F-5(e) is general in scope and  
language. It provides that the Director shall "[d]evelop  
uniform standards, rules of evidence, and procedures." It  
makes no specific reference to any particular rules of  
evidence, nor does it mention the existing powers of various  
agencies. On the other hand, Section 107(a)(6) refers  
specifically to the kind of evidence that may be introduced  
and the kind of evidence that is sufficient to base ultimate  
factual findings in all proceedings pursuant to the Casino  
Control Act. Therefore, under the canon of statutory  
construction by which a more specific law is deemed to prevail  
over a general law covering the same subject matter, N.J.S.A.  
107(a)(6) must prevail over N.J.S.A. 52:14F-5(e).<sup>11</sup>  
This does not mean, however, that the Legislature intended to  
nullify the general provision concerning rules of evidence

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11. This rule of construction applies even without regard to  
the respective dates of passage. See, e.g., Smith v.  
Livingston Tp., 106 N.J. Super. 444 (Ch. Div. 1969),  
aff'd o.b. 54 N.J. 525 (1969) (general initiative  
provisions of the Faulkner Act, L. 1950, c. 210,  
effective June 8, 1950, held to be subordinate to the  
more detailed provisions of the Zoning Act, N.J.S.A.  
40:55-35, enacted in 1948).

contained in the OAL Act, but rather intended the more detailed provision contained in the Casino Control Act to be "a particularized variant of the general rule." Muccio v. Cronin, 135 N.J. Super. 315 (Law Div. 1975).

For the aforesaid reasons, we conclude that the promulgation of N.J.A.C. 1:1-15.8 has no effect on the continued applicability of Section 107(a)(6).

Nor do we read the Appellate Division decision in In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, 180 N.J. Super. 324 (App. Div. 1981), mod. 90 N.J. 361 (1982), to refute our position. While it is true that the court made mention of the residuum rule in the Boardwalk Regency decision, we do not believe that such passing reference, when viewed in the context of the case before the court, should be taken as a determination of the sharply focused issue presented to us. In the Boardwalk Regency case, the appellants asserted that the evidence supporting certain of the Commission's findings concerning the relationship between the Perlman brothers, whose qualifications were at issue, and one Alvin Malnick, an allegedly unsuitable individual, was "'irrelevant, inadmissible and legally insufficient.'" 180 N.J. Super. at 349. The court dismissed the argument in a single paragraph of a 21 page opinion:

The argument is entirely frivolous. The protesting brief points out the relevance

of "what the Perlman's knew about Malnik between 1971 and 1975." N.J.S.A. 5:12-107(a)(6) takes care of the balance. See also, N.J.A.C. 19:42-2.6. In re Toth, 175 N.J. Super. 254 (App. Div. 1980), cited by appellants, is of no avail to them. In the matter before us there was an ample residuum of legal and competent evidence to sustain the administrative decision. Weston v. State, 60 N.J. 36, 51 (1972). [180 N.J. Super. at 350].

We find it apparent that in the Boardwalk Regency case the Appellate Division was not required to resolve any conflict between Section 107(a)(6) and the residuum rule. Section 107(a)(6) was itself sufficient to dispose of the admissibility and legal sufficiency questions, and the court so noted. While the court opined, in response to the appellants' contentions to the contrary, that there was "an ample residuum of legal and competent evidence" in the record to support the Commission's findings, we do not take that statement as a determination that the residuum rule must also be satisfied. As the ALJ noted, the issue was not addressed by the Supreme Court.

In concluding that the ALJ erred in applying the residuum rule to this case, we have also considered the contentions of the respondents which differed markedly from the rationale espoused by the ALJ. The respondents argue that, although pursuant to Section 107(a)(6) hearsay may be used in and of itself to support a finding of fact, in the final decision-making process there still must be a residuum

of legal and competent evidence to support a judgment or what counsel referred to as "an ultimate finding."

We find no justification in law or logic for any distinction between the terms "a finding" as used in Section 107 and "ultimate finding of fact" as utilized in N.J.A.C. 1:1-15.8. The operative language of Section 107 which we are obliged by law to implement is: "Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs....," regardless of the rules of court, statutes or common law which might make such evidence inadmissible in a court of law. We note too that the Supreme Court drew no such distinction in the Weston case. It announced that the rule governing administrative law in New Jersey "is that a fact finding or a legal determination cannot be based upon hearsay alone." [60 N.J. at 51]. However, as detailed earlier in this opinion, that court-made rule was later abrogated by the Legislature when it adopted the antithetical rule now embodied in Section 107(a)(6).

In summary we find the ALJ's rationale for applying the residuum rule unpersuasive. While the Legislature established the OAL to improve the overall quality of administrative adjudications, it never intended to alter the basic regulatory authority of this Commission. In re Uniform

Adm'n v. Procedure Rules, supra. More specifically, the Legislature did not intend to repeal Section 107(a)(6) by conferring upon the Director of the OAL the authority to promulgate uniform rules governing contested cases. We find that the residuum rule and Section 107(a)(6) cannot be harmonized. Moreover, we do not read the Appellate Division decision in the Boardwalk Regency case to hold to the contrary. Unless and until a court of competent jurisdiction rules otherwise, we are compelled to apply Section 107(a)(6) and direct the OAL to do so as well when conducting hearings pursuant to the Casino Control Act.

The ALJ's ruling on the residuum rule is therefore reversed. While we are cognizant of the fact that all parties, including the Division, argued there should be no remand, we find it desirable to do so. Even when acting in this quasi-judicial capacity, we are "not simply a neutral forum whose function is solely to decide the controversy presented to [us]." Hackensack v. Winner, 82 N.J. 1, 28 (1980). Rather, we are charged with the responsibility of faithfully executing the Casino Control Act. In re Rules, supra, 90 N.J. at 93. The error noted here and those to be addressed later warrant remand so that we may have the benefit of the ALJ's findings and conclusions reached after application of the appropriate legal considerations.

## II. FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

The central issue here is whether the respondents' invocation of their privilege against self-incrimination, i.e., the right to silence, prohibits the trier of fact from drawing adverse inferences against respondents based on their failure to respond to the evidence against them. For the reasons hereafter stated, we conclude that such inferences may be drawn without offending the respondents' Fifth Amendment right against self-incrimination.

The New Jersey Constitution contains no express provision embodying the privilege against self-incrimination. However, the privilege is firmly established in our common law. See, e.g., Mahne v. Mahne, 66 N.J. 53, 55 (1974); State v. Fary, 19 N.J. 431, 434 (1955); State v. Toscano, 13 N.J. 418, 423 (1953); In re Pillo, 11 N.J., 8, 16 (1952); In re Vince, 2 N.J. 443, 449 (1949); Fries v. Brugler, 12 N.J.L. 79, 82 (Sup. Ct. 1830); Merck & Co. v. Biorganic Labs, Inc., 87 N.J. Super. 23 (Ch. Div. 1965). It also finds expression in our Rules of Evidence. N.J.S.A. 2A:84A-1 et seq; Evid. R. 23, 24 and 25. The rules concerning privileges are applicable to administrative hearings, Evid. R. 2(1), and are incorporated by reference both in an OAL regulation,

N.J.A.C. 1:1-15.6, and a Commission regulation, N.J.A.C. 19:42-2.1(d). Finally, the Fifth Amendment privilege against self-incrimination in the United States Constitution is applicable to any state proceeding through the due process clause of the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1 (1964).

Undoubtedly, the Fifth Amendment should be accorded a construction in favor of the right it was intended to secure, i.e., the right against self-incrimination. The purpose of the Fifth Amendment was stated by our Supreme Court by Justice Brennan in In re Pillo, 11 N.J. 5, 15 (1952):

In modern concept its wide acceptance and broad interpretation rest on the view that compelling a person to convict himself of crime is "contrary to the principles of a free government" and "abhorrent to the instinct of an American,"... (citation omitted; emphasis added).

Evid. R. 23 sets forth the right of the accused in a criminal action. In pertinent part, Evid. R. 23 provides that:

(a) Every person has in any criminal action in which he is an accused a right not to be called as a witness and not to testify.

Evid. R. 24 defines the scope of the privilege and provides that a matter will incriminate:

(a) if it constitutes an element of a crime against this State, or another State or the United States, or (b) is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of such a crime, or (c) is a clue to the

discovery of a matter which is within clauses (a) or (b) above; provided, a matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution. In determining whether a matter is incriminating under clauses (a), (b) or (c) and whether a criminal prosecution is to be apprehended, other matters in evidence, or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations and all other factors, shall be taken into consideration.

A court must uphold an invocation of privilege if the response might provide "a clue" to the discovery of matter which would either directly constitute an element of a crime, or provide a basis to support a reasonable inference of the commission of a crime. "To sustain the privilege it need only appear, considering the implications of the question and the setting in which it is asked, that a responsive answer to the question or explanation of why it cannot be answered might be dangerous because injurious disclosure could result." In re Ippolito, 75 N.J. 435, 441 (1978); see also Hoffman v. United States, 341 U.S. 479, 487 (1951). However, a witness's mere assertion of the privilege "does not establish the hazard of incrimination." Ippolito, supra at 440. The court must decide "whether, under all of the circumstances, silence is justified." Ibid. There must be reasonable cause on the part of the witness to apprehend a criminal prosecution. If it "clearly appears" that such cause for apprehension does not

exist, the privilege against self-incrimination will not apply.

Although by its very nature the privilege against self-incrimination applies primarily to a defendant in a criminal prosecution, it is also available to a witness or a party in a civil proceeding when there is a possibility of subsequent criminal prosecution. See Evid. R. 25.<sup>12</sup> It was stated thusly in Murphy v. Waterfront Commission, 378 U.S. 52, 94 (1964):

The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory.\*\*\* [I]t protects any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used.

In the instant proceeding, respondents have relied heavily on their privilege against self-incrimination. T-78-25 to T-98-12. The question of whether they have properly invoked the privilege in this context is not at

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12. In pertinent part, Evid. R. 25 provides that "every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate."

issue here. Compare Ippolito, supra at 441.<sup>13</sup> Rather, the focus of the present inquiry concerns not the propriety vel non of respondents' assertion of the privilege against self-incrimination, but the consequences that should flow from its invocation. According to the ALJ, the respondents' assertion of their right to silence should have no effect and no inference may be drawn from its use. A-12. In reaching this conclusion, the ALJ relies on Evid. R. 39. Although a literal reading of the rule would support the ALJ's conclusion, our review of the relevant case law leads us to a contrary conclusion.

Evid. R. 39 provides:

If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. [emphasis added].

Although the underscored portion of Rule 39 provides that the trier of fact shall not draw any adverse inference

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13. Ippolito presents a very different case. There, the SCI was conducting an investigation into organized crime and racketeering in New Jersey. Ippolito had been subpoenaed in connection with that investigation. See also State v. Williams, 112 N.J. Super. 563, 568 (App. Div. 1970) ("Being the "'target'" of a grand jury investigation is sufficient of itself, to support a Fifth Amendment Claim.").

from the exercise of a privilege, our courts have, nonetheless, consistently condoned the drawing of adverse inferences from a witness's or a party's invocation of the right to silence in a civil proceeding (see, e.g., Duratron Corp. v. Republic Stuyvesant Corp., et al., 95 N.J. Super. 527 (App. Div. 1967), certif. denied 50 N.J. 404 (1967), as opposed to a criminal proceeding. See, e.g., State v. Smith, 100 N.J. Super. 420 (App. Div. 1968); Griffin v. California, supra. Thus, it is necessary to distinguish the privilege of "the accused" under Evid. R. 23, 24 and 39 from the privilege against self-incrimination available to a party or a witness in a non-criminal proceeding.

In a civil proceeding, where the State's interest is not to convict, i.e., impose penal sanctions, it appears permissible to draw an adverse inference from a party's failure to respond to damaging evidence without offending his right against self-incrimination. There is, however, one important caveat. The N.J. Supreme Court has not seen fit to permit the fact finder to draw an adverse inference from a party's failure to respond to charges against him in a civil proceeding in the absence of other procedural safeguards. Certainly this is true where the drawing of the adverse inference may result in the loss of liberty. See, e.g., Avant v. Clifford, 67 N.J. 497, 539 (1974) (drawing of adverse inferences from a prisoner's failure to respond to

charges against him in a prison disciplinary hearing, which could result in "grievous loss," held constitutionally impermissible, where prisoner not afforded other trappings of due process, viz., right to counsel, right to produce witnesses and cross-examine adverse witnesses.<sup>14</sup>

This exclusion hearing, replete with procedural safeguards, is clearly distinguishable from the civil proceeding in Avant, supra, where the limitations placed on the inmate's tools of defense made his decision to remain silent tantamount to a sacrifice of his defense. Id. at 539. At the hearing stage, respondents Merlino and Leonetti, unlike the incarcerated prisoner in Avant, enjoyed inter alia, the right to counsel, the right to call their own witnesses and the right to confront and cross-examine opposing witnesses. Further, should a final judgment be rendered against them, the consequence that follows would be their exclusion from the casino hotels in Atlantic City, a sanction hardly approaching the "grievous loss" to be visited upon the prisoner in Avant.

Our courts have on several occasions addressed the issue of whether the invocation by a witness or a party of the Fifth Amendment privilege against self-incrimination in a

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14. The United States Supreme Court reached a different result under the Fifth Amendment in Baxter v. Palmigiano, 425 U.S. 308 (1976). See discussion infra at 39-43.

civil proceeding prevents the trier of fact from drawing adverse inferences therefrom. See, e.g., Mahne v. Mahne, supra (divorce action); State v. Johnson, 186 N.J. Super. 423 (App. Div. 1982) (probation hearing); Bastas v. Bd. of Review Dep't of Labor and Ind., 155 N.J. Super. 312 (App. Div. 1978) (unemployment compensation hearing); Duratron Corp., supra (action for damages based upon fraud); In re Dagina, 94 N.J. Super. 167 (App. Div. 1967) (habeas corpus proceeding); Levin v. Levin, 129 N.J. Super. 142 (App. Div. 1974) (action for divorce); Amerada Hess Corp. v. Quinn, 143 N.J. Super. 237 (Law Div. 1976) (action for possession of gasoline service station). In each case, the court found that the refusal of a party in a civil cause to testify or to respond to legitimate discovery demands permits the trier of fact to draw adverse inferences therefrom, which may result in the imposition of some non-criminal sanction, notwithstanding the fact that the refusal is predicated upon the Fifth Amendment privilege. See, e.g., Bastas v. Bd. of Review Dept. of Labor and Ind., supra; Amerada Hess Corp. v. Quinn, supra.

Of the above-cited cases, the ALJ contends, however, that Duratron Corp., supra, and Mahne v. Mahne, supra, support his ultimate conclusion that "no adverse inferences may be drawn from the respondents' invocation of the privilege to remain silent." A-12. To the extent that the

ALJ would disdain an otherwise justified inference solely because the respondent's failure to refute the evidence was based on the constitutional right, the Commission disagrees.

At the outset, it should be noted that the ALJ's extrapolation from both the Duratron Corp. and Mahne opinions is somewhat selective. Duratron Corp. is quoted for the proposition that adverse inferences may be drawn "when the only potential harm [is] nothing more than a monetary judgment." A-11. In actuality, the court, after finding that the drawing of adverse inferences from a failure of a party to testify in a civil cause was "commonplace and elementary in our jurisprudence" (Duratron, supra at 532), noted that "[n]o constitutional protection is absolute." Id. at 533. The court spoke of the need to weigh "each alleged assault on a constitutional right by comparing the social values, public or private, attending the measures impugned as invalid, with the degree of hazard if any to which the constitutional right or privilege was subjected by such conduct." Ibid. The court found that the interest of the public in the fair adjudication by courts of civil disputes between parties permitted the fact finder to draw the inference that defendant "could not truthfully deny that his participation in the transactions under scrutiny was attended by fraudulent knowledge and intent as to plaintiff." Id. at 533. Accordingly, the court affirmed the judgment against

defendant in the sum of \$131,907, finding it to be a reasonable sanction under the circumstances. In reaching its conclusion, the majority decided that the drawing of the adverse inference did not impair the defendant's privilege against self-incrimination. The court's comments on the subject are instructive:

The predominant rule has always been that insofar as an adverse inference from failure of a party to testify in a civil cause may tend to visit upon him civil consequences (here, e.g., a judgment for damages) there is no infringement of the party's rights under the Fifth Amendment or similar guarantees.

. . . . .

The permissible drawing by the factfinder of an inference of inability truthfully to deny a civil claim from a defendant's failure to testify as to relevant facts within his personal knowledge which might refute the evidence adduced against him, is a logical, traditional and valuable tool in the process of fair adjudication. It subserves private justice. We conclude that it does not impair the privilege against self-incrimination. [95 N.J. Super. at 531, 533].

Similarly, in Mahne v. Mahne, supra, the Court did hold that "entry of an order striking the defendants' pleadings was too severe" a sanction to impose in response to their refusal to answer questions regarding the alleged adultery propounded in interrogatories. A-11. The Court was quick to note, however, that although it rejected this particular choice of sanction, it "agree[d] that non-criminal

sanctions were permissible" as a result of defendants' failure to respond to pretrial interrogatories. More importantly, the Court went on to accurately and succinctly state the current status of the law: "[I]n a civil case as distinguished from a criminal case, an inference of guilt... may be drawn from [a defendant's] invoking the fifth amendment.'" (citation omitted) Id. at 60. Accordingly, the Court found that "[a]t the trial the plaintiff [would] have the benefit not only of his own showing but also of any inferences to be drawn from the defendant's pretrial testimonial refusals." Id. at 62. Moreover, this view has recently been embraced by the Appellate Division in State v. Johnson, 186 N.J. Super. 423, 431 (App. Div. 1982) ("Because these rules [Evid. R. 23 (1) and Evid. R. 39] apply to criminal proceedings and because we have determined that a probation revocation hearing is not a criminal proceeding, the short answer is that the rules are inapplicable.") (dictum) (emphasis supplied).

Thus, Duratron Corp., Mahne and Johnson make it clear that adverse inferences may be drawn from a party's or a witness's invocation of the Fifth Amendment privilege against self-incrimination in the civil context. However, we disagree with the Division's assertion that Evid. R. 39 per se does not apply to civil proceedings. Even in civil cases there are limitations, namely, that no inference will be

permitted where to do so, in effect, destroys the privilege. A case which best illustrates this point is Reilly v. Gillen, 176 N.J. Super. 321 (App. Div. 1980).

Reilly v. Gillen, supra, was an action for libel against husband and wife for allegedly republishing a 23-year old newspaper article. The article, which was xeroxed and disseminated to voters in plaintiff's district, was factually incorrect and accused him of dishonest and unpatriotic conduct. In deciding the issue of "actual malice," the court found sufficient credible evidence in the record to support the finding that Peter Gillen "knew" of the article's untrue and defamatory character. However, there was no direct evidence that Patricia Gillen "knew" of the article's untrue and defamatory character. Such a conclusion could only be reached by drawing the adverse inference that Peter Gillen must have shared the information with his wife. The court refused to draw the adverse inference, finding that "communications between the Gillens were excluded from evidence under the marital privilege, Evid. R. 28... Evid. R. 39." Reilly, supra, 176 N.J. Super. at 329.

Properly construed, Evid. R. 39 is intended to provide a shield only in those situations where the drawing of the adverse inference would interfere with the exercise of the privilege. In Reilly the defendants properly exercised the marital privilege. This privilege protects "any

communication made in confidence" between spouses. Evid. R. 28. The adverse inference to be drawn was that Peter Gillen must have told his wife that the article was untrue. To have permitted this inference, however, would have directly impaired the exercise of the marital privilege, which is intended to protect confidential communications between spouses. Thus, the court properly relied on Evid. R. 39 to protect the marital privilege.

Neither the privilege itself nor Evid. R. 39 are applicable in this exclusion case because the exercise of the privilege against self-incrimination is in no way destroyed by the drawing of the adverse inference, and because the inference is not solely the result of the exercise of the privilege. As to Evid. R. 39, the inference in this case would not be based upon the fact that the privilege is invoked, i.e., the inference is not simply that the respondents have done the incriminating deeds because they claim the Fifth Amendment. Rather, the inference flows initially from the evidence presented against the respondents and then their failure to respond to the impetus of that evidence, for whatever reason. As to the assertion of the privilege itself, it must be borne in mind that the purpose of the Fifth Amendment privilege is to protect individuals from possible future criminal prosecution. Even assuming that the inference is drawn and, in consideration of the other evidence in the record, exclusion is ordered, this

result would not subject the respondents to any future criminal prosecution since meeting the criteria for exclusion is not itself a crime. Nor would it impose such a severe burden on the exercise of the privilege as to render the inference constitutionally intolerable.

Duratron Corp., supra and Mahne, supra, also illustrate the choice of non-criminal sanctions available to a court when dealing with the exercise of the Fifth Amendment privilege. In each instance, the court must choose a sanction which is "best designed to protect the pertinent public and private interests without impairing the historic design of the privilege." Mahne v. Mahne, supra at 61.

In the instant case, the drawing of an adverse inference from all of the evidence and from the failure of respondents to rebut based on information within their personal knowledge may result in the respondents being excluded from the casino hotels in Atlantic City. This non-criminal consequence, when balanced against the State's weighty need to preserve the integrity of a sensitive industry pales to insignificance, and is less burdensome than the loss of subsistence funds (Bastas, supra) or the loss of livelihood (Amerada Hess Corp., supra) or the imposition of a substantial fine (Duratron Corp., supra).

Finally, the ALJ argues that Baxter v. Palmigiano, supra, supports his conclusion "that no adverse inferences may be drawn from the respondents' invocation of the privilege to remain silent." A-12.

Palmigiano, an inmate of a Rhode Island Correctional Institution, was charged by corrections officials with creating a disturbance likely to result in a riot. At a subsequent disciplinary hearing officials told Palmigiano that the offense was punishable by state law. He was also informed that the Rhode Island prison rules allowed him to remain silent at the disciplinary hearing, but that adverse inferences could be drawn from his silence. Palmigiano invoked the privilege and refused to testify. After hearing other evidence, the Disciplinary Board found him guilty of prison rule infractions, and ordered that he be reclassified downward and placed in punitive segregation for 30 days. Baxter, supra at 313. Palmigiano filed suit for damages and injunctive relief under 42 U.S.C. §1983, alleging that the disciplinary proceedings violated his Fifth Amendment right to remain silent. After an evidentiary hearing, the district court denied relief. The court of appeals reversed the district court and held that the Fifth Amendment requires that an inmate be informed of his right to remain silent and

that his silence could not be used against him.<sup>16</sup> The Supreme Court reversed the court of appeals decision and held that an inmate facing a disciplinary hearing has the right to remain silent, but that adverse inferences may be drawn from the silence. Baxter, supra, 425 U.S. at 318.

In reaching its decision, the Court had to decide whether the prison officials violated Palmigiano's right to remain silent by drawing adverse inferences from his silence at the disciplinary hearing. The Court began its analysis with the premise that the Fifth Amendment protects persons from being called as witnesses against themselves and, absent immunity, gives them the right not to answer official questions in any civil or criminal proceeding where the answers might incriminate them in future criminal proceedings. Baxter, supra at 316. Further, the Court recognized that it would be unconstitutional to draw an adverse inference from silence in a criminal proceeding. Ibid. However, the Court found that since a prison disciplinary hearing was not a criminal proceeding, adverse inferences could be drawn from Palmigiano's silence.

The Court reasoned that Palmigiano was not compelled to testify because no criminal charges were pending against him, nor had the State sought to make use of his silence in any criminal proceeding. Ibid. Moreover, Palmigiano was

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16. Palmigiano v. Baxter, 487 F. 2d 1280 (1 Cir. 1973).

"not in consequence of his silence automatically found guilty of the infraction with which he [was] charged." Id. at 317. Further, the Court found that Palmigiano's silence was not the sole basis of the judgment rendered against him, but was given only the evidentiary value "warranted by the facts surrounding his case." Id. at 318. Therefore, the majority concluded that Palmigiano's exercise of his right to be silent had not been unconstitutionally burdened. Indeed, Justice White reasoned that this conclusion was in keeping with the prevailing rule that:

the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them...  
Id. at 318.

In reaching its conclusion, the Court distinguished the earlier "no-cost" line of non-criminal cases in which the adverse inferences drawn from silence had been held unconstitutional. See, e.g., Lefkowitz v. Turley, 414 U.S. 70 (1973) (cancellation of state contracts and bar from future contracts for five years for refusal to waive Fifth Amendment privilege when called to testify concerning state contracts); Gardner v. Broderick, 392 U.S. 273 (1968) (discharge from police force for failure to waive privilege against self-incrimination, without immunity, before grand jury); Garrity v. New Jersey, 385 U.S. 493 (1967) (statements made under threat of discharge from police force

for refusal to answer held to be involuntary); Sanitation Men v. Sanitation Comm'r., 392 U.S. 280 (1968) (discharge from city employment for failure to waive privilege against self-incrimination before Commissioner of Investigation of New York City). The Court reasoned that in all of these cases it had condemned the state action because sanctions had been automatically imposed when the persons refused to testify, and when no other evidence of the conduct had been received. Baxter, supra at 317. Thus, what the Court found impermissible was the automatic infliction of a penalty for asserting the constitutional privilege to be silent. Justice White reasoned that the Garrity-Lefkowitz line of cases differed from Baxter because disciplinary measures were not automatically imposed when Palmigiano refused to testify. Compare Kaufman v. Hurwitz, 176 F. 2d 210, 211 (4 Cir. 1949) (bankrupt unable to meet the terms of the Bankruptcy Act without running the risk of a criminal prosecution "must choose between the statutory privilege of discharge in bankruptcy or the constitutional privilege against self-incrimination.").

Applying the Court's reasoning in Baxter to the instant factual complex, we find that the exclusion hearing, like the prison disciplinary hearing in Baxter, is a civil proceeding. Moreover, at the hearing stage, Messrs. Merlino and Leonetti, like Palmigiano, were neither forced nor

requested to waive the Fifth Amendment privilege against self-incrimination; the adverse inferences, if any, to be drawn against them must be rooted in the totality of the evidence introduced at the hearing and not merely from the invocation of the privilege. Further, no automatic sanction would be imposed upon respondents' assertion of the privilege, i.e., they would not be "automatically" listed and excluded from the casino hotels in Atlantic City as a result thereof. Finally, the State's interest in the exclusion hearing, as in the prison disciplinary hearing, is other than conviction for crime. The Act is essentially regulatory, not criminal. See California v. Byers, 402 U.S. 424 (1971) (no Fifth Amendment right to flee accident scene to avoid possible legal involvement). Compare Griffin, supra; Malloy v. Hogan, supra; In re Ippolito, supra. Here, the State's interest is merely to ascertain whether or not respondents fall within the exclusion criteria of Section 71(a), which, if proved, would not constitute a crime.

Thus, Baxter makes it clear that the drawing of adverse inferences in the instant proceeding is clearly permissible under the Fifth and Fourteenth Amendments. Indeed, it may be characterized as "merely a realistic reflection of the evidentiary significance of the choice to remain silent." Baxter at 318.

For all of the above reasons, the ALJ erred in refusing to consider whether any adverse inferences should be drawn against respondents for their failure to respond to the Division's charges, notwithstanding the fact that their silence was maintained under the Fifth Amendment. Therefore, an order of remand is appropriate so that the Commission may have the benefit of the ALJ's findings and conclusions reached after a consideration of all the relevant evidence. The ALJ is directed to inform respondents prior to receiving any testimony or other evidence that, should they choose to invoke the privilege against self-incrimination, the court shall decide as to whether the claim of the privilege is justified, and, if so, that the court may draw adverse inferences as a result of the respondents' failure to respond to the evidence against them. Such inferences, if drawn, shall be considered by the ALJ along with other evidence and testimony in reaching his Initial Decision.

### III. CONSTITUTIONAL CHALLENGES TO THE CASINO CONTROL ACT

Respondents have attacked the constitutional validity of Section 71 of the Act and the Commission's implementing regulations, N.J.A.C. 19:42-4.2 and 4.3 and N.J.A.C. 19:48-1.5(a), which were effective October 18, 1982. The central issue here is whether the OAL has the authority to pass on the constitutionality of the Casino Control Act. The ALJ contended that "[i]t is entirely proper for the Office Of Administrative Law to resolve constitutional challenges to statutes and regulations, as well the ever present issues of fact and law." In support thereof, the ALJ relies on Roadway Express, Inc. v. Kingsley, 37 N.J. 136 (1962). Such reliance is misplaced.

Roadway Express, supra, was an action by a foreign corporation, seeking a declaratory judgment directing the Division of Tax Appeals to certify that no tax liens existed on the corporation's property, restraining the Director from collecting franchise taxes, and declaring the New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.) unconstitutional as applied to it.

At the outset, we note that plaintiff corporation in Roadway Express, supra, was not launching an attack that a statute was unconstitutional on its face, as asserted by the respondents in the instant proceeding, but rather sought a

declaratory judgment that the statute was unconstitutional as applied. Further, there was no suggestion that the administrative tribunal, viz., the Division of Tax Appeals, was competent to pass on the constitutional issue. Indeed, the central issue in Roadway Express was whether the "interests of justice" permitted the plaintiff corporation to bypass its administrative remedies and seek immediate judicial review of the constitutional issue. The Court reasoned, however, that since plaintiff was not attacking the statute as unconstitutional on its face, but rather unconstitutional "as applied" to it, resolution of the constitutional issue had to "be preceded by the taking of evidence [to establish its nontaxability under the Corporation Business Tax Act] and the making of factual determinations thereon." Id. at 41. Therefore, the Court found no reason to allow the plaintiff to bypass the Division of Tax Appeals and seek immediate relief in a judicial forum.

Thus, it is clear that Roadway Express, supra, does not support the notion that administrative tribunals may "resolve constitutional challenges to statutes and regulations" (A-19), but rather that constitutional issues are matters "for which the courts are uniquely suited." Matawan Borough v. Monmouth Cty. Tax Bd., 51 N.J. 291, 297 (1968).

It is well-settled that a legislative enactment is presumptively constitutional. State v. Musto, 187 N.J. Super.

264, 282 (Law Div. 1982); see also Stothers v. Martini, 6 N.J. 560, 567 (1951). It is presumed that the Legislature intended its enactments to meet constitutional requirements. State v. Prafaci, 50 N.J. 346, 349 (1970). Therefore, one who attacks the constitutionality of a statute faces a formidable burden. "Indeed, a statute will not be declared void unless its repugnance to the Constitution is clear beyond a reasonable doubt." Friedland v. Podhoretz, 174 N.J. Super. 73, 75 (Law Div. 1980); see also Harvey v. Essex Freeholders, 30 N.J. 381, 388 (1959).

Secondly, the determination of the constitutionality of an act of the Legislature rests with a judicial body, not a quasi-judicial body. Schwartz v. Essex County Board of Taxation, 129 N.J.L. 129, 132 (1942); see also City of Hackensack v. Winner, 82 N.J. 1, 28 (1980). The OAL was established by the Legislature in 1978 "in the Executive Branch" (N.J.S.A. 52:14F-1), not the judiciary, and thus "cannot be equated with a judicial court." Hackensack v. Winner, supra at 18. In comparing the nature and function of an administrative tribunal, to that of a judicial tribunal, the New Jersey Supreme Court has stated that:

Administrative agencies belong to a different branch of government. They are separately created and exercise executive power in administering legislative authority selectively delegated to them by statute. (citations omitted). That is not to say that there are not strong similarities between administrative and judicial tribunals. The

power exercised by administrative agencies, having legislative and executive as well as judicial characteristics, has been termed "quasi-judicial" when it takes the form of adjudication in contested cases. (citations omitted). However, the adjudicative functions of administrative agencies are actually an aspect of their regulatory powers and, in essence, do not embrace or constitute the exercise of judicial authority. [Hackensack v. Winner, supra, 82 N.J. at 28-29; emphasis supplied].

From the foregoing, it is clear that administrative agencies serve in part "to effectuate the constitutional obligation of the executive branch to see that laws are faithfully executed" (Id. at 30), not to declare them unconstitutional. The responsibility to pass on constitutional issues rests with the courts. Schwartz, supra at 132. In exercising its adjudicative function in a contested case, an administrative tribunal may be characterized as a quasi-judicial body whose function is "to review the facts and make independent findings thereon." Three L Corp. v. Bd. of Adj., City of Newark, 118 N.J. Super. 453 (Law Div. 1972). In matters of constitutional dimension, however, the obligation is on the judiciary,<sup>17</sup> and not the executive or legislative

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17. Moreover, appellate courts, not trial courts, generally should rule on issues of constitutionality. A trial judge should not hold a statute unconstitutional except in a clear case. Noyes v. Estate of Cohen, 117 N.J. Super. 471, 480 (Ch. Div. 1972); Chalmers v. Chalmers, 117 N.J. Super. 474, 478 (Ch. Div. 1971).

branches, to be the "final arbiters of what is and what is not constitutional." Valent v. N.J. State Bd. of Ed., et al, 114 N.J. Super. 63 (Ch. Div. 1971).

An administrative agency is without authority to entertain challenges to the constitutionality of its own enabling act. This view was most recently embraced by the Appellate Division in reviewing one of our rulings. In the Matter of the Application of Jersey Hotels, Inc., for Return of a \$100,000 Licensing Fee, Docket No. 82-L-17 (Commission decision October 26, 1982), aff'd in an unreported Appellate Division decision, A-803-82 (decided March 19, 1984). See also Montana Chapt. of Assn'n of Liv. Tech. Inc. v. Young, 514 F. 2d 1165, 1167 (9 Cir. 1975); Finnerty v. Caven, 508 F. 2d 979, 982 (2 Cir. 1974). The Commission announced in In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger (sic), Docket No. 81-LO-1 (Commission decision Sept. 28, 1982), rev'd on other grounds 536 F. Supp 317 (D.N.J. 1982); rev'd 709 F. 2d 815 (1983), that it was without authority to decide the constitutionality of its own enabling act. See also In the Matter of the Application of Martin et al. For Relief, Docket No. 78-EA-21 (Commission decision June 16, 1980), mod. In re Martin, 90 N.J. 295 (1982). As we concluded earlier in this opinion, where the OAL is hearing a contested case for an agency "the OAL assumes substantively the same power... as is held by the agency." Hayes v. Gulli, supra, 175

N.J. Super. at 302. Thus, if this Commission is without authority to rule on its own enabling act, the OAL is as well.

For all of the reasons discussed above, the Commission concludes that Judge Voliva erred in finding that it was entirely proper for the OAL to void provisions of the Casino Control Act and the Commission's regulations on constitutional grounds.

#### CONCLUSION

We reject the ALJ's rulings that: (1) the residuum rule embodied in N.J.A.C. 1:1-15.8, rather than the standard established by N.J.S.A. 5:12-107(a)(6), is to be applied in evaluating the evidence in these proceedings; (2) no adverse inferences may be drawn from the respondents' silence in the face of adverse evidence where the silence is based upon invocation of the privilege against self-incrimination, and (3) the OAL has the authority to entertain constitutional challenges to the Casino Control Act and Commission regulations. These matters are remanded to the OAL for a new hearing at which the evidentiary standard found in Section 107(a)(6) of the Act is to be applied. Further, the ALJ is directed to draw adverse inferences from the respondents' failure to respond to the evidence against them if such inferences are otherwise justified and notwithstanding the

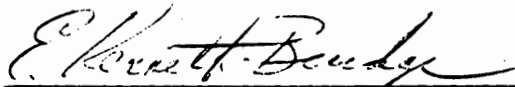
fact that respondents may again invoke the Fifth Amendment right to silence. Such inferences shall be considered by the ALJ along with other evidence and testimony in reaching his Initial Decision. In addition, the ALJ should expressly rule on the issue of whether the Fifth Amendment is properly invoked by the respondents if they do claim its protections on remand. Finally, the ALJ shall not rule on the constitutional validity of Section 71 of the Act or the Commission's implementing regulations, N.J.A.C. 19:42-4.2 and 4.3 and N.J.A.C. 19:48-1.5(a).



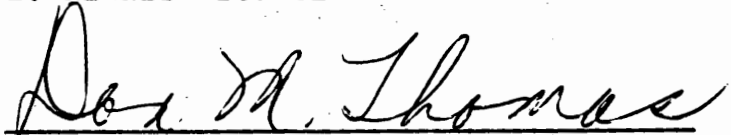
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WALTER N. READ, CHAIRMAN  
NEW JERSEY CASINO CONTROL COMMISSION



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CARL ZEITZ



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E. KENNETH BURDGE



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DON M. THOMAS

DATED: May 25, 1984

JOEL R. JACOBSON, COMMISSIONER (DISSENTING):

The controversy swirling around this decision has obviously been precipitated by Judge Voliva's first two preliminary rulings. I would like to comment upon each.

First, I disagree with Judge Voliva's contention that had the Casino Control Commission kept this case inhouse, rather than forwarding it to the OAL, the residuum rule would have been applied. That is not the case.

There is no dispute among all Commissioners that in all hearings conducted by the Casino Control Commission, Section 107(a)(6) would apply. However, I do not feel compelled to render the ultimate decision here as to whether the residuum rule, or Section 107, would control hearings conducted by the OAL on behalf of the Commission. A court challenge may decide this dispute.

Similarly, I see no need to ascertain the extent to which the standard established by Section 107(a)(6) is significantly different from the residuum rule. Rather, my review of this case leads me to the firm belief that under neither decisional standard could a finding of exclusion be based on materials submitted to the OAL by the Division.

When this case was forwarded to the OAL all parties were provided at the first pre-hearing conference with ample and timely notice that the residuum rule would be applied.

While I recognize the Division's argument that this ruling was erroneous, it nevertheless should have highlighted to the Division the need to produce the best and most convincing case possible.

Despite this notice, the Division did not produce the competent evidence to support its allegations in that forum. I find as persuasive the observations of Judge Voliva that the Division did not provide the witnesses it had called upon earlier--and whom it could easily have produced--to testify to the facts. Had the Division done so, the application of the residuum rule might not even have become an issue. But, the witnesses were not produced and the Division rested its case upon the documents which contain unreliable hearsay.

Nonetheless, the Director now urges this Commission to render a final determination on these petitions based upon the record compiled by the Division before Judge Voliva. Hence, I must conclude that the Division does not possess any additional or superior evidence to substantiate its accusations.

Attorneys for the respondents have asserted that their ability to mount a strong challenge to the allegations have been impaired because of a lack of opportunity to cross-examine witnesses making the charges. There is considerable merit in such contention. It is very difficult, I would submit, to cross-examine a newspaper headline or a photograph of mourners

at a funeral. Justice William O. Douglas has more eloquently made the point when he wrote, "a hearing at which faceless people are allowed to present their whispered rumors and, yet, escape the test and torture of cross-examination is not a hearing in the Anglo-American sense. Without the identification of the informer, the person investigated or accused stands helpless. The credibility, the passions, the perjury of the informers are never known. If he were exposed, the whole charge might wither under the cross-examination."

As a consequence, I find this proceeding to be highly reminiscent of the Local 54 case, which this Commission heard almost two years ago. I was not then, nor am I now, persuaded that baseless charges--making the accusations the substitute for proof--provided by faceless informers unavailable for cross-examination, constitute a legal basis, by any interpretation of the "fair preponderance of the evidence", to place these respondents on the exclusion list.

In the language of Section 107, which is the more lenient of the two decisional standards, the Division has failed to provide the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. A petition for exclusion is a serious affair, and, there is no justification to find these respondents excludable

based upon the evidence in the record before me.

With regard to that evidence, Judge Voliva noted that certain criminal charges had been brought against Messrs. Leonetti and Merlino, but that those charges had resulted in acquittal or dismissal. Further, he found that they were acquainted with Mr. Scarfo.

In light of the evidence that was advanced by the Division, other than guilt by association, how does one attach any sinister meaning to that relationship? How does one reach a conclusion that an association with a career offender is inimical to legitimate gaming?

An association, in the meaning of a relationship, cannot think, cannot act, cannot sin, cannot bribe, cannot extort, cannot commit any crime. Human beings think, act, sin, bribe, extort, or commit crimes.

Does Mr. Scarfo ever have a toothache? The dentist he visits is an associate. Does Mr. Scarfo ever have a bellyache? Does the doctor who treats him have an inimical association? Does Mr. Scarfo ever need a haircut? Does the barber he goes to most of time run the risk of being an inimical associate barred from the casinos? I will concede, that an association with a dentist, a doctor, a barber, or, for that matter, each of the respondents, with Nicodemo Scarfo

could certainly be inimical. But, such a judgment must be made upon a "fair preponderance of the evidence", pertaining to the individual so targeted.

If there were present before us credible allegations of the Commission of specific crimes of violations of the law, I would vote to exclude the respondents. The evidence in this record offers no such allegations.

In the absence of overt acts, the crimes and/or reputations of one cannot legally be imputed by another. Applying the statutory or regulatory standards, I cannot conclude today that the association is such as to render the respondents' presence in the casino hotels inimical.

Now, I recognize that this Commission lacks the authority to rule on the constitutionality of the statute under which we function. I also recognize my obligation to apply the law, even in instances where I may find it harsh or illadvised. However, I have the right and the duty to interpret and apply the law with an eye toward pertinent constitutional principles in our democratic system. In this regard, I am disturbed when we expand the concept of associations in such a way as to violate fundamental rights. The regulation regarding exclusions based on the concept of an association with a career offender is modified by the requirement that such an association must also be inimical to the act.

Judgment should not be reached in a case such as this one where there is no reliable evidence in the record to establish that the association has been, or will be, used to carry out illegal or criminal purposes.

I support Judge Voliva's second ruling concerning the respondents' right to the claim of the privilege against self-incrimination. The invocation of a constitutional privilege does not constitute legally competent evidence to support a finding of fact.

The parties have argued the applicability of Evidence Rule 39 to these proceedings. However, it appears to be quite clear that such a rule does apply here. Evidence Rule 2 provides that the rule governing privileges apply in all branches of government, in all inquiries whether formal, informal, public, or private.

Rule 39 states in clear and unequivocal terms, if a privilege is exercised not to testify, no presumption shall arise with respect to the exercise of the privilege and the trier of fact may not draw any adverse inferences therefrom. I can find no justification to go beyond the plain words and crystal-clear meaning of each of these rules, and in the process, to erode the fundamental rights involved.

The hurling of a mass of allegations about the

respondents has understandably increased the apprehension of prosecution from what the Division obviously believes are very serious offenses. The respondents' invocation of the Fifth Amendment privilege is valid and no adverse inference should, or can be, drawn.

In summary, we have here, as an argument for exclusion, the presentation of unsubstantiated charges, failing to meet the criteria of a fair preponderance of the reliable evidence, which has raised in the minds of the respondents, a reasonable apprehension of prosecution, thereby triggering the exercise of a constitutional privilege and precipitating in the minds of some, an adverse inference upon which the petition to exclude is based.

I am unpersuaded by such a Rube Goldberg contraption of alleged justice.

I have the highest regard for the integrity and competence of the Director of the Division of Gaming Enforcement and for his staff. Most emphatically, I make no allegations of any improprieties on the part of anyone in the Division. But, in all candor, who among us has not heard the rumors about unauthorized, illegal wiretapping conducted by over-zealous, so-called "law and order" proponents?

If we find ourselves persuaded by hearsay evidence--such as the aforementioned rumors--whom should we be excluding from the casinos, the individuals who invoke the Constitution or the individuals who violate the Constitution?

I would affirm and adopt the decision of the Office of Administrative Law subject to the modifications stated above.



JOEL R. JACOBSON, VICE-CHAIRMAN



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**FILED**

NEW JERSEY

DEC 22 1983

CASINO CONTROL COMMISSION

**INITIAL DECISION**

OAL DKT. NOS. CCC 1807-83 &  
CCC 1809-83

AGENCY DKT. NOS. 82-EL-19 &  
82-EL-20 (CONSOLIDATED)

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

Petitioner

v.

**LAWRENCE MERLINO,**

Respondent.

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

Petitioner

v.

**PHILIP LEONETTI,**

Respondent.

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**APPEARANCES:**

**Howard M. Barman, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Harold I. Garber, Esq., for the respondent Merlino**

**Edwin J. Jacobs, Jr., Esq., for the respondent Leonetti (Tort, Jacobs, Gross & Todd, P.C., attorneys)**

Record Closed: October 24, 1983

Decided: December 22, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

By petitions filed with the Casino Control Commission (Commission), the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, seeks to have the names of Lawrence Merlino and Philip Leonetti, respondents, placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino hotel, pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq., on the basis that Messrs. Merlino and Leonetti are alleged career criminal offenders, associates of career or professional offenders and whose presence in a licensed casino would be inimical. The respondents opposed the actions.

PROCEDURAL HISTORY

The Division's petitions were filed with the Commission on November 10, 1982. The petitions also sought the immediate placement of the respondents' names upon the exclusion list. On February 1, 1983, the Commission conducted a preliminary hearing, and, on February 2, 1983, the Commission issued an order placing the names of both respondents upon the exclusion list pending final disposition of the petitions. By letter dated February 24, 1983, Mr. Leonetti requested a hearing. Also, by letter dated March 1, 1983, Mr. Merlino requested a hearing. On March 4, 1983, the Commission transmitted the matters to the Office of Administrative Law for determination as contested cases, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On March 31, 1983, a prehearing conference was held concerning the petition filed against Mr. Merlino, and the matter was scheduled for hearing on May 6 and 17, 1983. On April 8, 1983, a prehearing conference was held concerning the petition filed against Mr. Leonetti, and the matter was scheduled for hearing on May 19 and 20, 1983.

On May 19, 1983, the matters were consolidated for hearing and the hearing was commenced. The hearing was continued on May 20, 1983. However, as a result of substantial problems which emanated from discovery and the unavailability of proposed

Division witnesses (including representatives of the New Jersey State Police), the matter was continued. On August 15, 1983, the hearing resumed and continued to conclusion. The final submission pursuant to the briefing schedule was filed on October 24, 1983. By an order of extension entered on December 8, 1983, the time period for the submission of the initial decision was extended until December 22, 1983.

### PRELIMINARY RULINGS

Two issues which arose during the proceedings require resolution prior to an analysis of the facts because of their potential impact upon the extent of the factual analysis to be made. First, at the prehearing conference and during the hearing in May 1983, a dispute was evident with regard to the applicability of the evidential standard found in N.J.S.A. 5:12-107a(6) as opposed to the residuum rule, embodied in N.J.A.C. 1:1-15.8. The parties were informed at the outset that the residuum rule would be applied; in addition, the Division was informed that it would have the opportunity at the close of the hearing to present legal argument to the contrary. Accordingly, all exhibits which contained hearsay were admitted upon the express condition that direct or legal and competent evidence be produced to support ultimate findings of fact (see List of Exhibits attached). Second, as a result of the respondents' invocation of their right to remain silent under the Fifth and Fourteenth Amendments, a dispute emerged as to whether their assertion of the privilege would permit the trier of fact to draw an adverse inference therefrom and reach the hearsay evidence. Each issue will be treated separately.

#### (A) APPLICABILITY OF THE RESIDUUM RULE

It was agreed that the residuum rule was the applicable evidential standard in all administrative agency hearings prior to the adoption of the Act. The State Supreme Court described the residuum rule in Weston v. State, 60 N.J. 36, 51 (1972):

However, in our State as well as in many other jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.

[citations omitted]

With the enactment of the Casino Control Act (Act), L. 1977, c. 110, effective June 2, 1977, as amended by L. 1979, c. 282, effective January 9, 1980, the legislature established what is now known as section 107 of the Act, conduct of hearings; rules of evidence; punishment of contempt; rehearing. The pertinent provision of section 107a provides:

(6) 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;

Arguably, section 107a(6) established an evidential standard different from that found in Weston, which was to be applied in all contested cases heard under the Act.

The apparent conflict between section 107a(6) and the residuum rule came to the fore in In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, OAL DKT. CCC 2085-79 (Dec. 6, 1979), modified, Casino Control Comm., DKT. NO. 79-EA-60 (May 6, 1980), affirmed (N.J. App. Div., June 24, 1981, A-4106-79). In the initial decision, the administrative law judge held that the residuum rule, as stated in Weston, was consistent with section 107a(6) of the Act and was applicable. Further, it was held that Weston raised the residuum rule to the level of a constitutional due process requirement. Also, it was held that section 107a(6) was impliedly repealed by the enactment of N.J.S.A. 52:14F-10, although it was acknowledged that the Director of the Office of Administrative Law (OAL) had not yet adopted a replacement standard, rule of evidence or procedure, pursuant to N.J.S.A. 52:14F-5(e). In its final decision, the Commission rejected the conclusions that the residuum rule and section 107a(6) are consistent, and that the residuum rule is a constitutional due process requirement. More specifically, the Commission held that section 107a(6) is the antithesis of the residuum rule and that its adoption abrogated a court-made rule of common law. Alter, Comm.'s decision at 5-7. In essence, the Commission held that ordinarily inadmissible hearsay evidence alone could be used to support an ultimate factual finding. The Appellate Division did not address this issue.

The Division contends that the Commission's ruling in Alter resolved the dispute and requires that section 107a(6) be applied to all matters heard pursuant to the Act.

Without regard to the merits of the Commission's decision in Alter, several developments have occurred since which shed new light upon the dispute.

First and primarily, was the promulgation by the OAL Director (Director) of N.J.A.C. 1:1-15.8, hearsay evidence; residuum rule. 12 N.J.R. 362, effective July 1, 1980. This rule was adopted pursuant to the authority vested in the Director. N.J.S.A. 52:14B-10 and N.J.S.A. 52:14F-5e. N.J.S.A. 52:14F-5e provides that the Director shall:

Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications;

N.J.A.C. 1:1-15.8 provides:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.2(a) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

[emphasis added]

When read together N.J.S.A. 52:14B-10a, which established that the exclusionary rules of evidence did not apply to administrative agency proceedings, N.J.S.A. 52:14B-10d and N.J.S.A. 52:14F-5e, which authorize the Director to establish "uniform standards, rules of evidence, and procedures," and N.J.A.C. 1:1-15.8, which established the evidential standard applicable in all administrative agency hearings, it is clear that the residuum rule as set forth in Weston, is the "standard" or "rule of evidence" applicable in all administrative agency hearings conducted under the Administrative Procedure Act,

including those conducted under the Act. The scope of the Director's authority will be discussed, infra.

N.J.S.A. 52:14F-10 specifically repealed section 107a(6) of the Act to the extent that it was inconsistent with the Administrative Procedure Act. It is assumed that the Commission did not address this issue in Alter because N.J.A.C. 1:1-15.8 had not been adopted at that time. Therefore, it was appropriate for the Commission to apply the evidential standard that existed in prior agency practice. However, the adoption of N.J.A.C. 1:1-15.8 effectively precluded any further use of the evidential standard set forth in section 107a(6) just as it did any other evidential standard employed by any other state agency which was inconsistent with the residuum rule.

The second intervening event was the Appellate Division decision of July 21, 1981, in In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, 180 N.J. Super. 324 (App. Div. 1981), modified and affirmed, 90 N.J. 361 (1982). This matter involved an appeal from a Commission decision which, in part, ordered certain key employees to divest themselves of any interest in the casino or related activities. In its rejection of arguments concerning the relevance, admissibility and legal sufficiency of certain evidence against the employees, the Appellate Division applied both section 107a(6) and the residuum rule, as set forth in Weston. In re Boardwalk Regency at 350. The court's reference to both standards was not inconsistent however. The court concluded that the disputed evidence was relevant, admissible and legally sufficient pursuant to both standards. However, the court's application of the residuum rule, which is the higher of the two standards, clearly established that the the residuum rule was the applicable standard in a review of final decisions rendered under the Act. Although the court did not resolve the issue presented herein, the fact that it applied the residuum rule is a clear indication that, as a practical matter, the residuum rule should be applied at the hearing stage in order to avoid confusion. The Supreme Court's decision did not address the issue.

In order to place in proper perspective the applicability of the residuum rule as set forth in N.J.A.C. 1:1-15.8 in all hearings conducted by the OAL for the Commission, it is necessary to review the purposes for the creation of the OAL and the authorities vested in the Director in this regard.

In the Senate and State Government, Federal and Interstate Relations and Veterans Affairs Committee Statement appended to the legislative proposal which created the OAL, Senate, No. 766—L, 1978, c. 67, there was an acknowledgement of problems within the then existing system, including faulty procedures. Further, the primary purpose of the legislative proposal was "to improve the quality of justice with respect to administrative hearings." In addition, it was anticipated that the OAL would "promote due process . . . and generally improve the quality of administrative justice." N.J.S.A. 52:14F-5e, f and g specifically vested the Director with broad authority to effectuate the intended result. The adoption of the Uniform Administrative Procedural Rules (UAPR), N.J.A.C. 1:1-1 et seq., is a part of the means instituted by the OAL to accomplish the legislative mandate.

Several decisions have recognized and supported the legislative initiative and the authority of the Director to enforce compliance therewith.

First, the State Supreme Court acknowledged the legislative purpose for the establishment of the OAL in Hackensack v. Winner, 82 N.J. 1, 36, 37 (1980):

The act creates an independent office of administrative law and provides for the assignment of independent hearing officers, denominated "administrative law judges," to hear and make recommended determinations in contested administrative cases. N.J.S.A. 52:14F-5, -6, -8. The salutary purposes of the statute "is to improve the quality of justice with respect to administrative hearings . . . [,] to eliminate conflict of interest for hearing officers, promote due process, expedite the just conclusion of contested cases and generally improve the quality of administrative justice."

[citations omitted]

Second, was Hayes v. Gulli, 175 N.J. Super. 294 (Ch. Div. 1980), which addressed the issue of whether the OAL had the power to issue and to enforce a subpoena duces tecum. The court found that while the OAL had the power to issue a subpoena by virtue of powers derived from those legislatively granted to the Civil Service Commission, it did not have the power of enforcement to compel disclosure. However, the court acknowledged that the legislature vested within the Director substantive powers in excess of those granted to other agencies, which provided the means to satisfy the mandated "goal of improvement of administrative justice." Id. at 299; N.J.S.A. 52:14F-5e, f and g. Further, the court recognized that the OAL was an entirely different entity from the

previous system, which had been given the primary responsibility of improving administrative justice. More specifically, at 299 the court stated: "The Legislature thus intended the OAL to provide a new system of administrative adjudication, promoting justice through uniformity and independence." Last, the court recognized that the OAL was vested with broad substantive powers, pursuant to N.J.S.A. 52:14F-5e, f and g "to develop uniform standards, rules and procedures for the conduct of contested cases." Id. at 303.

Third, in In re Uniform Administrative Procedure Rules, 90 N.J. 83 (1982) (hereinafter the Rules decision), the State Supreme Court reviewed a challenge to a number of rules promulgated by the OAL to govern the manner in which administrative hearings were to be conducted. While upholding some of the rules and invalidating others, the court stressed the policy concerns behind the establishment of the OAL and behind the relationship between the OAL and other state agencies. The court again acknowledged that the primary purpose for the creation of the OAL was to improve the quality of administrative justice through impartiality, objectivity and greater fairness in the conduct of contested cases. Id. at 90. Further, the court acknowledged that "the legislative goal in creating this new governmental office was to promote uniformity, efficiency, consistency, fairness, competence, and, most importantly, independence in the conduct of administrative hearings before state agencies." Id. at 90-91. Although the court stated that the creation of the OAL was not intended to interfere with the basic regulatory authority vested in the state agencies and that the OAL could not adopt rules which frustrated those agencies' exercise of their regulatory authority and undermined their regulatory responsibilities; nevertheless, with particular reference to N.J.S.A. 52:14F-5e, the court upheld the authority of the OAL to promulgate rules which were "necessary to promote efficiency, uniformity and impartiality in the conduct of administrative hearings." Id. at 91, 94.

Fourth, in In re Kallen, 92 N.J. 14 (1983), the State Supreme Court addressed the issue of whether an administrative law judge has the authority to refuse an order of remand from an agency head for the purpose of admitting evidence that was not presented at the initial hearing. In concluding that the order of remand was improper, the administrative law judge had relied in part on what is now N.J.A.C. 1:1-16.5(c), which provides that an agency head may not remand a matter in order to develop proofs that "in the exercise of reasonable diligence, could have been presented by the agency at the original hearing." The court noted that the rule was not at issue, but that in any case, its

application would not be enforceable because it would have resulted in a nullification of the authority of the Director of the Division of Motor Vehicles to make a final decision in a contested case and would have untoward substantive effects. Kallen at 19-20. The court reaffirmed its statement made in the Rules decision that the OAL cannot restrict the conduct of a contested case to the extent that it might encroach upon an agency head's final decision-making authority. Id. at 23. Nevertheless, an agency head does not have unlimited discretion in the conduct of a contested case, and the hearing must conform to principles of fundamental fairness. Id. at 25-26. However, the court held that "administrative hearings in contested cases may conform to procedural due process standards that are less restrictive than those imposed in court proceedings." Id. at 26.

It is clear that the OAL's adoption of the residuum rule as the evidential standard to be applied in all administrative agency hearings conformed to the broad substantive powers vested in the Director and was a means of satisfying the legislative mandate to "develop uniform standards, rules of evidence and procedures . . . to regulate the conduct of contested cases and the rendering of administrative adjudications," pursuant to N.J.S.A. 52:14F-5e. See also, N.J.S.A. 52:14B-10d. But for the specific exceptions provided in N.J.S.A. 52:14F-8(a), there are no other exceptions from the requirement that all state agencies adhere to the Director's promulgation of rules pursuant to the exercise of his ultimate regulatory responsibilities. It is unambiguous that the legislative goal of uniformity is all encompassing in regard to its application to the various state agencies. Therefore, the Commission has no independent authority or discretion to impose its own evidential standard and, thereby, nullify the Director's exercise of his ultimate regulatory responsibility.

There should be no concern that the Director's promulgation of N.J.A.C. 1:1-15.8 might impinge upon the Commission's final decision-making function. N.J.A.C. 1:1-15.8 merely reestablishes a uniform evidentiary standard which has been in effect at least since 1972, when it was set forth in Weston. The residuum rule is a fair and reasonable judicial safeguard, which was designed to ensure that agency decision making is not arbitrary, capricious or unreasonable. Further, had the Commission not forwarded this matter to the OAL and had it heard the matter under its original jurisdiction, it would have been required to apply the UAPR, i.e., the residuum rule. Accordingly, the application of the residuum rule in this proceeding has no effect upon the Commission's final decision-making authority.

As far as the Division is concerned, it was given more than ample and timely notice that the residuum rule would be applied in this proceeding, commencing with the prehearing conference. The opportunity to brief the issue at the conclusion of the hearing does not excuse the failure to produce legal and competent evidence to support the allegations.

The reasonableness of the uniform application of the residuum rule in administrative agency hearings is evident by merely envisioning the chaos which would exist if each state agency were permitted to develop and impose its own evidential standards.

I CONCLUDE that N.J.A.C. 1:1-15.8 is applicable in all hearings conducted under the Act.

(B) RESPONDENTS' CLAIM OF FIFTH AND FOURTEENTH AMENDMENT  
PRIVILEGE AGAINST SELF-INCRIMINATION

During the hearing, the Division called as its witnesses Messrs. Merlino and Leonetti. In response to various questions regarding possible associations and alleged criminal activities by the respondents, both witnesses invoked their privilege against self-incrimination, pursuant to the Fifth and Fourteenth Amendments of the United States Constitution. The Division contends that adverse inferences can be drawn from the respondents' assertions of their right to silence, which inferences constitute legal and competent evidence and which permit consideration of and reliance upon all the hearsay evidence admitted. The respondents contend that no adverse inferences can be drawn from their invocation of the privilege.

The privilege not to testify is applicable to proceedings in all courts in this State, pursuant to New Jersey Rules of Evidence, Evid. R. 39. In addition, the privilege is mandatorily applicable in all administrative agency hearings, pursuant to N.J.S.A. 52:14B-10a. N.J.A.C. 1:1-15.6, incorporates Evid. R. 39 with respect to the privilege against self-incrimination. In pertinent part, this rule provides:

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: . . . Rule 39 (Reference to Exercise of Privileges);

Evid. R. 39 provides that no adverse inference may be drawn from the exercise of the privilege, providing, pursuant to Evid. R. 24, that there is a reasonable apprehension of prosecution. The Division did not dispute that the respondents had a reasonable apprehension of prosecution. However, the Division contended that the circumstances surrounding the invocation of the privilege came within the scope of several exceptions to the rule, which had been established in case law.

In Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527 (App. Div. 1967), the Appellate Division held that an adverse inference from a defendant's failure to take the stand in a civil fraud action did not violate the privilege when the only potential harm was nothing more than a monetary judgment. Id. at 533. The court also concluded that there was legal and competent evidence that the silent party knowingly participated in the fraud and that he had made out of court admissions against interest, which had been admitted into evidence. Obviously this case can be distinguished from the subject action because the respondents herein had a reasonable apprehension of prosecution.

In Mahne v. Mahne, 66 N.J. 53 (1974), the State Supreme Court held that a defendant in a divorce action in which adultery, a misdemeanor, was alleged was properly entitled to claim the privilege in refusing to answer interrogatories concerning the allegations. Nevertheless, the court held that a refusal by the defendant to submit to pretrial discovery based upon the exercise of the privilege could lead to the imposition of noncriminal sanctions and could, ultimately, permit the trier to draw an adverse inference in the civil case. However, the court held that entry of an order striking the defendant's pleadings was too severe. This case is also clearly distinguishable from the subject action. The respondents herein invoked the privilege during the course of the hearing, had a reasonable apprehension of prosecution for very serious offenses and had no counterclaim pending against the Division.

The Division also cited Baxter v. Palmigiano, 425 U.S. 308 (1975), which involved an action for declaratory and injunctive relief. There, it was alleged that prison disciplinary proceedings against a respondent violated his equal protection and due process rights because, in part, the disciplinary board permitted an adverse inference to be drawn

from the respondent's silence at the hearing. The court held that it was proper to draw an inference from the inmate's silence because this was a civil proceeding and no criminal proceedings were pending against the inmate; in addition, the inmate was not asked to waive his privilege. Id. at 317. At the same time, the court noted that if inmates in prison disciplinary proceedings were compelled to give testimony that might incriminate them in later criminal proceedings, they must be offered whatever immunity is required to supplant the privilege. Id. at 316, citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973). The removal of the potential for future prosecution in exchange for the option of testifying or facing the drawing of an adverse inference from silence presents a totally different scenario from that present in the subject action.

The invocation of the privilege of silence by the respondents in this matter was clearly appropriate under Evid. R. 39 and was not voided by any of the exceptions cited by the Division.

I CONCLUDE that no adverse inferences may be drawn from the respondents' invocation of the privilege to remain silent.

#### FINDINGS OF FACT

The parties stipulated that all individuals whose names had been placed upon the exclusion list as of August 15, 1983, had a criminal record history which included at least one conviction for a criminal offense. The parties further stipulated that Messrs. Merlino and Leonetti had not been convicted of a criminal offense.

The Federal Bureau of Investigation defines organized crime as:

Organized crime is defined as any group having some type of formalized structure whose primary objective is to obtain money through the use of violence or threat of violence, corrupt public officials, graft and extortion, and which has a significant adverse impact on the people in its locale or region or the country, as a whole.

[P-4]

Mr. Leonetti knows Mr. Merlino and Nicodemo Scarfo (P-111 at 644). Mr. Leonetti is the nephew of Mr. Scarfo (P-111 at 625). Mr. Merlino knows Mr. Leonetti and Mr. Scarfo (P-111 at 647).

On January 3, 1972, Mr. Leonetti was arrested and was charged with a violation of N.J.S.A. 2A:151-62, possession of an offensive weapon (P-35). On January 13, 1972, he was found not guilty of a downgraded offense of N.J.S.A. 2A:170-3, carrying weapons or burglar tools with intent to break and enter or assault; presence in or near buildings or other places with intent to steal.

On March 25, 1975, Mr. Leonetti was arrested and charged with atrocious assault and battery in regard to an alleged shooting. He was found guilty of an amended charge of a violation of N.J.S.A. 2A:170-27, fighting, and was fined \$100 and \$10 costs (P-35).

On December 30, 1977, a certificate of incorporation of Scarf, Inc., was filed with the New Jersey Secretary of State (P-86). Mr. Leonetti was the initial registered agent for the corporation, as well as one of two directors and incorporators.

On August 28, 1978, Mr. Leonetti was arrested and was later indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2A:113-1 and 113-2, willfully, feloniously and with malice aforethought commit murder; N.J.S.A. 2A:151-5, N.J.S.A. 2A:113-1 and N.J.S.A. 2A:113-2, have in his possession a weapon, a pistol, and willfully, feloniously and with malice aforethought commit murder; and N.J.S.A. 2A:151-41(a), unlawfully have in possession a firearm, a pistol, without a permit, concerning an incident which occurred on July 3, 1977 (P-35 and P-78). On November 20, 1978, the indictment was dismissed (P-79).

On an unspecified date, Messrs. Merlino and Leonetti, together with Mr. Scarfo, were indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2C:5-2, conspiracy to commit murder; N.J.S.A. 2C:11-3, knowingly and willfully commit murder; N.J.S.A. 2C:39-5(b), knowingly and unlawfully possess and carry a firearm, a handgun, without a permit; and N.J.S.A. 2C:39-4, knowingly and unlawfully possess a weapon, a handgun, with a purpose to use it unlawfully, concerning an incident which purportedly occurred on December 16, 1979 (P-75). Although the outcome of the indictment was not established as a fact, it is apparent by reason of the stipulation that the respondents were acquitted of the charges. On January 16, 1980, and in conjunction with proceedings emanating from the indictment, an order was entered which permitted the defendants to post bail and, thereby, gain their release from custody (P-50). Each of the defendants in that matter designated properties with stated values, which properties

were different for each defendant with the exception of Messrs. Merlino and Leonetti, and posted cash.

Messrs. Merlino, Leonetti, and Scarfo have been the subject of a great number of articles published in many newspapers (including, but not limited to, The Press of Atlantic City, the Courier Post of Camden, the Star-Ledger of Newark, the Philadelphia Daily News, The New York Times, the Bergen Record, the Trenton Times, the Wall Street Journal, the Bulletin of Philadelphia, the Philadelphia Daily News and the Philadelphia Inquirer), which referred to them as the perpetrators of alleged criminal activities and as members of organized crime associations and participants in related activities in the Philadelphia/South Jersey area (P-108, P-109 and P-110).

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

The source for the undisputed evidence set forth above was from documents admitted into evidence without objection and which constituted direct or legal and competent evidence.

Many other undisputed facts, which would emanate from other documents admitted without objection, and which concerned the criminal record histories of various persons, the nature of proceedings initiated against them, the inclusion of various persons on the Commission's exclusion list, various banking transactions, etc., could have been set forth, the citation of which is too long for enumeration here. However, there was no legal and competent evidence to establish any nexus between those facts and the respondents. Therefore, those documents are not relevant and were disregarded.

Further, there were a substantial number of documents admitted to prove the factual basis of the allegations and which contained objected-to hearsay. By application of the residuum rule, these documents do not constitute legal and competent evidence. Therefore, in the absence of any legal and competent evidence upon which to base findings of fact, there was no sufficient or credible evidence to prove the Division's allegations that:

1. Messrs. Merlino and Leonetti exhibited behavior which was pursued in an occupational manner or context for the purpose of economic gain.

utilizing such methods which are deemed criminal violations of the public policy of this State.

2. Messrs. Merlino and Leonetti were associated with each other; associate being defined as "1: to join as a partner, friend, or companion 2. obs: to keep company with: attend" Webster's New Collegiate Dictionary (7th ed. 1979) at 67.
3. Messrs. Merlino and Leonetti were associated with Nicodemo Scarfo.
4. Mr. Scarfo's behavior was 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.
5. Messrs. Merlino and Leonetti had a reputation within the law enforcement community of being career criminal offenders and associates of career criminal offenders.

I so FIND.

#### DISCUSSION OF LAW AND CONCLUSIONS

##### (A) N.J.S.A. 5:2-71

Section 71 of the Act mandates that the Commission provide by regulation for the institution of a list of persons who are to be excluded from any licensed casino establishment. This section also sets forth certain classifications of persons, based upon their criminal activities or unsavory public image, who should be considered for possible exclusion. The Commission promulgated a series of regulations which were designed to implement the statute. N.J.S.A. 19:48-1.1 et seq. In pertinent part, N.J.A.C. 19:48-1.3, criteria for exclusion, provides:

(a) The exclusion list may include any person:

1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the

opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

....

4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

When, as in this matter, the Division proposes to have a person's name placed on the exclusion list, the Division has the burden of establishing, by the preponderance of the credible evidence, the reasons for such placement.

With regard to Messrs. Merlino and Leonetti, the Division alleged that their names should be included on the exclusion list, pursuant to N.J.A.C. 19:48-1.3(a)1, 2 and 4. However, the Division failed to prove that Mr. Merlino is a career criminal offender as defined in N.J.A.C. 19:48-1.1, that he is an associate of either Mr. Scarfo or Mr. Leonetti, that he has a reputation within the law enforcement community of being a career criminal offender and an associate of career criminal offenders, or that his presence in a licensed casino establishment would be inimical to the interest of the State or of licensed gaming therein, as alleged (the issue of newspaper articles will be dealt with, infra). Similarly, the Division failed to prove that Mr. Leonetti is a career criminal offender, that he is an associate of Mr. Scarfo, that he has a reputation among the law enforcement community of being a career criminal offender and an associate of career criminal offenders, or that his presence in a licensed casino establishment would be inimical to the interest of the State or licensed gaming therein, as alleged.

The Division offered many newspaper articles which referred to Messrs. Merlino and Leonetti as the perpetrators of various criminal acts and as members of organized crime associations (P-8 and P-9). However, these articles were not offered to prove the facts contained therein. Their admission was specifically restricted to the establishment of the fact that they were published by the newspaper and appeared on the dates indicated. Further, the articles do not establish that they were read by members of

the public, nor that the facts stated therein were accepted by members of the public. Although the fact that the respondents' names appear in the articles may support a conclusion of law that an inference of notoriety is attached to the respondents' names, such notoriety does not support the ultimate conclusion that the respondents' presence in a licensed casino establishment would be inimical to the interest of the State or of licensed gaming therein.

An administrative law judge rendering an initial decision is limited to the evidence in the record created during the hearing. In re Kallen at 22. It is clearly improper to go beyond the record. The circumstances present in this matter are virtually unique. The Division would have the decision rest almost entirely upon hearsay evidence, at least as far as each ultimate issue of fact is concerned. Further, the purported relevance and meaning of the great majority of the legal and competent evidence in the record can be determined only upon consideration and acceptance of the hearsay evidence. However, how is the trier to determine the believability and reliability of the hearsay evidence and decide what weight it is to be accorded? The mere fact that the hearsay evidence consists, in large part, of testimony given under oath by persons, including representatives of recognized law enforcement agencies, in another proceeding is not sufficient. Those witnesses were not subject to cross-examination by these respondents. Further, the Division has made no assertion that those witnesses were unavailable to testify in this proceeding and, since it had called upon them previously, those witnesses appeared to be reasonably available to the Division. Certainly, those witnesses were not available to the respondents.

Most significant is the potential harm that would occur if the Division were permitted to prevail under these circumstances. The Division has the burden of proof and the burden of going forward to establish the charges. The respondents are involuntarily parties to the proceeding and seek only to defend themselves. If the Division were allowed to meet its burden by the introduction of patently hearsay evidence, which emanated from a proceeding to which the respondents were not parties and during which participation by the respondents' counsel was restricted (P-111), and which was not subject to any challenge by the respondents, and thereby shift the burden to the respondents, the respondents would effectively have been deprived of their Fifth Amendment privilege of silence. See, In re Toth, 175 N.J. Super. 254 (App. Div. 1980) and In re Application of Howard Savings Bank, 143 N.J. Super. 1 (App. Div. 1976). The respondents either could remain silent and be denied a substantial right without one

witness being called against them and without the introduction of sufficient credible (legal and competent) evidence to establish the charges, or, they could, in the face of such hearsay, waive their privilege and respond to the hearsay evidence, which would surely lead to an intense effort by the Division during cross-examination to develop facts for future prosecutions. These options violate the fundamental objectives of our system of justice, including administrative justice. The public interest would be better served by the prohibition of such a scenario.

A decision which rests upon the application of the residuum rule is extremely rare. Practically speaking, it was not necessary in this matter. The Division could have called witnesses to testify to the ultimate issues of fact, which would have permitted consideration of the hearsay evidence. The Division's manner of proceeding clouds the resolution of the merits of the substantive dispute. Further, I do not understand why the Division, if these respondents are who the Division alleges they are, could not come forward with legal and competent evidence to prove the charges.

I CONCLUDE that the Division has not established, by the preponderance of the credible evidence, that the names of the respondents should be placed on the exclusion list.

(B) N.J.S.A. 5:12-71g and N.J.A.C. 19:42-4.4(c)

The respondents moved for dismissal of the charges because the hearing was not held within 30 days of their requests for a hearing, pursuant to N.J.S.A. 5:12-71g and N.J.A.C. 19:42-4.4(c).

N.J.S.A. 5:12-71g provides:

Upon receipt of a demand for a hearing, the Commission shall set a time and place for such hearing. Unless otherwise agreed by the Commission and by the named person, such a hearing shall not be later than 30 days after the receipt of a demand for such hearing.

N.J.A.C. 19:42-4.4(c) similarly provides:

The Commission shall, upon the receipt of a timely and sufficient demand for a final hearing, set a time and place for such hearing. Unless otherwise agreed by the Commission and the excluded person, the final hearing shall be initiated no later than 30 days after the receipt by the Commission of the written demand for a final hearing.

The telephonic prehearing conference in the Merlino action was conducted within 30 days of his request for a hearing. Similarly, an unsuccessful attempt was made in the Leonetti matter to conduct a prehearing conference within the 30-day time limit, which fell short by approximately two weeks. However, these efforts to conduct the necessary prehearing conference and, thereby, establish the issues, the hearing schedule, etc., within 30 days of the requests for hearings was sufficient to satisfy the requirements of section 71g of the Act and N.J.A.C. 19:42-4.4(c).

I CONCLUDE that the failure to initiate a final hearing in these matters within 30 days of the respondents' requests for hearings does not violate the requirements of section 71g of the Act and does not constitute a jurisdictional bar to these proceedings.

#### (C) CONSTITUTIONAL ATTACKS

The respondents have leveled a broad-based attack upon the constitutionality both of section 71 of the Act and the criteria for exclusion as set forth in N.J.A.C. 19:48-1.3. The Division argued that it would be improper for the Office of Administrative Law to render a decision on a constitutional challenge to a statute or regulation.

It is entirely proper for the Office of Administrative Law to resolve constitutional challenges to statutes and regulations, as well as the ever present issues of fact and law. Roadway Express, Inc. v. Kingsley, 37 N.J. 136 (1962). Some of the reasons in support of this principle are: the constitutional attack is usually coupled with other issues of fact and law which are more properly handled in one forum, judicial efficiency, cost to the parties, development of a record and the generally applicable doctrines which favor the litigation of a single controversy in a single proceeding, as well as the possibility that the administrative hearing may resolve the case on grounds other than those addressing the purely constitutional attack. It is well established that a "court should not reach and determine a constitutional issue unless it is absolutely imperative in the disposition of the litigation" Donadio v. Cunningham, 58 N.J. 309, 325 (1971). See,

Niglio v. New Jersey Racing Commission, 158 N.J. Super. 182, 188 (App. Div. 1978). It is not necessary in this matter to resolve the respondent's constitutional challenges because the Division's proofs do not constitute sufficient cause to order their exclusion. I so CONCLUDE.

DISPOSITION

It is ORDERED that the petitions of the Division of Gaming Enforcement to include the names of Lawrence Merlino and Philip Leonetti upon the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino hotel 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 22, 1983  
DATE

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

Receipt Acknowledged:

Dec 22, 1983  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

fms/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 The United States of America v. Nicodemo Scarfo, United States District Court, District of New Jersey, Indictment Number 81-10, Transcript of Sentence Hearing, Volume I, June 25, 1981 (107 pages); Transcript of Sentence Hearing, July 7, 1981 (108 pages)
- P-2\* Telephone List (5 pages)
- P-3\* Telephone List (2 pages)
- P-4 Federal Bureau of Investigation definiton of organized crime
- P-5 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Ralph S. Natale, June 28, 1979 (2 pages)
- P-6\* Federal Bureau of Investigation—Form 302—Surveillance Report, Joseph Salerno, February 22, 1980 (4 pages)
- P-7 Federal Bureau of Investigation—Criminal Record Sheet of Angelo Bruno (3 pages)
- P-8\* Telephone List (7 pages)
- P-9 Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Raymond Martorano, June 29, 1979 (2 pages)
- P-10 United States Department of Justice, Federal Bureau of Investigation—Identification Division, Criminal Record Sheet, Philip Charles Testa, March 30, 1981 (4 pages)
- P-11 The United States of America v. Phillip Testa, Frank Narducci, Carl Ippolito, Harry Riccobene, Joseph Ciancaglini, Mario Riccobene, Charles Warrington, Pasquale Spirito, Joseph Bongiovanni, Frank Primerano, United States District Court, Eastern District of Pennsylvania, Indictment (29 pages)
- P-12 The United States of America v. Frank Narducci, Anthony Charles Rossano, United States District Court for the Eastern District of Pennsylvania, Indictment, filed July 14, 1980 (10 pages)
- P-13 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Frank Narducci, October 12, 1978 (4 pages)

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\*Designates that exhibits were admitted into evidence subject to the residuum rule, with the exception of the testimonies of Messrs. Leonetti and Merlino as contained in P-111.

- P-14 United States Justice Department, Federal Bureau of Investigations, Identification Division—Criminal Record Sheet, Frank G. Sindone, July 26, 1979 (6 pages)
- P-15 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Joseph Ciancaglini, June 1, 1981 and June 19, 1979 (3 pages)
- P-16 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Anthony Ferrante, June 19, 1979
- P-17\* United States Department of Justice, Federal Bureau of Investigation, Identification Division—File Review of Anthony Vito Ferrante
- P-18 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Felix Bocchino, June 7, 1979 (2 pages)
- P-19\* United States Department of Justice, Federal Bureau of Investigation, Identification Division—File Review of Felix Bocchino
- P-20\* United States Department of Justice, Federal Bureau of Investigation—Form 302—Surveillance Report, March 25, 1980 (5 pages)
- P-21 United States Department of Justice, Federal Bureau of Investigation—Criminal Record Sheet, Ralph A. Napoli, June 25, 1979
- P-22\* United States Department of Justice, Federal Bureau of Investigation, Identification Bureau, File Review of Ralph Napoli
- P-23 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Anthony Capanegro (3 pages)
- P-24\* United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—File Review of Antonio Rocco Caponigro
- P-25 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Pasquale Martarano, June 26, 1979
- P-26 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, John Simone, December 12, 1980 (3 pages)
- P-27 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, John Stanfa, September 24, 1980
- P-28 The United States of America v. John Stanfa, United States District Court for the Eastern District of Pennsylvania, Criminal number 80-00156, Indictment, filed May 14, 1980 (5 pages)
- P-29\* The United States of America v. John Stanfa, United States District Court for the Eastern District of Pennsylvania—form 302—Surveillance Report, March 31, 1980 (3 pages)

- P-30\* United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—form 302—Surveillance Report, March 31, 1980 (3 pages)
- P-31 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Alfred Salerno ( 5 pages)
- P-32 The City of Philadelphia, Police Department—Extract of Criminal Record, Frank J. Monte (2 pages)
- P-33 City of Philadelphia, Police Department—Extract of Criminal Record, Patricia Fanelli
- P-34 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Harry Riccobene, June 23, 1980 (4 pages)
- P-35 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Phillip Leonetti, July 2, 1980; and State of New Jersey, Division of State Police, State Bureau of Identification—Criminal History Summary Record, Phillip Leonetti, April 26, 1975 (2 pages)
- P-36 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Salvatore Profaci, June 24, 1981
- P-37 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Frank Serpico, June 24, 1981 (3 pages)
- P-38 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Louis Pacella, June 24, 1981 (2 pages)
- P-39 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Lawrence Centore, June 24, 1981 (2 pages)
- P-40\* Transcription of a tape recording of telephone conversation between Harry Riccobene, Philip Testa, Frank Narducci and Nicodemo Scarfo, November 4, 1977 (72 pages)
- P-41\* The State of New Jersey v. Robert Lumio, Transcription of recorded statement of Robert Lumio contained in the Record of Proceedings (9 pages)
- P-42\* Handwriting on Paper
- P-44 Picture of premises at 26-28 North Georgia Avenue, Atlantic City, New Jersey
- P-45 Picture of Frank Materio
- P-46\* Transcription of recorded telephone conversation between Nicodemo Scarfo, Philip Testa and unknown person, April 20, 1976 (7 pages)
- P-47 The United States of America v. Frank Materio, United States District Court, District of New Jersey, Criminal No. 270-65, Indictment and Judgment of Conviction (4 pages)

- P-48\* The State of New Jersey v. Frank Lentino, statement of Frank Lentino contained in the record of proceedings (9 pages)
- P-49\* Letter to Jeffrey S. Blitz, Assistant Atlantic Atlantic County Prosecutor, from Robert I. Segal, Esq., September 29, 1978 (4 pages)
- P-50 The State of New Jersey v. Nicodemo Scarfo, Philip Leonetti and Lawrence Merlino, Superior Court of New Jersey, Law Division - Criminal, Order, January 16, 1980 (3 pages)
- P-51 Statement for the savings account for the period from October 1 to December 31, 1979, Frank Gerace, Guarantee Bank
- P-52 Credit Memo to the checking account of Frank Gerace at the Guarantee Bank, December 28, 1979 (2 pages)
- P-53 Statement of the checking account of Frank Gerace at the Guarantee Bank, January 21, 1980
- P-54 Check, dated December 28, 1979, payable to Lillian Gerace from the account of Frank Gerace, in the amount of \$10,000, drawn on the Guarantee Bank (2 pages)
- P-55 Treasurer's check No. 073832, payable to Catherine Scarfo, December 28, 1979, in the amount of \$10,000, from Lillian Gerace (2 pages)
- P-56 Photograph of the funeral of Saul Kane's mother
- P-57 Photograph of the funeral of Saul Kane's mother
- P-58 Photograph of the funeral of Saul Kane's mother
- P-59 Photograph of the funeral of Saul Kane's mother
- P-60 Photograph of the funeral of Saul Kane's mother
- P-61 Photograph of the funeral of Saul Kane's mother
- P-62 Photograph of the funeral of Saul Kane's mother
- P-63\* Vehicle Lease Agreement between Hotel and Restaurant Employees and Bartenders International Union Local 54 and Affiliated Leasing Systems, Inc., December 18, 1979 (2 pages)
- P-64\* Vehicle Lease Agreement between Hotel and Restaurant Employees and Bartenders International Union Local 54 and Affiliated Leasing Systems, Inc., June 15, 1981 (2 pages)
- P-65\* Vehicle Lease Agreement between Hotel and Restaurant Employees and Bartenders International Union Local 54 and Affiliated Leasing Systems, Inc. (2 pages)
- P-66\* Inventory of Leased Cars prepared by Affiliated Leasing Systems, Inc.
- P-67\* Vehicle Lease Agreement between Hotel and Restaurant Employees and Bartenders International Union Local 54 and Affiliated Leasing Systems, Inc., December 18, 1979 (2 pages)

- P-68 The State of New Jersey v. Nicodemo Scarfo, Mercer County, Superior and County Court Criminal Record, Minutes of the hearing and the Order to Show Cause, June 18, 1971 (4 pages)
- P-69 In the Matter of the Civil Contempt of Nicholas Scarfo, Superior Court of New Jersey, Law Division, Mercer County, Order, July 8, 1976; Order of Commitment July 19, 1976 (2 pages)
- P-70 Mercer County Bureau of Identification—Office of the County Prosecutor, Identification Sheet for Nicodemo Scarfo, June 23, 1971; Commitment Report and Admission Interview, June 23, 1971 (3 pages)
- P-71 The United States of America v. Nicodemo Scarfo, United States District Court, District of New Jersey, Criminal Docket, Docket Number 81-00010-01, Record of Proceedings (3 pages)
- P-72 Commonwealth of Pennsylvania v. Nicholas Scarfo, Court of Common Pleas, for the City and County of Philadelphia, True Bill of Indictment issued July 1963 (3 pages)
- P-73 Commonwealth of Pennsylvania v. Nicholas Scarfo, Common Pleas Court of Philadelphia, Number 791-792 certified copy of the conviction, March 1950 (7 pages)
- P-74 Atlantic County Prosecutor's Office, Arrest Sheet, Nicodemo Domenico Scarfo, December 23, 1979
- P-75 The State of New Jersey v. Nicodemo Scarfo, Philip Leonetti and Lawrence Merlino, Superior Court of New Jersey, Law Division—Criminal, Indictment Number 370-79-S-3, Indictment (7 pages)
- P-76 The United States of America v. Gary Rocco Garramone, Robert J. Lumio, Albert Joseph Catalano, Jr., Emilio Joseph Tramontina, Jr., United States District Court for the Eastern District of Pennsylvania, Criminal Number 73-648, Indictment, filed November 14, 1978; The United States of America v. Robert J. Lumio, Judgment and Order of Probation, July 18, 1974; The United States of America v. Gary Rocco Garramone, Judgment and Order of Probation, July 18, 1974; The United States of America v. Albert Joseph Catalano, Jr., Judgment and Order of Probation, July 18, 1974 (6 pages)
- P-77 Conviction of Frank Lentino (2 pages)
- P-78 The State of New Jersey v. Philip Leonetti, Superior Court of New Jersey, Law Division Criminal, Indictment Number 729-77-M, Indictment, filed August 24, 1978; Atlantic County Superior and County Court Criminal Record, August 24, 1978 (8 pages)
- P-79 The State of New Jersey v. Philip Leonetti, Superior Court of New Jersey, Law Division—Criminal, Indictment Number 729-77-M-3, Order, November 21, 1978 (2 pages)

- P-80 The United States of America v. Saul Kane, United States District Court for the District of New Jersey, Criminal Number 77-334, Amended Judgment and Order of Probation, April 18, 1980; Judgment and Probation/Commitment Order, May 12, 1978; Indictment filed September 19, 1977 (6 pages)
- P-81 The State of New Jersey v. Saul Kane, Superior Court of New Jersey, Law Division—Criminal, Indictment Number I.25-77-S, Indictment filed September 27, 1977; Judgment of Conviction, September 14, 1978 (5 pages)
- P-82 The State of New Jersey v. Nicholas Virgilio, Superior Court, Gloucester County Law Division—Criminal, Indictment Number 316-77, Indictment, January 13, 1978; Judgment of Dismissal, March 6, 1981; Indictment Number 368-77, Indictment, January 13, 1978; Judgment of Conviction, March 6, 1981; Statement of Reasons for Sentencing by Samuel H. Bullock, J.S.C., March 6, 1981 (6 pages)
- P-83 The State of New Jersey v. Nicholas Vincent Virgilio, Atlantic County Superior and County Court Criminal Record, Number I.166-70-S; Indictment; Transcript of sentence hearing, September 28, 1971; Letter to Barney B. Brown, Esq., from Arthur V. Guerrera, Assistant County Prosecutor, December 14, 1971 (26 pages)
- P-84 The State of New Jersey v. Nicholas Vincent Virgilio, Atlantic County Superior and County Court Criminal Record, Number I.224-70-S; Indictment; Motion and Order to Dismiss Indictment, March 30, 1972; The State of New Jersey v. Nicholas Vincent Virgilio, Anthony John Farside and Edward Joseph Hudson, Atlantic County Superior and County Court Criminal Record of Proceedings, Number I.294-70-S; The State of New Jersey v. Nicholas Vincent Virgilio, Indictment Number 294-70-S, Motion and Order to Dismiss Indictment, March 30, 1972 (9 pages)
- P-85 Commonwealth of Pennsylvania v. Nicholas V. Virgilio, Common Pleas Court of Philadelphia, Number 683-684, True Bill of Indictment and Judgment of Conviction, April 1952 (8 pages)
- P-86 Certificate of Incorporation of Scarf, Inc., filed and recorded December 30, 1977 (6 pages)
- P-87 Article published by The New York Times on December 1, 1980 (3 pages)
- P-88\* Transcript of the sworn interview of Gerald Adler by the Division of Gaming Enforcement, March 24, 1982 (ppgs. 1, 86-107) (23 pages)
- P-89\* Report and Recommendations of The State of New Jersey, Commission of Investigation and Organized Crime Infiltration of Dental Care Plan Organizations (pps. Title Sheet, Table of Contents, 25-40 and 108-145) (57 pages)
- P-90\* Letter to Robert B. Sturges, Acting Director, from Jeffrey S. Blitz, Chief Assistant Prosecutor for Investigations, July 15, 1982, with attachments (56 pages)

- P-91 The United States of America v. Harry Riccobene, United States District Court for the Eastern District of Pennsylvania, Docket Number CR.81-00049-04, Judgment and Probation/Commitment Order, June 25, 1982
- P-92 In the matter of the Exclusion of Harry Riccobene from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, Docket Number 82-EL14, Preliminary Order of Exclusion, January 31, 1983 (2 pages)
- P-93 The United States of America v. Mario Riccobene, United States District Court for the Eastern District of Pennsylvania, Docket Number CR.810049-06, Judgment and Probation/Commitment Order, June 25, 1982
- P-94 In the Matter of the Exclusion of Mario Riccobene from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, Docket Number 82-EL-15, Preliminary Order of Exclusion, February 22, 1983 (2 pages)
- P-95 The United States of America v. Joseph Bongiovanni, United States District Court for the Eastern District of Pennsylvania, Docket Number CR.81-0049-09, Judgment and Probation/Comitment Order, June 25, 1982
- P-96 In the Matter of the Exclusion of Joseph Bongiovanni from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, Docket Number 82-EL-21, Preliminary Order of Exclusion, February 22, 1983 (2 pages)
- P-97 The United States of America v. Charles Warrington, United States District Court for the Eastern District of Pennsylvania, Docket Number CR. 81-0049-07, Judgment and Probation/Commitment Order, June 25, 1982
- P-98 In the Matter of the Exclusion of Charles Warrington from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, docket number 82-EL-17, Preliminary Order of Exclusion, February 22, 1983 (2 pages)
- P-99 The United States of America v. Pasquale Spirito, United States District Court for the Eastern District of Pennsylvania, Docket Number CR. 81-0049-08, Judgment and Probation/Commitment Order, June 25, 1982
- P-100 In the Matter of the Exclusion of Pasquale Spirito from Casino Hotel Facilities, State of New Jersey, Casino Control Comission, Docket Number 82-EL-18, Preliminary Order of Exclusion, January 31, 1983
- P-101 The United States of America v. Joseph Ciancaglini, United States District Court for the Eastern District of Pennsylvania, Docket Number CR.81-0049-05, Judgment and Probation/Commitment Order, June 25, 1982
- P-102 In the Matter of the Exclusion of Joseph Ciancaglini from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, Docket Number 82-EL-16, Preliminary Order of Exclusion, January 31, 1983 (2 pages)

- P-103 In the Matter of the Exclusion of Nicholas V. Virgilio from Casino Hotel Facilities, State of New Jersey, Casino Control Commission, Docket Number 80-EL-7, Order, September 10, 1980
- P-104\* A Decade of Organized Crime 1980 Report by Pennsylvania Crime Commission (pps. Title Page, 34, 38-39, 44-45, 47, 81-82, 97-98, 130-131, 139, 142-144, 158-163, 172-173, 201-202, 227-230) (31 pages)
- P-105\* Pennsylvania Crime Commission Annual Report, April 1981 (2 pages)
- P-106\* Pennsylvania Crime Commission 1981 Annual Report, April 1982 (2 pages)
- P-107\* Pennsylvania Crime Commission 1983 Report (19 pages of the report)
- P-108 File of newspaper articles regarding Nicodemo Scarfo
- P-109 File of newspaper articles regarding Philip Leonetti
- P-110 File of newspaper articles regarding Lawrence Merlino
- P-111\* Division of Gaming Enforcement v. Local 54, redacted portion of the Transcript of Proceedings, Casino Control Commission, days numbers 5, 6, 7, 10, 13, 15, 17 and 18

EXHIBIT NOT ADMITTED INTO EVIDENCE

P-43Id. Handwriting Examples (withdrawn)

WITNESS LIST

**FOR THE PETITIONER:**

**Lawrence Merlino**

**Philip Leonetti**

**FOR THE RESPONDENTS:**

**None**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-174  
OAL DOCKET NO. CCC 8112-83  
APPLICATION NO. 42789-21

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APPLICATION OF CARMEN D. MARTINO  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 2, 1984, recommending that the casino employee license application of Carmen D. Martino be denied; and Carmen D. Martino having filed a response to the Initial Decision on April 13, 1984; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting on May 16, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 22nd day of MAY 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and


IT IS FURTHER ORDERED that the casino employee license-application of Carmen D. Martino be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8112-83

AGENCY DKT. NO. 83-EA-174

**CARMEN D. MARTINO,**

Applicant,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW**

**AND PUBLIC SAFETY,**

Respondent.

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**APPEARANCES:**

**Carmen D. Martino, pro se**

**Patricia M. Wild, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: February 16, 1984

Decided: April 2, 1984

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

STATEMENT OF THE CASE

This matter concerns the application of Carmen D. Martino, applicant, for licensure by the Casino Control Commission (Commission) 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 on the basis that the applicant had failed to disclose information material to licensure and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Martino filed his Personal History Disclosure Form - 2 (PHDF-2) with the Commission on September 14, 1982 (R-1). By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated August 25, 1983, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on September 29, 1983, Mr. Martino requested a hearing. On October 12, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 20, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Martino is 60 years of age (R-1). He is married and is the father of four children. He has resided at his current address in Runnemede for the past 38 years. The applicant completed the ninth grade. On May 17, 1946, he received an honorable discharge from the United States Army.

Mr. Martino has been self-employed as a barber for the past 35 years.

On April 30, 1949, the applicant was arrested in Pennsauken and was charged with a violation of N.J.S.A. 2A:119-2 (equivalent to N.J.S.A. 2C:20-3), petty larceny, concerning the theft of a ladder with a value of \$15 (R-2). The applicant pled guilty and was fined \$5 plus \$3.25 costs.

The applicant was arrested by the New Jersey State Police on January 17, 1961, and was charged with a violation of N.J.S.A. 2A:112-3 (equivalent to N.J.S.A. 2C:37-2), bookmaking (R-3, R-4, R-5, R-6 and R-7). The applicant was released on \$2,500 bail. The applicant and an employee of his were indicted by a Camden County Grand Jury (R-8). On May 18, 1961, the applicant pled guilty to the indictment and was sentenced to

two-to-three years in state prison, suspended, and fined \$1,000. The applicant paid his fine. At the time of his arrest, the applicant admitted that he had operated a bookmaking business from his barbershop for a six week period (R-7). The applicant had covered all small bets himself and had passed out the larger bets.

The applicant was arrested on March 5, 1964, and was charged with a violation of N.J.S.A. 2A:170-26 (equivalent to N.J.S.A. 2C:12-1), assault and battery (R-9). More specifically, the applicant was arrested upon a complaint filed by his wife. The applicant pled guilty to the charge and was fined \$50 plus court costs.

The applicant was arrested by the New Jersey State Police on April 1, 1966, and was charged with a violation of N.J.S.A. 2A:112-3 (equivalent to N.J.S.A. 2C:37-2), bookmaking (R-9, R-10, R-11 and R-12). The applicant posted bail in the amount of \$2,500. The applicant was later indicted by a Camden County Grand Jury for conducting bookmaking operations from his place of business for the period from December 20, 1965 to April 1, 1966 (R-13). On May 8, 1967, the applicant pled guilty to the indictment. On June 29, 1967, the applicant was sentenced to a six-month term at the Camden County Jail (R-13).

The applicant was arrested by the Gloucester Township Police Department on August 22, 1968, upon the informal complaint of a violation of N.J.S.A. 2A:96-4, contributing to the delinquency of a minor (R-14). The applicant was later indicted by a Camden County Grand Jury for an alleged violation of N.J.S.A. 2A:133-11 (equivalent to N.J.S.A. 2C:34-1), permitting immoral relations with a female under 18 at his place of business (R-15). On December 11, 1968, the applicant was found guilty by a jury. The applicant was sentenced to one year in the county jail, suspended, and fined \$1,500.

The applicant has committed no further violations of the criminal laws.

On September 14, 1982, Mr. Martino filed his PHDF-2 with the Commission (R-1). The applicant inadvertently transposed his responses to questions number 45 and 46. Nevertheless, the applicant disclosed having been found guilty only of bookmaking in Camden County in 1968.

On July 11, 1983, the applicant participated in a telephonic interview with Division Agent Dwayne Brooks. With regard to the arrests of April 30, 1949 (petty larceny), March 5, 1964 (assault and battery), and August 22, 1968 (permitting immoral relations with a female under 18), the applicant, upon confrontation by Agent Brooks with the details of the arrests and subsequent criminal proceedings, admitted his involvement in the incidents. In addition, the applicant stated that the incidents were not disclosed on his PHDF-2 because he had forgotten them. The applicant also admitted his arrest of January 17, 1961, and April 1, 1966, and charges of bookmaking; however, he stated that he thought both had been listed on his PHDF-2.

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

(B) DISPUTED FACTS

In dispute were the reasons for the applicant's failure to disclose his criminal record history on his PHDF-2, the circumstances underlying the incidents of his criminal misconduct and his good character, honesty and integrity.

The applicant conceded his involvement in the petty larceny and both bookmaking incidents. Further, with regard to the assault and battery charge, the applicant stated that he had thrown water upon his wife during a dispute. It should be noted that the applicant and his wife are still married. With regard to the 1968 offense of permitting immoral relations with a female under 18, the applicant stated that he had allowed a friend to use his shop for the purpose of having an intimate relationship with a female companion and that the applicant was blamed for the offense. Although the applicant testified that he pled guilty to the charge, it was evident that there had been a jury trial.

Because the applicant's explanations of the circumstances underlying these offenses appeared to be credible and because the Division offered no contradictory evidence thereof, I am persuaded to accept his testimony.

The applicant also described the circumstances underlying the completion of his PHDF-2. More specifically, the applicant secured and paid for assistance in the completion of his PHDF-2 from a business situated in the vicinity of the Commission offices in Atlantic City. Further, the applicant testified that with regard to question number 46, he advised the preparer of the 1961 bookmaking offense. The applicant testified that he had simply forgotten or had not thought about the remainder of his criminal record history at the time his PHDF-2 was completed.

The most significant issue of fact in this matter concerns the reasons for the applicant's failure to disclose fully his criminal record history in response to question number 46 on his PHDF-2. The applicant's explanation that he forgot the incidents is plausible with regard to the arrest of April 30, 1949 (petty larceny), by reason of the age of the offense, and his arrest of March 5, 1964 (assault and battery upon his wife), by reason of the fact that the applicant and his wife are still married. Nevertheless, the applicant's explanation that he simply forgot or did not think about the remainder of his criminal record history was not believable and must be rejected. More specifically, the applicant knew that he had more than one bookmaking conviction, his most recent four arrests were each made at his place of business and required the posting of bail, and he had been tried before a jury on the 1968 charge. These very significant facts together with the reminding influence of question 46 negate the plausibility of a claim of forgetfulness.

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

1. The applicant's explanations of the circumstances underlying his various arrests and the criminal proceedings that resulted therefrom were persuasive.
2. The applicant's testimony with regard to his failure to disclose fully his criminal record history on his PHDF-2 was not believable.
3. The applicant offered no viable explanation for his failure to disclose fully his criminal record history on his PHDF-2.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission 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 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at 15:

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 explicitly placed upon applicants for licensure the affirmative responsibility to produce information, to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

Commission, 79-EA-9 (June 30, 1980) at 3; 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, 80-EA-4 (September 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 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 a failure to disclose or the provision of misleading statements by an applicant, which are not the result of ignorance or inadvertence, would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

The applicant argued that the nondisclosure of his criminal record was, in part, excusable because of his reliance upon a third party during the completion of his PHDF-2. However, the Commission has held in In the Matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT CCC 2252-79 (November 15, 1979), modified, Casino Control Commission 79-EA-10 (March 20, 1980) at 7-10, that applicants for licensure who failed to disclose information material to licensure on personal history disclosure forms will not be allowed to avoid disqualification from licensure by reliance upon others. Under such circumstances, the Commission will strictly apply N.J.S.A. 5:12-86b and deny licensure. Id. at 10. Given the fact that the applicant can read and write, and that he reviewed the responses on the PHDF-2, his reliance upon a third party is of no significance whatsoever.

Various questions on the PHDF-2 call for full and complete disclosure of an applicant's criminal record history. Even accepting the possibility that Mr. Martino's response to question number 46 was sufficient to identify both bookmaking incidents, and accepting the possibility that the applicant did not recall either the 1949 petty larceny incident or the 1964 assault and battery incident, his explanation that he merely forgot or did not think about the 1968 arrest, indictment, jury trial and conviction was not believable. Further, I am not persuaded that the response to question number 46 was sufficient to identify either of the bookmaking incidents. The applicant understood well,

as he testified, his obligation to disclose fully his criminal record history, or, in the alternative, again as he testified, he had the necessary skills to establish that he should have known of this obligation. Accordingly, there is no reason to believe that the applicant's failure to disclose was due to ignorance, inadvertence or was a good faith error. Therefore, the failure to disclose must serve to disqualify the applicant from licensure.

I **CONCLUDE** that the Division has established, by by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, in regard to his failure to disclose fully his criminal record history on his PHDF-2.

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

Under section 89b(2) of the Act, Mr. Martino was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the 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, *supra*, at 2. Here, the Division has raised issue regarding the applicant's failure to disclose fully his criminal record history on his PHDF-2 and the circumstances underlying the various incidents of misconduct.

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

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

DISPOSITION

I **ORDER** that the application of Carmen D. Martino 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.

April 2, 1984  
DATE

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

April 2, 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 4, 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ij

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- R-1 Personal History Disclosure Form - 2, Carmen D. Martino, filed on September 14, 1982 (28 pages)
- R-2 Pennsauken Police Department - Arrest Record Summary Card, Carmen Martino, April 30, 1949
- R-3 New Jersey State Police - Report of Arrest, Carmen Daniel Martino, prepared by Investigator Justin Dintino
- R-4 New Jersey State Police - Minor Initial Report, January 20, 1961, prepared by Investigator Justin Dintino (5 pages)
- R-5 New Jersey State Police - Secondary Reports, prepared by Investigator Justin Dintino, January 26, 1961, May 1, 1961, July 22, 1961 and October 24, 1961 (4 pages)
- R-6 New Jersey State Police - Final Report, December 11, 1961, prepared by Investigator Justin Dintino
- R-7 Statement of Carmen Daniel Martino to the New Jersey State Police, January 17, 1961 (3 pages)
- R-8 The State of New Jersey v. Carmen Daniel Martino, Camden County Law Division (Criminal), Indictment Number 582-60, and Judgment of Conviction, December 5, 1961 (3 pages)
- R-9 Township of Gloucester - Criminal Record Summary, Carmen Daniel Martino
- R-10 New Jersey State Police, Report of Arrest, prepared by Investigator Justin Dintino
- R-11 New Jersey State Police - Minor Initial Report, April 1, 1966, prepared by Investigator Justin Dintino (4 pages)
- R-12 New Jersey State Police - Final Report, September 17, 1967, prepared by Investigator D.J. Novak
- R-13 The State of New Jersey v. Carmen Daniel Martino, Camden County - Law Division (Criminal), Indictment Number 285-66, June 29, 1967 (3 pages)
- R-14 Gloucester Township Police Department - Arrest Report, August 22, 1968
- R-15 State of New Jersey v. Carmen Martino, Camden County - Law Division (Criminal), Indictment Number 1124-67, together with Judgment of Conviction, January 24, 1969, (3 pages)

WITNESS LIST

**FOR THE APPLICANT:**

Carmen D. Martino

**FOR THE RESPONDENT:**

Dwayne Brooks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-69  
OAL DOCKET NO. CCC 4148-82  
LICENSE NOS. 00631-11 & 01773-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
  
Complainant, : FINAL ORDER  
  
v. :  
  
MANUEL MATTA, :  
  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 12, 1983, recommending that the casino key and casino employee licenses held by Manuel Matta be revoked; and Manuel Matta having filed exceptions thereto on February 4, 1983; and the Commission having considered the entire record of these proceedings having resolved at its public meeting of February 23, 1983, to modify the said Initial Decision and to revoke the casino key and casino employee licenses held by Manuel Matta,

IT IS on this 1st day of May 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified to include the following:

The Commission finds that Manuel Matta's conviction for swindling and cheating in violation of N.J.S.A. 5:12-113 is presumptively inimical to the policies and operations of casino gaming as it occurred while he was employed as a casino key employee and therefore requires disqualification pursuant to N.J.S.A. 5:12-86(c)(4).

IT IS FURTHER ORDERED that the casino key and casino employee licenses held by Manuel Matta be and hereby are revoked based upon the reasons set forth in the Initial decision, as modified above, which is incorporated herein and made a part hereof; and

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

IT IS FURTHER ORDERED that Manuel Matta shall deliver his casino key and casino employee license cards to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of his receipt of this Order; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4148-82

AGENCY DKT. NO. 81-69

**STATE OF NEW JERSEY, DEPARTMENT  
of LAW and PUBLIC SAFETY,  
DIVISION of GAMING ENFORCEMENT,  
Petitioner,**

**v.**

**MANUEL MATTA,  
Respondent.**

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**APPEARANCES:**

**Howard Barman, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**John H. Fitzgerald, Esq., Cape-Atlantic Legal Services, for respondent**

**Record Closed December 22, 1982**

**Decided January 10, 1983**

BEFORE R. JACKSON DWYER, ALJ:

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement, filed with the Casino Control Commission on October 22, 1982, seeking judgment revoking respondent's casino key employee license no. 00631-11 as a pit boss issued by the Casino Control Commission on May 1, 1980, and his casino employee license no. 01773-21 as a floorperson, issued by the Commission on November 8, 1978; renewed on December 5, 1979; and a second renewal application received on November 21, 1980, pursuant to N.J.S.A. 5:12-129(1) of the Casino Control Act. By order dated November 9, 1981, the Commission suspended respondent's licenses pending the final disposition of this matter pursuant to N.J.S.A. 5:12-109(a)(1). Respondent's licenses were suspended because he was arrested and charged with cheating at craps in a licensed casino on or about February 15, 1981, in violation of N.J.S.A. 5:12-115(a)(2) of the act. On or about August 3, 1981, respondent was found guilty of swindling and cheating, in violation of N.J.S.A. 5:12-113(b) and was fined \$200 and \$25 court costs. Respondent appealed his conviction to Superior Court and the conviction was affirmed on November 2, 1981.

By letter from the Commission dated October 23, 1981, respondent was advised of the suspension of his licenses upon the complaint of the Division of Gaming Enforcement filed with the Commission on October 22, 1981. By letter dated November 5, 1981, respondent requested a hearing, and the matter was transmitted by the Commission to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

#### UNDISPUTED FACTS

There is little dispute as to the material facts in this matter and I FIND as follows:

On February 15, 1981, around 12:25 p.m., respondent, a pit boss, took a set of dice (five dice) and scraped or beveled the edges with an angle bar. Respondent then wrapped the dice and placed them in the drawer in the podium of the pit stand separating them from other sets of dice in the drawer. There is a minor factual dispute

whether respondent scraped or beveled off two or six edges of the dice; however, I do not consider that of significant moment in deciding the matter.

According to respondent, a patron of the casino, whom he characterized as a "high roller," came by his table and engaged in a practice of "helicoptering" or "lobbing" the dice instead of rolling the dice down to the end of the table. In beveling or shaving the edges on the dice, respondent felt that the dice would "roll more" and thus take away any advantage that the "high roller" might acquire. Respondent further testified that he called the practice of "helicoptering" the dice to the attention of casino management; however, they ignored the information presumably because the particular "high roller" lost more money than he won over a span of time. Respondent denied that the particular shaved or beveled dice were introduced into the game before he went on his break and was relieved by another pit boss. There is no suggestion whatsoever that respondent personally profited by this act but rather he felt he was neutralizing any advantages that the "high roller" might acquire against the casino and/or other patrons at the table.

All of respondent's testimony is essentially credible, believable and trustworthy and is thus **FOUND AS FACT**.

The only issue presented is the question of an appropriate penalty. Respondent asserts that since he has been unemployed in excess of a year that should suffice as an appropriate penalty. The Division takes the position that the penalty should be revocation of respondent's licenses.

#### 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. Section 129 of the act provides a range of options: revocation, suspension, civil penalty or letter of reprimand. Section 86(c) of the Casino Control Act states the

Commission shall deny licensure to any applicant who has committed any offense which indicates the licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations. Since respondent was convicted of N.J.S.A. 5:12-113(b), he is subject to revocation or some other appropriate sanction pursuant to Section 129 of the act.

Under Section 130, the determination of an appropriate sanction should be based upon consideration of a number of factors, including risk to the public and to the integrity of gaming operations created by the conduct of the licensee; 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 the act or the regulations promulgated thereunder; any justification or excuse for such conduct by the licensee; and the prior history of the particular licensee involved with respect to gaming activity.

Respondent contends that he did not personally profit from his act and that he simply shaved or beveled the dice to restore the proper odds to the casino and/or the patrons at his table. He argues that the Division agreed to downgrade the offense from N.J.S.A. 5:12-115(A)(2) (cheating at craps in a licensed casino) to N.J.S.A. 5:12-113(b) (swindling and cheating) for which he was fined \$200 and \$25 court costs. The disorderly persons offense should not serve as a justification for the revocation of his license. He made a mistake in judgment and his act does not create a risk to the public. Character witnesses, both at the criminal trial and the administrative hearing, testified that he was an exemplary employee and worked his way from position of dealer to pit boss, that he was a trusted employee at the Conquistador Hotel and Casino in Puerto Rico and was elected president of his union. Respondent has acknowledged his mistake and there is no likelihood that there will be a repetition of similar conduct in the future.

Respondent's contentions are unpersuasive. The evil or mischief intended to be suppressed by respondent is covered by clearly mandated regulations. N.J.A.C. 19:46-1.15 states in full:

**Dice; physical characteristics**

(a) Each die used in gaming at craps shall:

1. Be formed in the shape of a perfect cube and of a size no smaller than 0.750 of an inch on each side nor any larger than 0.775 of an inch on each side;
2. Be manufactured to an accuracy tolerance of no greater than .0002 of an inch;
3. Be transparent and made exclusively of cellulose except for the spots, name of the casino and serial numbers or letters contained thereon;
4. Have the surface of each of its sides perfectly flat and the spots contained in each side perfectly flush with the area surrounding them;
5. Have all edges and corners perfectly square, that is forming perfect 90 degree angles;
6. Have the texture and finish of each side exactly identical to the texture and finish of all other sides;
7. Have its weight equally distributed throughout the cube and no side of the cube heavier or lighter than any other side of the cube;
8. Have its six sides bearing white circular spots from one to six respectively with the diameter of each spot equal to the diameter of every other spot on the die;
9. Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; and
10. Have the name of the casino in which the die is being used imprinted or impressed thereon.

- (b) Each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound equal in weight to the weight of the cellulose drilled out and which will form a permanent bond with the cellulose cube.
- (c) Each spot shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of 0.004 of an inch.

When respondent scraped or beveled off the edges of the dice with an angle bar he was in clear violation of the above regulation. The regulation mandates the dice must have perfectly square edges.

Furthermore, N.J.A.C. 19:47-1.8 provides:

#### Throw the Dice

Upon selection of the dice, the shooter shall make a Pass Bet or Don't Pass Bet after which he shall throw the two selected dice so that they leave his hand simultaneously and in a manner calculated to cause them to strike the end of the table farthest from him.

That regulation clearly provides that "helicoptering" the dice is impermissible and would have been a violation by the casino if such activity was condoned. Finally, N.J.A.C. 19:47-1.9(b) states in pertinent part:

#### Invalid Roll of the Dice

- (b) A boxman or stickman, as designated by the casino licensee, shall have the authority to invalidate a roll of the dice by calling "No Roll" for any of the following reasons:
  - 1. The dice do not leave the shooter's hand simultaneously;
  - 2. Either or both of the dice fail to strike an end of the table;
  - 3. Either or both of the dice come to rest on the chips constituting the craps bank of chips located in front of the boxman;

4. Either or both of the dice come to rest in the dice cup in front of the Stickman or on one of the rails surrounding the table;
5. The use of a cheating, crooked or fixed device or technique in the roll of the dice; and
6. For any other reason the Boxman or Stickman, as the case may be, considers the throw to be improper.

Respondent under the above regulation had the authority to invalidate any roll which was not in conformity with this regulation.

Respondent's act was in contravention of the Legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1(b)(6) which provides in part:

An integral and essential element of the regulatory 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 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 operations of licensed casino enterprises . . . .

Pursuant to that expressed public policy of the Casino Control Act, and based upon the totality of circumstances surrounding this matter, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of respondent's casino key employee license no. 00631-11 as a pit boss and his casino employee license no. 01773-21 as a floorperson by a preponderance of the relevant and credible evidence pursuant to Section 129 of the Casino Control Act.

Accordingly, it is **ORDERED** that the casino key employee license and casino employee license of respondent be **REVOKED**.

OAL DKT. NO. CCC 4148-82

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.

Jan 10, 1983  
DATE

R. Jackson Dwyer  
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Jan 19, 1983  
DATE

Jim A. McNeill  
CASINO CONTROL COMMISSION

Mailed To Parties:

Jan. 13, 1983  
DATE  
jrp

Ronald L. Parker  
FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-249  
OAL DOCKET NO. CCC 7861-83 &  
CCC 10414-82  
APPLICATION NO. 31960-21

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APPLICATION OF LOUIS MCKAY  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 12, 1984, recommending that the casino employee license application of Louis McKay be denied; and neither party having filed exceptions or objections thereto; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting on May 16, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 22nd day of MAY 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Louis McKay be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

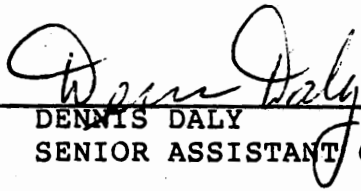
IT IS FURTHER ORDERED that, Louis McKay is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee shall not prevent Louis McKay from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7861-83

AGENCY DKT. NO. 82-EA-249

**LOUIS MC KAY,**

Petitioner

v.

**STATE DIVISION OF**

**GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**John J. Zarych, Esq.,** on behalf of petitioner

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

Record Closed: March 5, 1984

Decided: April 11, 1984

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

This matter concerns petitioner's application for a license as a casino employee pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder, and objections filed thereto by respondent. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The basic facts are undisputed. On February 19, 1981, petitioner executed a Personal History Disclosure Form (PHDF) seeking a license as a dealer. He signed the back of the form attesting that the answers given were truthful. He also initialed page two of the form directly beneath bold type which states that failure to answer any question completely and truthfully will result in denial of the application. Petitioner answered the series of questions on the PHDF concerning prior criminal arrests or convictions in the negative. It develops that there is such a record.

On July 18, 1968, petitioner was arrested by the Los Angeles Police Department and charged with shoplifting, analogous to N.J.S.A. 2C:20-12. Petitioner was found guilty, received a suspended sentence of 180 days in jail, a \$50 fine and one-year probation. On August 31, 1969, petitioner was arrested by the Los Angeles Police Department and charged with soliciting, analogous to N.J.S.A. 2C:34-1. He was found guilty and received a two-year probationary period and a \$100 fine. On June 10, 1971, petitioner was arrested by the Los Angeles Police Department and was charged with possession of marijuana under 25 grams, analogous to N.J.S.A. 24:21-20(a)(3). He was found guilty, received 180 days' suspended sentence and one-year probation. On January 18, 1973, petitioner was arrested by the Los Angeles Police Department and charged with indecent exposure, analogous to N.J.S.A. 2C:14-4, and soliciting, analogous to N.J.S.A. 2C:34-1. These charges were ultimately dismissed. On March 15, 1973, petitioner was arrested by the San Francisco Police Department and charged with soliciting analogous to N.J.S.A. 2C:34-1, and engaging in lewd acts, analogous to N.J.S.A. 2C:14-4. This charge was amended to a disorderly conduct offense and the applicant received one day in the county jail. On July 1, 1978, petitioner was arrested by the San Francisco Police Department and charged with credit card forgery, analogous to N.J.S.A. 2C:21-6. The applicant was convicted, received a six-month suspended sentence, six days in the county jail, and was ordered to repay \$1,232.77. On February 7, 1975, the applicant was arrested by the Mount Vernon, New York, Police Department and was charged with possession of a dangerous weapon, analogous to N.J.S.A. 2C:39-1. The applicant pled guilty to the downgraded charge of harassment, paid a \$50 fine and received a one-year conditional discharge.

Testimony was also presented concerning two incidents which arose subsequent to the filing of the PHDF. The first occurred in July 1981. Petitioner was charged with theft and burglary, which was dismissed for lack of prosecution. In April 1983 petitioner was charged with aggravated assault, which was also dismissed.

Petitioner testified in his own behalf. He is 30-years old and the son of Louis McKay and Billie Holiday. His father was a theatrical agent and his mother a well-known entertainer. His mother died when he was eight as a result of heroin and alcohol addiction. Petitioner spent most of his childhood in various private boarding schools. He testified that he has had a confused upbringing.

In early 1981 he came to Atlantic City from California to care for his now elderly father. He found all of the incidents which took place in California to be emotionally distressing and tried to put that part of his life behind him when he came east. When he completed the PHDF, he had been in Atlantic City for only a few weeks and did not fully understand its importance. He did not review the form carefully and when he came to the questions involving prior criminal record, he either couldn't bring himself to relive these incidents or simply blanked them out. He testified that he was under a great deal of stress at the time as his father was ill and he was working two jobs.

He did explain some of the incidents in the record, most particularly the credit card fraud conviction in July 1978. He testified that the person whose credit card he was using was actually a roommate who had not paid his share of the rent and who had authorized him to use his card in lieu of rental payment. Later his roommate complained to the police. Petitioner testified that he has completely paid off the \$1,232.77 in restitution ordered by the court in California. Respondent did not present any details concerning this offense.

Petitioner also testified that the incidents which took place in Atlantic City subsequent to the filing of his PHDF also involved roommates. The July 1981 incident took place while he was moving out of an apartment. He took some things and damaged others which were jointly owned apparently in a fit of anger. The April 1983 incident involved an altercation with a roommate. In each case, the matters were dismissed for want of prosecution.

Petitioner testified that he was employed for approximately a year and a half as a waiter at the Claridge Hotel and Casino and is now a waiter at Charley's Restaurant in the Golden Nugget. He has held this employment for a year and a half as well. He has had no difficulty with either of these employers. He has also sought out the assistance of a counselor in the person of Father Paul Wise, whom he sees once a week.

This is the substance of the record.

N.J.S.A. 5:12-86 provides:

The commission shall deny a casino license . . . on the basis of any of the following criteria:

- b. . . . 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. . . .

Petitioner was a sympathetic and generally credible witness. Most of his offenses took place when he was not yet 20. The question here, however, is whether he intentionally withheld material information and, if so, whether special circumstances explain such behavior. Petitioner sought first to imply that he really didn't read the PHDF carefully and didn't quite know that he was omitting important information. He also maintained that he wanted very much to forget these prior incidents and either couldn't bring himself to relive them or somehow momentarily blanked them out. I cannot accept these as reasonable excuses. A review of his PHDF indicates that it was filled out with care. A good deal of detail is provided in responses to a number of questions. More importantly, inattentiveness cannot form the basis of reasonable excuse. He initialed and signed the document and he must take responsibility for it! I do believe his testimony to the effect that he wanted very much to forget his past. Yet, that explanation without more, is available to every person who files a PHDF who is dissatisfied with or ashamed of some prior behavior. It is possible that an individual could so want to forget some element of his past that he could not physically bring himself to write it down, or would simply blank it out. But the common sense approach to such a claim is to recognize that it is possible though unlikely, and to place the heavy burden of persuasion on the proponent to show it. It is the type of theory that at the least requires the support of expert opinion. We do not have that here. Thus we are left with the very believable testimony that it would have been painful for petitioner to relive these matters through the PHDF. In my view, that is not sufficient under the statute.

Based on the foregoing, it is my **CONCLUSION** that petitioner failed to make appropriate disclosures on the PHDF without reasonable explanation. He has not established his good character, honesty and integrity by clear and convincing evidence, and it is **ORDERED** that his application be and hereby 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.

4/11/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

April 12, 1984  
DATE

*Bernadette T. Friger*  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 16, 1984  
DATE

*Ronald L. Parker*  
OFFICE OF ADMINISTRATIVE LAW

bm

EXHIBITS

- R-1 FBI report
- R-2 Police investigation report
- R-3 PHDF

WITNESSES

John Sandilli, Investigator, DGE  
Louise G. Frey, Patrolman, Ventnor City Police  
Louis McCay, petitioner

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-COI-6  
OAL DOCKET NO. CCC 3814-83  
APPLICATION NO. 79-70

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APPLICATION OF MERCHANTS' WINE &  
LIQUOR, INC., FOR A  
CASINO SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on March 26, 1984, recommending that the application of Merchants' Wine & Liquor, Inc., for a casino service industry license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on April 16, 1984, to which the applicant filed a reply brief on May 21, 1984; and the Commission having considered the entire record of these proceedings resolved at its public meeting on June 6, 1984, to affirm and adopt the said Initial Decision and to grant the application,

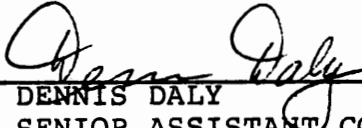
IT IS on this 11th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the casino service industry license application of Merchants' Wine & Liquor, Inc., be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Merchants' Wine & Liquor, Inc., and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 3814-83**

**AGENCY DKT. NO. 83-CSI-6**

**MERCHANTS' WINE AND LIQUOR, INC.,**

Applicant

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW**

**AND PUBLIC SAFETY,**

Respondent.

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**APPEARANCES:**

**Martin L. Greenberg, Esq., and Jeffrey D. Light, Esq., for the petitioner (Greenberg, Margolis, Ziegler & Schwartz, P.C., attorneys)**

**R. Lane Stebbins, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: February 1, 1984

Decided: March 19, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Merchants' Wine and Liquor, Inc. (Merchants'), applicant, to the Casino Control Commission (Commission) for licensure as a casino service industry, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, neither consented to nor opposed licensure, but raised questions concerning the qualifications of the applicant on the basis of the corporate qualifiers' good character, honesty and integrity in light of the applicant's prior regulatory transgressions.

PROCEDURAL HISTORY

Merchants' filed its application with the Commission. By letter dated April 28, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated January 11, 1983, there was a "substantial possibility" that the Commission would deny the application and that Merchants' had a right to a hearing. By letter dated May 9, 1983, the applicant requested a hearing. By letter dated May 16, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 4, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Merchants' is the holder of a plenary wholesale license issued by the Division of Alcoholic Beverage Control, Department of Law and Public Safety (the ABC). Although Merchants' is the only applicant in this matter, it shares a common ownership and directorship with two other corporations which hold plenary wholesale licenses from the ABC, F & A Distributors (F & A) and Gillhaus Beverage Co. (Gillhaus) (the Companies). F & A was founded in December 1933 by two Feldman brothers and Maurice Altschuler. In 1947-48 a branch warehouse was opened in Camden. In 1951 the branch office was made into a separate corporation - Merchants'. In 1955 at the request of a supplier, Gillhaus, a small wholesaler in Bergen County, was purchased. In 1978, Gillhaus' operations were moved to F & A's premises in Bayonne. Nevertheless, Gillhaus is still operated separately.

The Companies are privately held corporations which are operated separately but have joint ownership. The ownership is now in the second and third generations. More specifically, ownership of each of the corporations is 50/50 between the Altschuler family, and brothers Myron and Edward Feldman together with the estate of their father.

F & A continues to operate out of Bayonne. Myron Feldman, who has been with F & A since 1946, is the president. Mr. Feldman earned a Bachelor of Arts degree from the University of Pennsylvania. He was honorably discharged from the United States Navy following World War II. He serves as a bank director, a trustee of the Pension and Welfare Fund of Local 19 of the Distillery Worker's Union, is a past member of the Board of Directors of Temple B'nai Israel, is a former director of the YMHA of eastern Union County, is a trustee of the Rabbinical College of America, is a member of the National Distillers and Wholesalers Scholarship Foundation and is the past president and past chairman of the board of the Wine and Spirits Wholesalers of America (which association consists of 90 to 95% of all holders of plenary licenses in the United States).

Merchants' continues to operate from Camden County. Edward Feldman, the younger brother of Myron Feldman, has been with the company since its inception and is now its president. Edward Feldman earned a Bachelor of Science degree from the University of Pennsylvania. Merchants' began selling wine and liquor to the casino hotels when Resorts International Hotel, Inc., opened in 1978. Merchants' currently sells to all casino hotels. Annual gross sales to casino hotels are approximately \$1 million, which is five percent of Merchants' total gross income. Merchants' has had no business difficulties with the casino hotels, nor has the ABC taken any action against Merchants' by reason of its business dealings with the casino hotels.

As indicated, Gillhaus continues to operate out of Bayonne. Its president is Myron Altschuler.

The alcoholic beverage industry in New Jersey consists of three basic levels: (1) supplier-distiller, (2) wholesaler-distributor and (3) retailer. The supplier/wholesaler relationship is noncontractual and is generally nonexclusive. The industry is regulated by the ABC. In addition, on a national level, the industry is regulated by the Bureau of Alcohol, Tobacco and Firearms (BATF), of the United States Department of the Treasury.

In 1961 the ABC suspended the plenary wholesale license of F&A for a period of 25 days, because F&A had permitted the sale and delivery of alcoholic beverages on credit to two retail licensees which were then on the ABC's default list, in violation of the ABC's regulations. Myron Feldman was then the sales manager of F & A. At that time, the ABC's regulatory scheme provided for a 30-day payment period by a retailer to a wholesaler.

A wholesaler had the affirmative responsibility to inform the ABC when a retailer did not make payment within the required period. Thereafter, the ABC would place the retailer on the default list. When the retailer in default made payment, the wholesaler would advise the ABC, which would then remove the retailer from the default list. There was a 10-day processing period for the placement of a retailer on or off the default list. This regulation has now been modified and provides for a 24-hour period in which a retailer's status may be changed. The circumstances underlying this incident were in dispute and will be discussed, infra.

In 1972 the BATF assessed Merchants' and F&A each a penalty of \$25,000 for violations of the Federal Alcohol Administration Act (J-1A and J-1B). The actions concerned the rebating of alcoholic beverages to retail licensees, and failing to keep records of disposition of the alcoholic beverages used as rebates. More specifically, Merchants' and F & A rebated free goods on quantity orders to retail licensees, which practice was permitted by the BATF but precluded by the ABC through its regulatory scheme which fixed all prices throughout the industry. In essence, the rebating was the means by which wholesalers competed with each other. The BATF investigation uncovered discrepancies in record keeping by Merchants' and F&A, which were designed to avoid detection of the rebating practice. The BATF investigation targeted 19 licensed wholesalers in New Jersey, which comprised virtually the entire wholesale industry (P-1). Again, the circumstances underlying this incident were in dispute and will be discussed, infra.

As a result of a BATF on-site inspection, the BATF issued a warning letter, dated August 24, 1978, to Merchants', which cited various regulatory violations concerning the issuance of credit, sales with the right of return and issuing false credits and false rebills to retail accounts under the so-called post off rebill method (J-2). Merchants' acknowledged receipt of the warning letter but took no further responsive action. The circumstances underlying this incident were in dispute and will be discussed, infra.

In 1976 and in response to a belief that the alcoholic beverage industry was conducting its business contrary to the regulations of the ABC, the attorney general ordered an industry wide investigation to be conducted by the Antitrust Task Force of the Division of Criminal Justice, Department of Law and Public Safety. In the spring of 1977, Alfred J. Luciani, then Chief of the Antitrust Civil Remedy Section and Deputy Director of the Division of Criminal Justice, was assigned to head the task force. Deputy Director

Luciani oversaw the investigation and supervised the preparation of the task force report (P-5). The task force was directed, in part, to investigate all levels of the alcoholic beverage industry and to determine whether there were any regulatory and/or criminal violations, and, if any, the extent thereof. At the instigation of Deputy Director Luciani, the task force met with suppliers and wholesalers in an effort to provide the industry with the opportunity to voluntarily describe trade practices as an aid to the task force in exchange for more favorable treatment regarding any regulatory transgressions. Deputy Director Luciani met with Myron and Edward Feldman and Jeffrey Altschuler, an officer in F&A, who were cooperative, helpful and made a complete disclosure of the trade practices of the Companies. This saved the task force both time and money (P-2). In fact, the entire industry, with one or two exceptions, provided varying degrees of cooperation and assistance to the task force. The task force concluded that since the enactment of "An Act Concerning Alcoholic Beverages" on December 6, 1933 "...the underlying principals and trade practices have not been reviewed in a comprehensive fashion..." (P-5 at pps. 3-4). Further, the regulatory violations which were uncovered concerned the trade practices of promotion, i.e., marketing and pricing, and the giving of extended credit to retailers. More specifically, the regulatory scheme in New Jersey did not support the concept of competition between wholesalers. Rather, it frustrated competition, which was standard operating procedure in other industries (P-5 at p. 33). The task force determined that these regulatory restrictions were in direct conflict with modern marketing techniques. The task force concluded that although the industry-wide regulatory violations could not be excused, they were understandable (P-5 at p. 34). The industry was pressured from various levels to violate the regulatory scheme in order to compete and, accordingly, found ways to compete for business. Abstinence from participating in illegal competition would have resulted in economic hardships which were potentially severe. The task force concluded:

Most industry trade practices reflect the industry's attempt to "modernize" its marketing methods. Such marketing practices have caused the industry often to find itself running afoul of an inflexible regulatory scheme. [P-5 at p. 34]

In essence, the industry responded to unofficial restraints upon competition and found ways to compete. The task force also concluded "that the trade practice violations were endemic to the industry..." (P-2). The task force recommended an overhaul of the regulatory structure to permit competition in the areas of marketing and promotion,

which would be consistent with modern trade practices in other industries. Last, in anticipation that the alcoholic beverage industry would do business with the casino industry, the task force recommended the following:

Finally, with the advent of Casino Gaming and the removal from the ABC of direct control over consumption of alcoholic beverages in Casino Hotels, the Task Force recommends that the industry be required to maintain records of sales to Casino Hotels, so as to assist the Casino Control Commission in its supervisory functions, and to insure the integrity of "consumption" statistics that will necessarily be examined if the proposals set forth in this Report are adopted. [P-5]

As a result of the task force investigation, the ABC filed charges against the Companies (J-3 and P-2). The nature of the charges concerned the illegal trade practices which were the subject of the task force report. However, in consideration of the degree of cooperation by the principals of the Companies and the recommendations of Deputy Director Luciani, upon the entry of pleas of non vult, the ABC assessed fines as follows:

F&A	\$20,000	
Merchants'	\$19,000	
Gillhaus	<u>\$ 0</u>	
Total	\$39,000	(J-3 & P-2).

Again, the circumstances underlying this incident were in dispute and will be discussed, infra.

Prior to the issuance of the Division's report, dated January 11, 1983, to the Commission, F&A used its petty cash fund to compensate seasonal warehouse help, i.e., helpers on trucks. The amounts used for this purpose were charged to freight, which was the area in which the workers performed. F&A did not pay withholding tax at this time. However, as a result of the Division's comments, F&A instituted a fully automated system for the paying of casual labor (P-3). The laborers are still paid in cash, but F&A maintains full and proper records. Although F&A sent out many W-2 forms for 1983, many were returned. Again, the circumstances underlying this issue were in dispute and will be discussed further, infra.

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

(B) DISPUTED FACTS

In addition to the aforementioned issues, the good character, honesty and integrity of Myron Feldman, Edward Feldman and Jeffrey Altschuler were in dispute.

1. Division of Alcoholic Beverage Control - 1961

Myron Feldman testified on behalf of the petitioner in regard to this issue. Although the regulatory violation and subsequent suspension were not disputed, the witness explained the circumstances underlying the incident.

Myron Feldman first learned of the incident when two investigators from the ABC appeared and asked for records regarding the sale of alcoholic beverages to two retailers. F&A provided the requested information. Upon questioning the salesman to whom the two accounts were assigned, the witness learned for the first time that the salesman had developed a habit of meeting the driver of the delivery truck, whereupon the salesman placed the delivery in his car and advised the driver that he would pick up the payment from the retailer. The salesman made the delivery but was not paid at that time. The salesman managed to avoid detection of the nonpayment by the retailers, who were on the ABC's default list, by lying to F&A's credit manager. This salesman was a six-year employee of F&A with no prior record of employment disciplinary problems. The salesman further explained that he provided the service to the two customers because the same service was provided by competitors and the salesman feared the loss of his two best accounts. The salesman was asked to resign, which he did. The credit manager, who was a twelve-year employee, was deemed not to have any knowledge of the violations and was retained. F&A also initiated new procedures which were designed to eliminate the possibility of similar regulatory transgressions.

At this point it is appropriate to consider Myron Feldman's credibility, because the outcome of this issue, as well as several other issues, depends largely upon whether his testimony was believable. Initially, the witness' position in this matter must be recognized. He is a qualifying owner and director of the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that, from my

observations of the witness' demeanor, the plausibility of his testimony and my examination of the documentary evidence, that Myron Feldman testified truthfully. His testimony was candid, consistent, supported by 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 addition, the Division did not offer any witness or evidence to refute any fact to which Myron Feldman testified. In the final analysis, I am persuaded to accept his testimony in all respects.

Accordingly, although F&A was subject to disciplinary proceedings by the ABC, it is evident that the incident was not serious in nature. More specifically, the incident occurred 23 years ago. Further, the incident was the result of improper actions by an employee without the knowledge of the principals or management of F&A. When the principals learned of the misconduct, the employee was released from his position and the company initiated new and better procedures in order to avoid a repetition of the misconduct. Therefore, the incident is of minor significance in this matter.

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

1. Myron Feldman first learned of the regulatory violations from an investigation conducted by the ABC.
2. F&A cooperated with the ABC's investigative efforts.
3. The regulatory violations were the direct result of misconduct by a salesman employed by F&A, and whose improper actions were not known to the principals of F&A or otherwise detected by supervising employees of the company.
4. Upon learning of the misconduct, F&A released the salesman from employment and initiated new and better procedures which were designed to prevent the repetition of the violations.
5. Myron Feldman's testimony was credible, believable and persuasive in all respects.

2. Bureau of Alcohol, Tobacco and Firearms - 1972

Myron Feldman also testified regarding this issue. Again, there was no dispute that Merchants' and F&A had committed the regulatory violations. Further, the Companies knowingly and purposefully committed the violations in order to avoid detection of other prohibited conduct. More specifically, the Companies rebated free goods on quantity orders to retail licensees, which conduct was permitted by the BATF but prohibited by the ABC. In order to avoid detection by the ABC, but in an effort to pay State taxes on merchandise which was given away, the Companies prepared and maintained inaccurate records. Myron Feldman further testified that at no time did F&A destroy records as set forth in exhibit J-1B. The reference to the destruction of records was an inadvertent error and was not noticed until preparation for this hearing. The witness further testified that the practice of providing rebates was the direct result of the trade practices of competitors. In essence, economic realities dictated that the Companies participate in illicit trade practices or be forced out of business. The issue of competitive trade practices will be dealt with, infra. Nevertheless, it was apparent that although the violations did occur, the seriousness is mitigated by the facts that virtually the entire wholesale segment of the alcoholic beverage industry was involved and by the contributory effect of the restrictive regulatory scheme. Again, the Division offered no evidence or testimony to refute the witness' explanation of the underlying circumstances.

I further **FIND** that:

6. Merchants' and F&A knowingly and purposefully committed the cited regulatory violations.
7. The Companies' misconduct was the result of similar trade practices by competitors and a restrictive regulatory scheme.
8. F&A did not destroy records, but prepared and maintained false records in an effort to avoid detection of other regulatory violations.

3. Bureau of Alcohol, Tobacco and Firearms - 1978

Edward Feldman testified on behalf of the applicant regarding this issue. The witness stated that Merchants' did not respond to the BATF's charges, because they were merely contained in a warning letter and because no penalty was assessed. Simply, there was no practical need to respond.

In addition, Edward Feldman described the circumstances underlying each of the purported violations (J-2). More specifically, charges 1 and 2 concerned the extension of excessive credit and the making of sales with the right of return. These charges were concerned with one general transaction. Under the ABC regulations, a wholesaler was permitted to accept returns of merchandise within the 30-day period provided for payment. Simultaneously, the wholesaler was permitted to accept and fill a new order for the same merchandise, which would restart the 30-day payment clock. The witness testified that all merchandise which was the subject of this procedure was in fact picked up and redelivered by Merchants'. With regard to charges 3a. and b., which concerned the maintenance of false records of receipt and disposition, the witness had no knowledge or understanding of the basis for the charges. At this point it should be noted that the warning letter does not contain a specification of the charges. With regard to charge 3c. which concerned the failure to properly cancel the BATF's file copy of cancelled invoices, the witness stated that the BATF wanted Merchants' to use a larger and bolder stamp, which was purchased accordingly. With regard to charge 3e., which concerned the failure to prepare accurate recapitulation records, the witness stated that the BATF investigators, while at the Companies' offices, had requested the daily record of transactions for the same day. The witness had advised the investigators that the deliveries were not yet completed and, therefore, the documents could not be prepared until the next day. Accordingly, although the BATF regulations required the document to be prepared on the same day, completion was always made the following day. This practice existed throughout the industry. With regard to charge 3e., which concerned the failure to maintain a numerical sequence of records of disposition, the witness did not deny the cited conduct. However, by reference to an industry memorandum issued on December 15, 1983, which advised that such numerical sequencing was no longer required and should not have been required previously, the witness established that there were practical difficulties with the maintenance of numerical sequencing. Nevertheless, the witness was aware of the regulatory requirement, but did not comply. In any event, this violation appears to be minor in nature.

Again, it is appropriate to consider Edward Feldman's credibility, because the outcome of this issue, as well as several other issues, depends largely upon the believability of his testimony. Initially, the witness' position in this matter must be recognized. He is a qualifying owner and director of the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that from my observation of Edward Feldman's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the witness testified truthfully. The witness' testimony was candid, consistent, supported by the documentary evidence, believable and persuasive. The witness responded fully and completely to each and every question asked. In addition, the Division did not offer any witness or evidence to refute any fact to which this witness testified. In the final analysis, I am persuaded to accept his testimony in all respects.

I further **FIND** that:

9. Merchants' did not respond to the BATF warning letter of August 24, 1978, because it was merely a warning letter and because no penalty was assessed.
10. Charges 1 and 2 concerned activities which were permitted by the ABC. Further, Merchants' conduct was consistent with the ABC regulations.
11. It is not possible to determine the nature of charges 3a. and 3b.
12. In response to charge 3c., Merchants' initiated corrective action. The charge was extremely minor in nature.
13. Although Merchants' was technically in violation of charge 3d., it prepared the record of transactions on each following business day, which was the earliest possible date.
14. Although Merchants' committed the violations charged in 3e., it was apparent that the conduct was the result of practical difficulties with the regulations and was minor in nature.

15. Edward Feldman's testimony was credible, believable and persuasive in all respects.

#### 4. Division of Alcoholic Beverage Control - 1979

Although there was no dispute that the violations had been committed, Myron Feldman testified to the underlying circumstances.

Charge number 1 concerned the acceptance of rebates or allowances from manufacturers or suppliers of alcoholic beverages. The witness stated that the rebates or allowances were sales inducements offered by the manufacturers. Such conduct violated the state's price fixing scheme. The second charge concerned prohibited promotional activities. The witness stated that the Companies provided promotional benefits to salesman, which were financed by suppliers. The Companies participated in this conduct because of pressure from suppliers to cooperate and because of the pressure of the marketplace. In addition, the ABC had not taken any action against competitors who engaged in illicit promotional activities. The third charge concerned the failure to notify the ABC of retailers who were in default for placement on the default list. Myron Feldman testified that such action would have had a negative impact upon customer relations. Further, only F&A engaged in this misconduct. The fourth charge concerned the unlawful extension of credit. The witness testified that this was directly related to the third charge. More specifically, by not notifying the ABC of retailers on default, F&A, in essence, extended credit beyond the 30-day period. The fifth charge concerned the preparation and maintenance of false books and records. The witness stated that this was done in an effort to cover up illicit promotional contests. Again, this charge concerned misconduct only by F&A.

Because of the witness' apparent credibility and the absence of any evidence or testimony to the contrary, I am persuaded to accept Myron Feldman's explanations of the underlying conduct. Nevertheless, it appears that the misconduct was knowing and purposeful. However, the Companies actions are mitigated by the fact that the Director of the ABC concluded "that the trade practice violations were endemic to the industry" (J-3).

I further **FIND:**

16. As a direct result of the task force study of the alcoholic beverage industry, the Companies were cited for regulatory violations and received a penalty of a fine from the Director of the ABC.
17. The Companies knowingly and purposefully committed the regulatory violations.
18. The Companies were pressured by suppliers to cooperate in the regulatory violations, and were pressured in the marketplace by the participation in the misconduct by their competitors.
19. The ABC took no action to prohibit the misconduct by any members of the alcoholic beverage industry.
20. None of the Companies nor any of their principals reported the regulatory violations to the ABC.

#### 5. Seasonal warehouse help

Jeffrey Altschuler, vice-president of F&A since September 1978, described the circumstances surrounding the use by F&A of its petty cash fund to compensate seasonal warehouse help. These laborers were helpers on delivery trucks and were used primarily during the summer months and the holiday season. The amounts used for this purpose were charged to the freight account, because it was the area in which they worked and because F&A's accountant had organized the accounts in that fashion. Many of these laborers were transient and desired to be paid in cash. The witness stated that F&A's accountant had advised the company that this practice, including the nonwithholding of taxes, was permitted conduct under the Internal Revenue Code. In addition, the company's records had been audited by the Internal Revenue Service through 1982 and there was no indication of any wrongdoing.

In the absence of any contention or proof by the Division that F&A's conduct was improper, the resolution of this issue depends entirely upon Mr. Altschuler's credibility. Initially, the witness' position in this matter must be recognized. He is an officer and principal of the company which is affiliated with the applicant for licensure

and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was obvious both during the hearing and during the review of the record that, from my observations of the witness' demeanor, the plausibility of his testimony and my examination of the documentary evidence, the witness testified truthfully. Mr. Altschuler's testimony was candid, consistent, was supported by the documentary evidence, believable and most persuasive. The witness responded completely to each and every question asked. He also had a very detailed understanding of the accounting system of F&A and the apparent exempt status of the conduct. In the final analysis, I am persuaded to accept his testimony in all respects. Accordingly, there is no basis upon which to conclude that F&A's procedures for the payment of casual labor were improper.

I further **FIND** that:

21. F&A's use of its petty cash fund to compensate casual labor was not improper in any respect.

#### 6. Good Character, Honesty and Integrity of the Principals and Officers

Myron Feldman called four witnesses to testify on his behalf. The first was Kevin Shanley, the vice chairman of the Board of Fidelity Union Bank Corporation. Mr. Shanley has known Myron Feldman for the past four years, during which time Mr. Feldman served as a director of the Fidelity Union Bank Corporation's northern region. Mr. Shanley stated that he had both a personal and business relationship with Mr. Feldman. The witness was of the opinion that Mr. Feldman was unquestionably a person of good character, honesty and integrity and was a man of his word. The witness has authorized loans for F&A and the bank has extended F&A a line of credit. Further, the witness testified that Mr. Feldman enjoys a unanimously favorable reputation, including among those with whom he does business. Mr. Shanley was unaware of the various regulatory violations which were cited herein.

Milton H. Cooper, the applicant's second witness, is a consultant to the New Jersey Wine and Spirit Wholesale Association, was the president of the association from 1954 to 1982 and was the executive secretary of the association from 1951 to 1954. Mr. Cooper has been associated with Mr. Feldman since 1951. Mr. Cooper was of the opinion that Mr. Feldman was of the highest caliber and that there was no one for whom

he had more respect. His opinion was based upon personal observations. Mr. Cooper is also a close personal friend of Mr. Feldman. The witness also stated that among all levels of the alcoholic beverage industry Mr. Feldman enjoys a reputation of being a very fine and reliable person. Mr. Cooper knew of the 1961, 1972 and 1978 regulatory violations, although he was unaware of the 1979 charges.

Myron Feldman's third witness was Harvey H. Dembe, a consultant to and past president of the First National State Bank of New Jersey. Mr. Dembe has been associated with Mr. Feldman for his entire life and they have a business and personal relationship. The witness was of the opinion that Mr. Feldman's good character, honesty and integrity were excellent and that he was a man of his word and more. Further, the witness stated that Mr. Feldman enjoys a first-rate reputation. Mr. Dembe was aware of only the 1961 regulatory violation.

Alfred J. Luciani, Mr. Feldman's fourth witness, is currently an executive vice president and managing director of the Golden Nugget of Atlantic City Corporation and was in charge of the Attorney General's task force. The witness was of the opinion that based upon his observations of Mr. Feldman's voluntary cooperation and completeness of disclosure, he was forthright, candid and helpful during the task force investigation. Further, the witness stated that Mr. Feldman enjoyed the same reputation as other operators in the industry. More specifically, the reputation of the liquor industry is that it is a legitimate regulated industry which can always be subject to scrutiny and the discovery of some regulatory violations. However, on the whole the industry is comprised of people worthy of credence. The witness based his opinion upon the cooperation and candid disclosures by the majority of the industry in response to the task force investigation. In essence, the industry viewed and seized the opportunity to participate in the investigation as a means by which the regulatory scheme could be modified.

Myron Feldman also offered affidavits from the following persons: Dennis Collins, Mayor of the City of Bayonne (P-4B); Barry Silverman, president of Jaydor Corp., a licensed liquor wholesaler (P-4E); Sam Gold, retired, but previously employed by the ABC (P-4C); Frederick Whelply, executive vice-president and director of Bayonne Hospital (P-4F); Dennis Smith, formerly executive vice-president of Joseph G. Smith & Sons, Inc., a licensed wholesaler, and presently consultant to AT&T (P-4I); and Douglas W. Metz, executive vice-president and general counsel of the Wine and Spirits Wholesalers of America, Inc. (P-4J). These character witnesses were people from the alcoholic beverage

industry, general business and civic sectors of the community in which Myron Feldman works and lives. Each of the witnesses personally held Mr. Feldman in the highest possible regard concerning his good character, honesty and integrity. The opinions were based upon personal observations of Mr. Feldman. Similarly, these witnesses testified to Mr. Feldman's reputation for good character, honesty and integrity within his business and private life. It was also established that Mr. Feldman has been an extremely active participant in charitable and community activities.

Edward Feldman called three witnesses to testify on his behalf. The first was Milton H. Cooper. Mr. Cooper again was of the opinion that Edward Feldman was a person of the highest caliber and that there was no one for whom he had more respect. This opinion was based upon the witness' personal observations of Mr. Feldman. Further, the witness testified that within the alcoholic beverage industry Mr. Feldman enjoys a reputation of being a very fine and reliable person.

Richard O. Lindsey, Mr. Feldman's second witness, is an account officer with the Heritage Bank N.A. in Cherry Hill and has been acquainted with Mr. Feldman for five years. The witness has both a personal and business relationship with Mr. Feldman. Mr. Lindsey was of the opinion that Mr. Feldman is a person of the highest good character, honesty and integrity and always meets his commitments. Further, the witness testified that Mr. Feldman enjoys a very favorable reputation within the alcoholic beverage industry and the general business community. The witness acknowledged that the Merchants' account is one of the larger accounts at the bank. The witness had no knowledge of any regulatory violations.

Mr. Feldman's third witness was Alfred J. Luciani. The witness held the same opinion of Edward Feldman as that which he had testified to for Myron Feldman.

Edward Feldman also offered affidavits from the following persons: William Simon, currently Sheriff of Camden County and formerly a Camden County Freeholder, who has known Mr. Feldman for 16 years (P-4A); Sam Gold, retired from employment with the ABC (P-4C); and Rabbi Lester Hering, Rabbi of the Congregation Beth Jacob-Beth Israel, who has known Mr. Feldman for 25 years (P-4H). The affiants were people from the alcoholic beverage industry, general business and religious sectors of the community

in which Edward Feldman lives and works. Each of the affiants personally held Edward Feldman in the highest possible regard concerning his good character, honesty and integrity. Further, each affiant testified to Mr. Feldman's favorable reputation for good character, honesty and integrity. It was also established that Mr. Feldman has been an extremely active participant in charitable and community activities.

Jeffrey Altschuler called one witness to testify on his behalf. Milton H. Cooper again testified that, in his opinion, Mr. Altschuler was a person of the highest caliber. Further, the witness testified that Mr. Altschuler is a person who enjoys a reputation within the alcoholic beverage industry of being a very fine and reliable person.

Jeffrey Altschuler also offered affidavits from the following persons: Frederick Whelply, the executive vice-president and director of Bayonne Hospital (P-4F) and Douglas W. Metz, executive vice-president and general counsel of the Wine and Spirits Wholesalers of America, Inc. (P-4J). Both affiants were of the opinion that Jeffrey Altschuler was a person of the highest degree of good character, honesty and integrity. Further, the affiants stated that Mr. Altschuler enjoys a very high reputation as a person of good character, honesty and integrity. It was also established that Mr. Altschuler has been an extremely active participant in charitable and community activities.

Mr. Cooper also testified on behalf of Myron Altschuler. The witness was of the opinion that Mr. Altschuler was a person of the highest caliber and that there was no one for whom he had more respect. Similarly, the witness testified that Mr. Altschuler had a reputation within the alcoholic beverage industry of being a very fine and reliable person. The affidavit of Mr. Metz was also offered on behalf of Myron Altschuler (P-4J). The affiant was of the opinion that Mr. Altschuler is a person of the finest character and the highest degrees of honesty and integrity. Further, the affiant stated that Mr. Altschuler enjoys the highest reputation among his peers in the national alcoholic beverage industry.

Last, the following affidavits were offered on behalf of Maurice Altschuler: Sam Gold, retired from the ABC (P-4C); Rabbi Zachary I. Heller, Rabbi at Temple Emanu-El, who has known Mr. Altschuler for 30 years (P-4D); and Frank J. Cirona, executive vice-president of finance and administration of Somerset Importers Ltd. (P-4G),

Each of the affiants was of the opinion that Maurice Altschuler was a person of the highest degree of good character, honesty and integrity. Further, each of the affiants stated that Maurice Altschuler is held in very high regard within the communities in which he lives and works. It was also established that Mr. Altschuler has been an extremely active participant in charitable and community activities.

I further **FIND** that:

22. Myron Feldman, Edward Feldman, Jeffrey Altschuler, Myron Altschuler and Maurice Altschuler each enjoy a very high reputation for good character, honesty and integrity among close friends, business associates, the general business community, and religious and civic leaders. In addition, each has been an extremely active participant in charitable and community activities.

#### DISCUSSION OF LAW AND CONCLUSIONS

All entities which do business with casino hotels, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to Section 92c of the Act. N.J.A.C. 19:41-1.3(c)1. Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of Section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. 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.

It is well settled that the character and responsibility of a corporate entity can be judged only by that of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 32 L.Ed. 2d 796 (1972). Therefore, in order to determine the fitness of the applicant business entity, its principals, although not required to be licensed, were required to establish their qualifications under Section 86 of the Act and to establish their good character, honesty and integrity.

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

The Act established a comprehensive scheme of regulation over the casino industry and its attendant businesses. Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to the most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission 85 N.J. 325, 328, app. dism. 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as modified, 90 N.J. 361, app. dism., 103 S.Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(o)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions. . . are designed to extend strict State regulation to all persons. . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision...is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

Accordingly, the history of the regulatory violations governing the alcoholic beverage industry by Merchants' and its affiliated companies must be scrutinized closely in reaching a determination of Merchants' fitness for licensure.

The suspension of F&A's plenary wholesale license by the ABC in 1961, alone, presents no obstacle to licensure here. Although F&A was responsible for the commission of a moderately serious regulatory violation, it was evident that the misconduct was the direct result of improper and secretive actions by one of its employees. Appropriately, F&A released the employee and instituted new procedures in order to avoid similar future violations. The fact that this violation occurred 23 years ago and has not been repeated indicates that it is of little, if any, significance in regard to Merchants' application.

Similarly, the BATF warning letter, dated August 24, 1978, to Merchants', alone, is of virtually no significance. Although the letter identifies certain regulatory violations, it indicates that the problems had been cured. Further, it appears that several of the violations occurred as a direct result of the conflict between the BATF regulations and those of the ABC. In addition, the remaining violations appear to be of minimal significance. Accordingly, this presents no obstacle to licensure here.

There was no evidence to establish that F&A's practice of compensating casual labor out of its petty cash funds was improper in any respect. Therefore, it is of no significance in this matter. In addition, the fact that F&A automated and upgraded the method of paying casual labor in direct response to the Division's objection letter is a good faith indication of the willingness of the principals of the Companies to conduct their business according to proper standards and to respond positively to the expectations of the Commission.

Nevertheless, the regulatory violations of 1972 and 1979 are substantially negative in nature. More specifically, it was abundantly evident that Merchants' and F&A, under the express direction of their owners and directors, knowingly and purposefully committed serious violations of ABC and the BATF regulations. Further, it was clear that the Companies prepared and maintained false records designed to avoid

detection of their misconduct. The seriousness of the misconduct is demonstrated by the fact that the violations were of several basic elements of the regulatory schemes. Also important is the fact that the alcoholic beverage industry is a highly regulated and sensitive industry.

It is imperative that the violations be placed in their proper perspective. Clearly there was a series or a pattern of regulatory transgressions by the Companies, the most serious of which occurred in 1972 and 1979. These involved a systematic and continuous commission of violations by the Companies, which had interlocking directorships and identical ownership. Therefore, the violations are equally attributable to all of the qualifiers of Merchants'.

Nevertheless, the violations cannot be viewed in a vacuum. The regulatory misconduct of the Companies was symptomatic of virtually all plenary wholesale license holders in New Jersey. In fact, the abuse and disregard of the regulatory scheme was not only endemic to the State, but existed nationwide.

It is also necessary to examine the causal factors. There is no question that suppliers exerted pressures upon wholesalers through potential economic sanctions which contributed to participation by the Companies in the violations. Also, participation by competitors of the Companies in illicit conduct created severe economic pressure. In addition, the outmoded regulations of the ABC, together with ABC inaction, were serious contributing factors. Each of these factors was established through the testimony of witnesses who are also qualifiers of Merchants'. Also, these facts were corroborated by the testimony of Mr. Luciani, the task force report and the ABC records (J-3, P-2 and P-5). See also Heir v. Degnan 82 N.J. 109 (1980). Although these causal factors do not excuse the misconduct, they must be considered as an explanation of the background of the violations.

Also significant is the fact that the Companies and the qualifiers cooperated fully with the task force investigation. More specifically, the Companies provided a candid and honest disclosure of their trade practices and helped to educate the task force regarding the alcoholic beverage industry. These actions were of great assistance to the task force. Further, this conduct was considered most favorably by the Director of the ABC in his determination of the penalties to be imposed, which involved a substantial fine

but no suspension of the licenses (J-3). It is also important to note that the regulations which were violated by the Companies have, at the recommendation of the task force, been modified substantially to permit much of the violative conduct.

The essential question is how these qualifiers, who have in the past committed regulatory violations of the highly regulated alcoholic beverage industry, could be trusted to adhere to the requirements of the highly regulated casino industry in this State. It appears, based upon the task force report, the orders of the BATF in 1972 (J-1A and J-1B), and the order of the Director of the ABC entered on May 11, 1979 (J-3) that the prior regulatory misconduct, although serious, should not necessarily disqualify the applicant. Further and most important, is the fact that Merchants' has for the past six years done a substantial volume of business with all of the licensed casino hotels in this State without any difficulty whatsoever. This demonstrates that Merchants', in particular, is fully capable of conducting its operations in total compliance with the provisions of the Act and the regulations adopted thereunder. Also, it was clearly established that the qualifiers are well regarded for their good character, honesty and integrity within the communities in which they live and work. Such a reputation is not easy to achieve in a highly competitive, risky and demanding industry such as the alcoholic beverage industry. Although I recognize that the character witnesses were, for the most part, unaware of the regulatory violations, their opinions still carry significant weight. Accordingly, the applicant appears to present no risk to the public and the integrity of gaming operations.

I CONCLUDE that the qualifiers and Merchants' have established, by clear and convincing evidence, their good character, honesty and integrity, under section 89b(2) of the Act.

Nevertheless, Merchants' and the entire alcoholic beverage industry should be clearly warned that regulatory transgressions such as those which have occurred previously in the alcoholic beverage industry will not, under any circumstances, be tolerated within the casino industry in this State. In the event operational difficulties arise as a result of the regulatory scheme, all licensees have an affirmative duty to notify the Commission in order that revisions may be considered prior to the commission of violations.

DISPOSITION

It is **ORDERED** that the application of Merchants' Wine and Liquor, Inc., for licensure as a casino service industry, under N.J.S.A. 5:12-92c, be **GRANTED**.

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

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

March 19, 1984  
DATE

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

Receipt Acknowledged:

March 26, 1984  
DATE

Bernadette T. Frigo  
CASINO CONTROL COMMISSION

Mailed to Parties:

March 28, 1984  
DATE

Ronald J. Parkersho  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1A Department of the Treasury - Internal Revenue Service - - Offer in Compromise, Merchants' Wine and Liquor Company, August 2, 1972; Department of the Treasury -Internal Revenue Service - Abstract and Statement, Merchants' Wine and Liquor Company, March 15, 1973, with attachments; United States of America v. Merchants' Wine and Liquor Company, Alcohol, Tobacco and Fire Arms - Internal Revenue Service Mid-Atlantic Region, Case No. N.J.- 3149 (FAA), Stipulation for Future Compliance, August 2, 1972 (12 pages)
- J-1B Department of the Treasury - Internal Revenue Service - Offer in Compromise, F&A Distributing Company, August 2, 1972; Department of the Treasury - Internal Revenue Service - Abstract and Statement, F&A Distributing Company, March 15, 1973, with attachments; United States of America v. F&A Distributing Company, Alcohol, Tobacco and Firearms Internal Revenue Service Mid-Atlantic Region, Case No. NJ-3086 (FAA), Stipulation for Future Compliance, August 2, 1972 (10 pages)
- J-2 Letter to Merchants' Wine and Liquor Company From Darol C. McGlone, Regional Regulatory Administrator, August 24, 1978 (2 pages)
- J-3 In the Matter of Disciplinary Proceedings against F&A Distributing Co., Gillhaus Beverage Co., Inc., and Merchants' Wine and Liquor Co., State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, Case No. S-12-225, Conclusions and Order, May 11, 1979 (3 pages)
- J-4 Analysis of Petty Cash Account - F&A Distributing
- P-1 Letter to Harry L. Sears, Esq., from Richard M. Langway, Chief, Criminal Division, June 30, 1972 (2 pages)
- P-2 Letter to Director Joseph H. Lerner from Alfred J. Luciani, Deputy Director, April 23, 1979 (4 pages)
- P-3 F&A Distributing Company - Payroll Worksheets (9 pages)
- P-4A Affidavit of William Simon, January 23, 1984 (2 pages)
- P-4B Affidavit of Dennis Collins, January 25, 1984 (3 pages)
- P-4C Affidavit of Sam Gold, January 27, 1984 (3 pages)
- P-4D Affidavit of Rabbi Zachary I. Heller, January 27, 1984 (2 pages)
- P-4E Affidavit of Barry Silverman, January 27, 1984 (3 pages)
- P-4F Affidavit of Frederick Whelply, January 27, 1984 (3 pages)
- P-4G Affidavit of Frank J. Cirona, January 30, 1984 (2 pages)

- P-4H Affidavit of Rabbi Lester Hering, January 30, 1984 (2 pages)
- P-4I Affidavit of Dennis Smith, January 31, 1984 (3 pages)
- P-4J Affidavit of Douglas W. Metz, January 31, 1984 (2 pages)
- P-5 Report of Division of Criminal Justice Antitrust Task Force to Study the Alcoholic Beverage Industry (103 pages)
- P-6 Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms - Industry memorandum NA-83-15 "Records of Disposition for Wholesale Liquor Dealers," December 15, 1983

WITNESS LIST

FOR THE PETITIONER:

Jeffrey Altschuler  
Milton H. Cooper  
Harvey H. Dembe  
Edward Feldman  
Myron Feldman  
Richard O. Lindsey  
Alfred J. Luciani  
Kevin Shanley

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 82-EL-19 &  
82-EL-20 (CONSOLIDATED)  
OAL DOCKET NOS. CCC 1807-83 &  
CCC 1809-83 (CONSOLIDATED)

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

Complainant,

v.

LAWRENCE MERLINO,

Respondent.

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ORDER

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

Complainant,

v.

PHILIP LEONETTI,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on December 22, 1983, recommending that the petitions of the Division of Gaming Enforcement seeking final orders of exclusion requiring that the names of Lawrence Merlino and Philip Leonetti remain on the Casino Control Commission's list of persons who are to

be excluded or ejected from any licensed casino hotel be denied pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1 et seq.; and the Commission having previously entered preliminary orders of exclusion against the respondents dated February 2, 1983, pursuant to N.J.A.C. 19:48-1.5(a); and the Division of Gaming Enforcement having filed exceptions to the initial decision on January 6, 1984; and the Commission having considered the entire record of these proceedings including the arguments of counsel presented at the Commission's public meeting of March 21, 1984, resolved at its public meeting of March 28, 1984, to reverse certain rulings of the Administrative Law Judge (ALJ) and to remand this matter to the Office of Administrative Law,

IT IS on this 1st day of May 1984, ORDERED that the following rulings of the ALJ be and hereby are reversed for the reasons stated on the record at the Commission's public meeting of March 28, 1984, and for the further reasons to be stated in a Commission Decision to be issued forthwith which is included herein by reference:

- (1) N.J.A.C. 1:1-15.8 applies to this proceeding;
- (2) no adverse inferences may be drawn from the respondents' invocation of the right to remain silent; and
- (3) it is entirely proper for the Office of Administrative Law to resolve constitutional challenges to N.J.S.A. 5:12-71.

IT IS FURTHER ORDERED that this matter be and hereby is remanded to the Office of Administrative Law for further

proceedings consistent with the Commission's decision.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

FOR COMMISSION DECISION AND  
INITIAL DECISION ON  
LAWRENCE MERLINO - SEE PAGE 364.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-104  
OAL DOCKET NO. CCC 6728-22  
APP. NO. 27040-21

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IN THE MATTER OF THE APPLICATION  
OF STEVEN R. MOLLURE FOR LICENSURE  
AS A CASINO EMPLOYEE

---

AMENDED  
FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on October 12, 1983, recommending that the casino employee license application of Steven R. Mollure be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on December 14, 1983, to modify the said initial decision, and to grant the application,

IT IS on this 10<sup>th</sup> day of February 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified by the Commission as follows:

1. The ALJ erred in his determination that Mollure's conviction on April 18, 1980, in Nevada for possession of a stolen credit card is a statutory disqualifying offense. Based upon the record, the Commission finds that since the applicant's conviction in Nevada for possession of stolen property involved the unauthorized use of another's credit card, the equivalent offense in New Jersey is N.J.S.A. 2C:21-6(c)(1). A violation of N.J.S.A. 2C:21-6(c)(1) is a crime of the fourth degree and therefore not a statutory disqualifying offense pursuant to section 86(c)(1) of the Act. Neither, we find based upon the record, is it an offense which renders the applicant's licensure inimical to the policies of the Act or casino operations, pursuant to N.J.S.A. 5:12-86(c)(4).
2. The ALJ failed to identify the provision of the criminal code for which he found Mollure disqualified pursuant to N.J.S.A. 5:12-86(c) and (g). Based upon the record, the Commission finds that Mollure's actions to defraud his insurance company equate to theft by deception, contrary to N.J.S.A. 2C:20-4. Mr. Mollure admitted that the amount in question was at least two thousand dollars. Thus, it is a crime of the third degree and a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g). Nevertheless, we concur in the ALJ's conclusion that Mr. Mollure adequately demonstrates his rehabilitation from this disqualifying offense, pursuant to N.J.S.A. 5:12-90(h).
3. The ALJ failed to make any findings or conclusions on the issue of the applicant's qualification under N.J.S.A. 5:12-89(b)(2), notwithstanding the fact that the prehearing conference order dated December 8, 1982, included such issue. Based upon the record, the Commission finds that Mollure has adequately demonstrated his qualifications for licensure by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b) and 90(b).

Commission finds that Mollure has adequately demonstrated his qualifications for licensure by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b) and 90(b).

IT IS FURTHER ORDERED that the casino employee license application of Steven R. Mollure be and hereby is granted based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 10 , 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-104  
OAL DOCKET NO. CCC 6728-22  
APP. NO. 27040-21

---

IN THE MATTER OF THE APPLICATION  
OF STEVEN R. MOLLURE FOR LICENSURE  
AS A CASINO EMPLOYEE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on October 12, 1983, recommending that the casino employee license application of Steven R. Mollure be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on November 23, 1983, to modify the said initial decision, and to grant the application,

IT IS on this, *3<sup>rd</sup>* day of February 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified by the Commission as follows:

1. The ALJ erred in his determination that Mollure's conviction on April 18, 1980, in Nevada for possession of a stolen credit card is a statutory disqualifying offense. Based upon the record, the Commission finds that since the applicant's conviction in Nevada for possession of stolen property involved the unauthorized use of another's credit card, the equivalent offense in New Jersey is N.J.S.A. 2C:21-6(c)(1). A violation of N.J.S.A. 2C:21-6(c)(1) is a crime of the fourth degree and therefore not a statutory disqualifying offense pursuant to section 86(c)(1) of the Act. Neither, we find based upon the record, is it an offense which renders the applicant's licensure inimical to the policies of the Act or casino operations, pursuant to N.J.S.A. 5:12-86(c)(4).
2. The ALJ failed to identify the provision of the criminal code for which he found Mollure disqualified pursuant to N.J.S.A. 5:12-86(c) and (g). Based upon the record, the Commission finds that Mollure's actions to defraud his insurance company equate to theft by deception, contrary to N.J.S.A. 2C:20-4. Mr. Mollure admitted that the amount in question was at least two thousand dollars. Thus, it is a crime of the third degree and a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g). Nevertheless, we concur in the ALJ's conclusion that Mr. Mollure adequately demonstrates his rehabilitation from this disqualifying offense, pursuant to N.J.S.A. 5:12-90(h).
3. The ALJ failed to make any findings or conclusions on the issue of the applicant's qualification under N.J.S.A. 5:12-89(b)(2), notwithstanding the fact that the prehearing conference order dated December 8, 1982, included such issue. Based upon the record, the Commission finds that Mollure has adequately demonstrated his qualifications for licensure by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b) and 90(b).

IT IS FURTHER ORDERED that the casino employee license application of Steven R. Mollure be and hereby is granted based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 3, 1984



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6728-83

AGENCY DKT. NO. 82-EA-104

**STEVEN R. MOLLURE,**

Petitioner

v.

**STATE OF NEW JERSEY**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY, DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Nicholas Casiello, Esq.,** for petitioner (Horn, Kaplan, Goldberg & Gorny, attorneys)

**William Mountford,** Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: September 26, 1983

Decided: October 11, 1983

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

Steven R. Mollure has applied to the Casino Control Commission for licensure as a casino employee (box person). The Division of Gaming Enforcement opposed his licensure in a letter of May 12, 1982, directed to the Commission. Mr. Mollure 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 on November 22, 1982 and a prehearing order was issued on December 8, 1982. A hearing was held before Administrative Law Judge Jeff S. Masin at Absecon Municipal Court on September 26, 1983.

The Division's objections to Mr. Mollure's licensure arose out of his arrest on December 5, 1979 and subsequent conviction for possession of a stolen credit card. This incident occurred in Reno, Nevada. The crime is the equivalent to N.J.S.A. 2C:20-7. The Division also contends that Mr. Mollure should be denied licensure because in March 1979, he reported to the Deptford, New Jersey Police Department that his automobile had been stolen, when in fact it had not. Mollure collected several thousand dollars from his insurance company and continued to drive the vehicle, eventually being caught driving it at the time of his arrest on December 5, 1979. The Division questions whether Mollure has the requisite good character, honesty and integrity for licensure and also argues that his conduct in connection with the report of the stolen vehicle is conduct which, although never prosecuted, may rise to the level of an enumerated disqualifying offense under N.J.S.A. 5:12-86c, thus requiring denial of licensure under N.J.S.A. 5:12-86g.

The petitioner contends that although he did engage in the criminal conduct for which he was convicted and did also defraud his insurance company in connection with the automobile, that he should be given a license because he has rehabilitated himself. Rehabilitation may be shown pursuant to N.J.S.A. 5:12-90(h).

#### CONCLUSION

For the reasons set forth below, I CONCLUDE that the respondent has sufficiently demonstrated his rehabilitation to permit him to obtain a license.

#### EVIDENCE

According to the testimony of Mr. Mollure, he is now 23 years old and lives in Reno, Nevada. He owns a home and is married. He was married in Philadelphia on March 15, 1980.

Mr. Mollure graduated high school in 1975. From June 1975 until December 1978, he was employed at the Hilton Hotel in Philadelphia as a banquet person. From December 1978 until April 1979, he was unemployed and then became employed at the Sierra Square Casino in Reno. He now works at the Eldorado Casino as a craps and blackjack dealer.

According to Mr. Mollure, he never engaged in any illegal conduct before March 24, 1979. On that date he reported to the Deptford Township, New Jersey police that his automobile had been stolen from the parking lot of the Deptford Mall. In fact, the car had not been stolen and Mr. Mollure had merely moved the car from the spot where he had originally parked it in the mall lot to another spot. He had gone to the mall that day where he had met another friend who had come in a separate vehicle. The friend was unaware of Mollure's scheme. Mollure then continued to operate his car. His motivation for reporting the car stolen was his need for money. He had been unemployed for four months and desired to move to Reno to become employed in the casino industry. He could think of no other way to get any money and the idea of reporting the car stolen and collecting the insurance just popped into his head. Mollure did eventually go to Reno a few months after reporting the car stolen, although he had not at that time received payment from the insurance company and borrowed money from his parents to go to Nevada.

During the summer of 1979, Mollure was stopped by Officer Tapia of the Reno Police Department for a traffic violation. Mollure was driving the "stolen" vehicle, but the officer let him off with a warning for the motor vehicle offense and Mollure had left the scene before the officer received information that the car was a stolen one.

On December 5, 1979, Mr. Mollure was stopped for speeding in Reno. The police officers received a report from the dispatcher that the vehicle was stolen. During the booking procedure, Mollure displayed a credit card bearing the name C. K. Rehner, Inc. Mollure told the police that he had found the card. He testified in this hearing that he did not remember when he found it, but that he had used it for about eight months and at the time of his arrest had a \$388.08 gasoline bill.

Mollure was charged with possession of the stolen credit card and he eventually pled guilty to an Information and was sentenced to one year in the Washoe County Jail, which sentence was suspended. He was placed on three years probation and fined \$250 and also ordered to make restitution of \$388.08. According to an affidavit received from Richard Meacham, who served as Mollure's probation officer in Nevada, the probation was "minimum supervision", which required periodic mail-in reporting and infrequent visits to the probationer's residence. Mr. Meacham notes that Mollure has "met all of the conditions set down by the court and has had no problems whatsoever with

his supervising officers." He states that Mollure has been "a model probationer in every respect." and continues that he feels "that Mr. Mollure is making every effort to become a model and outstanding citizen in this community." He further indicates that he would recommend Mollure for licensure as a box person in Atlantic City.

Mr. Mollure was never charged with any criminal offense as a result of his having reported his motor vehicle stolen. The Reno police referred the matter to the Deptford police for investigation of a possible fraud charge, but none was ever brought. The insurance company took possession of the impounded car and apparently settled for possession of the car rather than seek restitution of the monies which had previously been paid to Mr. Mollure on his insurance claim.

As noted, Mollure was married on March 15, 1980. He told his wife Joyce about the fraudulent stolen car report during the drive to Reno following their marriage. Mrs. Mollure testified at the hearing that during the three and one-half years she has been married to the petitioner, she has found him to be very honest and has had no reason to question his truthfulness. She was quite shocked by his revelation of the car incident as she had always found Steven to be honest and truthful in his dealings with her prior to their marriage.

Mr. Mollure presented several character witnesses in support of his application. Morton Mondel, of Oreland, Pennsylvania, has known Mr. Mollure for 12 or 13 years, having met him through the petitioner's parents, who are good friends of Mondel's from his Beef and Ale House. Mondel has frequently been a dinner guest of the petitioner's parents. Prior to Mollure's moving to Reno, Mondel would see him quite often. Since the move, Mondel has seen the petitioner infrequently, the last time being during Christmas 1982. Mr. Mondel was not aware of the petitioner's problems with the law until Mollure's mother asked Mondel to be a character witness at this hearing. Mondel described himself as shocked and dismayed at hearing of Mollure's legal difficulties. He had always found the petitioner to be quiet and respectful and quite eager to work. According to Mondel, Mollure had always been "beyond reproach" and "all american boy" and a person who Mondel would trust to work as an employee of his. Despite his knowledge of the criminal involvement, Mondel felt that his opinion of Mollure as a person of good character and integrity was unchanged.

Mrs. Theresa Frangelli of Philadelphia, Pennsylvania, a waitress at the Casa Vecchio Restaurant, testified that she has known Mollure since his birth. She is a friend of Mr. Mollure's mother. She has visited with the petitioner in Reno. She heard of his legal difficulties almost immediately after Mollure was arrested in Reno. She was "very very shocked and couldn't believe it." She had always found the petitioner to be very honest. She knows that he is a good son and a good husband and she loves him "like a son."

Mrs. Marie T. Ziccardi, a Senior Personal Banker at Fidelity Bank in Philadelphia and a resident of Williamstown, New Jersey, testified that she had been a neighbor of the Mollures' for many years. Although she has not seen the petitioner very often during the last three years while he has lived in Reno, before that she would see him very often. When she heard of his legal difficulties she was shocked. Mollure had always been a "fine boy" and the conduct reported to her was "not Steven". She asserted that Mollure would never again engage in criminal conduct. She also admitted that she "loved him like a son."

Mrs. Gloria Mollure, the petitioner's mother, testified that she was completely shocked by her son's criminal activity. Such actions did not appear to be within his makeup. She said that the type of activities in which he engaged were "not the way he thinks." Mollure had always been a straightforward, honest boy who had never given his parents any problem and who was always sure to advise them when he was going to be home even a few minutes late. He always worked and was a fine son. She was certain that there is no way that he would ever be involved in criminal conduct again and noted that he was quite scared by the whole incident.

In addition to the persons who testified at the hearing, Mr. Mollure also presented affidavits from Victor Michael Leonardi of Reno, Nevada and Whitney J. LeMaire, also of Reno. Mr. Leonardi is Mollure's shift supervisor at the Eldorado Casino. Mr. LeMaire was his supervisor for one year at the MGM Grand Hotel. Each of them speaks highly of Mr. Mollure's qualifications, Leonardi indicating that he has "the utmost confidence in Steven Mollure's integrity, honesty and trustworthiness." LeMaire notes that Mollure "performed his duties loyally and with integrity. His character was held in high esteem by myself and Mr. Mollure's co-workers. His reputation for honesty and truthfulness was excellent." Neither Leonardi nor LeMaire indicates anything with respect to whether they were aware of Mollure's legal problems at the time they made the affidavits.

DISCUSSION

As with any case of this nature, it is impossible to predict whether an individual will ever engage in criminal conduct. One can only look at the past record and make an educated guess. In this case Mr. Mollure appears to have had a quite normal youth and to have been an upstanding citizen and devoted, conscientious person until March 1979. At that time, apparently because of what he saw as being a serious financial problem and because he desired to go to Nevada to seek employment and needed money to get there, he chose to engage in a scheme to defraud his insurance company. Obviously this took some thought and planning and indicates that at least at that time Mr. Mollure's mind was functioning in a rather devious fashion. In addition, Mollure used a credit card which he knew he had no business using and engaged in purchases of gasoline in an equally fraudulent manner. This conduct stopped with his arrest in December 1979. Since that time Mr. Mollure has married, bought a home and held steady employment in the casino industry. He served his probation in a satisfactory fashion. He has had no further difficulties with the law.

Having observed the petitioner and having heard both his testimony and that of persons who have known him for many years, I FIND that I am impressed by the strong feelings which his witnesses expressed about him and also am impressed that Mr. Mollure appears to understand that what he did was totally wrong and should never again be repeated. I believe that the ultimate revelation of his criminal conduct was a true shock to Mollure's conscious and that he is not likely to ever again engage in illegal conduct. While it is certainly possible that periods of unemployment and financial stress may again be encountered, I do not believe that the petitioner is today the immature and perhaps drifting individual that he was in 1979 when he began his illegal activities.

Although the nature of the offense involved is one which denotes a lack of trustworthiness and a devious and scheming nature, I believe strongly that Mr. Mollure's conduct was of an aberrational nature and that he is a safe candidate for licensure. I FIND that he has proven his rehabilitation by clear and convincing evidence. Therefore, cognizant of the nature of the employment which he seeks and the potential for further advancement, I ORDER that his license be issued.

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

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

October 11, 1983  
DATE

Jeff S. Masin  
**JEFF S. MASIN, ALJ**

Receipt Acknowledged:

October 12, 1983  
DATE

Bernadette P. Friger  
**CASINO CONTROL COMMISSION**

Mailed to Parties:

October 14, 1983  
DATE

Ronald J. Pukrops  
**OFFICE OF ADMINISTRATIVE LAW**

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EVIDENCE LIST

On behalf of petitioner:

P-1 Personal History Disclosure Form-II

P-2 Affidavit of Victor Leonardi

P-3 Affidavit of Richard Meacham

P-4 Affidavit of Whitney J. LaMaire

On behalf of respondent:

R-1 Criminal Rap Sheet

R-2 Notice of Disposition

R-3 Police Reports, Reno Police Department

R-4 Vehicle Report-Reno Police Department

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-54  
OAL DOCKET NO. CCC 4558-83  
APP. NO. 29616-22

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APPLICATION OF BOBBY EARL :  
MOORE FOR A CASINO EMPLOYEE : FINAL ORDER  
LICENSE :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 14, 1983, recommending that the casino employee license application of Bobby Earl Moore be granted; and neither party having filed exceptions thereto; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on January 25, 1984, to affirm and adopt the said Initial Decision and to grant the application,


IT IS on this 9th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Bobby Earl Moore be and hereby is granted based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED:

February 9, 1984



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4558-83  
AGENCY DKT. NO. 82-EA-54

**BOBBY EARL MOORE,**  
Petitioner

v.

**DIVISION OF GAMING  
ENFORCEMENT, DEPARTMENT  
OF LAW & PUBLIC SAFETY,**  
Respondent.

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**APPEARANCES:**

**Bobby Earl Moore, petitioner, Pro Se**

**Patricia Wild, Deputy Attorney General, representing respondent (Irwin I. Kimmelman, Attorney General for New Jersey, attorney)**

Record Closed: November 1, 1983

Decided: December 13, 1983

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

Bobby Earl Moore seeks a casino employee license so that he may be employed as a maintenance and cleaning person. He is presently employed by Harrah's Marina Hotel/Casino in its Environmental Services Department.

The Division of Gaming Enforcement, by letter of March 1, 1982, opposed Mr. Moore's licensure. He requested a hearing on the matter and the case 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 the Honorable Beatrice S. Tylutki, ALJ on

August 5, 1983, and a Prehearing Order was issued on August 10, 1983. The matter was heard before Administrative Law Judge Jeff S. Masin at the Pleasantville Municipal Court on November 1, 1983.

#### ISSUES

In the Prehearing Order the respondent indicated that it believed that Mr. Moore was disqualified from licensure because of his alleged failure to reveal on his casino license application a number of arrests and convictions, which, if such omissions were the result of a willful act, would constitute a violation of N.J.S.A. 5:12-86(b), as incorporated by N.J.S.A. 5:12-90 (e). In addition, the respondent questioned whether the petitioner could establish his reputation for good character, honesty and integrity, as required by N.J.S.A. 5:12-89(b) and incorporated in N.J.S.A. 5:12-90(b). Evidence as to both issues was presented at the hearing.

#### EVIDENCE

As noted above, Mr. Moore is employed at Harrah's Marina Hotel/Casino. He works in the Environmental Services Department. He was rapidly promoted from his initial position of cleaner to foreman, and on October 16, 1981 he was selected as the Environmental Services Supervisor from a large number of applicants.

During the hearing Mr. Moore presented a number of letters intended to establish his reputation for good character, honesty and integrity as well as his work characteristics and reputation. Among these was a letter from Lathan Pridgen, Affirmative Action Officer for Harrah's. In this letter Mr. Pridgen describes Mr. Moore as a "very good employee." He goes on to point out that Moore's "attitude is very good, his work habits and skills border on excellent and he gets along very well with other employees." The letter mentions that because of the difficulty which Mr. Moore had in obtaining a license (reason for this hearing) it was necessary to remove Mr. Moore from his supervisory position. However, Mr. Pridgen notes that because of Moore's excellent work habits, "once this problem is cleared up, we will return him to his former position."

Mr. Moore also presented a letter from Tom Davis, a manager at Harrah's, who notes that Moore's promotion to floor person, which occurred on April 12, 1981, was the result of his "hard work and determination." As a foreperson, Moore "displayed superior

work habits and certain leadership capabilities." Davis also mentions that Moore is a "respectful hard working family man with a personality that positively affects all those around him."

Mr. Moore also presented a letter from Ed Posey, Senior Vice-President and General Manager of Harrah's. This letter, which is addressed to Mr. Moore, indicates that Moore is

"commended for your honesty in the manner in which you have projected the Harrah's image by turning in the credit card that you found in the garage.

You take pride in your job and have shown it by your honesty."

In addition to the information noted above, Mr. Moore presented a copy of a letter which had been written by the 2:00 a.m. to 10.00 a.m. shift of the Environmental Services and Public Area Department at Harrah's. This letter was sent to the manager of Environmental Services, Richard Biedeczski, on August 26, 1981. The letter is generally self-explanatory and I will not quote extensively from it here. However, the letter, which bears 18 signatures, states that "in our opinion, (Moore) is one of the finest people that Harrah's has in its employ." The letter goes on to note that:

Because of of his kindness and understanding, all of us want to do the very best job that we possibly can to make him proud of us. He is not only our much respected foreperson, but he is a friend to each and every one of us, being totally impartial and showing no favoritism to any one individual.

In addition to the letters presented by Moore relating to his present employment, he also submitted several letters from persons who had known him for many years. A letter of January 10, 1979 from Celestine W. Seisay, written "To Whom It May Concern" states that Ms. Seisay has known Moore for several years through "extremely difficult times as well as good times," She notes that during his difficulties Moore has "maintained his dignity and took the problems in stride and worked toward a better life for himself and his children." She continues that Moore is a "considerate, polite, and extremely understanding person, and well groomed." Carolyn Mann writes that she has known Moore for 30 years and has found him to be a strong individual" . . . He exudes the understanding, knowledge and possesses the fortitude to become a model worker. My opinion of him is most favorable."

As will be noted below, Mr. Moore has had some difficulties with the law. As part of his presentation of character evidence, he presented a letter from a former employer, Central Warwick Laundry, which indicated that his former job with that company would be available to him when he was released from confinement. This occurred in 1976 and will be discussed below. A letter from the chief jailor of the city of Hampton, Virginia notes that Moore was admitted to the Hampton City Jail on June 10, 1976. Moore obtained the status of Trustee and was "always a polite and well behaved inmate. He never caused anyone here any problems."

Finally, Mr. Moore presented a letter from Clark Walden, Chief Probation and Parole Officer, District 30, Department of Corrections, Commonwealth of Virginia. Walden was Moore's parole supervisor beginning March 10, 1977 through June 9, 1978. Walden notes that Moore, who had had his "share of personal and family problems" had cared for his invalid mother and brother during his period of parole and had dealt in a "very mature manner" with domestic problems and had served as a positive influence on his two children. Walden continues by saying that Moore had shown "initiative to work and support himself and his family - not simply one job, but as many as three jobs at a time. Walden never received a complaint from any employer or anyone else and found Moore to be "very cooperative with me and I have found him to be dependable and trustworthy. I feel confident that he would give 100 percent to any employer who hired him." Moore was discharged from parole on June 5, 1978.

As noted, one of the objections of the Division in this case relates to an allegation that Moore failed to disclose certain arrests and convictions. Indeed, the record shows that Moore's legal difficulties were centered in Newport News and Hampton, Virginia. In his application for licensure, in answer to Question 46 which requested information as to arrests and convictions, Mr. Moore filled in the block by stating "Note attached copy on page 23." The photocopy of the application presented in the hearing disclosed that page 23 of the form is a page which bears at the top the notation "pages to be used for answering questions which require additional room for the answer." The page is filled in with a list of relatives and is part of the answer to another question on the application. In the copy presented in court the next page, page 24, is the signature and waiver of liability page. There is no list of any arrests or convictions attached to page 23. However, following page 25, there are attached a certificate of live birth and then a letter from the Division of Police, City of Newport News, Virginia, which is a list of criminal charges and dispositions for Bobby E. Moore running from dates of

February 4, 1975 through September 2, 1977. There is also a letter from the Assistant to Congressman Thomas N. Downing, First District, Virginia, which refers to an Order of Dismissal. Finally, attached is an Order of Dismissal from the United States District Court, Eastern-District of Virginia, Norfolk Division, dated September 19, 1975. There is nothing attached to the photocopy of the application as presented in court as to Mr. Moore's criminal record in the City of Hampton, Virginia.

Mr. Moore testified that he did indeed attach to his original application a listing of his Hampton arrests and convictions. He paid to obtain such a list. He inserted them behind page 22 on the application, just in front of page 23. He presented this information to a gentlemen at Harrah's Casino Hotel who checked over the form and discussed the arrests with him. The staple was then taken out of the application so that a copy could be made to be placed in Harrah's file. The document was then stapled back together. Mr. Moore presented the restapled application to the Casino Control Commission. Apparently, this application did not contain anything concerning criminal records following page 22 and only contained the listing of the Newport News matters attached after page 25 and the certificate of birth.

Mr Moore testified that he had spoken with Quinton Nelson, a manager of licensing at Harrah's, in an attempt to find the copy made of the application. No such copy could be found.

Mr. Moore discussed the numerous worthless check charges brought against him between 1970 and 1975. He indicated that he had had marital difficulties during that time and that his wife was an alcoholic. She eventually left him, leaving him in charge of his two children. Mr. Moore noted that many of the check charges were dismissed, although there were several convictions. He made restitution for all the checks. He described himself as being careless with respect to keeping his records and his check statements and stated that many of the checks had been written by his wife.

In addition to the above-noted worthless check charges, Mr. Moore was convicted in the Circuit Court of the city of Hampton of two charges of withholding credit cards, a felony violation under Virginia statute. He was sentenced to 12 months in prison on one of the charges and a term of five years in the State Penitentiary on the other. With respect to the five year sentence, the court suspended three years of the

sentence and placed Mr. Moore on probation. The sentences were imposed consecutively. Mr. Moore served time in the Virginia State Penitentiary from June 1976 to March 1977 as a result of these convictions. On his listing of residence data on page four of the application, he listed his address during that period of time as the Virginia Department of Corrections, Richmond, Virginia.

Moore noted that as a result of his marital difficulties, he almost suffered a breakdown, and had to have surgery on ulcers. After his release from prison, he eventually determined to come to the Atlantic City area to seek employment. He bought a home in Pleasantville for himself and supported his children. He has a 23-year-old son and a daughter who is attending Hampton Institute. He has been working since he was 11 years old and has frequently held three or four jobs, having held two jobs up until a few months ago. He managed to send both his children to college and has bought them homes. He is an ordained deacon in the Bethel Pentecostal Holiness Church, having obtained that position in January, 1965. He is presently 44 years old.

Mr. Moore believes that he has rehabilitated himself from his prior difficulties. He said that he has a good family life, a good job, and wishes to hold on to his present improved circumstances.

The Division of Gaming Enforcement presented as its witness William Frasco, an investigator with the Division who was involved in a background check on Mr. Moore. On January 25, 1982, Frasco called Mr. Moore at 2:00 p.m. to discuss Moore's application. He asked Mr. Moore about question 46 and asked the applicant if he understood the question. Moore said that he did. The applicant did not mention anything about the Hampton criminal matters until Frasco brought them up. Moore indicated that he did not think that he had to disclose these arrests and mentioned that they involved domestic problems. He also stated that he did not have a list of the arrests when he filed his application and did not know the exact dates of the matters.

Mr. Frasco noted that he does not recall if he asked Moore about the written comment in answer to question 46 which indicated that there was an attachment on page 23. Frasco assumes that having looked at the application he believed that Moore was referring to list of arrests from Newport News which was attached following page 25.

Mr. Moore testified that he recalled being interviewed by Frasco. He had worked that day from 2:00 a.m. to 10:00 a.m. at Harrah's, and he was also employed from 10:00 a.m. to 5:30 p.m. at Homberger's Department Store in Atlantic City. At the time of the phone call, he had been sleeping and was in a foggy state. He thinks he recalls being asked why he didn't disclose the Hampton arrests. He denied that he had not informed the Commission and Division about these in the application.

#### DISCUSSION

The evidence presented in this case demonstrates to the mind of this judge that Bobby Earl Moore is presently an outstanding employee of Harrah's and a credit to the casino industry. He has, through hard work, worked his way up to a significant supervisory position. He commands the respect of his employers and fellow employees and I find that his reputation for good character, honesty and integrity is excellent

The record discloses that during the 1970's Mr. Moore had many difficulties while residing in the Commonwealth of Virginia. Many of these were financially related, having to do with charges of worthless checks. The disposition of these indicate that most were dismissed and that several resulted in fines. Mr. Moore's significant legal troubles arose because of his problems involving other persons credit cards. Moore insists that he did not steal the cards. He acknowledges that he received merchandise purchased with them. He was convicted, sentenced and served time in prison for his offenses.

The Division objects to Mr. Moore's licensure because it believes that he withheld information with respect to certain criminal offenses, including the most serious ones. A review of his application shows that he did indeed attach thereto a listing of offenses accumulated in Newport News. They were not attached, at least on the copy presented in evidence, at the same location as the answer to question 46 would seem to suggest. According to Mr. Moore, he did indeed attached information concerning both the Newport News and Hampton arrests to the application.

He claims that the application was taken apart by Harrah's personnel for photocopying, and presumably when the papers were put back together the order was changed and the Hampton information was not reattached. When Investigator Frasco called Mr. Moore he did not specifically ask him about the reference to an attachment following page 23 on the application.

It is interesting to note, and perhaps somewhat significant that although the application is alleged not to have included information concerning the felony convictions which resulted in the prison term, Mr. Moore did list his address as the Department of Corrections, Richmond, Virginia for the period from June 1976 through July 1977. Any law enforcement official or representative of the gaming authorities reviewing the resident data on page four of the application would certainly be alerted to the fact that Mr. Moore had some legal difficulty because of the address listed. Therefore, while Mr. Moore is alleged to have hidden his involvement in the credit card matters, he did advise the authorities that he had spent some time in a correctional facility.

As noted, Mr. Moore has an impressive present record. I found him to be an impressive and believable witness. His character references speak quite highly of him. His background, including as it does his raising of two children following his wife's departure from his home, and the manner in which he has apparently raised them, tend to support the good character assessment.

Perhaps the most damaging allegation against the applicant is the claim that he did not disclose his Hampton convictions to Investigator Frasco when they spoke on the telephone. The contention here is that Moore was still attempting to hide his offenses.

The burden of proof in this matter rests with the applicant, who must demonstrate by clear and convincing evidence his good character, honesty and integrity. I FIND that Mr. Moore has met the burden. Although there is some question as to exactly what happened to his application, given all of the facts, and looking at the totality of the circumstances, I do not find it believable that this applicant deliberately and intentionally attempted to hide some of his criminal history from the authorities. I believe that his testimony was correct, that is, that the original application form as he filled it out had attached to it information concerning his entire criminal record. If in fact, the Hampton matters were not attached, I find that such an omission was inadvertent.

I have considered carefully the testimony of Investigator Frasco. Having considered the credibility of the witnesses, and again having considered all of the circumstances surrounding this application and the matters included therein, I do not believe that Mr. Moore was attempting to deceive Frasco. Whether Moore was tired, confused, or whatever, I cannot on the facts of this matter conclude that he intentionally attempted to withhold information from the Commission.

For the reason stated, I **CONCLUDE** that Mr. Moore should be licensed. It is so **ORDERED**.

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

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

December 13, 1983  
DATE

Jeff S. Masin  
**JEFF S. MASIN, ALJ**

14 DEC 1983  
DATE

Receipt Acknowledged:  
[Signature]  
**CASINO CONTROL COMMISSION**

Dec. 16, 1983  
DATE

Mailed to Parties:  
Ronald L. Parkypro  
**OFFICE OF ADMINISTRATIVE LAW**

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EVIDENCE LIST

- P-1 Letter of August 25, 1983 from Ed Posey
- P-2 Letter of July 28, 1983 from Lathan Pridgen
- P-3 Letter from Tom Davis
- P-4 Official Notice of Commendation or Unsatisfactory Performance, dated August 10, 1982
- P-5 Letter of August 26, 1981 from the crew of Environmental Services Public Area
- P-6 Letter of August 16, 1981
- P-7 Inter-office correspondence, dated October 16, 1981
- P-8 Letter from Lou Costanzo
- P-9 Letter from Celestine W. Seisey, dated January 10, 1979
- P-10 Letter from Carolyn Mann, January 9, 1979
- P-11 Letter of May 8, 1978 from Clark Walden, Chief Probation and Parole Officer
- P-12 Virginia Parole Board, certificate of discharge, May 22, 1978
- P-13 Letter from Chief Jailer Michael, City of Hampton, dated July 21, 1976
- P-14 Letter from Henry F. Zey, President, Central-Warwick Laundry, dated October 15, 1976
- P-15 Membership Card, dated September 29, 1983
- P-16 Certificate of Ordination
- R-1 Personal History Disclosure Form-2
- R-2 United States Department of Justice, Federal Bureau of Investigation, Identification Division, record of criminal arrests and convictions
- R-3 Letter of January 13, 1982 from Theodora Lockett, Central Records, Police Department, Newport News, Virginia
- R-4 Letter of August 16, 1983 from City of Hampton General District Court
- R-5 Indictment and record of sentence, Circuit Court for the City of Hampton
- R-6 Indictment and record sentence, Circuit Court for the City of Hampton
- R-7 Hampton Police Department Docket Arrest

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-109  
OAL DOCKET NO. CCC 7080-83  
APP. NO. 12295-21

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IN THE MATTER OF THE APPLICATION

OF EDWIN L. NEWBY FOR LICENSURE

FINAL ORDER

AS A CASINO EMPLOYEE

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 9, 1984, recommending that the application of Edwin L. Newby for renewal of his casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting on June 20, 1984, to affirm and adopt the said Initial Decision and to grant the application for renewal,

IT IS on this <sup>20<sup>th</sup></sup> day of June 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7080-83

AGENCY DKT. NO. 83-EA-109

**EDWIN L. NEWBY,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Edwin L. Newby, petitioner, pro se**

**William J. Walsh, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: April 23, 1984

Decided: May 8, 1984

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

This matter concerns petitioner's application to renew his casino employee license pursuant to N.J.S.A. 5:12-1 et seq. and objections filed thereto by respondent with the Casino Control Commission. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The basic facts are undisputed. On January 25, 1982, petitioner filed a renewal application for his casino license. He responded in the negative to questions on the form asking whether he had had any arrests or convictions since the filing of his Personal History Disclosure Form (PHDF) or previous renewal application. On July 19, 1980, petitioner was arrested in Atlantic City on charges of theft, criminal

conspiracy, and endangering the welfare of children. He was convicted on March 24, 1981, of theft, and received a fine and suspended sentence. The remaining charges were dismissed. Petitioner did not include this information on his January 25, 1982 submission. Respondent took the position that failure to disclose these facts required denial of petitioner's license, pursuant to N.J.S.A. 5:12-86.b.

During the course of his testimony, petitioner indicated that while he did not disclose the July 1980 arrest on the renewal application of January 25, 1982, he had disclosed the information on a prior renewal application. Respondent was unaware of any prior application and petitioner was given an opportunity after the hearing to locate any such document.

The hearing was held on February 10, 1984. On February 22, 1984, I received a copy of a renewal application from petitioner. It is dated December 2, 1980, and in response to the question concerning arrest since the filing of the PHDF, petitioner checked the "yes" box indicating in the space provided "disorderly persons - Atlantic City Hall courtroom - Never been in any trouble before I just ran in the [illegible] rough crowd." By letter of March 19, 1984, I forwarded this material to Deputy Attorney General Walsh for his review and response. In a letter of April 23, 1984, he wrote as follows:

It would appear after examining Mr. Newby's submission, that he did in fact report arrest involving the incident of theft, which was the subject of controversy at the trial of this matter. The other arrest involving his failure to appear before the Juvenile Domestic Relations Court, evidently was not reported in any of the renewal applications following its occurrence.

Also, it is deserved to be mentioned that Mr. Newby, at his interview with Detective Quirk, stated that the charges in connection with the theft were dismissed in the Municipal Court. Although similar charges were dismissed, the charge dealing with theft of the ladies pocketbook and the small amount of money involved was not dismissed. Mr. Newby was found guilty of this offense.

Thus, by the close of the record it was undisputed that respondent did make required disclosures. This was the central issue at the hearing.

Deputy Attorney General Walsh's letter notes petitioner's failure to disclose an arrest for non support and his interview with Detective Quirk as additional areas which require review. As to the first of these, the record reflects that the arrest took place in

April 1982 after petitioner filed the latest renewal form in evidence. The second question concerns testimony from Detective Quirk to the effect that during his interview with petitioner in January 1983, petitioner admitted that he had been arrested on July 19, 1980, but maintained that all charges had been dismissed. Petitioner did not quite agree, indicating that he believed he told Detective Quirk that he had been convicted of theft, but if he hadn't, it was an oversight. Petitioner was a credible witness and I accept this testimony. In any event, he had already disclosed the incident in his December 1980 renewal application. There would be little point in attempting to hide it later on. Further, the interview which Detective Quirk testified to took place over the telephone two and a half years after the incident and more than a year and a half after the conviction. Petitioner testified and it is undisputed that when he received the call he had been dealing blackjack at the Sands. He took the call on a pay phone and answered the questions as quickly and as best as he could.

Based on the foregoing, it is my **CONCLUSION** that respondent has not established that petitioner provided false or misleading information on any document filed in support of his license and that to the extent that he may not have fully and accurately communicated his prior record in a telephone conversation with Detective Quirk, this was no more than an oversight. Nothing in respondent's proofs undermines the good character findings made when petitioner was initially licensed. It is **ORDERED** that petitioner's renewal application 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.

5/8/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

May 9, 1984  
DATE

*Bernadette T. Frigo*  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 11 1984  
DATE

*Ronald L. Parker/skt*  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

R-1 Renewal application

R-2 FBI Criminal Arrest Record

R-3 N.J. State Police Criminal History Summary Record

R-4 Atlantic City Municipal Court Summons and Disposition Form

R-5 Atlantic City Police Department Police Report 7-19-80

R-6 Memorandum with attachments 6-9-82

R-7 Security Officer License 12-19-79

R-8 Position addition

P-1a, b & c

Check stubs

WITNESSES

Edward L. Newby, petitioner, pro se

Wendy S. Newby

Charles A. Graham

Edward Quirk

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
PETITION NO. 046408

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IN THE MATTER OF THE PETITION OF :  
NEW COAST, INC. FOR APPROVAL OF : OPINION  
A MERGER AND FOR OTHER RELIEF :

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NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN  
JOEL R. JACOBSON, VICE-CHAIRMAN  
DON M. THOMAS, COMMISSIONER  
CARL ZEITZ, COMMISSIONER  
E. KENNETH BURDGE, COMMISSIONER

APPEARANCES:

For New Coast, Inc., Drew National Corporation and Bass  
Brothers Enterprises, Inc.:

Joel H. Sterns, Esq.  
Richard Hluchen, Esq.

For PPI Corporation:

John Daniels, Esq.  
Nicholas Casiello, Esq.

For the Division of Gaming Enforcement:

Thomas R. O'Brien, Director  
Anthony J. Parrillo, Assistant Attorney General  
Mary Jo Flaherty, Deputy Attorney General

For the Casino Control Commission:

Robert J. Genatt, General Counsel  
John R. Zimmerman, Senior Assistant Counsel

New Coast, Inc. (New Coast) has filed a petition seeking (1) approval of a plan to merge Pratt Hotel Corporation (Pratt Hotel) into Drew National Corporation (Drew), (2) permission for officials of Pratt Hotel and Drew to negotiate the details of the merger, and (3) a declaratory ruling that certain individuals and entities referred to as the "Bass distributees" will not be persons required to qualify under sections 84(b) and 85(c) and (d) of the Casino Control Act (the Act) if the merger is consummated.

There is a lengthy factual and procedural history underlying this petition. That history begins on May 7, 1982, when the Commission issued casino licenses to Greate Bay Hotel and Casino, Inc. (GBH&C), which owns the Sands Hotel and Casino (the Sands), and Americas-New Jersey Management, Inc. (ANJ), which has a contract with GBH&C to manage the Sands. At the time of licensure, GBH&C was wholly owned by Greate Bay Casino Corporation (GBC), which was 73.2% owned by Greate Bay Hotel Corporation (GBH), which was 78.2% owned by PPI Corporation, which was 50% owned by Burton and Richard Koffman and 50% owned by Pratt Hotel. Pratt Hotel was owned primarily by Jack, Edward and William Pratt. ANJ was a wholly-owned subsidiary of Pratt Hotel.

In late 1982 Williams Electronics, Inc. (Williams) made an offer to purchase the Koffmans' 50% interest in PPI. The Koffmans accepted the offer, subject to the right of

Pratt Hotel, under a PPI shareholders agreement, to purchase the shares if it could meet the Williams' offer within 90 days. If Pratt Hotel failed to meet the Williams' offer, the Koffmans would have the right to acquire Pratt Hotel's PPI shares, and they had agreed in principal to sell those shares to Williams.

Thus, if Pratt Hotel could not meet the Williams' offer, Williams was in position to acquire all of PPI's stock. In addition, Williams had purchased 8.82% of the stock of GBC and had acquired options, which it later exercised, to purchase 24.8% of the stock of GBH. Clearly, Pratt Hotel was in danger of losing its interest in the Sands, and losing the benefit of the management contract held by its subsidiary, ANJ.

Pratt Hotel was unable to meet the Williams' offer without outside backing, and it turned to Bass Brothers Enterprises, Inc. (BBE) for that backing. BBE is a closely-held, multi-billion dollar company, whose stock is primarily owned by members of the Bass family and companies and trusts controlled by members of the Bass family. BBE is engaged in oil and other businesses, and frequently invests in other companies. One of the other companies in which BBE had previously invested, and in which it held a controlling interest, is Drew, and BBE decided to involve Drew in its investment in the Sands. Before detailing how this

investment was made, the relationship of BBE and Drew should be explained further.

In August 1979, BBE purchased 73% of the stock of Drew, and simultaneously Drew satisfied its obligations under a Chapter XI Plan of Arrangement under the federal Bankruptcy Act. Thereafter, Drew acquired several subsidiaries and became a profit-making company. BBE then sold some of its Drew shares, but continued to control an interest of over 50%. In December 1982, BBE distributed its Drew stock to its shareholders, hence the term "Bass distributees." This distribution of BBE's Drew stock to BBE's shareholders was done for tax purposes, and BBE clearly continued to have the ability to control Drew.

BBE, Drew and Pratt Hotel agreed to a two-phase plan to buy out the Koffmans and reorganize the Sands holding companies. The first phase consisted of PPI redeeming its stock held by the Koffmans, at the same price offered by Williams, thus making Pratt Hotel the sole owner of PPI.

The second phase consisted of the formation of a joint venture, in the form of a Texas general partnership, between PPI and New Coast, a wholly-owned subsidiary of Drew, with PPI contributing its 78.2% interest in GBH to the joint venture.

After BBE, Drew and Pratt Hotel agreed to the two-phase plan, Williams brought suit in Superior Court,

Chancery Division, to enjoin them from putting it into effect, claiming, among other things, that to do so would violate the Casino Control Act. In opposing the injunction, the defendants argued that phase one would merely be a redistribution of ownership of PPI among already qualified persons, and could thus be accomplished without approval by this Commission and without violating the Act. They represented that they only planned to execute phase one, and would obtain Commission approval and comply with all provisions of the Act before carrying out phase two. The judge said that he was unsure if phase one would implicate new qualification requirements under the Act, but, because Williams had failed to show that it clearly would, he denied the injunction.

On January 24, 1983, PPI redeemed the Koffmans' stock, thus accomplishing phase one. PPI paid the Koffmans \$13,624,830 for the stock, consisting of \$5,032,850 in cash, a \$7,085,410 note and a \$1,506,570 note. To pay the cash portion of the price, PPI borrowed \$5,100,000 from Bankers Trust Company. PPI secured the two notes which it gave to the Koffmans with letters of credit issued by Bankers Trust. The letters of credit were opened by Drew on behalf of PPI. As security for Drew's obligations under the letters of credit, as well as PPI's obligation to repay the \$5,100,000 loan, PPI pledged its GBH stock, Pratt Hotel pledged its PPI

stock, and Pratt Hotel and ANJ pledged their interest in the management contract. In addition, BBE guaranteed Drew's obligations under the letters of credit, and BBE, Drew and Pratt Hotel guaranteed repayment of the \$5,100,000 loan.

In addition, Bankers Trust issued a third letter of credit, for \$5,130,000, to secure PPI's \$5,000,000 preexisting indebtedness to the Koffmans. This letter of credit was opened under the same conditions and with the same guarantees described above.

Finally, Drew and BBE assumed the Koffmans' obligations under a preexisting \$5,000,000 letter of credit issued by Manufacturers Hanover Trust Company guaranteeing a debt of PPI to Arthur Kania and Eugene Gatti, from whom PPI had originally purchased its GBH stock.

It is clear that the backing of BBE made all of these transactions possible. If Pratt Hotel could have bought out the Koffmans using its own resources, it would have done so. Drew's resources are likewise insufficient to support the loan and letters of credit extended by Bankers Trust. At any rate, it was BBE to which Pratt Hotel turned for help, and Drew was merely an instrumentality of BBE in these transactions, apparently used to attempt to insulate BBE from the qualification requirements of the Act.

On the same date as the PPI stock redemption, PPI and New Coast entered into a joint venture agreement. Under this

agreement, the joint venture would not be formed until the ninety-first day after all persons and entities which will be required to qualify as a result of its formation had filed the appropriate application forms with the Commission. This provision was put into the agreement to attempt to comply with section 137 of the Act, N.J.S.A. 5:12-137, which states, in pertinent part:

When any person contracts to sell or lease any property or interest in property, real or personal, under circumstances which require the approval or licensing of the purchaser or lessee by the commission, the contract shall not specify a settlement or closing date for the transaction which is earlier than the ninety-first day after the date of submission of the completed application for such approval or licensing.

PPI, New Coast, Drew, Pratt Hotel and BBE also entered into a supplementary letter agreement to the joint venture agreement. Under the supplementary agreement, until the joint venture was formed, PPI was required to pay "the carry," i.e., all principal, interest and fees due on the loan from Bankers Trust to PPI, the two notes issued by PPI to the Koffmans, PPI's preexisting \$5,000,000 debt to the Koffmans, PPI's preexisting \$5,000,000 debt to Gatti and Kania, and another, \$20,000,000 preexisting debt of PPI to Gatti and Kania. When the joint venture was formed, New Coast would be required to reimburse PPI for 50% of the carry paid prior thereto. However, if at any time prior to the formation of the joint venture PPI was unable to pay the

entire carry, it could so notify New Coast, and New Coast would then have to pay or arrange financing for 50% of the carry until PPI again became able to pay the entire carry. BBE was required to provide all credit or financing necessary for New Coast to meet its obligation to contribute to the carry.

On March 22, 1983, PPI called on New Coast to contribute to the carry, and New Coast began making contributions.

The parties involved in the redemption and joint venture took the position that the redemption did not require qualification of any new persons or entities, and thus did not implicate section 137 of the Act. However, they recognized that formation of the joint venture would implicate new qualification requirements, and thus provided for the 90-day waiting period in the joint venture agreement and for the interim financing of the carry in the supplementary agreement.

The parties were incorrect in surmising that the redemption would not entail new qualification requirements.<sup>1</sup> On April 27, 1983, the Commission ruled

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1. The parties also overlooked the fact that the redemption involved a transfer of PPI stock, which, under section 82(d)(7) of the Act, N.J.S.A. 5:12-82(d)(7), requires prior approval of the Commission. However, this issue has been dealt with by the Commission elsewhere, and need not be treated here.

that, by virtue of their involvement with the Bankers Trust guarantees, their interest in the joint venture, and their ongoing participation in the carry payments, BBE, Drew and New Coast were "qualifiers" with respect to the pending applications for renewal of the casino licenses of GBH&C and ANJ. Specifically, the Commission ruled that BBE, Drew and New Coast were (1) persons with the ability to control the licensees, (2) lenders, and (3) other persons deemed appropriate for qualification, all within the meaning of N.J.S.A. 5:12-85(c) and (d). In addition, the Commission ruled that BBE, Drew and New Coast were financial sources with respect to the casino license renewal applications of GBH&C and ANJ and were therefore required to be qualified under N.J.S.A. 5:12-84(b).

At the time these rulings were made, BBE, through its subsidiaries, Drew and New Coast, had provided much needed financial backing to enable Pratt Hotel to retain its most valuable assets, its interest in the Sands and in ANJ's management contract. In addition, BBE, through those same subsidiaries, had agreed to become Pratt Hotel's partner in the Sands and had begun contributing to the partnership's expenses. Under these circumstances, and in view of the comprehensive qualification requirements of the Act, the Commission had no alternative but to rule that BBE, Drew and

New Coast were persons required to qualify in connection with the license renewal applications of GBH&C and ANJ.

The casino licenses were to expire on May 7, 1983. Under the Act, in order to obtain renewal the licensees were required to satisfy all of the criteria for initial licensure, including establishing the qualification of all persons required to qualify. Due to the imminence of the expiration date, it would have been impossible to qualify BBE, Drew and New Coast as part of the renewal process. However, prior to the expiration date, BBE, Drew and New Coast entered into a series of arrangements designed to separate them from the casino licensees and preclude them from engaging in any continuing relationship with or exercising any influence or control over the casino licensees. These arrangements need not be described in detail here. For present purposes it suffices to say that they included extensions of the loan guarantees, the funding of New Coast's carry obligations, the elimination of recourse rights against PPI, and the prohibition of communication between Pratt Hotel, PPI and the Greate Bay companies, on the one hand, and BBE, Drew and New Coast, on the other. In view of these arrangements, the Commission ruled that BBE, Drew and New Coast were temporarily removed from qualifier and financial source status. Therefore, BBE, Drew and New Coast did not have to be qualified in order for the Commission to

renew the casino licenses of GBH&C and ANJ. The licenses were renewed on May 6, 1983, and counsel for BBE, Drew and New Coast represented that during the license year those entities would either become qualified or permanently remove themselves from qualifier and financial source status.

Drew and New Coast and their attendant qualifiers, see N.J.S.A. 5:12-85(c) and (d), other than BBE, subsequently filed application forms and submitted to an investigation by the Division of Gaming Enforcement, in an effort to obtain a finding of qualification from the Commission. However, BBE and its qualifiers, the Bass distributees, determined not to submit to qualification. Rather, New Coast filed a series of petitions, in which PPI joined, all designed to remove BBE and the Bass distributees from qualifier and financial source status.

#### THE FIRST PETITION

The first petition represented that BBE would be removed from the Bankers Trust guarantees, but did not indicate how this would be accomplished. The petition also described a plan to permanently separate the substantially entangled financial affairs of BBE and Drew, and to place the Drew shares held by the Bass distributees in a voting trust. The petition requested a ruling that, if all of the steps outlined were undertaken, BBE would cease to be a financial

source under section 84(b) and BBE and the distributees could be waived as qualifiers under section 85(d)(1).

In its responding brief, the Division stated that it had "severe reservations" as to whether Drew could become financially independent of BBE, and concluded that the steps proposed in the petition clearly did not accomplish that goal. Thus, the Division objected to a waiver under the plan outlined in the petition. However, the Division did allow for the possibility that BBE might be able to "completely divorce itself" from Drew, and that a waiver might then be appropriate. The Division outlined certain of the steps which would be required to achieve a satisfactory separation of BBE and Drew. These steps included the dismantling of all financial arrangements between the two companies, and a restructuring of the Drew board of directors. They also included placing the distributees' Drew stock in a trust which removed all incidence of ownership and control, including the right to vote the stock, the right to dispose of the stock, the right to pledge the stock, and, possibly by placing the stock in a charitable trust, the right to profit from direct or indirect involvement in the casino venture.

New Coast submitted a letter outlining certain proposals designed to meet the Division's concerns. The Division in turn responded with a letter pointing out a variety of deficiencies and ambiguities in these proposals.

In addition, counsel for PPI requested permission for officials of that company and BBE to meet to discuss whether BBE had reconsidered its determination not to submit to qualification and, if not, whether BBE would be willing to discuss the possibility of PPI buying out New Coast's interest in the joint venture. Permission for those discussions was granted by the Commission.

It is clear that the discussions which took place ranged far beyond the topics permitted by the Commission. The meeting resulted not in a reconsideration of BBE's decision not to qualify, or in a plan for PPI to buy out New Coast's interest in the joint venture, but rather in a plan to abandon the joint venture and substitute a merger of Pratt Hotel into Drew. New Coast submitted a petition requesting that the prior petition be held in abeyance and proposing a merger as an alternative means of eliminating the requirement that BBE and the Bass distributees be qualified.

#### THE SECOND PETITION

The second petition outlined a plan under which Drew would transfer its assets, except New Coast's interest in the joint venture, to a newly created company to be known as Drew Industrial Corporation (Industrial) and would distribute the shares of Industrial to the current shareholders of Drew. Pratt Hotel would transfer its assets, except its stock in PPI and certain unidentified "additional assets," to a newly

created entity to be owned solely by the current shareholders of Pratt Hotel. Pratt Hotel would then be merged into Drew, with the surviving company to be known as "\_\_\_\_\_ Gaming Corporation" (Gaming). As a result of the merger, Gaming would own 100% of the stock of PPI plus the "additional assets." The current shareholders of Pratt Hotel would receive approximately 50.52% of the stock of Gaming, and the current shareholders of Drew, including the Bass distributees, would receive about 49.48%, the difference representing the value of the "additional assets." In addition, the existing first mortgage on the Sands casino hotel would be refinanced in order to permit Gaming (1) to remove BBE from the Bankers Trust guarantees; (2) to exercise an option which PPI had acquired to purchase the GBH and GBC stock held by Williams; and (3) to take GBC private by acquiring the additional outstanding public shares. As a result of these transactions, Gaming would own 100% of the stock of GBH&C.

The petition fixed the total holding of the Bass distributees at 33.4% of Drew<sup>2</sup> which, as a result of the merger, would translate into 33.4% of Industrial and 16.5% of Gaming. The petition represented that BBE and the

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2. Apparently, the distributees' percentage holding of Drew had been diluted by the conversion of certain convertible preferred stock.

distributees would not purchase any additional stock in Gaming and would not provide financial assistance to attempt to exert influence upon Gaming. In addition, it is represented that for three years the Pratt Hotel shareholders would vote their 50.52% of Gaming's stock for directors who were not affiliated with BBE.

In its responding brief the Division aggregated the Drew holdings of the Bass distributees with those of certain other "Bass-related persons," resulting in a total interest of approximately 45% of Drew, which, after the merger, would translate into approximately 45% of Industrial and 22.3% of Gaming. The Division objected to a waiver of qualification of the holders of such a large block of stock in Gaming. The Division also questioned whether the steps set forth in the merger plan were sufficient to eliminate the possibility of BBE exercising control over Gaming. The Division noted that there would be a delicate and superficial balance between the 50.52% of Gaming held by the Pratt Hotel shareholders and the 22.3% held by the distributees and other Bass-related persons, and that this balance could be upset by the issuance of new securities by Gaming, or the sale of stock by the Pratt Hotel shareholders. The Division added that the entire structure set forth in the petition would require continual monitoring by the Commission and the Division, and concluded that it would be unwise to undertake such monitoring

responsibilities for the purpose of permitting individuals with no current interest to obtain a large interest in a holding company of a casino licensee.

The Division further argued that the Act was concerned not only with persons who have ability to control or elect directors of licensees or holding companies, but also with persons who have a financial stake in and ability to profit from casino operations, as well as with the public perception of the industry and the regulatory process. These considerations, in the Division's view, precluded approval of the merger plan, under which the Bass distributees and Bass-related persons would be permitted to obtain a very substantial interest in a casino licensee without submitting to the qualification process.

#### THE THIRD PETITION

After receipt of the Division's brief, New Coast submitted, in rapid succession, three more petitions. Two of these petitions were quickly withdrawn, and do not require discussion here. The petition which was not withdrawn attempted to address the entire 45% of Drew which the Division sought to aggregate. The petition divided the holders of this interest into two categories, designated as the "Bass distributees" and the "qualified persons." The term "Bass distributees" was expanded to include all of the persons whose holdings in Drew the Division sought to

aggregate, other than those who had either applied or agreed to apply for qualification. The holdings of these persons amounted to approximately 36% of Drew. For the remainder of this opinion the term "Bass distributees" will be used to refer to these persons.<sup>3</sup> The other persons whose Drew stock the Division had sought to aggregate, and who had applied or agreed to apply for qualification, the petition referred to as the "qualified persons," and the Division continued to refer to as the "Bass-related persons." These individuals, who will be referred to in the remainder of this opinion as the "Bass-related persons," owned approximately

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3. These persons are: Sid R. Bass; Sid and Anne Bass Management Trust; Robert M. Bass; Robert M. Bass as custodian; Edward P. Bass; Fine Line, Inc. (Edward P. Bass as president); Lee M. Bass; Richard Rainwater; Sid Richardson Carbon and Gasoline Co.; Panther City Investment Company, Bass Successor Trust as Trustee (Robert M. Bass as trustor; issue of Robert M. Bass as beneficiaries); Panther City Investment Company as trustee of the Hyatt Anne Bass 1972 Trust; Panther City Investment Company as trustee of the Samantha Sims Bass 1972 Trust; Panther City Investment Company as trustee of the Christopher M. Bass 1974 Trust; Panther City Investment Company as trustee of the Timothy R. Bass 1976 Trust; Panther City Investment Company as trustee of the Anne Chandler Bass 1978 Trust; Panther City Investment Company, Bass Successor Trust as trustee (Sid R. Bass as trustor and issue of Sid R. Bass as beneficiaries); Courtney E. Rainwater Trust; Richard Todd Rainwater Trust; Matthew J. Rainwater Trust; Thomas M. Taylor (transferee of shares previously owned by W. Fred Massey and a Bass affiliate); and Mark L. Hart, Esq.

9% of Drew.<sup>4</sup>

This petition presented two alternative proposals. The first was an amendment to the merger proposal, involving a plan of disproportionate merger under which the Bass distributees would receive relatively more Industrial stock for their Drew stock and the other Drew stockholders, including the Bass-related persons, would receive relatively more Gaming stock. Specifically, the Bass distributees would receive, in exchange for their 36% of Drew, 64.58% of Industrial and 4.67% of Gaming.

In its responding brief, the Division expressed reservations as to whether the proposal eliminated the possibility of the Bass distributees exercising control over Gaming. The Division also stated that the proposal amounted to a mechanism for the Bass distributees to profit by obtaining and disposing of a substantial indirect interest in the Sands. At the time of the petition, the distributees had no interest in the Sands or any of its holding companies. They merely had stock in Drew, which had an interest in a joint venture that, by its own terms and under section 137 of the Act, could not become effective until the 91st day after all persons required to qualify had applied for

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4. These persons are: Leigh J. Abrams, individually and as custodian; Edward W. Rose III; John H. Scully; Harvey J. Kaplan; David L. Webster; Robert E. Wallace; and David G. Marshall.

qualification. In view of the Bass distributees' refusal to submit to qualification, they merely had an interest in a joint venture which could never come to fruition. However, under this proposal, they would translate their holding of about 36% of Drew into a holding of approximately 65% of Industrial and 4.67% of Gaming. In essence, they would be profiting by acquiring and disposing of a substantial interest in the Sands, despite their refusal to qualify and despite the fact that they had no right to such an interest. In view of these considerations, the Division objected to a waiver under this proposal.

Under the second alternative outlined in this petition, after the merger the Bass distributees would hold outright 4.67% of Gaming and would place an additional 14.03% interest in Gaming in a trust. Under sections 85(c) and (d) of the Act, the holder of any "beneficial interest" in stock must be either qualified or waived. The distributees would obviously have a beneficial interest in the 4.67% which they would hold outright, and in the 14.03% which would be held in a trust with the distributees as the beneficiaries. Thus, they would be seeking waiver of an 18.7% interest in Gaming.

The Division again expressed doubt whether the plan eliminated the possibility of control of Gaming by the distributees, and noted that, even eliminating the trust shares, the distributees and the Bass-related persons would

together retain an interest of approximately 10% of Gaming. The Division also noted that under this plan the distributees would be permitted to obtain a large interest in Gaming and thus profit from their involvement with the Sands despite their refusal to qualify. Again, the Division objected to a waiver.

DISPOSITION OF THE FIRST, SECOND AND THIRD PETITIONS

On February 8, 1984, the Commission considered the three then pending petitions. Its action in doing so was little more than a formality, because the essence of each petition was a request for a waiver of qualification of the Bass distributees and, in view of the Division's position, none of the waiver requests could be granted.

Under sections 85(c) and (d) of the Act, the holder of any beneficial interest in securities of a casino licensee or holding company of a casino licensee must be qualified. Under section 85(d)(1), the Commission has discretion to waive qualification of security holders of a publicly-traded holding company, if the Director of the Division concurs in the waiver, and if the security holder has no ability to control the corporation or elect one or more of its directors. The Director of the Division having refused to concur in a waiver under any of the three petitions, the Commission had no alternative but to deny the petitions.

Although our denial of these petitions was dictated by the Division's position, we nonetheless note our agreement with the Division that waiver under section 85(d)(1) would not be appropriate under any of these petitions.

Absent section 85(d)(1), it would be impossible for a subsidiary of a publicly-traded company to obtain a casino license. The Commission could not qualify all security holders of a public holding company, in view of the vast numbers of persons who hold equity and debt securities of most public corporations, as well as the frequency with which such securities change hands. However, the insignificant and entirely passive nature of most investments in securities of publicly-traded corporations makes qualification of all security holders unnecessary, and thus section 85(d)(1) allows for their waiver.

BBE's involvement with Drew, and with the Sands holding companies, stands in sharp contrast to the type of situation in which a waiver is appropriate. BBE acquired a controlling interest in Drew at a time when the company was involved in a bankruptcy proceeding. Since that time, BBE has clearly had the ability to control Drew. BBE came to the rescue of Pratt Hotel at a time when it was in danger of losing its most valuable assets. Absent the separation mechanisms imposed at the time of the license renewals, BBE would have the ability to control Pratt Hotel and PPI. These

petitions fail to resolve the problem of ongoing control, and also fail to adequately address the profit and public perception issues raised by the Division. In short, under these three petitions BBE and the Bass distributees are simply not the kinds of qualifiers to which section 85(d) (1) was designed to apply, and the purposes of that section would not have been served by granting the requested waivers.

#### THE PRESENT PETITION

We now come, at last, to the present petition, which was filed on February 24, 1984. This petition is again an amendment of the original merger petition and again involves a disproportionate merger. This time the Bass distributees are to receive, in exchange for their 36% of Drew, approximately 65% of Industrial and no interest in Gaming.

The present petition differs from the petitions previously filed in that it does not request a waiver of the Bass distributees. Rather, the petition requests a ruling that the distributees will have no interest in or ability to control Gaming, and that they will therefore not be qualifiers. The petition also requests approval of the merger. Such approval is necessary because the merger will involve transfers of stock of PPI and Pratt Hotel, which, under section 82(d)(7) of the Act, N.J.S.A. 5:12-82(d)(7), require prior approval of the Commission. Finally, the petition requests authorization for officials of Pratt Hotel

and Drew to communicate and to negotiate the details of the merger.

The present plan, like those previously submitted, is obviously designed to accommodate the Bass interests. Its essential purpose is to allow the Bass distributees to transfer their anticipated interest in Gaming to the other Drew shareholders in exchange for an additional 29% interest in Industrial.

There is much discussion in the briefs concerning the financial impact of the proposed merger on the Bass distributees. For example, petitioner speculates that the market value of the distributees' 65% interest in Industrial will be less than that of their current 36% interest in Drew. This analysis is based on an opinion of petitioner's investment bankers that the market value of Industrial stock will be about 40% of the current market value of Drew stock and the market value of Gaming stock will be about 60% of the current market value of Drew stock. This leads petitioner to conclude that the distributees will suffer an economic loss as a result of the merger. However, in so concluding petitioner ignores its own assertion that 60% of the present value of Drew is attributable to its projected interest in Gaming.

If this merger goes through, the distributees will own 65% of Industrial, which will be exactly the same company

that Drew was before the joint venture agreement. Thus, putting aside the speculation in the briefs about the post-merger value of Gaming and Industrial stock, it is clear that as a result of this merger (1) the distributees will have profited to the extent of a 29% interest in the company which will be called Industrial, and (2) the distributees will have acquired this additional interest by trading their anticipated interest in Gaming to the other Drew shareholders.<sup>5</sup>

The issue, then, is whether the Commission should grant the relief requested in the petition despite the fact that it would thereby be authorizing the Bass distributees to profit by bartering an interest in the Sands.

Petitioner argues that the notion of benefit or profit is nowhere to be found in the Act. On the contrary, section 85(c) requires qualification of "each person who

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5. While the advantage to the distributees is evident from the marked increase of their percentage holdings in Industrial, it may also be that the distributees will realize a substantial gain based on the relative stock market values of the Gaming and Industrial stock. Notwithstanding the unsubstantiated opinion of the investment bankers retained by petitioner as to the post-merger market prices, petitioner itself points out that before the joint venture agreement the average price of Drew stock was \$1 per share as contrasted to the projected post-merger price of \$0.43 per share. If the Industrial stock regains the average price of \$1, the distributees' holdings in Industrial after the merger would be worth approximately \$34,000,000 as compared to the present \$22,000,000 value of their Drew stock.

directly or indirectly holds any beneficial interest" in securities of a licensee or holding company. If they are permitted to trade their purported right, as Drew shareholders, to an interest in Gaming, the distributees will be realizing an indirect beneficial interest in the stock of Gaming, and will thus fall within the purview of the Act.

The Act also concerns itself with profit in section 84(b), which requires qualification of financial sources and thus places within the Commission's jurisdiction all persons who stand to profit by investing in casino enterprises; in section 105(e), which provides that security holders who are found disqualified cannot receive dividends or "any remuneration in any form" as a result of their holdings; and in other sections, such as 109 and 126.

Clearly, then, the Act does embody the notion of benefit, and the extent to which the Bass distributees will benefit by trading a future interest in Gaming is a proper consideration in determining whether to grant the relief requested in this petition.

The Division contends that benefit is a relevant consideration, but nonetheless does not object to the petition being granted. The Division bases its lack of objection on (1) the assertion that the distributees will not own stock in Gaming and will therefore not become qualifiers as a result of the merger, and (2) the notion that BBE is

entitled to some profit for its action in providing the Bankers Trust guarantees.

The Division is correct in stating that under the present proposal the distributees will not directly hold any Gaming stock. However, as previously noted, section 85(c) requires qualification of holders of any direct or indirect beneficial interest in securities. In addition, the Act defines "securities" as including warrants, options and other "future" interests. N.J.S.A. 5:12-44. Indeed, the Division finds that the expected interest in Gaming to be exchanged by the distributees for Industrial stock is a "security" of Gaming. However, the Division fails to follow this reasoning to its logical result, i.e., that the distributees will become qualifiers under the present proposal.

It is true that the distributees will cease to be security-holder qualifiers of Gaming after the merger, and this absence of a continuing security interest in Gaming is certainly a relevant consideration. However, it cannot be overlooked that the distributees are seeking Commission approval to acquire and trade a future interest when the Commission, by denying the three prior petitions, has effectively ruled that the interest cannot become a reality unless they qualify. In essence, the distributees seek a ruling that they can sell their right to an interest in Gaming despite the fact that the Commission has ruled that

they have no right to an interest in Gaming. The absence of continuing stockholder status does not persuade us that such a ruling is appropriate.

The Division's argument that BBE is entitled to a profit for the guarantees which it provided, and that the distributees should be allowed to take this profit in the form proposed in the present petition, is also unpersuasive. BBE, acting through Drew and New Coast, entered into a contract, the joint venture agreement, which specifies its profit for providing the guarantees. Under that agreement, and as required by section 137 of the Act, the joint venture was to be formed 90 days after all new qualifiers had applied for qualification, and at that time BBE would have acquired an interest in Sands and thus realized its profit. However, by not applying for qualification the distributees have prevented the joint venture from becoming a reality. They have thus prevented themselves from realizing a profit in the form of an interest in the Sands, and they now ask the Commission to authorize them to achieve that profit by acquiring and trading an interest in the Sands.

In addition, the joint venture agreement provides that if New Coast reasonably believes that qualification will be too expensive or inconvenient, or that qualification "will not be forthcoming," it shall have the right to sell its joint venture interest to a third party, subject to a right

of first refusal by PPI. The agreement further provides that if the Commission refuses to grant New Coast qualification "within a reasonable period of time," PPI shall have the obligation to purchase New Coast's interest in the joint venture for an amount equal to New Coast's contributions to the carry. Thus, the situation which has been created by the distributees' refusal to submit to qualification is provided for in the joint venture agreement.<sup>6</sup>

We therefore cannot accept the reasoning proffered by the Division for excusing the Bass distributees from the requirement of qualification. The Casino Control Act establishes an "extraordinarily pervasive and intensive" system of regulation, Knight v. City of Margate, 86 N.J. 374, 381 (1981), designed to oversee and control all aspects of the casino industry with the "utmost strictness." Id. at 392; Bally Manufacturing Corp. v. New Jersey Casino Control Commission, 85 N.J. 325 (1981), appeal dismissed, 454 U.S. 804 (1981); In re Martin, 90 N.J. 295 (1982); Uston v. Resorts International Hotel, Inc., 89 N.J. 163 (1982). That system of regulation extends to companies which own and operate casino hotels; their holding companies; officers, directors, security holders, principal employees, etc., of casino

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6. We also note that, according to reports filed by Drew with the Securities and Exchange Commission, Drew has paid BBE a fee of \$20,000 per month in consideration of the guarantee provided by BBE to Bankers Trust.

owners and operators and their holding companies, N.J.S.A. 5:12-85(c) and (d); investors and financial backers in casino projects, N.J.S.A. 5:12-84(b); persons involved in the supervision and conduct of casino operations, N.J.S.A. 5:12-89 and -90; other persons employed in casino hotels who have access to the casinos, N.J.S.A. 5:12-90; all other persons who work in casino hotels without having access to the casinos, N.J.S.A. 5:12-91; and all companies and individuals which provide goods and services to casino hotels, N.J.S.A. 5:12-92. The Legislature has directed the Commission to exercise its regulatory authority over all of these individuals and entities to the greatest extent possible, N.J.S.A. 5:12-1(b)(9), and has invested the Commission with all necessary power and authority to do so, N.J.S.A. 5:12-75. We must conclude that, under the merger plan now before us, the regulatory grasp of the Act reaches the Bass distributees.

BBE provided vitally-needed financial backing to PPI. Since that time, officials of Pratt Hotel and PPI have referred to BBE as their intended "partner" in the casino hotel enterprise. However, for over a year the Bass interests have refused to either submit to qualification or end their involvement with the Sands, such as by selling their interest in accordance with the joint venture agreement. Rather, they, through New Coast, have submitted a

series of petitions seeking Commission approval of mechanisms designed to allow them to participate in the Atlantic City casino industry and profit from that participation without becoming qualified.

Despite the separation arrangements approved by the Commission at the time of the 1983 license renewal, it is clear that the specter of BBE is a continuing presence in the corporate lives of Pratt Hotel and PPI. By their refusal to either qualify or dispose of their interest in the joint venture, BBE and the distributees have kept the business affairs of the casino licensees and their holding companies in a state of confusion and uncertainty. PPI has joined in all of New Coast's petitions, and has foregone the remedies available to it under the joint venture agreement. Jack Pratt, president of Pratt Hotel and PPI, has told this Commission that the Pratt brothers "have a cannon to our head" because the loans and letters of credit guaranteed by BBE will expire on May 26, 1984.

In light of this deep and continuing involvement of the Bass interests in the affairs of Pratt Hotel and PPI, the Commission cannot accept the notion that the distributees should now be permitted to barter a substantial interest in the Sands without being found qualified. For an unqualified person or group to have this kind of vital and extended presence in a casino enterprise, and to profit from the sale

of a purported interest in that enterprise, is something which the Act simply will not tolerate.

One further matter which requires comment is petitioner's assertion that denial of the relief requested here contradicts a recent ruling of the Commission involving certain security holders of a holding company of the casino licensee which operates the Claridge Hotel and Casino.

Until October 31, 1983, the Claridge Hotel and Casino was owned and operated by Claridge Limited, a partnership composed of two partners, Del E. Webb New Jersey, Inc. and Claridge Associates. On that date, Claridge Limited was liquidated and the ownership of the facility was restructured pursuant to a plan devised by Del E. Webb Corporation (Webb), the parent of Del E. Webb New Jersey, Inc., and Oppenheimer & Co., Inc. (Oppenheimer).

Webb had consulted Oppenheimer, a major New York investment firm, seeking professional advice with regard to a proposed restructuring of its Claridge property and its debt related thereto. Oppenheimer provided professional services, acting for and at the direction of Webb. Webb and Oppenheimer agreed that, in accordance with Oppenheimer's normal practice, it would accept part of its compensation in the form of an equity participation in the restructured operation. The entire Claridge restructuring was designed to give Webb complete control over the new entities created in

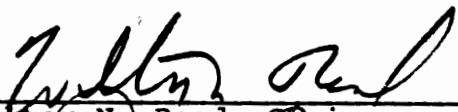
connection therewith and to give Webb the ability to repurchase all of the assets of those entities. Thus, Oppenheimer's equity participation, which amounted to 12.39% of the stock of a holding company, did not involve the potential for influence or control, but rather was a purely passive investment arising from a purely professional relationship. Webb retained all of the voting stock of the holding company involved, as well as the ability to cause its liquidation by exercising an option to purchase its only asset, the stock of the casino licensee.

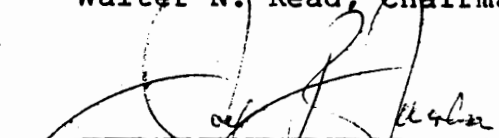
The Claridge restructuring is an extremely complex series of transactions, which cannot possibly be described here, even in a summary manner. However, the brief description of the Oppenheimer situation given above should be sufficient to demonstrate that it is clearly distinct from the present case. The waiver of the Oppenheimer shareholders was a unique action based on a unique factual situation, and should not be taken as an indication that this Commission will be inclined to excuse from the qualification large interests, potentially controlling and even critical to the continued maintenance of the casino ownership, such as those involved in the present case.

CONCLUSION

The relief requested in the petition is denied.

NEW JERSEY CASINO CONTROL COMMISSION

  
\_\_\_\_\_  
Walter N. Read, Chairman

  
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Joel R. Jacobson, Vice-Chairman

  
\_\_\_\_\_  
Carl Zeitz, Commissioner

  
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E. Kenneth Burdge, Commissioner

DATED: April 30, 1984.

DISSENTING OPINION OF COMMISSIONER THOMAS

- Much time and effort have been expended by the parties to this application, as well as by the Commission, in attempting to find a mechanism to remove the Bass distributees from qualifier and financial source status. Although I voted with my colleagues to reject the proposals put forward in the three prior petitions, in my view the present petition sets forth an acceptable removal mechanism, and the relief requested should therefore be granted.

The present proposal is qualitatively different from those previously rejected in that it provides for the complete elimination of any Bass interest in the new gaming company. The Bass distributees will hold no stock in Gaming. Although the Bass-related persons will hold about 4.9% of Gaming, the petition represents that, if required to do so by the Commission, they will dispose of their stock "in an orderly manner giving due regard to prevailing market conditions." Prior to any such disposition, the stock of the Bass-related persons will be placed in a voting trust, empowering Jack Pratt to vote the shares in proportion to other votes cast on any matter. The Bass distributees and Bass-related persons agree not to serve as officers, directors, employees or agents of Gaming or any affiliate of Gaming, and not to engage in any transactions with Gaming, any affiliate of Gaming, or any other Pratt-related company.

Thus, all indicia of Bass control over Gaming are eliminated.

While I agree with the majority that control is not the sole consideration here, it is certainly the most salient consideration under section 85(d)(1) of the Act. While the notion of benefit, as well as concern with public trust and confidence in the casino industry and the regulatory process, are pertinent, I do not believe that these considerations compel denial of the relief requested in this petition.

Under the present merger proposal, the Bass distributees will never actually own any Gaming stock or other casino-related stock. They will obtain a greater interest in Industrial than they now hold in Drew, and may to that extent realize a profit. However, they did provide financial guarantees which were obviously of value to Pratt Hotel, and those guarantees may serve to justify whatever benefit the distributees will obtain under the current proposal. While that benefit might bar a waiver of the Bass distributees if they were to obtain an ongoing security interest in Gaming, in my view it does not preclude approval of this petition.

The merger proposal put forward in this petition removes the Bass distributees, and ultimately the Bass-related persons, from any continuing security interest in Gaming. It also removes the Bass distributees and the Bass-related persons from any position of influence or

control over Gaming, or its affiliates or any other Pratt-related company. In my view, approval of this petition would support, and would certainly not undermine, public trust and confidence in the casino industry and the regulatory process. The petition presents a fair and reasonable solution to the problems presented by the involvement of BBE and the distributees with Pratt hotel and PPI; and adequately addresses all reasonable regulatory concerns. I cannot accept the reasoning of my colleagues that the distributees' increased interest in Industrial mandates rejection of this proposal.

I would therefore grant the relief requested in the petition.



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Don M. Thomas, Commissioner

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-8  
OAL DOCKET NO. CCC 9588-83  
(CCC 737-83 ON REMAND)  
APPLICATION NO. 27881-21  
REGISTRATION NO. 22676-40

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APPLICATION OF SHELDON A. PATRICK  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 19, 1984, recommending that the application of Sheldon A. Patrick for a casino employee license be denied; and Sheldon A. Patrick having filed a response to the Initial Decision on May 8, 1984; and the Commission having considered the entire record of these proceedings resolved at its public meeting on May 30, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 4th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

IT IS FURTHER ORDERED that, Sheldon A. Patrick 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 Sheldon A. Patrick from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 9588-83

AGENCY DKT. NO. 83-EA-8

**SHELDON A. PATRICK,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Sheldon A. Patrick, petitioner, pro se**

**Patricia Wild, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: March 15, 1984

Decided: April 18, 1984

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

This matter concerns petitioner's application for licensure as a casino employee, pursuant to N.J.S.A. 5:12-1 et seq. and objections thereto filed by respondent with the Casino Control Commission. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The facts are substantially undisputed. Petitioner was arrested on January 21, 1980 in Springfield Township, Pennsylvania, and charged with criminal mischief corresponding to N.J.S.A. 2C:17-3; theft by unlawful taking of goods valued under \$500

corresponding to N.J.S.A. 2C:20-3; and receiving stolen property corresponding to N.J.S.A. 2C:20-7. Petitioner had been accused of stealing various articles of clothing valued at \$495 from a van. Petitioner failed to appear for trial and a bench warrant was issued by Montgomery County Criminal Court.

Petitioner filed a Personal History Disclosure form (PHDF) in February 1981 in which he failed to disclose these offenses. He initialed the form on each page and signed it at the end certifying to the truthfulness of his answers.

On March 17, 1982, he was interviewed by Sergeant John M. Hoovan of the New Jersey State Police, Casino Gaming Section. Sergeant Hoovan testified that when confronted with this nondisclosure petitioner indicated that he didn't feel it was necessary to put the information down as all of the stolen property had been recovered.

Petitioner was also taken into custody at this time for purposes of extradition to Pennsylvania on the pending charges there. Sergeant Hoovan testified that after finger printing, petitioner was given an opportunity to wash the ink off of his hands and at a moment when he was not being watched, fled from custody. Detective Bruce Hall of the New Jersey State Police testified that he saw petitioner run out the door and chased him some five blocks before he caught him.

Petitioner testified in his own behalf. He confirmed much of the testimony given by the officers. He could not explain his attempt to flee, but felt that the behavior was uncharacteristic. He also testified that he misunderstood the question on the PHDF concerning prior arrests and thus didn't answer it properly.

He has since been admitted to a program equivalent to pre-trial intervention in Pennsylvania and was permitted to return to New Jersey to work. He testified that most recently he has been self-employed cleaning limousines and is now in the motor accessories business.

This is the substance of the record. N.J.S.A. 5:12-86 provides:

The Commission shall deny a casino license . . . on the basis of any of the following criteria:

- b. ...failure of the applicant to reveal any fact material to qualification...

Petitioner did not disclose that he was arrested on January 21, 1980, in Pennsylvania. The record reveals no special circumstances which explain this. His license may be denied for that reason alone. Additionally, he sought to escape from custody in March 1982 exhibiting conduct similar to his failure to appear in court on the original charges.

Based on the foregoing it is my **CONCLUSION** that petitioner has not established the good character, honesty and integrity required by the act for a casino license and it is **ORDERED** that his application be and hereby is **DENIED**.

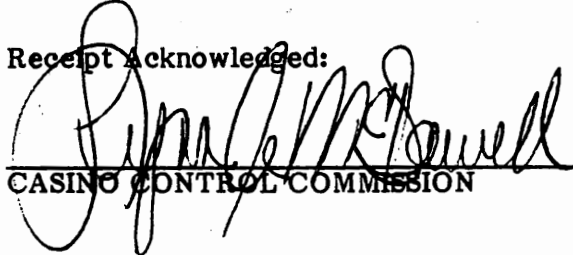
This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended 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.


DATE 4/18/84

  
SOLOMON A. METZGER, ALJ

DATE 19 APR 1984

Receipt Acknowledged:  
  
CASINO CONTROL COMMISSION

DATE April 24, 1984

Mailed to Parties:  
  
OFFICE OF ADMINISTRATIVE LAW

ml

APPENDIX

**EXHIBITS:**

- J-1 PHDF
- R-1 FBI Record
- R-2 Pennsylvania Complaint
- R-3 Pennsylvania Docket transcript

**WITNESSES:**

Sheldon Patrick  
Charles M. Bergman, DGE  
Sgt. John M. Hoovan, NJ State Police, Casino Gaming Section  
Detective Bruce Hall, NJ State Police, Casino Gaming Section

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-184  
OAL DOCKET NO. CCC 4755-83  
REGISTRATION NO. 44138-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
FREDERICK G. PAYNE, III :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 24, 1984, recommending that the complaint of the Division of Gaming Enforcement be denied and dismissed with prejudice; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of February 29, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint with prejudice,

IT IS on this 1st day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed with prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4755-83

AGENCY DKT. NO. 83-184

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

Petitioner

v.

**FREDERICK G. PAYNE, III,**

Respondent.

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**APPEARANCES:**

**Patricia M. Wild, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Gary Dinenberg, Esq., for the respondent**

Record Closed: December 8, 1983

Decided: January 23, 1984

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Frederick G. Payne, III, respondent. The Division alleged that Mr. Payne committed a criminal offense, for which it seeks revocation of his casino hotel employee registration, number 44138-40, pursuant to N.J.S.A. 5:12-129. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 2, 1983. By letter filed with the Commission on June 15, 1983, the respondent requested a hearing. On June 22, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on Septmeber 21, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Payne is 20 years of age.

At age three he drank drain cleaner. As a result, between ages three and thirteen he was in and out of hospitals on a regular basis and underwent a series of major surgery. Accordingly, he spent most of his time with his mother and developed an abnormally close relationship with her. Also, he missed substantial amounts of school and had little contact with other children.

The respondent was also very close to his father, who was active in church activities. His father was strict, but fair. The respondent was a good student. He has a younger sister and brother.

When the respondent was 13 years of age and had completed his surgery, his parents separated. The respondent first lived with his mother.

Within two years of the separation, the respondent's mother remarried. His stepfather was a bartender by profession and alcohol became a big part of the new family's personal and social life. It was the primary beverage in the house. The respondent's mother was intoxicated on a daily basis became an alcoholic. She and his stepfather frequently bar hopped and had parties at the house which consisted of heavy drinking. As a consequence, the respondent no longer had a close relationship with his mother. Also, the respondent was no longer active in church activities. With his mother's remarriage, the respondent gained three stepbrothers, one of whom lived with the family for a substantial period of time. This stepbrother was approximately the same age as the respondent. They had a very competitive relationship.

Meanwhile, the respondent's father remarried and became involved with his new family. His father was also opposed to the consumption of alcohol and, there was little communication between the respondent and his father.

These circumstances began to have a very negative effect upon the respondent. He became a poor student and he sought out new friends by whom he was easily accepted, many of whom were involved in drug-related activities. The respondent's primary interests were to earn enough money to purchase alcohol and drugs, which activities he participated in with his stepbrother.

During the 11th grade when the respondent was 17, he sought assistance from a psychologist. At her suggestion, he left the home. The respondent rented a room of his own in a boarding house. There he developed an active social life with his peers.

The respondent graduated from high school in June 1981.

In July 1981, the respondent went with his stepbrother to Wildwood for a good time. The respondent had just become 18. For the first time the respondent drank in bars and he became intoxicated. He also used drugs. The respondent and his stepbrother discovered that they did not have enough money to return home. They then observed a person in an arcade with a roll of money. When the person left the arcade, the respondent and his stepbrother attempted to rob the person and the respondent threatened the victim with a pocket knife. The respondent and his stepbrother stole a total of \$38 and the respondent cut himself, which required four stitches. They ran in separate directions, but were pursued and captured. On July 11, 1981, the respondent was arrested by the Wildwood Police Department and was charged with a violation of N.J.S.A. 2C:15-1, robbery (P-1, P-2 and P-3). The respondent was held in the Cape May County Correction Center for two weeks before his parents posted bail. On November 12, 1981, the respondent was indicted by a Cape May County Grand Jury for violations of N.J.S.A. 2C:15-1, robbery; N.J.S.A. 2C:39-4d, possession of a weapon, a knife, for unlawful purposes; and N.J.S.A. 2C:39-5d, possession of a weapon, a knife, under circumstances not manifestly appropriate for such lawful uses as it may have (P-4).

On February 25, 1982, the respondent entered a retransit plea of guilty to violations of N.J.S.A. 2C:15-1, robbery-third degree, and N.J.S.A. 2C:39-5d. The remaining charge was dismissed. On March 29, 1982, the respondent was sentenced on

each count to two years' probation, upon the condition that he serve a nine-month custodial term in the Cape May County Jail and ordered to pay \$25 to the Violent Crimes Compensation Board; the sentences were concurrent.

From his release on bail until his sentencing, the respondent continued to abuse alcohol and drugs.

The respondent was incarcerated for a period of six months. After one month, he earned a job as a trustee. During the third month he was admitted to the Work Release Program. He became employed by the Wildwood Italian Bakery, where he worked satisfactorily for a period of three months. On September 10, 1982, the respondent was released. He reported during probation by mail (R-1). He also paid his fine in full. Recently, the respondent was granted early release from probation (R-2).

In May 1982 during his incarceration, the respondent met the Reverend Pastor Albert E. Alspach, a Lutheran pastor for the past 17 years. During the pastor's frequent visits, they developed a good rapport and, at the pastor's urging, members of his congregation began to correspond with the respondent. In part because of the pastor's fear of the risks of an early release and because of the respondent's need for a positive environment, the respondent chose to reside with the pastor at the parsonage. It was anticipated that this arrangement would be of short duration, i.e., long enough to permit the respondent to develop the financial stability necessary to his successful rehabilitation.

Also, almost immediately upon his release from incarceration, the respondent became employed by the Playboy Hotel and Casino as a pantry worker. He worked as an apprentice for the first six months. John J. Anderson, Executive Sous Chef at Playboy, testified that the respondent is a loyal employee, is a hard worker, has an excellent attendance record and desires to better himself.

The respondent has also become active in church affairs. He currently participates in continuing religious education programs, has become close to the pastor and has helped with church fund raising activities.

The respondent has also enrolled at Atlantic Community College. He has completed one semester of studies, with the goal of becoming a food and beverage manager within the hotel industry.

Pastor Alspach testified that he has observed a total change and a tremendous maturing of the respondent since they first met. The respondent has accepted complete responsibility for himself and is attempting to improve his situation. The pastor testified that this is a very difficult undertaking for a young person who has been in trouble. The pastor further testified that the respondent has continued to live at the parsonage. He has paid room and board during the past six months and has increasingly provided assistance on his own initiative. Further, the pastor was of the opinion that, at first, the parsonage provided a crutch for the respondent; however, that situation no longer exists. The respondent now remains at the parsonage because of economic need. More specifically, the respondent is working, attending school and taking other initiatives to better prepare himself to be self-sufficient. The pastor testified that under these circumstances he is willing to continue to provide assistance to the respondent.

Although the preceding facts were not disputed, essential to their acceptance is a determination of the credibility of Mr. Payne and an assessment of the testimony of his mother and Pastor Alspach.

Initially, Mr. Payne's position in this matter must be recognized. He is the respondent and seeks to prevent revocation of his registration, 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 that from my observations of the respondent's demeanor, the plausibility of his testimony and my examination of the documentary evidence, the respondent testified truthfully. Also, the respondent's testimony was consistent with the documentary evidence and was corroborated by the testimony of his mother and Pastor Alspach. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

The respondent's mother testified concerning the situation for which she was substantially responsible. This was a humiliating experience for her. Most significant, was when this administrative law judge inquired whether the respondent's depiction of the events of his teenage years was accurate. Mrs. Van Parys responded, with great embarrassment, that the situation was in reality far worse than that described. This testimony was overwhelmingly compelling and persuasive.

The testimony of Pastor Alspach was also most persuasive. In addition to his objective observations, the pastor's opinion testimony was buttressed

substantially by his experience working with young persons, his training in psychology and the fact that counselling comprises approximately 30% of his work.

Accordingly, I am persuaded to accept the opinion testimony in addition to the undisputed facts as set forth above. 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 that Mr. Payne's conviction constitutes a violation of section 86c(1) of the Act, an automatic disqualifier. Although the respondent acknowledged his misconduct, he contended that he had established his rehabilitation, pursuant to section 91d of the Act.

(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 constitutes violation of statutory disqualifiers listed under section 86c(1) of the Act.

There is no doubt that the respondent's conviction for a violation of N.J.S.A. 2C:15-1 is a statutory disqualifying offense 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 conviction for a violation of N.J.S.A. 2C:15-1 disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant for licensure or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Payne is registered as a casino hotel employee and is employed as a cook at the Sands. As such, he has no responsibilities for actual gaming activities and has virtually no contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:15-1, robbery - third degree, and a violation of N.J.S.A. 2C:39-5d, possession of a weapon, a knife, which was used in the commission of the robbery. Under section 86c(1) of the Act, the violation of N.J.S.A. 2C:15-1 is a statutory disqualifier. Because of the use of a knife, the offense is very serious.

Third, the respondent was aware that his intended misconduct was criminal in nature, but he did not withdraw therefrom. The fact that he may have been under the influence of alcohol and/or drugs does not mitigate his misconduct.

Fourth, the offense occurred on July 11, 1981, two and one-half years ago.

Fifth, at the time of the offense the respondent was 18 years of age. Given the change in the respondent's behavior since his conviction and his current attitudes and intention to be a law-abiding citizen, it is apparent that his misconduct was, in part, the result of immaturity.

Sixth, the respondent's misconduct only once occurred. There was no other indication of criminal misconduct.

Seventh, it is apparent that the respondent's behavior which preceded and likely contributed to his participation in the offense was the result of the traumatic effect of his parents' divorce and the circumstances of his mother's remarriage. It is clear that these events had a profound effect upon the respondent which he was, understandably, unable to cope with for many reasons. These conditions substantially mitigate his misconduct.

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. He pled guilty to the charges and has accepted fully his responsibility for his misconduct. He served his time in prison. During his incarceration, the respondent was quickly given a job as a trustee. Also, he was admitted into and successfully participated in a work release program. The respondent has also complied satisfactorily with all of the requirements of his probation. The respondent also established a very positive employment record in the casino industry. It was well established that the respondent is a responsible, loyal and hardworking employee. He is also attempting to further enhance his career opportunities by the pursuit of an advanced education. Further, the respondent has successfully reentered the community. He wisely took advantage of the opportunities offered by Pastor Alspach and has responded in a most positive manner to the trust reposed in him. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation, but for the passage of additional time. However, sufficient time has passed since the incident during which 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 petition of the Division to revoke the casino employee registration of Frederick G. Payne, III, be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

January 23, 1984  
DATE

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

24  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Jan. 26, 1984  
DATE

Mailed to Parties:  
Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

bm

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Wildwood Police Department - Uniform Investigation Report, prepared by Patrolman Keith Weidenhof, July 11, 1981
- P-2 Wildwood Police Department - Uniform Supplementary Investigation Report, prepared by Patrolman John F. Bekisz, July 11, 1981
- P-3 Wildwood Police Department - Uniform Arrest Report, prepared by Patrolman Kenneth Langford, July 11, 1981
- P-4 The State of New Jersey v. Fred Payne, Superior Court of New Jersey, Cape May County, Law Division (Criminal), Indictment Number 13581, filed November 12, 1981; Judgment of Conviction and Order for Commitment, March 29, 1982 (6 pages)
- R-1 Letter from Richard D. Decker, Probation Officer, August 10, 1983
- R-2 The State of New Jersey v. Fred G. Payne, Order, September 1, 1983

WITNESS LIST

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

Reverend Pastor Albert E. Alspach

John J. Anderson

Barbara Van Parys

Frederick G. Payne, III

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-CSI-18  
OAL DOCKET NO. CCC 10522-82  
APPLICATION NOS. 419-70

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APPLICATION OF PRUDENTIAL BUILDING  
SERVICES CORPORATION OF NEW JERSEY  
FOR A CASINO SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 21, 1983, recommending that the casino service industry license application of Prudential Building Services Corporation of New Jersey be granted; and neither party having filed exceptions or objections thereto; and counsel for the applicant having submitted documentation showing that the applicant's name has been changed, effective March 1, 1983, to ISS Prudential Maintenance Services, Inc. - New Jersey; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on December 21, 1983, to affirm and adopt the said Initial Decision with the modification that the casino service industry license be granted to ISS Prudential Maintenance Services, Inc. - New Jersey,

IT IS on this <sup>2<sup>nd</sup></sup> day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino service industry license application of ISS Prudential Maintenance Services, Inc. - New Jersey, be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon ISS Prudential Maintenance Services, Inc. - New Jersey and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 2, 1984



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 10522-82

AGENCY DKT. NO. 82-CSI-18

**PRUDENTIAL BUILDING  
SERVICES CORPORATION  
OF NEW JERSEY,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**  
Respondent.

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**APPEARANCES:**

**Edward F. Lamb, Esq.,** for petitioner (Robinson, Wayne, Levin, Riccio and LaSala, attorneys)

**R. Lane Stebbins,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: September 21, 1983

Decided: November 21, 1983

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

**STATEMENT OF THE CASE**

This matter concerns the application of Prudential Building Services Corporation of New Jersey for licensure as a casino service industry, pursuant to section 92 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Division of Gaming

Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to alleged state and federal criminal and civil antitrust violations, has established by clear and convincing evidence its reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 92 of the act.
2. Whether the petitioner, with specific reference to alleged state and federal criminal and civil antitrust violations, has been convicted of or has engaged in conduct constituting an offense which would make the licensure of the petitioner inimical to the policies of the Casino Control Act, within the meaning of section 86c(4) of the act.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated August 10, 1982. The petitioner requested a hearing on its license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

#### FINDINGS OF FACT

Few of the material facts in this matter are in dispute. The petitioner is a service and maintenance company which provides cleaning, janitorial and window cleaning services to its clients. It seeks to do business with casino hotels in Atlantic City by submitting bids as existing service contracts expire, as well as through advertisements at trade shows and other normal business means used to attract clients. The petitioner's headquarters are located at 550 Newark Avenue, Jersey City, New Jersey.

The petitioner incorporated in the State of New Jersey on October 29, 1965, under the name of Building Services Corporation of New Jersey. In October 1967,

Building Services Corporation of New Jersey became a wholly owned subsidiary of Prudential Building Maintenance Corporation. On December 22, 1980, Building Services Corporation of New Jersey changed its name to its present name, Prudential Building Services Corporation of New Jersey.

The petitioner's parent corporation, Prudential Building Maintenance Corporation, has been a publicly traded corporation listed on the American Stock Exchange. In 1979, approximately 62% of the stock of Prudential Building Maintenance Corporation was purchased by ISS International Service System A/S, a Danish corporation, which is the largest such service company in the world. In September 1982, Prudential Building Maintenance Corporation changed its name to ISS International Service System, Inc.

ISS International Service System A/S, the Danish parent corporation, is the single largest employer in Denmark, and one of the largest employers in all of Scandinavia. It conducts business in the United States and 14 other countries. It is undisputed that the petitioner, as well as its American and Danish parent corporations, are approved bidders in every state and country where they conduct business. Both the Danish parent corporation and its related American companies have undergone security checks and clearances in connection with their work in government operated facilities in the United States and in connection with such international operations as the United Nations and NATO, as well as all of the police stations in Denmark.

The President of ISS International Service System A/S, Poul Andreassen, is Chairman of the Board of the petitioner's parent corporation, ISS International Service System, Inc. Ib J. Goldschmidt, who testified on behalf of the petitioner at the hearing, is a Director and Executive Vice President of the Danish parent corporation, working on a full-time basis as its representative for the American corporation. As part of his job function, Mr. Goldschmidt is in daily contact with the executives of the Danish corporation. President Andreassen comes to the United States to attend board meetings and for other business needs.

On May 16, 1974, the petitioner, then known as Building Services Corporation of New Jersey, was named as a defendant, together with 12 other corporations, in an indictment (Exhibit J-2A) filed in the United States District Court for the District of New Jersey. This indictment charged the corporate defendants with violation of the

Sherman Antitrust Act, 15 U.S.C. 1, alleging a market allocation conspiracy in restraint of trade. On the same day, the United States Department of Justice filed a civil complaint (Exhibit J-2B) against the petitioner and 12 other corporations seeking injunctive and other relief with regard to the alleged antitrust violations. On June 17, 1974, Building Services Corporation of New Jersey entered a plea of nolo contendere to the criminal charge of engaging in a continuing combination and conspiracy in unreasonable restraint of interstate trade and commerce. On October 21, 1974, the petitioner was ordered to pay a fine of \$30,000 (Exhibit J-2C). With regard to the civil action filed May 16, 1974, a consent final judgment (Exhibit J-2D) was entered on October 25, 1977. This consent final judgment was entered without adjudication of any issue of fact or law and without admission by any party with respect to any such issue. Pursuant to the consent final judgment, each defendant was enjoined and restrained from entering into any plan to divide, allocate or apportion customers for building maintenance services.

On January 16, 1976, the parent corporation of the then Building Services Corporation, Prudential Building Maintenance Corporation, was named as a defendant in an indictment (Exhibit J-3A), filed in the United States District Court for the Southern District of New York. This indictment charged 11 corporations and ten officers of those corporations with a conspiracy in restraint of trade, contrary to the Sherman Antitrust Act, 15 U.S.C. 1. On the same date, the United States Department of Justice filed a civil complaint (Exhibit J-3B) against Prudential Building Maintenance Corporation and the other corporate defendants, seeking injunctive relief related to the activities alleged in the criminal indictment.

On May 17, 1977, Prudential Building Maintenance Corporation pled nolo contendere to the charge of engaging in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in the sale of building maintenance services and goods in violation of the Sherman Act. As a result, Prudential Building Maintenance Corporation was ordered to pay a fine of \$15,000 (Exhibit J-3C). On December 21, 1978, a consent final judgment (Exhibit J-3D) was entered in the companion civil suit. This consent final judgment, which enjoined and restrained the corporate defendants from entering into agreements in restraint of trade in the sale of building maintenance services, was entered into without adjudication of any issue of fact or law and without an admission by any party in respect to any such issue.

Prudential Building Maintenance Corporation was also one of a number of corporations named as defendants in a civil class action filed in the United States District Court for the Southern District of New York in 1976. This class action sought monetary damages for the alleged participation by the defendants in an unlawful conspiracy to fix prices. On March 19, 1980, the parties to the civil class action filed an agreement of settlement (Exhibit J-4B). The agreement of settlement expressly stated that the settling defendants denied wrong doing of any kind and did not admit any of the allegations of the complaint. It was also expressly stated that the parties entered into the agreement of settlement in order to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation. By the terms of the settlement, Prudential Building Maintenance Corporation agreed to pay \$1,156,960 into a settlement fund. A final judgment and order was filed on February 19, 1981 (Exhibit J-4C).

At the sentencing of Prudential Building Maintenance Corporation and the other corporate and individual defendants on May 17, 1977, pursuant to the information charging violation of the Sherman Antitrust Act, United States District Court Judge Thomas P. Griesa noted that the maintenance service market or customer allocation arrangement was openly entered into by the defendants and that arbitration and court cases arose to enforce the allocation agreements. In addition, the defendants had been furnished with legal opinion by reputable counsel that the arrangements were not in violation of the New York State Antitrust Statute. Judge Griesa noted that when Prudential Building Maintenance Corporation was alerted to a problem under the federal antitrust laws as a result of a federal investigation of New Jersey companies in 1972, it took steps to follow the advice of new counsel that the market allocation practices should be discontinued (Exhibit P-2). Judge Griesa determined that the state of mind and motivation and purpose of the various defendants tended to strongly mitigate the offenses and to indicate that an unusual reduction should be made in the sentence which might otherwise be imposed.

Testifying on behalf of the petitioner was Jay Kaufman, Executive Vice President and Director of ISS International Service System, Inc., the parent corporation, and an officer of the petitioner. Mr. Kaufman was first employed by the parent corporation, which was then known as Prudential Building Maintenance Corporation, in 1962. According to Mr. Kaufman, market allocation in the building service industry had been the common practice in New Jersey and New York, prior to 1972. He was familiar with the legal opinions offered prior to that time which indicated that the practice was

lawful. It was the testimony of Mr. Kaufman that all employees of Prudential Building Maintenance Corporation and Building Services Corporation of New Jersey were instructed to fully cooperate in the federal investigations and that the attorneys representing these corporations expended over 500 lawyer hours directly and solely attributable to furnishing cooperation to the investigating governmental agencies.

Ib J. Goldschmidt, Director and Executive Vice President of ISS International Service System A/S, testified that the Danish parent corporation conducted a thorough investigation of Prudential Building Maintenance Corporation and its subsidiaries, including the petitioner, before deciding to acquire the stock of the American company. According to Mr. Goldschmidt, the Danish corporation had been looking into American companies for acquisition purposes for quite a few years and the investigation of Prudential Building Maintenance Corporation revealed that the practices which had been alleged in the indictments and civil complaints had stopped. Mr. Goldschmidt's testimony was straightforward and sincere, and entirely worthy of credit.

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

The factual dispute in this matter concerns the duration of the petitioner's participation in the building services market allocation conspiracy. The indictment filed in the United States District Court for the District of New Jersey on May 16, 1974 (Exhibit J-2A), alleges that the defendant participated in the unreasonable restraint of trade from 1967 until 1974. The indictment filed in the United States District Court for the Southern District of New York on January 16, 1976 (Exhibit J-3A), alleges that the defendants participated in unreasonable restraint of trade from at least as early as 1970, until October 1974. However, Judge Griesa specifically noted in his sentencing remarks on May 17, 1977 (Exhibit P-2), that Prudential Building Maintenance Corporation took steps to end the market allocation practices in 1972, when it was alerted to a possible problem under the federal antitrust laws. In addition, Executive Vice President and Director Jay Kaufman testified that in 1971 or 1972, when Prudential Building Maintenance Corporation was first informed by outside counsel that the market allocation practices were possibly illegal, the officers and employers of both Prudential Building Maintenance Corporation and Building Services Corporation of New Jersey were instructed immediately to cease the practices, and that both corporations did cease these practices in 1972. Mr. Kaufman's testimony was candid and believable. Accordingly, I

further **FIND** that Prudential Building Maintenance Corporation and Building Services Corporation of New Jersey ceased the unlawful market allocation practices at some time during 1972.

CONCLUSIONS OF LAW

Pursuant to section 92c of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and N.J.A.C. 19:43-1.3(c), an applicant for a casino service industry license which offers goods or services not directly related to casino gaming activity must establish, by clear and convincing evidence, its reputation for good character, honesty and integrity. Pursuant to section 92d of the act and N.J.A.C. 19:43-1.5, licensure of a casino service industry applicant may be denied in accordance with the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(4), the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations.

There is no genuine dispute concerning the nature of the petitioner's participation in a building services market allocation plan in New York and New Jersey during the 1960s and early in the 1970s. The petitioner had received legal advice that the market allocations practice common in the industry was lawful and the petitioner had openly participated in the market allocation. However, the petitioner and its parent corporation voluntarily stopped the practice of market allocation no later than 1972, when advice of outside counsel indicated that the practice might be violative of federal law. Thus, the petitioner and its parent corporation have not participated in unlawful market allocation for nearly 12 years. In addition, the petitioner and its parent corporation cooperated with the governmental agencies investigating the building services industry.

In 1979, ISS International Service System A/S, a Danish corporation, acquired ownership of the petitioner's parent corporation, Prudential Building Maintenance Corporation, which changed its name to ISS International Service System, Inc. in 1982. The petitioner and its American and Danish parent corporations are approved bidders in every state and country where they conduct business. These corporations have successfully undergone security checks and clearances in connection with their maintenance and security work in government facilities in the United States and in connection with the United Nations, NATO and other security organizations in Europe.

Pursuant to N.J.A.C. 19:43-1.6, the Casino Control Commission and the Division of Gaming Enforcement shall have the "power and the duty to regulate, control and prevent economic concentration in casino operations and in casino service industries so as to encourage and preserve competition." If the petitioner were to be involved in an anticompetitive plan or agreement with other building maintenance enterprises providing services to the casino industry, it is clear that such conduct would be contrary to the policies of the Casino Control Act and the regulations adopted thereunder, as well as violative of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq. However, the petitioner corporation has not engaged in a plan of market allocation violative of law since 1972, and the plan did not concern the legalized gaming industry. In addition, the petitioner's Danish parent corporation, ISS International Service System A/S, is a trustworthy entity possessing an excellent reputation. There is no reasonable likelihood that the petitioner will again become involved in any unlawful market allocation. As a result, the petitioner's participation in a plan of market allocation which ended nearly 12 years ago is not so significant to the question of the petitioner's licensure as a casino service industry as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, in view of all of the material circumstances, I **CONCLUDE** that the petitioner has not been convicted of and has not engaged in conduct constituting any 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 voluntary cessation of the practice of market allocation and its rejection of the practice for nearly 12 years reflects favorably on its demonstration of good character, honesty and integrity. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner has affirmatively demonstrated, by clear and convincing evidence, that it possesses the degree of good character, honesty and integrity requisite for licensure as a casino service industry, within the meaning of N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3(c).

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Prudential Building Services Corporation of New Jersey for a casino service industry license be **AFFIRMED**.

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

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

November 21, 1983  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 21, 1983  
DATE

[Signature]  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

November 23, 1983  
DATE

Ronald J. Parley, Jr.  
OFFICE OF ADMINISTRATIVE LAW

fms

INVENTORY OF EXHIBITS

**JOINTS EXHIBITS:**

- J-1 Stipulation
- J-2A Indictment, dated May 16, 1974
- J-2B Civil Complaint, dated May 16, 1974
- J-2C Judgment, dated October 21, 1974
- J-2D Consent Final Judgment, dated October 25, 1977
- J-3A Indictment, dated January 16, 1976
- J-3B Civil Complaint, dated January 16, 1976
- J-3C Judgment, dated May 17, 1977
- J-3D Consent Final Judgment
- J-3E Information, filed July 2, 1976
- J-4B Agreement of Settlement, filed March 19, 1980
- J-4C Final Judgment and Order, filed February 19, 1981

OAL DKT. NO. CCC 10522-82

**FOR THE PETITIONER:**

P-1 New Jersey Approved Bidder's List Letter, dated October 5, 1979

P-2 Sentencing transcript, dated May 17, 1977

**FOR THE RESPONDENT:**

None

WITNESSES

FOR THE PETITIONER:

Jay Kaufman

Ib Goldschmidt

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-164  
OAL DOCKET NO. CCC 4887-83  
REGISTRATION NO. 37318-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
WILLIAM M. RAWLINGS, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 16, 1984, recommending that the complaint filed by the Division of Gaming Enforcement against William M. Rawlings be dismissed; and no exceptions or objections having been filed thereto; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting of May 23, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 31st day of May 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4887-83

AGENCY DKT. NO. 83-164

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**WILLIAM M. RAWLINGS,**

Respondent.

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APPEARANCES:

Patricia M. Wild, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Leonard A. Cinaglia, Esq., for respondent

Record Closed: March 2, 1984

Decided: April 16, 1984

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 24, 1983, seeking judgment revoking the respondent's casino hotel employee registration, or some other sanction, pursuant to Section 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) based upon the respondent's 1976 and 1980 convictions for possession of a controlled dangerous substance, with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to his 1976 and 1980 convictions for possession of a controlled dangerous substance, with intent to distribute, contrary to N.J.S.A. 24:21-19a(1), has been convicted of an enumerated disqualifying offense under Section 86c(3) of the Casino Control Act, thereby requiring revocation of registration, or some other sanction, pursuant to Sections 91b and 129 of the act.
2. Whether the respondent, notwithstanding a conviction which constitutes a per se disqualifying offense under Section 86 of the act, has demonstrated his rehabilitation, within the meaning of Section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to Section 91b and 129 of the act.

#### PROCEDURAL HISTORY

On June 27, 1983, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On June 30, 1983, the Commission transmitted the matter to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

This matter was originally scheduled for a prehearing conference on September 20, 1983. As a result of his mistake, the respondent did not appear at the conference, and it was rescheduled and held on November 22, 1983. The hearing was held on January 12, 1984, and the record remained open at the request of the respondent's counsel so that respondent could submit letters from his employer and a drug rehabilitation organization. The letters were not promptly submitted and counsel for the respondent was given until March 2, 1984, to submit the letters. The letters were never provided and the record in this matter closed on that date.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 30-year-old resident of Somers Point, New Jersey, and he is engaged to be married. His parents and his son are residents of Connecticut. The respondent is presently employed by the Sands Casino Hotel as a housekeeping supervisor.

It is undisputed that the respondent was indicted by the Cumberland County Grand Jury in November 1975 on three counts of possession of a controlled dangerous substance, with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). The respondent was found guilty on each count of the indictment on April 28, 1976. On June 28, 1976, the respondent was sentenced for a minimum term of five years and a maximum term of seven years to the prison reception and classification center, which sentence was suspended. The respondent was also placed on probation for a period of five years (Exhibit P-1).

It is also undisputed that the respondent was indicted by the Cumberland County Grand Jury on April 8, 1980, for unlawful possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1), and possession of a controlled dangerous substance with intent to sell, distribute or dispense, contrary to N.J.S.A. 24:21-19a(1). On July 30, 1980, the respondent entered a plea of guilty to the count of unlawful possession of a controlled dangerous substance with intent to distribute, and the second count of the indictment was dismissed (Exhibit P-2).

On August 25, 1980, the respondent was sentenced to a minimum term of two years and a maximum term of three years in the New Jersey State Prison, with credit for time served from September 24 to October 30, 1979, and from February 29 to July 7, 1980. The respondent's previous sentence to the Cumberland County Jail was to run concurrently with the respondent's incarceration in the New Jersey State Prison. In his statement of reasons, the sentencing judge stated that the seriousness of the offense, taking into account the respondent's prior record, required incarceration (Exhibit P-2).

Testifying on his own behalf, the respondent stated that his drug offenses had occurred when he was relatively young and had been going through a period of depression. According to the respondent, at that time he had lived in Vineland, New Jersey, and drugs were readily available in the area where he resided.

It was the sincere and credible testimony of the respondent that he has been free of drug use since September 1979. The respondent was paroled from the state prison on May 8, 1981, and he was successfully discharged from his parole on May 14, 1982. A letter from the respondent's parole officer, R. Allan Jenni, was admitted into evidence as Exhibit R-1. According to Officer Jenni, the respondent "continues to be a good example of rehabilitation" and the officer recommends the respondent for continued employment in the casino industry.

When the respondent was paroled, he enrolled in a drug rehabilitation program in Atlantic City. According to the respondent, he participated in and completed the drug rehabilitation program in approximately five months.

On December 2, 1981, the respondent was hired by the Sands Casino Hotel as a room attendant. Subsequently, the respondent was one of 16 employees selected by the Sands management to be given management training as part of the Sands upward mobility program. On November 22, 1982, the respondent was promoted to the position of housekeeping supervisor.

As a result of his participation in the Sands training program, the respondent also received 20 credits from Atlantic County Community College. The respondent testified credibly that it is his desire to leave his past behind. It is his belief that he has shown significant improvement since 1979.

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

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict the registration of any registrant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for possession of a controlled dangerous substance, with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), is such an automatic disqualifier under section 86c(3) of the act. Therefore, I **CONCLUDE** that the respondent's 1976 and 1980 convictions for possession of a controlled dangerous substance, with intent to distribute, permit the revocation, suspension or limitation of his registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, absent rehabilitation, pursuant to section 91d of the act, or waiver, pursuant to section 91e of the act, the appropriate sanction is revocation of the credential. See, State v. Wynette Harris, Dkt. No. 81-19, Commission Decision 1983. Pursuant to section 91d of the act, no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in the 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.

The respondent was convicted in 1976 and 1980 for possession of a controlled dangerous substance, with intent to distribute. These offenses occurred when he was relatively young and resulted in part from an unsatisfactory social environment. The respondent was incarcerated following his second conviction, because of the seriousness of the offense. Nevertheless, the respondent was paroled from the state prison in May 1981 and was successfully discharged from his parole in May 1982.

The respondent has been free from drug involvement since 1979. His parole officer considers him to be a good example of rehabilitation and has recommended the respondent for continued casino employment.

Since 1981, the respondent has been an employee of the Sands Casino Hotel in Atlantic City, New Jersey. His employer recognized his potential and selected the respondent to participate in management training as part of the Sands upward mobility program. The respondent has demonstrated his potential to his employer and in November 1982, the respondent was promoted to the position of housekeeping supervisor.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, notwithstanding two convictions of an otherwise disqualifying offense under section 86c of the act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or any other sanction, pursuant to sections 91b and 129 of the act.

**ORDER OF DISPOSITION**

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against William M. Rawlings be and hereby is **DISMISSED**.

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

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

April 16, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

16 APR 1984  
DATE

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 18, 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Certified Indictment and Judgment of Conviction, 1975 and 1976

P-2 Certified Indictment and Judgment of Conviction, 1980

FOR THE RESPONDENT:

R-1 Letter, dated November 23, 1983

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

William M. Rawlings

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-435  
OAL DOCKET NO. CCC 6127-83  
APPLICATION NO. 18733-22

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APPLICATION OF JAMES REITZLER  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 7, 1984, recommending that the casino employee license application of James Reitzler be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 22, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 28th day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6127-83

AGENCY DKT. NO. 81-EA-435

**JAMES REITZLER,**

Petitioner

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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APPEARANCES:

**James Reitzler, Pro Se**

**William Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: December 2, 1983

Decided: January 17, 1984

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to the application of James Reitzler to the Casino Control Commission for licensure as a casino employee (porter). Mr. Reitzler requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

The Division alleges that Mr. Reitzler does not have the good character, honesty and integrity required by N.J.S.A. 5:12-89b2. It further alleges that Mr. Reitzler failed to disclose material information, an act requiring disqualification by reason of N.J.S.A. 5:12-86b.

In 1973, at the age of 18, having just graduated high school, Mr. Reitzler was convicted of the disorderly persons offense of trespassing. He was a passenger in a car driven by a friend who lived near the Garden State Race Track. The friend was familiar with certain junk cars that were kept in an isolated portion of the race track property near his home. His friend suggested that they remove batteries and radiators from the junk cars, products of a "demolition derby," and Mr. Reitzler joined him in that activity. They were discovered on the race track grounds and were arrested. The separate charge of possession of stolen property under \$200 was dismissed.

On August 11, 1979, Mr. Reitzler went to visit his girl friend of two years at her home. He had apparently been quite taken with her. On that date, he was not allowed into his girl friend's house. Her parents told him that she didn't want to see him anymore, and he could not see or speak with her. Mr. Reitzler asked to see her and also asked about stereo equipment he owned, which she was holding in her house. His requests were turned away by his girl friend's parents. At that point, Mr. Reitzler became irrational, yelling and screaming obscenities, smashing a storm window with his fist in an attempt to get into the house. His girl friend's parents called the police and he was arrested. He was taken to the hospital for treatment of his bleeding fist and then to police headquarters. After his release, he went right back the same evening and started trying the doors to his girl friend's house. This time, he had been followed by the officer who had arrested him earlier in the evening. He was once again arrested, after a struggle, and was charged with resisting arrest. He was charged with malicious damage as a result of his earlier breaking of the storm door. The resisting arrest charge was dismissed, but Mr. Reitzler was convicted of malicious damage to property in violation of N.J.S.A. 2A-170-36.

Three months later, on November 24, 1979, Mr. Reitzler made another attempt at seeing his girl friend. This time, he was successful in having her take a walk down the block near her home with him while they talked. However, when her brother-in-law observed this, he came out on the street and chased Mr. Reitzler away. Shortly thereafter, in another fit of temper, Mr. Reitzler broke the windshield wipers and antennas on cars belonging to his girlfriend, her mother, and her brother-in-law. He was arrested and convicted of damage to property in violation of N.J.S.A. 2C:33-4.

The foregoing constitute Mr. Reitzler's involvements with the law. For the last several years, Mr. Reitzler has attempted to advance his career as a musician. He is the organizer of a band that is currently getting work in and around Atlantic City. From

July 1981 to July 1982, Mr. Reitzler was employed as a supervisor by Globe Service Industries. His job was terminated when Globe lost the casino's account. Mr. Reitzler was apparently well regarded by his employer (P-1). He earned a reputation there as a trustworthy and reliable employee. That reputation was also shared by his co-workers, as testified to by Bernadette Tully. Ms. Tully was also employed at Globe Industries while Mr. Reitzler was there. They have since become engaged and plan to marry in the near future. They live together in a rented home and are the parents of a nine-month-old child that they care for. Mr. Reitzler's work schedule with his band and Ms. Tully's work schedule complement each other, so that one takes care of the baby while the other works. Mr. Reitzler is apparently a caring and capable father. I questioned Mr. Reitzler closely about his past involvements with the law and his current understanding of his obligations of citizenship. I **FIND** that the 1973 conviction for trespassing was an adolescent and atypical act on the part of Mr. Reitzler. He now regrets that act, as well as his unjustifiable outbursts of temper as a spurned suitor in 1979. The birth of his child has sobered and matured him. He is now concerned with providing a stable home for his new family. I paid close attention to Mr. Reitzler's appearance and demeanor, and I **FIND** that his expressions of regret and reform are sincere and factual. I **FIND** that his current reputation for good character, honesty and integrity that he enjoyed at Globe Industries, and that now enjoys with his band members, has been earned. I **CONCLUDE** that Mr. Reitzler, as he appears before me in this hearing, is a man of good character, honesty and integrity.

With regard to the issue of the alleged failure to disclose material information, I **FIND** that no such intentional failure existed. Mr. Reitzler had, understandably, put his 1973 disorderly persons conviction out of his mind. I **FIND** that he had truthfully forgotten about it when he filed his application. In response to question no. 46, inquiring of criminal conduct, he did describe his arrest in August 1979. For reasons that are not clear, he had the wrong date. He referred to the arrest to the arrest as having occurred in May 1979. He also referred as having been for drunk driving, among other things. Since drunk driving did not appear in the various police reports, the Division was concerned that Mr. Reitzler was trying to disguise the true nature of the arrests. However, subsequent to the hearing, I have been advised by Deputy Attorney General Walsh that Mr. Reitzler was indeed charged with drunk driving as well as the other charges that I have described. I **FIND** that Mr. Reitzler, in filling out the Personal History Disclosure Form, intended his description of the arrests to include both the August and November arrests, which had merged in his mind. In fact, both the August and

November arrests were consolidated for purposes of trial. I **CONCLUDE**, therefore, that Mr. Reitzler did not intentionally fail to disclose his criminal record.

Finally, Mr. Reitzler answered question no. 33 of his Personal History Disclosure Form in the negative, signifying that he had never been discharged from employment. The official records at Bally's Park Place (R-8) seem to indicate that he was fired from his employment there for being absent more than three days without calling. However, the evidence at the hearing established that Mr. Reitzler left his employment when he was not given a promotion which had been promised to him. He did indeed fail to call or appear at Bally's. The custom at Bally's, according to the evidence produced at the hearing, is to describe all such situations as a discharge for failure to show or call. Thus, Mr. Reitzler was not aware that he had been fired and did not consider himself to have been fired.

In summary, I **CONCLUDE** that Mr. Reitzler is now a man of good character, honesty and integrity, and has a reputation for such. He did not intentionally fail to disclose any material information in the application process. Therefore, it is hereby **ORDERED** that a Casino Employee License (porter) be issued to Mr. Reitzler.

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.

1/17/84  
DATE

  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

1/17/84  
DATE

  
NORMAN D. SMITH, ALJ

Mailed to Parties:

Jan. 19, 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

bm

WITNESSES

James Reitzler  
Kevin McManamon  
Bernadette Tully  
Trooper John Wild

EXHIBITS

P-1 Letter, dated November 28, 1983

R-1 Computer printout-Rap Sheet

R-2 Rap sheet

R-3 Arrest report

R-4 Arrest report, dated August 11, 1979

R-5 Summons and Complaint, dated November 24, 1979

R-6 Summons and Complaint, dated November 24, 1979

R-7 Summons and Complaint, dated November 24, 1979

R-8 Bally's Park Place employment form

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 81-EA-100  
OAL DOCKET NO. CCC 2652-81  
APP. NO. 10694-22

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IN THE MATTER OF THE APPLICATION

OF RAYMOND E. RENZI FOR

A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed with the Commission on January 5, 1982, recommending that the application be granted; and the Division of Gaming Enforcement having filed exceptions to the initial decision on January 26, 1982; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on February 16, 1982, to reject the initial decision, and to deny the application for licensure; and it appearing that an order reflecting the Commission's determination of February 16, 1982, having not heretofore been entered,

IT IS on this 27<sup>th</sup> day of January 1984, ORDERED that the initial decision be and hereby is rejected; and

IT IS FURTHER ORDERED that, upon consideration of the record created in this matter, the Commission makes the following findings:

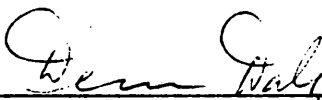
- (1) That the applicant breached the public trust in that, while an employee of the U.S. Postal Service, he committed acts which resulted in his conviction in September 1975 on charges of obstruction of the mails, in violation of 18 U.S.C.A. §1701.
- (2) That the Administrative Law Judge failed to accord sufficient weight to the investigative reports and records of the U.S. Postal Service investigation into the applicant (R-2 to R-7) and the testimony of Albert J. Saunders, inspector for the U.S. Postal Service. See N.J.S.A. 5:12-107(a)(6).
- (3) That, based upon credible evidence in the record, particularly the testimony of Michael Rivero, the applicant received money under false pretenses at the Garden State Racetrack in February 1976, within a year of the conviction described in (1) above.
- (4) That the applicant's testimony before the Administrative Law Judge concerning his 1975 conviction and the racetrack incident was patently incredible.

IT IS FURTHER ORDERED that, based on the above findings, the application of Raymond E. Renzi for a casino employee license be and hereby is denied by reason of his failure to demonstrate by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and -90(b) of the Act; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), the applicant is not eligible to apply or reapply for nor to obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from February 16, 1982, unless the applicant obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this order be served upon the applicant, the Division of Gaming Enforcement and the authorized agents of all currently operating casino within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: January 27, 1984



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2652-81

AGENCY DKT. NO. 81-EA-100

**IN THE MATTER OF THE APPLICATION  
OF RAYMOND E. RENZI, JR., FOR  
LICENSURE AS A CASINO EMPLOYEE  
(ALCOHOLIC BEVERAGE EMPLOYEE)**

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**APPEARANCES:**

**Donald F. Manno, Esq.** for the applicant, Raymond E. Renzi, Jr.

**Stephen D. Schrier, Deputy Attorney General**, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (James R. Zazzali, Attorney General of New Jersey, attorney)

Record Closed November 18, 1981

Decided January 4, 1982

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

**STATEMENT OF THE CASE**

This matter concerns the application of Raymond E. Renzi, Jr., applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (alcoholic 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 licensure on the basis that the applicant allegedly had committed disqualifying criminal acts, had conducted himself in a manner which rendered licensure inimical to the policies of the Casino Control Act (Act), and lacked the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Renzi filed his application for licensure with the Commission on July 26, 1979 (J-1). The applicant was advised by letter from the Commission, dated April 13, 1981, that, based upon information received by letter from the Division, dated March 4, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On April 23, 1981, the applicant requested a hearing, and 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 September 17, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Renzi is 36 years of age. He has resided in Maple Shade, New Jersey, for the past four and one-half years.

The applicant was employed by Bodner Hardware in Philadelphia, Pennsylvania, as a necktie cutter from September 1963 until September 1969.

Mr. Renzi was employed by the United States Postal Service (Postal Service) as a letter carrier from October 1969 until June 1975. During 1974 or 1975 he was suspended from his position due to excessive absenteeism. After arbitration he was reinstated without back pay. The applicant was again suspended from his position on June 28, 1975, because of an arrest. He resigned shortly thereafter.

On June 28, 1975, Mr. Renzi was arrested and charged with violations of 18 U.S.C. § 495 (forgery), 18 U.S.C. § 371 (conspiracy), and 18 U.S.C. § 1701 (obstruction of mail). This matter will be discussed in more detail, infra. On September 8, 1975, pursuant to a plea bargain agreement, the applicant pled guilty to a violation of 18 U.S.C. § 1701 (obstruction of mail). The remaining charges were dismissed. The imposition of sentence was suspended, and the applicant was placed on probation for a period of three months (J-2). The probation was satisfactorily completed.

Mr. Renzi has been employed by the Pub Restaurant, Airport Circle, in Pennsauken, as a bartender since October 1, 1975.

On February 3, 1976, the applicant was present at the Garden State Race Track (Race Track) in Cherry Hill. At about the time of the eighth race, the applicant presented a winning trifecta ticket for the fourth race at the cashier's window and collected the amount of \$1,236.30 (R-9). He also completed an Internal Revenue Service form 1099 (R-9). Mr. Renzi claimed that he found the ticket on the ground. This will be discussed in more detail, infra.

Race Track officials later discovered that the ticket cashed by Mr. Renzi was altered. Part of the winning number had been cut from another mutual ticket and glued into the subject ticket. The alteration was only discovered after a check of the day's activities revealed that an extra winning ticket had been cashed. New Jersey State Police Detective Lanny Roberson described the alteration as very good.

Detective Roberson conducted the State Police investigation of the altered ticket. Mr. Renzi was identified as the person who cashed the ticket because he had identified himself at the track. Upon request, the applicant voluntarily appeared at the track on March 2, 1976. Detective Roberson gave the applicant his Miranda warnings and explained the circumstances. Mr. Renzi gave a voluntary statement to the detective (R-9).

The applicant was indicted and charged with violations of N.J.S.A. 2A:111-1 (obtaining money under false pretenses) and N.J.S.A. 2A:109-1 (forgery). On March 4, 1977, the applicant was accepted into the Pretrial Intervention Program. He received three month's probation and was ordered to make restitution. The probation period was extended to six months in order to permit him to complete restitution (J-3). An Order of Dismissal upon completion of the program was entered on October 28, 1977.

The applicant has not been charged with any infractions of the law or arrested during the past five years.

Mr. Renzi was married for the first time on February 11, 1978.

All of the preceding evidence is undisputed and believable and is thus FOUND

AS FACT.

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(B) DISPUTED FACTS

In dispute were several answers to questions on Mr. Renzi's Personal History Disclosure Form (PHDF), his conduct which led to his arrest on June 28, 1975, and his conduct which led to his arrest on March 2, 1976.

Inspector Albert J. Saunders, a Security Specialist for the Postal Service testified on behalf of the Division. In 1975, Inspector Saunders was an Internal Theft Inspector and was assigned to investigate complaints regarding employee thefts. During May-June 1975, the Inspector became involved in an investigation concerning the theft of multiple treasury checks from the mail. The investigation had originally commenced in 1974 and was conducted jointly by the External Theft Section and the Secret Service. The entire investigation had been conducted by the External Theft Section and the Secret Service. The investigation had uncovered 45 missing treasury checks and had led to the arrest of Pasquale Vitale on March 7, 1974, and John Corvino (R-4, R-5, R-6 and R-7). On June 27, 1975, Mr. Corvino pled guilty to a violation of 18 U.S.C. § 1701, and was sentenced to six month's probation (R-7). No information was offered regarding the disposition of the charges lodged against Mr. Vitale. Messrs. Corvino and Vitale implicated Mr. Renzi in a stolen treasury check cashing scheme, wherein they cashed treasury checks which they had received from the applicant. Inspector Saunders became aware of this information from reading reports prepared and submitted by members of the External Theft Section. The Inspector did not conduct personally any investigation of the matter. He also did not know if the recipients of the stolen checks were on the applicant's route. The Inspector stated that charges were brought against the applicant based upon the statements of Messrs. Vitale and Corvino.

Mr. Renzi testified that he did not know Messrs. Corvino or Vitale, and he denied any involvement in or knowledge of the check cashing scheme.

Mr. Renzi testified that he first believed the 1975 investigation was caused by his conduct on a Saturday at about the time of his arrest. On Saturdays, he was only required to make one delivery trip. Upon completion of his duties, he returned home and changed his clothes, after which he returned to work to check out. The applicant stated that he believed he was suspended because he went off his route. He only later learned of the criminal nature of the investigation.

Although the applicant denied any wrongdoing, he conceded that he pled guilty to a violation of 18 U.S.C. § 1701 (obstruction of mail). He stated that he agreed to plead guilty upon the advice of counsel and because he thought it was in his best interest. He considered that he would not be incarcerated and his belief that people are in jail for things they have not done, the cost of trial, discussions with his family, his belief that the charge was not serious and his belief that a guilty plea would not affect his future employment.

Mr. Renzi resigned from his position with the Postal Service upon the advice of his union representative that he would not get his job back because of the charges and his earlier suspension. He resigned in order to avoid a disciplinary removal.

Mr. Renzi testified to the events which occurred at the Race Track on February 3, 1976. A person approached the applicant and inquired whether he was interested in making some extra money. The applicant interpreted the inquiry to mean that the person wanted the applicant to cash in a winning ticket for an amount in excess of \$600. For this, the applicant would be paid 10% of the winning amount. The purpose of this agreement would be to enable the person holding the ticket to avoid disclosure of his identity and avoid payment of income taxes. The other person also advised the applicant that he had a winning trifecta ticket. Mr. Renzi testified that he shook his head no and walked away because he did not want any trouble after the post office incident. The applicant stated that the person approached him a second time and made the same request. Mr. Renzi again refused to participate. Later that day, the applicant observed the same person near him at the refreshment stand. He saw the other person drop a stack of tickets onto the ground and leave. As he had done on other occasions, the applicant picked up the tickets, examined them and found one to be a winning trifecta ticket. The applicant took the ticket to the cashier. Two cashiers examined the ticket. The applicant completed an Internal Revenue Service 1099 form and provided his name, address and Social Security number.

Mr. Renzi denied that he altered the ticket and denied that he had any knowledge that it had been altered. The applicant's probation period was extended from three to six months in order to enable him to make full restitution. He made a payment to the cashier, who he understood had been required to make restitution to the Race Track. However, the cashier returned the payment to the applicant and advised that he

had not made restitution. Ultimately, Mr. Renzi's probation officer instructed him to forget the matter.

In response to question 46 on his PHDF, Mr. Renzi indicated that by way of disposition of the 1975 charges, he had been placed in an Accelerated Rehabilitation Disposition (A.R.D.) program. The applicant was generally unfamiliar with the program, but believed that he had been placed in the program upon information provided by counsel. However, Investigator Charles Littlefield of the Division testified that the applicant had not been placed in the A.R.D. program.

Mr. Renzi called two witnesses to testify in regard to his character, honesty and integrity. The first, Edward Dunbar, is also employed at the Pub Restaurant as a bartender. He has worked with the applicant for approximately the past six years, four days per week. Mr. Dunbar testified that, in his opinion, the applicant is an honest person. He has observed the applicant handle cash at the bar. He would hire the applicant without reservation.

Michael Riverso, the applicant's second witness, is employed as a printer at the Philadelphia Inquirer. He has known the applicant for the past 30 years and has remained a close friend. Mr. Riverso was of the opinion that the applicant is a very hard worker, there is no better friend and he is a very honest person. On cross-examination, Mr. Riverso testified that although he had no knowledge of the underlying circumstances of the 1975 post office incident, it would not change his opinion of the applicant. The witness also testified that he believed the Race Track incident involved the applicant having cashed a winning ticket for another person in return for 10% of the winning amount. Again, the witness stated that this incident would not change his opinion of the applicant.

With regard to the post office incident in 1975, it was evident that other than statements purportedly made by Messrs. Corvino and Vitale to other investigators, Inspector Saunders had no personal knowledge of any conduct by the applicant which would indicate that he committed any unlawful act.

With regard to the Race Track incident in 1976, the applicant's testimony of the circumstances set forth a strange scenario. Although there is no evidence of any kind to indicate that the applicant's testimony was untrue, I am not necessarily

persuaded to accept the testimony in its entirety. Nevertheless, I can believe that the applicant did not alter the ticket, nor did he know that it had been altered when he cashed it.

Similarly, I am persuaded that the applicant reasonably believed, upon advice of counsel, that he had been admitted into the A.R.D. program. Given the brief three month period of probation, it was reasonable for the applicant to believe that he had been placed in a special program, and, in any event, the error, if that, is harmless.

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

1. Inspector Saunders had no personal knowledge of any acts committed by the applicant which would indicate that he personally or with others participated in an unlawful check cashing scheme.
2. The charges made against the applicant in 1975 resulted from statements made by Messrs. Corvino and Vitale to postal inspectors other than Inspector Saunders.
3. Other than his guilty plea to a violation of 18 U.S.C. § 1701, there was no evidence of any misconduct by the applicant.
4. The factors considered by the applicant in his decision to plead guilty were reasonable.
5. The applicant did not alter, nor did he have any knowledge that the trifecta ticket which he cashed on February 3, 1976, was altered.
6. The applicant reasonably believed that he had been admitted to the A.R.D. program in conjunction with his sentence in 1975.
7. The applicant is well regarded by co-workers and close friends.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under Section 86g, that Mr. Renzi's conduct in 1975, which led to the indictment for violations of 18 U.S.C. § 495, 18 U.S.C. § 371, and 18 U.S.C. § 1701, and his conduct in February 1976, which led to the indictment for violations of N.J.S.A. 2A:111-1 and N.J.S.A. 2A:109-1, are cause for disqualification.

There was no evidence offered which would indicate that Mr. Renzi committed any act of forgery in regard to the performance of his duties as a letter carrier with the Postal Service in 1975.

In regard to the charge of a violation of 18 U.S.C. § 371, conspiracy, the only evidence that the applicant may have been involved in the treasury check scheme were the statements of Messrs. Corvino and Vitale. However, the testimony regarding the statements was third hand at best. The statements were also not verbatim, and were statements made by persons who were directly involved in criminal activity. The proffered statements were neither competent nor reliable evidence upon which to base a finding of fact, let alone a conclusion. Accordingly, no direct evidence of Mr. Renzi's conduct was offered. The only direct evidence in the record concerning the applicant's conduct was his own testimony to the effect that he had no knowledge of the scheme and that he did know Messrs. Corvino and Vitale. This testimony was believable. Therefore, there was no evidence that Mr. Renzi committed any conspiratorial act in regard to the treasury check scheme.

As far as the indictment of the applicant in 1976 for a violation of N.J.S.A. 2A:109-1 (forgery), again there was no evidence to indicate that the applicant committed a forgery. In fact, there was credible evidence that the forgery of the winning trifecta ticket was good enough that it was not detected by the cashiers at the Race Track. Under such circumstances, it is not difficult to envision that the applicant would not have detected the forgery.

In 1976, the applicant was also charged with a violation of N.J.S.A. 2A:111-1 (obtaining money by false pretense). The elements of such an offense are: (1) there must be a misrepresentation, (2) the misrepresentation must be knowing and made with the specific intent to cheat or defraud, (3) there must be reliance upon the misrepresentation in parting with money, and (4) the person who made the misrepresentation must receive something of value as a result thereof. State v. Cox, 150 N.J. Super. 599 (Law Div. 1977), affirmed 160 N.J. Super. 28 (App. Div. 1977). Even if I assume the Division's contention that Mr. Renzi did not find the trifecta ticket and the necessary inference that he cashed it for another person, the proofs do not establish a violation. There is no doubt that the applicant misrepresented himself as the proper holder of the winning ticket, that there was reliance by the Race Track upon the misrepresentation, and that the applicant received a financial benefit as a result of his act. However, there was no evidence that the applicant knew of the forgery or intended to cheat or defraud the Race Track. Consequently, there was no violation of N.J.S.A. 2A:111-1.

I CONCLUDE that the Division has not established, by the preponderance of credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86g.

(B) 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 criterion to be applied in individual cases when a determination of whether an offense is inimical to the policies of the Act is made. The Commission stated at p. 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 and 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 casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or 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 enhanced by Justice Handler as he recently observed in Knight v. City of Margate, 86 N.J. 374 (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 provision . . . are designed to extend strict state regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." [Id.] at 381.

The Division contended that Mr. Renzi's conduct, which led to his indictments in 1975 and 1976, established that licensure of the applicant would be inimical to the policies of the Act. However, as previously found, aside from the applicant's guilty plea to a violation of 18 U.S.C. § 1701, there was no evidence whatsoever to support the allegations that the applicant violated any of the remaining statutes with which he was charged. Further, the applicant's 1975 guilty plea to a charge of a violation of 18 U.S.C. § 1701 and his candid admission that in 1976 he attempted to cash a winning ticket which he did not purchase at the Race Track, are not per se disqualifying offenses and do not otherwise establish that licensure would be inimical to the policies of the Act.

I CONCLUDE that the potential licensure of Mr. Renzi has not been established by the preponderance of the credible evidence to be inimical to the policies of the Act.

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

Under Section 89b(2) of the Act, Mr. Renzi was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises 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 Matter of the Application of Boardwalk Regency Corporation for a Casino License, \_\_\_ N.J. Super. \_\_\_ (App. Div. 1981) (slip opinion at 15), 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, supra at 19.

There was no evidence which would indicate that the applicant purposefully provided inaccurate information on his PHDF. His statement that he had been admitted to the ARD program was reasonably based upon information he received from his then attorney. He had no reason to believe this information was inaccurate.

In regard to the applicant's conduct in 1975, his guilty plea and resignation indicate wrongful conduct in respect to his employment as a letter carrier. However, there was no evidence from which the nature of his conduct could be determined. The applicant contended that he committed no wrongful conduct and gave the reasons for which he entered a guilty plea. Although the reasons for the guilty plea were good, I do not accept that the applicant committed no wrongful act, whatever it may have been. Nevertheless, the applicant's guilty plea to a violation of 18 U.S.C. § 1701 subjected him to a maximum penalty of a \$100 fine and/or six months imprisonment. Under federal law, this was a petty offense. 18 U.S.C. § 1. It is also equivalent to a disorderly persons offense in this State. Similarly, the evidence only revealed that in 1976 the applicant cashed a winning ticket at the Race Track which he did not purchase. Neither of these offenses are serious in nature.

It is also important to note that Mr. Renzi has applied for licensure as a bartender. He would not be involved in any gaming activity. Although it is expected that he would handle large sums of money, he has done this without any difficulty for the past six years at his current place of employment.

Since the 1976 incident, the applicant has not been involved in any criminal activity of any nature whatsoever. He has continuously been employed and has a good employment record. He was also married for the first time.

The applicant has clearly and convincingly refuted the Division's contentions that his conduct in 1975 and 1976 connotes a serious flaw in his character today. Although the applicant's conduct at that time was not affirmative evidence of his good character, honesty and integrity, an examination of the "whole man" clearly and convincingly established that Mr. Renzi is a person of good character, honesty and integrity, and is suitable for licensure as a casino employee (alcoholic beverage employee) at a casino hotel in this State. Boardwalk Regency Corporation, Casino Control Commission, supra at pp. 51, 52.

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

#### DISPOSITION

I **ORDER** that the application of Raymond E. Renzi, Jr., for licensure as a casino employee (alcoholic beverage 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.

January 4, 1982  
DATE

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

Receipt Acknowledged:

January 5, 1982  
DATE

Bernadette T. Fusco  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 7, 1982  
DATE

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

ms

LIST OF EXHIBITS OFFERED INTO EVIDENCE

EXHIBITS ADMITTED INTO EVIDENCE:

- J-1 Personal History Disclosure Form-2, Raymond Edward Renzi, Jr., July 19, 1979 (33 pages)
- J-2 United States of America v. Raymond E. Renzi, United States District Court for the Eastern District of Pennsylvania, Docket No. 75-765-M, Judgment, September 8, 1975
- J-3 State of New Jersey v. Raymond E. Renzi, Camden County Court, Indictment No. 321-76, Order of Dismissal under Rule 3:28, October 28, 1977 (3 pages)
- R-2 Investigative Memorandum by A.J. Saunders, Postal Inspector, July 2, 1975 (4 pages)
- R-3 Investigative Memorandum by A.J. Saunders, Postal Inspector, July 16, 1975 (2 pages)
- R-4 U.S. Postal Service, Postal Inspector Arrest and Prosecutive Action Report-Raymond E. Renzi, September 9, 1975
- R-5 Report of Postal Inspector by W.R. Hunt, March 18, 1974 (2 pages)
- R-6 Report of Postal Inspector by E.J. Smeader, Jr., October 30, 1974 (2 pages)
- R-7 Report of Postal Inspector by E.J. Smeader, Jr., July 11, 1975 (2 pages)
- R-8 New Jersey State Police - Arrest Report, Raymond Edward Renzi, March 2, 1976
- R-9 Investigative reports by Detective Lanny R. Roberson (12 pages)

EXHIBIT NOT ADMITTED INTO EVIDENCE:

- R-1 I.D. Statement of Raymond Edward Renzi, March 2, 1976 (2 pages) (part of R-9 in evidence)

Witness List

For the Applicant:

Edward Dunbar  
Raymond E. Renzi, Jr.  
Michael Riverso

For the Respondent:

Mark Gasperini  
Charles Littlefield  
Raymond E. Renzi, Jr.  
Lanny Roberson  
Albert J. Saunders

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
PETITION NO. 287204

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IN THE MATTER OF THE  
PETITION OF RESORTS  
INTERNATIONAL HOTEL, INC.  
FOR A DECLARATORY RULING  
CONCERNING COMPLIMENTARIES

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a petition for a declaratory ruling by Resorts International Hotel, Inc. on October 14, 1982, requesting the consideration of certain issues concerning the issuance of complimentary services or items by casino licensees; and the Commission having received and considered legal memoranda from Resorts International Hotel, Inc. in support of the petition and from the Division of Gaming Enforcement in opposition thereto; and, on November 9, 1983, the Commission having heard oral arguments on the issues presented by the petition;

IT IS on this 9<sup>th</sup> day of January, 1984,  
ORDERED that the issues presented by the petition be resolved as follows:

1. A complimentary service or item within the purview of the Casino Control Act and the regulations of the Commission refers to any complimentary service or item issued by a casino licensee, regardless of whether it is issued:

- (a) to a gaming patron as a result of, or in anticipation of gaming activity; or
- (b) to a business associate, as the result of an existing or potential business relationship; or
- (c) to any other person under any other circumstance.

2. Pursuant to the Act and the regulations of the Commission, a casino must record, report and provide to the Commission the names of the persons who are the intended recipients of the complimentary service or item.

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

NEW JERSEY CASINO CONTROL COMMISSION

By: Walter N. Read  
Walter N. Read  
Chairman

Dated: 1/9/84

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
Petition No. 287204

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IN THE MATTER OF THE :  
PETITION OF RESORTS :  
INTERNATIONAL HOTEL, INC. :  
FOR A DECLARATORY RULING :  
CONCERNING COMPLIMENTARIES:

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NEW JERSEY CASINO CONTROL COMMISSION:

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

APPEARANCES:

For Resorts International Hotel, Inc.:

John M. Donnelly, Esq.  
Marc D. Schorr, Esq.  
Lorraine Schewior, Esq.

For the Division of Gaming Enforcement:

Kevin F. O'Toole, Deputy Attorney General

For the Casino Control Commission:

David C. Missimer, Senior Assistant Counsel  
Richard Dana Krebs, Assistant Counsel

**NATURE OF THE PROCEEDING AND PROCEDURAL HISTORY**

On October 14, 1982, Resorts International Hotel, Inc., pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 19:42-2.13<sup>1</sup>, filed with the Casino Control Commission a petition for a declaratory ruling concerning the proper interpretation of those sections of the Casino Control Act and the Commission's regulations which control the issuance of complimentary services. A "complimentary service or item" is defined in the Act as "a service or item provided at no cost or at a reduced price." P.L. 1983, c. 41, §2.

This petition stems from the January 29, 1982, Report on the Application of Resorts International Hotel, Inc. for Renewal of its Casino License, prepared by the Division of Gaming Enforcement. Part of the Report criticizes Resorts' compliance with the Casino Control Act and the Commission's implementing regulations. More specifically, the Division claimed that Resorts failed to abide by the internal controls and reporting requirements established by the Commission in N.J.A.C. 19:45-1.2 and 1.9.

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1. This regulation has been recodified as N.J.A.C. 19:42-9.

The Division and Resorts agreed that the unresolved issues concerning complimentary services would be severed from the context of the license renewal hearing and would be considered at a later date. The instant petition for a declaratory ruling is the procedural mechanism by which the Commission is being asked to consider and rule upon the applicability of the pertinent provisions of the Act and regulations to certain of Resorts' practices and procedures in issuing and recording complimentary services.

## II

### ISSUES

As stated in Resorts' petition, the issues to be resolved are: 1) whether complimentary slips recording complimentary services granted to gaming patrons need include the names and signatures of all persons who may ultimately benefit from the complimentary in order to comply with N.J.A.C. 19:45-1.2 and 1.9; and 2) whether non-gaming related complimentary services provided by a Resorts employee to himself or others need be treated and recorded in the same manner as gaming related complimentary services. For purposes of our

analysis, the Commission will restate and address these issues as follows:

1. WHAT IS A "COMPLIMENTARY SERVICE OR ITEM" WITHIN THE MEANING OF THE CASINO CONTROL ACT AND THE REGULATIONS OF THE COMMISSION?

2. WHOSE NAME MUST A CASINO RECORD AND REPORT AS THE PERSON WHO HAS BEEN "PROVIDED" WITH A COMPLIMENTARY SERVICE OR ITEM IN MEETING THE REQUIREMENTS OF THE CASINO CONTROL ACT AND THE REGULATIONS OF THE COMMISSION?

### III

#### DISCUSSION AND ANALYSIS

WHAT IS A "COMPLIMENTARY SERVICE OR ITEM" WITHIN THE MEANING OF THE CASINO CONTROL ACT AND THE REGULATIONS OF THE COMMISSION?

Although this issue was not directly addressed by Resorts or the Division in their briefs, its analysis and discussion encompasses the narrower issues raised therein

(see sections III A and B, infra) and is crucial to a full understanding, consideration and disposition of those issues.

Resorts contends that a service or item provided in a non-gaming context is not a "complimentary" within the meaning of the Act and the regulations of the Commission. Resorts' legal arguments in support of its position are essentially twofold. First, it is asserted that the Casino Control Act is not concerned with the issuance of all forms of complimentaries per se, but rather only with complimentaries that are issued as a quid pro quo for a gambling commitment. Second, and concomitant to their first argument, Resorts construes the pertinent statutory and regulatory provisions <sup>2</sup> to refer only to complimentaries granted directly to a gaming patron rather than to an individual who receives a complimentary in a non-gaming context or to one who receives a complimentary indirectly through a gaming patron benefactor.

In support of its first argument, Resorts asserts that the Casino Control Act must be interpreted in light of the Second Interim Report of the Governor's Staff Policy Group on Casino Gambling (Second Interim Report), issued in February 1977. It is argued that the Second Interim Report concludes that only complimentaries that are issued as a quid pro quo

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2. See, e.g., N.J.A.C. 19:45-1.9 and 1.2 and N.J.S.A. 5:12-102(m).

for a gambling commitment should be considered complimentary within the scope of State legislative and regulatory control and that they comprise the sole legitimate subject of State regulation and concern respecting the issuance of complimentary. Resorts further contends that the issuance of complimentary per se, or all complimentary issued without a bargained-for commitment to play, are entirely within the discretion of casino management. In support of its second argument, Resorts seemingly suggests that because complimentary exist only within the context of a quid pro quo condition, the sole beneficiary of the complimentary is the gaming patron who is the direct and immediate recipient of the casino's bounty. Therefore, Resorts concludes that the recording and reporting requirements of N.J.A.C. 19:45-1.2 and 1.9 (and all other provisions referencing "person" or "patron" beneficiaries of a complimentary) regulate and refer to the direct gaming patron beneficiary only.

The Division asserts that the requirement for the disclosure of the name of "each person provided with complimentary services" (see N.J.A.C. 19:45-1.2(c)3) is a general requirement for the identification of all persons who may ultimately benefit from a complimentary. It is argued that the Legislature specifically rejected notions of quid pro quo and specifically directed that all complimentary

services be reported (see N.J.S.A. 5:12-102(m)). The Division interprets the relevant section 102(m) statutory language ("...all complimentary services offered or engaged in...") within the framework of one of the declared public policies of the act:

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. [N.J.S.A. 5:12-1(b)6(emphasis added)].

The analysis of this issue must begin with an examination of the relevant provisions of the Casino Control Act. Fundamental principles of statutory construction direct that if this question may be answered by recourse to the "plain meaning" of the relevant statutory language, then no further analysis is required.

[I]f the statutory language is plain, unambiguous and uncontrolled by other parts of the Act or other acts upon the same subject the court cannot give it a different meaning. [In re Jamesburg High School Closing, 83 N.J. 540 (1980), citing C.D. Sands, 2A Sutherland Statutory Construction §46.01 (4th ed. 1973)].

The definition of "complimentary service or item"

in the Act and N.J.A.C. 19:45-1.9<sup>3</sup> is simple, clear and plain on its face. Under the Act, it refers to "a service or item provided at no cost or at a reduced price." Applying the "plain meaning" rule, the conclusion is reached that this definition is essentially open-ended and encompasses "any service" or "any item" which is offered by a casino licensee at no cost or at a reduced price. This interpretation of the statutory definition (which definition became effective and operative on January 27, 1983) entirely reaffirms and comports with the pre-existing regulatory definition<sup>4</sup> and is fully consistent with the pre-existing statutory reference to "complimentary service" as it appears in the definition of

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3. N.J.A.C. 19:45-1.9 clarifies that a complimentary service is provided by a casino licensee whether it is granted directly by the casino or indirectly by a third party on behalf of a casino.
  4. The following definition was effective from May 25, 1978, to January 27, 1983:

...the sale value of rooms, food, beverage travel, and other services provided without charge... . N.J.A.C. 19:45-1.9 (emphasis added).

"regulated complimentary service account."<sup>5</sup> As indicated by the Division, the open-ended nature of "complimentary service or item" also comports with the declared public policy of the Act (see N.J.S.A. 5:12-1(b)6). Additionally, the Act requires the submission to the Commission of reports covering "all complimentary services" (see N.J.S.A. 5:12-102(m); emphasis added). Conversely, no provision of the Act or regulations includes a reference to the necessity of a gaming commitment or any other type of consideration in defining the elements of a complimentary service or item. Therefore, the Commission is compelled to conclude that all complementaries provided by a licensee, regardless of their gaming or non-gaming setting, are clearly subject to the reporting requirements established by the Commission (see N.J.A.C. 19:45-1.2) except to the extent that a particular item or service is exempted from the reporting requirements by the regulations (see, e.g., N.J.A.C. 19:45-1.2(c)3).

These conclusions survive Resorts' legal and policy arguments to the contrary. A review of the legislative history of the Act clearly vitiates Resorts'

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5. This term is defined as:

An account maintained by a casino licensee on a regular basis which itemizes complimentary services and includes, without limitation, a listing of the cost of junket activities and any other service provided at no cost or reduced price. N.J.S.A. 5:12-42 (emphasis added).

contention that "complimentaries" exist and are defined only within a quid pro quo context. Two bodies issued pre-statutory reports which studied the broad context of casino gaming in general, and of complimentaries in particular. The Second Interim Report discusses complimentaries primarily in the context of junket activities.<sup>6</sup> As defined at page 37 of this report, a junket is an arrangement "whereby a group of people are induced to visit and gamble some specified minimum amount at a casino establishment in exchange for free or reduced price accommodations." (Emphasis added). This report further asserts that:

[t]he State's interest in disclosure and regulation extends beyond the narrow definition of junkets to include all situations in which complimentary services are bestowed for a quid pro quo. [Id. at 38.]

The report continues to discuss the subject of complimentaries using such terms as "bargain for commitment to play," "player complaints" and "complimentaries to heavy or regular players."

In April 1977, the State Commission of

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6. See pp. 37-39.

Investigation (SCI) issued two reports.<sup>7</sup> As with the Second Interim Report of the Staff Policy Group, the complimentary issue is discussed within the context of junket activities organized for the promotion of casino gambling.

The SCI Report recommends that:

[e]ach casino must be required to designate the person or persons who will coordinate junket activities on behalf of the casino. Only these persons will be authorized to approve the granting of complimentaries to patrons of the casino. (Page 14E; emphasis added)<sup>8</sup>

The SCI Review and Recommendations, in commenting on the draft provision for the definition of "junket" (proposed section 29), recommends that the definition of junket be

reworded to delete any reference to "primary purpose" because [o]bviously, a casino will only provide complimentaries to get persons to come to Atlantic City in the hope that such persons will gamble.<sup>9</sup>

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7. Report and Recommendations on Casino Gambling; See also Review and Recommendations by the State Commission of Investigation of the Draft Provisions Before the Assembly State Government Casino Gambling Committee [hereinafter "Review and Recommendations"].
  8. See generally, SCI Report, pp. 13E-15E.
  9. SCI Review and Recommendations, Part II, p.2B.

Upon review of these reports, there would appear to be reason to conclude that the Staff Policy Group and SCI contemplated that complimentaries would be offered as a quid pro quo for gaming patronage. An examination of the relevant statutory provisions actually enacted, however, reveals that the Legislature chose not to incorporate the notion of quid pro quo in the definition or regulation of complimentaries. Rather, the Act clearly extends regulation to "all complimentary services offered or engaged in by the licensee." N.J.S.A. 5:12-102(m) (Emphasis added).<sup>10</sup>

Resorts' attempt to interpret the relevant statutory and regulatory provisions to refer only to gaming patrons, and thus bolster its consideration theory, is also unsupported by the actual wording of the Act and regulations. Recipients of complimentary services are variously referred

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10. See also, P.L. 1983, c. 41, §2, N.J.A.C. 19:45-1.9 and N.J.S.A. 5:12-42.

to as both "persons"<sup>11</sup> and "patrons"<sup>12</sup> throughout these provisions. These words are apparently used interchangeably, without any meaningful distinction being drawn between them or any significant meaning being attached to either term.<sup>13</sup> Thus, for example, in N.J.A.C. 19:45-1.9, both terms are employed in an apparently random manner. While N.J.A.C. 19:45-1.9(b) refers to a "patron," it focuses not on the identification of the complimentary recipient, but on the proper method for evaluating complimentary services. In contrast, every substantive provision which deals with the definition or identification of complimentary services uses the word "person." Indeed, were a conclusion to be drawn

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11. This term is used in N.J.S.A. 5:12-102(m) and (n) and N.J.A.C. 19:45-1.2 and 1.9. It is also used in the SCI's Review and Recommendations. The Division, of course, would argue that the more general term "person" is the operative word and provides the dispositive clue to the intentment of the statutory and regulatory provision.
  12. This term is used in N.J.A.C. 19:45-1.9 and several pre-statutory commission reports (see Second Interim Report and SCI Report). Resorts, of course, would argue that the narrower term "patron" is the operative word and provides the dispositive clue to the intentment of the statutory and regulatory provisions.
  13. "Patron" is undefined in the Act and the regulations. "Person" is defined in N.J.S.A. 5:12-37 and N.J.A.C. 19:40-1.2 as:

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

from the statutory use of these terms, it would more likely be that the Legislature, in rejecting the quid pro quo approach of the Staff Policy Group, and for essentially the same reasons, rejected the proposition that the gaming patron is the only true recipient of a complimentary within the scope of the Act<sup>14</sup>.

Finally, there is a sound public policy basis to conclude that non-gaming related complimentaries are complimentaries within the meaning of the Act and the regulations of the Commission. Simply, Resorts' attempt to distinguish between gaming and non-gaming complimentaries would present severe practical problems were such an interpretation applied in this case or in similar cases. A particular recipient of a complimentary may have both a gaming and non-gaming relationship with a casino licensee. The distinction between these two categories may often be less than clear and the endless variety of factual possibilities would require the casino itself to decide, and the Commission to accept (at least initially), the particular category in which a particular complimentary fits. Such a system would be unmanageable and unacceptable. Clearly,

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14. See, e.g., N.J.S.A. 5:12-102(m) and (n) in which only "person" is employed and no reference to "patron" status is made.

therefore, a "complimentary service or item" within the purview of the Act and the regulations refers to any complimentary service or item issued by a casino licensee under any circumstance.

**WHOSE NAME MUST A CASINO RECORD AND REPORT AS THE PERSON WHO HAS BEEN "PROVIDED" WITH A COMPLIMENTARY SERVICE OR ITEM IN MEETING THE REQUIREMENTS OF THE CASINO CONTROL ACT AND THE REGULATIONS OF THE COMMISSION?**

**A. Gaming-related Complimentaries**

For purposes of this declaratory ruling, Resorts projects the following, allegedly typical, fact patterns and seeks a determination as to the applicability of the complimentary reporting and recording obligations in each instance: 1. a gaming patron approaches a pit boss or similar person in authority at Resorts' casino and requests a complimentary for himself and the members of his party; or 2. a favored patron calls the casino stating that he will be visiting Resorts on a particular evening and desires dinner reservations, a hotel room, or a limousine for his party. In both of the above cases, and in all similar situations, Resorts presently issues, records and reports the

complimentary in the name of the gaming patron only. The names of some of the ultimate beneficiaries (e.g., the members of the patron's party) do not appear on the complimentary reports.

Resorts contends that such a procedure is both practical and consistent with the Act and the Commission's regulations. It is argued that when issuing the complimentary, Resorts has no way of knowing who the ultimate beneficiaries of the complimentary will be, and that to require such knowledge, recording and reporting would present "an impossible problem." In its supporting memorandum, Resorts states:

Resorts cannot obtain the names and signatures of all the beneficiaries of the complimentaries unless it stations an employee at each show, restaurant, lounge and hotel room to ask the gaming patron to provide the names of his guest, and, in turn to ask the guests to sign the complimentary slip. This would be a most ungracious and difficult task... . To require... research into who ultimately shares in those complimentaries, who shares a drink with the gaming patron, eats dinner with that patron, enjoys a show with that patron or shares that patron's hotel room goes beyond the interests of the state and is both burdensome to the casino and intrusive upon the public's basic right to privacy. Moreover, it would elevate an already difficult administrative problem to an unmanageable paperwork task.<sup>15</sup>

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15. Resorts improperly intimates that recipients of complimentaries must presently sign the complimentary slip as part of the procedures required by the Commission. In fact, no such procedure is required by statute or regulation. The requirement at issue here is whether or not the names of all the beneficiaries of complimentaries must be recorded and reported (see N.J.A.C. 19:45-1.2(c)(3)).

Resorts presents two legal arguments in support of its position. First, it construes the pertinent provision, which requires complimentary records to include "the name of each person provided with complimentary services" (see N.J.A.C. 19:45-1.2(c)(3)), to refer only to the person who initially receives an authorization for the receipt of the complimentary services from Resorts and not to the persons who may ultimately partake of these complementaries as a guest of the patron. It is argued that the complimentary service "runs" directly and only from Resorts to the gaming patron and that the service is not "provided" to the patron's guest within the meaning of the statutory and regulatory provisions. The second legal argument is again based upon the assertion that the Casino Control Act is not concerned with the issuance of all forms of complementaries per se, but only when they are issued as a quid pro quo for a gambling commitment. Resorts contends that the integrity of casino gambling will not be compromised by the "absence of the signatures <sup>16</sup> and names of guests of the gaming patron."

As previously noted, the Division of Gaming Enforcement believes that the requirement for the disclosure of the name of "each person provided with complimentary services" (see N.J.A.C. 19:45-1.2(c)3) is a general

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16. See footnote 15.

requirement for the identification of all persons who may ultimately benefit from the complimentary. Additionally, the Division argues that the practical concerns of Resorts have, to some extent, already been recognized and addressed by the Commission, as evidenced by the exemptions from the requirement to record the names of all persons who may receive theater tickets, parking or beverages served in bars and the casino (see N.J.A.C. 19:45-1.2(c)3).

The Commission concurs with the conclusion of the Division that the Legislature has clearly directed that all complimentary services issued by a casino must be recorded and reported. This conclusion, however, does not necessarily provide the answer, as the Division implies, to the issue of who is the recipient of a complimentary service for the purposes of the Act and regulations. Resorts contends that the recipient of a gaming related complimentary service is the gaming patron to whom it was directly issued by the casino, notwithstanding the fact that the patron may share the casino's munificence with his guests. For the reasons which follow, the Commission agrees with Resorts' contention that the complimentary reports required by N.J.A.C. 19:45-1.2(c)3 and 1.9 need only include the name of the intended recipient of the complimentary service (the gaming patron) rather than the names of all of the incidental beneficiaries of the complimentary. Of course, where there is more than one intended recipient of the complimentary service (i.e., gaming patrons), the names of all such intended recipients must be identified pursuant to the above regulatory provisions.

As with the first issue discussed above, the analysis of this issue must begin with an examination of the relevant provisions of the Casino Control Act. If this question may be answered by recourse to the "plain meaning" of the relevant statutory language, then no further analysis is required.

As previously noted, the statutory definition of "complimentary service or item" is "a service or item provided at no cost or at a reduced price." P.L. 1983, c.41, §2. The operative word in this definition for purposes of this issue is the word "provided." In order for a complimentary to be issued to a person, it must be "provided" by the casino licensee.<sup>19</sup> The relevant regulatory requirement at issue, N.J.A.C. 19:45-1.2(c)(3), also is expressed in terms of the "name of each person provided with complimentary services." (Emphasis added). Any attempt to rely upon the "plain meaning" of this language in resolving the instant dispute, however, is quickly frustrated. The word "provided," as used in this context, is clearly ambiguous and may be used to support the interpretations proffered by both Resorts and the Division. Resorts argues that the complimentary service in the typical fact patterns alleged is only given ("provided") to the gaming patron, and

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19. See footnote 3.

that it is the patron who gives the benefit to his guests. The Division argues that if a casino serves a meal to a gaming patron and 4 guests, then the casino "provides" a meal to 5 persons.

Similar frustration is incurred, for the reasons noted above, if one attempts to resolve this issue by analyzing and comparing the use and meaning of "person" and "patron." Clearly, these terms refer to, but neither identify nor define, the recipient of a complimentary service. A review of the legislative history and intent behind the general provisions concerning complimentaries in the Act also provides no clear response to or resolution of the instant issue.<sup>18</sup>

Plain meaning (statutory construction) and legislative history analyses having failed to resolve the issue at bar, an analysis of the relevant statutory and regulatory provisions within the fabric of the general intent, scope and purpose of the Act is necessary and appropriate. As noted by one legal scholar, one must construe a statute:

with reference to the leading idea  
or purpose of the whole instrument.

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18. The official statements to the bills which were eventually enacted as P.L.1977, c.110 (N.J.S.A. 5:12-1 et seq.) and P.L. 1983, c. 41, §2 (defining "complimentary service or item") provide no assistance in the analyses of the instant issues.

A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent....[E]ach part or section should be construed in connection with every other part or section so as to produce a harmonious whole.<sup>19</sup>

Among the many themes and purposes pervading the Act (and the Commission's regulations), perhaps none is more prominent than the Legislature's concern with strictly regulating all "associations" with licensed casino enterprises. Thus, for example, the Act establishes an elaborate system for employee licensure and registration (see e.g., sections 86 through 91 of the Act), for the licensure and registration of casino service industries (section 92) and for the licensure of junket enterprises and representatives (see section 102 of the Act and P.L. 1983, c.41, §7). More fundamentally, the Legislature declared as public policy its finding that:

...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 ...  
[N.J.S.A. 5:12-1(b)6(emphasis added)]

Although the statutory and administrative controls over casino operations established by the Act are "extraordinarily pervasive and intensive," Knight v. Margate, 86 N.J. 374, 380-381 (1981), the Commission concludes that

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19. C.D. Sands, 2A Sutherland Statutory Construction §46.05 (4th ed. 1973).

these controls are primarily and more specifically focused upon persons who have a substantial or significant relationship or association with a licensed casino enterprise. Quite clearly, such a relationship or association does not exist in the case where a person ultimately receives an item or service at the sole discretion of another individual who does have a relationship with the casino licensee. Just as clear is the fact that, with limited exceptions,<sup>20</sup> the Act does not specifically attempt to regulate or control the relationship between the general public and the casino industry. One who shares the benefit of a complimentary (an incidental beneficiary) as the result of the discretion of the gaming patron to whom the complimentary was intentionally granted (the intended beneficiary) is not a true recipient of the casino's largesse nor the intended object of its attention or interest. Therefore, the incidental beneficiary is generally beyond the regulatory

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20. See, N.J.S.A. 5:12-71 concerning the exclusion of certain persons from licensed casino establishments and N.J.S.A. 5:12-70(o) and (r) concerning advertising.

scope of the Act.<sup>21</sup>

N.J.A.C. 19:45-1.2 requires casinos to record and report on a daily basis, among other things, the name of each person provided with a complimentary service or item. In view of the other pertinent provisions of the Act and regulations, this section must be construed to require a casino to provide the name of the person who is the intended recipient of the complimentary service or item. This conclusion is reinforced by the public policy considerations which underlie the State's supervision of casino complimentary practices. Clearly, the primary concern of the State is, and should be, its ability to identify and evaluate associations between casinos and the persons to whom they grant complimentary services. The essence of the complimentary is the establishment of a relationship between the casino hotel and the intended recipient of the

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21. Although the issue will not, and need not, be resolved here, it should be noted that this same analysis may not apply with equal force when interpreting the provisions of N.J.S.A. 52:13D-17.2(e). This provision of the "Conflicts Law" prohibits certain public officials from soliciting or accepting, directly or indirectly, any complimentary service which is not offered to members of the general public under like circumstances. The legislative intent here, as well as in subsection 102(n) of the Act, is to restrict the issuance of certain complimentary to certain persons, regardless of whether the complimentary is issued directly or indirectly. Of course, any attempt by a licensee to purposefully issue a complimentary service to a third person through an intermediary would constitute the issuance of a complimentary to that third person, regardless of the analysis applied.

complimentary. There is nothing in the Act, the legislative history or the Commission's regulations to alter this seemingly self-evident truth.

When a casino hotel issues a complimentary to a gaming patron, it is clearly concerned with extending benefits and amenities to a known individual (typically one who bets heavily or who may be new to a casino), rather than to his unknown family or friends. Thus, for example, when a casino provides a complimentary service or item to a gaming patron and his guest, it normally does so in order to obtain or reward the patronage of the gaming patron. It is the value which the casino places on its relationship with that gaming patron which the complimentary reporting system seeks to identify and which a casino must be prepared to justify if called upon to do so. Accordingly, in the foregoing example, only the gaming patron should be identified as the "person provided with the complimentary service or item" even if he shares the complimentary with others. The fact that the recipient-gaming patron is offered and extends additional benefits and amenities to other persons does not change the underlying reason for the issuance of the complimentary. Any other conclusion would be illogical given and accepting the profit motive as the essential basis for the issuance of the complimentary and, indeed, for the existence and presence of the casino itself.

Finally, although more directly raised within the context of non-gaming complimentaries (see B below), the Division impliedly argues that the complimentary system should also, and in all cases, play the supplementary and supporting role of an investigatory mechanism to discern potentially nefarious business practices or relationships involving incidental beneficiaries of the complimentary service -- that is, persons with whom an intended recipient shares his complimentary. Although the Commission does not reject this particular philosophy of law enforcement, its decision is limited to an interpretation and analysis of the existing provisions of law. As previously noted, this interpretation and analysis has led to the conclusion that the casino must only provide the names of the persons who are the intended recipients of the complimentary service or item (e.g., the gaming patron) rather than the names of the incidental recipients who receive the complimentary from the person to whom it was intentionally issued. Therefore, the Commission suggests that the concerns of the Division could more appropriately be addressed through proposed amendments to the current regulations.

**B. Non-gaming Related Complimentaries**

A typical example of the situation at issue here is where an executive of Resorts, engaged in a meeting with non-Resorts executives, invites those persons to lunch.

Under the challenged procedure, the Resorts employee signs<sup>22</sup> the complimentary slip as the person receiving the service, but the business guests are not named, recorded and reported to the Commission pursuant to N.J.A.C. 19:45-1.2 and 1.9.

As noted above, Resorts argues that a distinction exists between a complimentary service that is extended to a gaming patron and one that is extended to a non-gaming patron. They contend that the issuance of complimentary by its employees to guests who are present for non-gaming purposes is not governed by nor subject to the recording and reporting requirements of N.J.A.C. 19:45-1.9 and 1.2(c)3. On this theory, certain Resorts employees are permitted to issue complimentary to themselves and to their guests for "business-related" purposes.

In support of its position, Resorts contends that the "business-luncheon" complimentary is a common and necessary business practice, particularly in the hotel and food preparation industry where the product being offered to the public by the business is restaurant services. It is argued that adhering to these requirements would create "additional and unnecessary record keeping" and additional

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22. See Footnote 15.

costs which would far outweigh the value which can be derived from their implementation.

The Division believes that the "business-luncheon" complimentary, like all other complimentaries not specifically excluded by the Act or regulations, is subject to the recording and reporting requirements of N.J.A.C. 19:45-1.9 and 1.2(c)3, and that these requirements oblige the licensee to maintain adequate records reporting the name of each person provided with complimentary services and the identity of the person authorizing the receipt of such service. The Division offers three legal arguments in support of its position.

First, it is argued that neither the Act nor the regulations, by name or substance, distinguish between gaming related and non-gaming related complimentaries (see, e.g., N.J.S.A. 5:12-102(m), N.J.A.C. 19:45-1.2(c) and 1.9). Second, the Division argues that such an interpretation of the Act and the regulations is consistent with an underlying public policy of the Act (see N.J.S.A. 5:12-1(b)6). Third, the Division believes that the requirement for the disclosure of the name of "each person provided with complimentary services" (N.J.A.C. 19:45-1.2(c)3):

is not satisfied when an employee authorized the receipt of a comp to himself and others and names only himself as the recipient since the pertinent regulation clearly contemplates a distinction.

They further argue that the requirements of the regulation are left unsatisfied where the name of a third-party vendor is reported as the person provided with the complimentary services, since such practices could be used as a "subterfuge for hiding the identity of the person or persons who are actually being provided with the complimentary service."

Having established that complimentaries issued in a non-gaming context are complimentaries within the meaning and scope of the Act and regulations (section III, supra), and that the general intent of the Act is to identify and regulate relationships which exist between licensed casino enterprises and persons or entities with whom they are directly or significantly associated (section III-A, supra), the response to the instant issue is tautological. Simply, when a Resorts employee grants a complimentary service or item to himself and others, each person who is an intended beneficiary of the complimentary must be identified, recorded and reported pursuant to N.J.A.C. 19:45-1.2.

As with gaming-related complimentaries, the question of whether or not a particular person is an intended recipient of a complimentary issued by a casino licensee must be addressed in the context of the particular facts and circumstances. The rationale for the existence of the non-gaming complimentary is clearly analogous to that for its gaming counterpart: the complimentary is issued as an inducement to do, or to continue to do, business with the

casino hotel. Generally, any person who actively participates in a business relationship with a casino licensee, or who is in a position of influence with regard to such relationship, should be considered an intended recipient of a complimentary in which he shares. In observing these requirements, a licensee should record and report the name of any individual whose identity would be useful to the State in evaluating the persons or entities with whom the casino is doing business.

It requires substantially less than a leap of faith to recognize the importance and propriety of strict control and regulation over the dispensing of non-gaming complimentaries. Such strict control and regulation cannot be effected by recording and reporting (pursuant to Resorts' present procedure) the name of only the Resorts employee who "receives" the complimentary (from himself). Recording his receipt of the complimentary without the further identification of the persons with whom he shares the complimentary is meaningless, because he is clearly not the only intended recipient of the casino's good will. To require the casino to submit, and to allow the Commission and Division to receive, only the name of the "straw man" through whom the complimentary services of the casino are being provided would be to promote meaningless regulation. Of course, if the Resorts employee authorizes a complimentary

for himself as well as others, his name should also be recorded and reported as a recipient. The Commission and the Division have a clear and legitimate interest in, and need to know, the names of all of the intended beneficiaries of the casino's good will.

Finally, we note that to require the recording and reporting of the names of all of the intended recipients of the non-gaming complimentary service would not impose any undue burden on the casinos, even without consideration of the overriding benefits which will accrue to the regulatory system. Despite Resorts' arguments to the contrary, the additional administrative burden will be somewhat less than they anticipate given the general and good business practice of maintaining complete and accurate records of entertainment expenses for tax purposes.<sup>23</sup>

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23. Internal Revenue Service Regulation §1.274-5, concerning substantiation requirements for entertainment expenses (including in the present context, the furnishing of food), in pertinent part provides:

(b) Elements of an expenditure - (1) In General. Section 274(d) and this section contemplates that no deduction shall be allowed for any expenditure for travel, entertainment, or a gift unless the taxpayer substantiates the following elements for each such expenditure:

- (i) Amount;
  - (ii) Time and place of travel or entertainment (or use of a facility with respect to entertainment), or date and description of a gift;
  - (iii) Business purpose; and
  - (iv) Business relationship to the taxpayer of each person entertained, using an entertainment facility or receiving a gift.
- (Emphasis added)

IV

CONCLUSIONS OF LAW

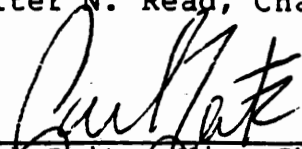
1. A complimentary service or item within the purview of the Casino Control Act and the regulations of the Commission refers to any complimentary service or item issued by a casino licensee, regardless of whether it is issued:

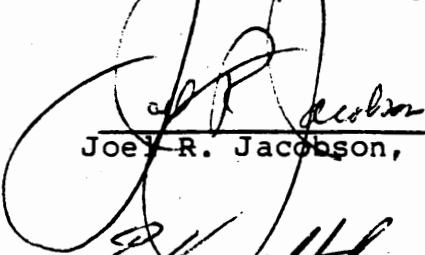
- (a) to a gaming patron as a result of,  
or in anticipation of gaming activity; or
- (b) to a business associate, as the result of  
an existing or potential business  
relationship; or
- (c) to any other person under any other  
circumstance.

2. Pursuant to the Act and the regulations of the Commission, a casino must record, report and provide to the Division the name of any person who is the intended recipient of the complimentary service or item.

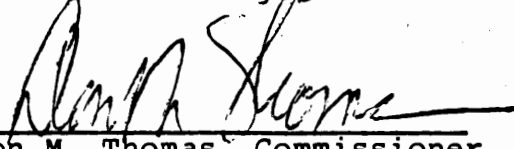
**CASINO CONTROL COMMISSION**

  
\_\_\_\_\_  
Walter N. Read, Chairman

  
\_\_\_\_\_  
Carl Zeitz, Vice-Chairman

  
\_\_\_\_\_  
Joel R. Jacobson, Commissioner

  
\_\_\_\_\_  
E. Kenneth Burdge, Commissioner

  
\_\_\_\_\_  
Don M. Thomas, Commissioner

Dated: February 17, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-156  
OAL DOCKET NOS. CCC 4381-83;  
CCC 8581-82 (ON REMAND)  
APPLICATION NO. 31851-21

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IN THE MATTER OF THE APPLICATION :  
OF DENNIS K. SCHECKENBACH FOR A : FINAL ORDER  
CASINO EMPLOYEE LICENSE :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on February 8, 1984, recommending that the application of Dennis K. Scheckenbach for a casino employee license be denied; and Dennis K. Scheckenbach having offered two letters attesting to his good character and business ability for inclusion in the record at the Commission's public meeting of March 21, 1984; and the Division of Gaming Enforcement having waived any objection to the admissibility of the letters pursuant to N.J.S.A. 52:14B-10; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of March 21, 1984, by a vote of 3-2 (Chairman Read and Commissioner Burdge dissenting) to reject certain conclusions of law contained in the said Initial Decision and to grant the application,

IT IS on this 27th day of June 1984, ORDERED that the following conclusions contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected:

1. Mr. Scheckenbach has not established by clear and convincing evidence his rehabilitation from acts which constituted a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g) (i.e., possession with intent to distribute, contrary to N.J.S.A. 24:21-19(a)(2)). [Initial Decision at 5].
2. Mr. Scheckenbach has failed to establish by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b). [Initial Decision at 5].
3. The application of Dennis K. Scheckenbach for licensure as a casino employee be denied. [Initial Decision at 5].

IT IS FURTHER ORDERED that the application of Dennis K. Scheckenbach be and hereby is granted based upon the factual findings contained in the Initial Decision of the Office of Administrative Law which is incorporated herein by reference and made a part hereof and further upon the following findings:

1. Mr. Scheckenbach has adequately demonstrated rehabilitation from his disqualification considering: (a) the passage of more than six years since Mr. Scheckenbach's commission of

acts constituting a statutory disqualifying offense; (b) his commendable employment record which includes a position with as well as being part owner of United Closet Systems since 1978; (c) favorable references from business and personal acquaintances which attest to his good character and business ability; (d) his pursuit of additional schooling at Cumberland County College and further, his successful completion of a course of study in the game of craps at East Coast School of Gaming; and (e) his representation that he is not likely to use any controlled dangerous substance in the future.

2. There being no other bases for disqualification, Mr. Scheckenbach has demonstrated his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that, as a result of amendments to N.J.A.C. 19:41-9.14 since Mr. Scheckenbach originally applied for licensure as a casino employee, he pay an additional \$150 in application fees, which sum is due and payable prior to the issuance of a casino employee license.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4381-83

(Remand of CCC 8581-82)

AGENCY DKT. NO. 82-EA-156

**DENNIS K. SCHECKENBACH,**

Petitioner

v.

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

Respondent.

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**APPEARANCES:**

**Dennis K. Scheckenbach, petitioner, Pro Se**

**Ollie H. Hawkins, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: December 30, 1983

Decided: February 7, 1984

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

This matter concerns the recommendation by the Division of Gaming Enforcement (hereinafter referred to as "Division") that the petitioner, Dennis K. Scheckenbach, not be licensed as a casino employee (dealer). Mr. Scheckenbach requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled in this matter for December 14, 1982, and the petitioner failed to appear and failed to respond to a letter sent by the Office of Administrative Law requesting an explanation of his nonappearance. Based on these facts, Judge Voliva on March 25, 1983, issued an initial decision concluding that

Mr. Scheckenbach had abandoned his appeal and that he should not be licensed. The Casino Control Commission accepted Mr. Scheckenbach's explanation for his nonappearance and remanded the matter to the Office of Administrative Law by Order dated May 17, 1983.

Mr. Scheckenbach appeared at the second prehearing which was scheduled for August 10, 1983 and at that time, the parties agreed that the issues in this matter are:

- (1) Whether the petitioner is disqualified from licensure, pursuant to N.J.S.A. 5:12-86g as a result of the fact that he entered a plea of nolo contendere to a charge of possession of marijuana with intent to deliver in the State of Pennsylvania.
- (2) Whether the petitioner can establish his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) as incorporated in N.J.S.A. 5:12-90b.
- (3) Whether the petitioner can establish that he has been rehabilitated as set forth in N.J.S.A. 5:12-90h.

The hearing took place on December 9, 1983 and at the end of the hearing, Mr. Scheckenbach asked for the opportunity to supplement the record with additional letters relating to his rehabilitation. I agreed to keep the record open for a three-week period. No additional letters were received from the petitioner and the record in the matter closed on December 30, 1983.

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

- (1) Mr. Scheckenbach was arrested on April 15, 1978, at the Philadelphia International Airport and was charged with the possession of marijuana with the intent to deliver. At that time, Mr. Scheckenbach was 22 years old and had in his possession six pounds of marijuana.
- (2) Mr. Scheckenbach entered a plea of nolo contendere to the charge and was placed on probation without a verdict and fined \$1,000 (R-1, R-2).

- (3) On November 16, 1977, Mr. Scheckenbach was arrested in Franklin Township, New Jersey and charged with simple assault, a violation of N.J.S.A. 2A:170-26. Thereafter the petitioner was found guilty of this offense and fined \$50.
- (4) Both of the offenses set forth above were disclosed by Mr. Scheckenbach on his casino license application (R-4).
- (5) During its investigation, the Division determined that Mr. Scheckenbach has a charge-off account with a balance of \$1554.14 with the Farmers and Merchants National Bank in Bridgeton, New Jersey (R-3).
- (6) Since the 1978 offense, Mr. Scheckenbach attended Cumberland County College for two semesters and successfully completed a 240-hour crap dealer course at East Coast Gambling and Electronic, Inc., Atlantic City, New Jersey (R-3).
- (7) Also since his 1978 offense, the petitioner has been continuously employed and is presently a partial owner of United Closet Systems in New York City.
- (8) On behalf of the petitioner, Rev. Msgr. D. Leonard Donohue wrote a letter dated November 17, 1983, stating that he considered Dennis Scheckenbach to be a well adjusted and outstanding young man; however, he admitted that he had not seen the petitioner for a while (P-1).

On his own behalf, Mr. Scheckenbach testified that he had made a mistake in 1978 and that he had learned his lesson and was no longer involved with drugs. Later on cross-examination, Mr. Scheckenbach admitted that at parties he periodically smokes marijuana and considers marijuana equivalent to an alcoholic drink.

As to the 1978 offense, Mr. Scheckenbach stated that he was coming back to New Jersey and that he had purchased six pounds of marijuana in Denver, Colorado. According to the petitioner, this marijuana was for his own use and he planned to store it by freezing it. Mr. Scheckenbach stated that the six pounds represented an approximate one-year personal supply of marijuana.

As to the November 16, 1977 assault charge, Mr. Scheckenbach testified that he had dated a man's ex-wife and that this man had shot out the back window of his vehicle. The petitioner found out who was responsible for the vandalism of his car and when he saw the person in a tavern, he lost his temper. According to Mr. Scheckenbach, he was not formally arrested but was found guilty and paid a fine.

Mr. Scheckenbach argued that he should be given a casino license since the narcotic offense occurred approximately six years ago and since then he has been working and not involved in any criminal activity.

Mr. Hawkins argued that the Pennsylvania drug offense is equivalent to a New Jersey conviction pursuant to N.J.S.A. 24:21-19a(1) and that such a conviction is an automatic disqualifier from licensure pursuant to the provisions of N.J.S.A. 5:12-86c and 5:12-86g. I concur with the Division and I **CONCLUDE** that the petitioner's 1978 offense is an automatic disqualifier pursuant to the Casino Control Act.

The Casino Control Act provides that a person can overcome a prohibition against licensure by affirmatively demonstrating his/her rehabilitation pursuant to N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

- (1) The nature and duties of the 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.

Although I **CONCLUDE** that Mr. Scheckenbach has taken steps toward complete rehabilitation, he has not at this time established by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90h. Mr. Scheckenbach by his own admission still periodically uses marijuana and notwithstanding the criminal prohibition, he expressed no intent to completely abstain from the use of marijuana.

The clear intent of the licensure provisions in the Casino Control Act is to screen all potential and existing casino employees to make sure that they are law-abiding persons of integrity thereby promoting the public confidence and trust in the casino operation. Mr. Scheckenbach's attitude and disclosure regarding his continued use of marijuana, even though on an infrequent basis, do not meet the high standards as set forth and required by the Casino Control Act. Therefore, I **CONCLUDE** that the petitioner has not established his reputation for good character, honesty and integrity as required by the statute.

Therefore, it is **ORDERED** that the application of Dennis K. Scheckenbach for licensure as a casino employee (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.

February 7, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

2/8/84  
DATE

David C. Musina  
CASINO CONTROL COMMISSION

Mailed to Parties:

2-10-84  
DATE

Charles J. Ryan, Esq.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

ADDENDUM

EXHIBITS

For the petitioner:

- P-1 Letter from Rev. Monsignore D. Leonard Donohue to the Casino Control Commission, dated November 17, 1983

For the respondent:

- R-1 Criminal Transcript of the Philadelphia Municipal Court relating to Dennis K. Scheckenbach
- R-2 Investigation Report regarding Mr. Scheckenbach's arrest on April 15, 1978, by Patrolman William Perkins of the Philadelphia Police Department
- R-3 Letter to the Casino Control Commission from Edward P. Busichio, Deputy Attorney General, dated July 26, 1982, regarding the licensure of Dennis K. Scheckenbach
- R-4 Personal History Disclosure Form-2, prepared by Dennis K. Scheckenbach and filed with the Casino Control Commission on June 10, 1981

WITNESSES

For the petitioner:

Dennis K. Scheckenbach

For the respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-145  
CROSS REFERENCE 82-EA-191  
OAL DOCKET NO. CCC 2704-83  
REGISTRATION NO. 43263-40 AND  
APPLICATION NO. 31641-22

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

Complainant, :

v. :

GARY A. SERENI, :

Respondent. :

FINAL ORDER

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APPLICATION OF GARY A. SERENI :

FOR A CASINO EMPLOYEE LICENSE :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 10, 1984, recommending that the application of Gary A. Sereni for a casino employee license be denied and further that his casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of February 29, 1984, to affirm certain of the ALJ's findings of fact and conclusions of law and to reject certain others

contained in the Initial Decision and to revoke Respondent's casino hotel employee registration,

IT IS on this 8th day of MAY 1984, ORDERED that the following findings and conclusions contained in the Initial Decision in this matter be and hereby are modified or rejected:

- (1) The conclusions regarding Mr. Sereni's disqualification are modified to include his 1983 convictions for theft of property valued at more than \$500 and conspiracy to commit theft contrary to N.J.S.A. 2C:20-3 and N.J.S.A. 2C:2-6, respectively, both of which are statutory disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1); and
- (2) The conclusions regarding denial of the casino employee license application of Gary A. Sereni are rejected as unnecessary in view of the Commission's prior determination to deny Mr. Sereni's casino employee license application by order dated March 17, 1983; and
- (3) The findings and conclusions on the issues of financial integrity and good character, honesty and integrity are rejected as such issues are not relevant to casino hotel employee registrants pursuant to N.J.S.A. 5:12-91(b).

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

IT IS FURTHER ORDERED that, Gary A. Sereni is prohibited from reapplying for or obtaining any license, registration,

qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2704-83

AGENCY DKT. NO. 82-145

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

Petitioner

v.

**GARY A. SERENI,**

Respondent.

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**GARY A. SERENI,**

Applicant

v.

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

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Charles J. Casale, Jr., Esq.,** for Gary A. Sereni

Record Closed: November 22, 1983

Decided: January 6, 1984

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. The first, concerns charges filed by the Division of Gaming Enforcement (Division) Department of Law and Public Safety against Gary A. Sereni. The Division alleged that Mr. Sereni had been convicted of a statutory disqualifying offense, for which the Division sought revocation of his casino hotel employee registration no. 43263-40, pursuant to N.J.S.A. 5:12-129. Mr. Sereni opposed the action. The second, concerns the application of Mr. Sereni for licensure by the Casino Control Commission (Commission) as a casino employee (non-gaming), pursuant to N.J.S.A. 5:12-90. The Division opposed licensure on the basis that the applicant had been convicted of a statutory disqualifying offense, had failed to disclose information material to licensure on his application form, lacked the requisite financial stability, integrity and responsibility and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Sereni filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission on June 8, 1981 (J-1). The Commission advised Mr. Sereni that, based upon information received in a report from the Division, dated August 19, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. Further, the Division filed its complaint with the Commission on September 29, 1982. By letter dated October 1, 1982, the Commission again advised Mr. Sereni that he had a right to a hearing. By letter filed with the Commission on March 6, 1983, Mr. Sereni requested a hearing in the above matters. On March 14, 1983, the Commission transmitted the matters to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 7, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Sereni is 31 years of age and is a life-long resident of the Trenton, New Jersey, area (J-1). He is a 1971 graduate of Hamilton High School East and has attended and successfully completed several courses at vocational schools (R-2). He currently holds a Blue Seal Boiler License, which is the second step of four. He meets the experiential requirements for the third step license; however, he must first attend school and take a test (R-2). Mr. Sereni also holds a beautician's license.

Following high school, Mr. Sereni began to develop a drug problem. He began to drink and then used marijuana and downers. Ultimately, he developed a heroin habit.

On July 2, 1970, Mr. Sereni was arrested and was charged with a violation of N.J.S.A. 2A:119-1, attempted larceny (R-2). He was found not guilty.

From 1971 to 1974, Mr. Sereni was employed by the Acme Hamilton Lumber Company as a stationary engineer (J-1 and R-2).

On August 4, 1971, Mr. Sereni was arrested by the Hamilton Township Police Department and was charged with being involved in a fight (P-3). He pled guilty to the charge. He was 19 years of age at the time of the offense.

On October 9, 1972, Mr. Sereni was arrested by the Hamilton Township Police Department and charged with a violation of N.J.S.A. 2A:90-3, aggravated assault with a dangerous weapon (P-4). He was found not guilty.

On April 13, 1973, Mr. Sereni was again arrested by the Hamilton Township Police Department and was charged with a violation of N.J.S.A. 24:21-20(a)1, possession of barbituates (P-5). He pled guilty and received a \$100 fine. He was 21 years of age at the time of the offense.

From June 4, 1974 to April 21, 1976, Mr. Sereni was employed by the RCA David Sarnoff Research Center as an Assistant Supervisor to the Boiler House (J-1 and R-2).

From December 7, 1979 until 1982, Mr. Sereni was employed by Princeton University as a boiler operator (J-1 and R-2).

From 1977 to 1978, Mr. Sereni was employed by Congoleum Industries (J-1).

By 1980, Mr. Sereni had developed a heavy drug habit including the use of heroin. He attempted unsuccessfully to complete several detoxification programs and also sought private treatment. From September to October 1981, Mr. Sereni participated voluntarily in the Addiction Recovery Unit at Carrier Clinic.

On October 31, 1980, Mr. Sereni was arrested by the Trenton Police Department and charged with a violation of N.J.S.A. 24:21-20(a)1, possession of a controlled dangerous substance, heroin (P-6). He was found guilty, and was sentenced to two years' probation and received a \$250 fine. Mr. Sereni explained that he had purchased the heroin on the street prior to his arrest.

On March 4, 1981, Mr. Sereni was arrested by the Lawrence Township Police Department and was charged with a violation of N.J.S.A. 2C:5-1, attempted theft of property with a value in excess of \$500 from three separate stores (P-7 and R-3). On July 21, 1981, Mr. Sereni was indicted by a Mercer County grand jury and was charged with three counts of a violation of N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:5-1, attempted theft of property with a value in excess of \$500 (P-8 and R-3). On August 14, 1981, Mr. Sereni pled not guilty to the charges. Further, on July 27, 1981, Mr. Sereni was arrested by the Trenton Police Department and was charged with a violation of N.J.S.A. 24:21-51, possession of narcotic paraphenalia (P-8). On August 5, 1981, Mr. Sereni was arrested by the Ewing Township Police Department and was charged with shoplifting. On December 22, 1981, Mr. Sereni retracted his plea of not guilty to the indictment and pled guilty to the second count, whereupon counts one and three were dismissed. Mr. Sereni was sentenced to two years' imprisonment, received a \$300 fine and was ordered to attend counseling. As part of the plea bargain, the charges filed by the Trenton and Ewing Township Police Departments were to be dismissed (R-3). On August 4, 1981, Mr. Sereni was indicted with being in possession of a weapon for unlawful purposes and being unlawfully in possession of a weapon (R-3). Also on December 22, 1981, Mr. Sereni pled guilty to a violation of N.J.S.A. 2C:39-5(d), unlawful possession of a weapon, a crime of the fourth degree.

On June 8, 1981, Mr. Sereni filed his PHDF-2 with the Commission (J-1). In response to question number 45, which concerned a juvenile criminal record history, Mr. Sereni disclosed his arrest of August 4, 1971, and the charge of fighting, and his arrest of April 13, 1973, and the charge of possession of barbituates (J-1). In response to question number 46, which concerned his adult criminal record history, Mr. Sereni responded that he had none. In response to question number 49, regarding his use of narcotics or drugs, Mr. Sereni revealed that he had used a controlled dangerous substance on the occasion of his arrest in 1973. Mr. Sereni testified that he did not read the warning and instructions found on page one of the PHDF-2 and indicated that he paid little attention to the remainder of the instructions on the form.

Although he had not been totally detoxed, in September 1981, Mr. Sereni was administratively released from the Mercer County Detoxification Program (R-3).

Mr. Sereni was also indicted by a Mercer County Grand Jury and was charged with a violation of N.J.S.A. 2C:18-2(a)1 and N.J.S.A. 2C:2-6, attempt to enter illegally the Kingdom Hall of Jehovah's Witnesses in Hamilton Township for the purpose to commit a theft, concerning an incident which occurred between May 30 and June 1, 1982 (P-9). The indictment further charged him with a violation of N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:2-6, theft of movable property with a value in excess of \$500, concerning another incident which occurred between May 30 and June 1, 1982. Last, the indictment charged him with a violation of N.J.S.A. 2C:18-2a(1), for his unlawful entry of the New Jersey Synod Lutheran Church in Hamilton Township for the purpose of committing a theft, concerning an incident which occurred on June 5, 1982. Following his indictment, Mr. Sereni voluntarily entered a 21-day detoxification program. On April 15, 1983, Mr. Sereni pled guilty to counts one and two of the indictment and the third count was dismissed. Mr. Sereni was sentenced to three years probation, received a \$150 fine and was ordered to pay \$25 to the Violent Crimes Compensation Board for each count, sentences to be concurrent. Mr. Sereni now reports to the probation office on a monthly basis and pays \$50 per month against the fine. Mr. Sereni testified that his involvement in these incidents were heroin related.

In August 1982, Mr. Sereni was temporarily employed by the Playboy Hotel and Casino as a fill-in boiler room engineer (R-1). At or about this time, he became a hotel employee registrant.

Since November 1982, Mr. Sereni has been employed by the Marie Katzenbach School for the Deaf as an Operating Engineer I. He is a provisional employee and earns an annual salary of \$15,000. This employment has been satisfactory.

Mr. Sereni has also had various credit problems. More specifically, he was indebted to the Chase Manhattan Bank in the amount of \$1,050 (P-1). He testified that he is now making monthly payments of \$35-\$50 and the balance has been reduced to \$900. Further, Mr. Sereni incurred an indebtedness to the New Jersey Higher Education Assistance Authority in the amount of approximately \$2,137.13, regarding a student loan (P-1). As of January/February 1983, this loan was paid in full. Mr. Sereni has no other current debts.

Mr. Sereni is engaged to be married in early-1984.

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

(B) DISPUTED FACTS

In dispute were the reasons for Mr. Sereni's nondisclosure of certain criminal proceedings on his PHDF-2 and the current status of his involvement with drugs.

The Division contended that Mr. Sereni had failed to disclose his arrests of July 2, 1970, October 9, 1972 and March 5, 1981, and the charges which emanated therefrom, on his PHDF-2 and during a telephonic interview with a Division investigator. With regard to the arrest of July 2, 1970, Mr. Sereni testified that at the time he completed the PHDF-2 he had no recollection of the incident, nor does he now have a recollection of the incident. With regard to the arrest of October 9, 1972, Mr. Sereni testified that he did not disclose the incident because he was found not guilty, and that he did not realize the form required disclosure of offenses for which he was not found guilty. With regard to his arrest of March 5, 1981, Mr. Sereni stated that he did not disclose the incident because the matter had not been disposed of and because his attorney had advised him not to discuss the matter with any other person. Further, Mr. Sereni had no recollection of the details of his telephone conference with a Division investigator.

Detective Stephen Mihalow of the New Jersey State Police assigned to the Division, testified regarding a telephonic interview he conducted with Mr. Sereni on March 9, 1982. The detective testified that Mr. Sereni did not voluntarily disclose any of the three arrests and charges referred to above. More specifically, with regard to the arrest of July 2, 1970, the applicant had no recollection of the incident. Also, after being confronted with the facts of the arrest of October 9, 1972, the applicant stated that he did not believe it had to be disclosed because the charges were dismissed. Further, Mr. Sereni conceded the charges concerning the incident of March 5, 1981, but refused to discuss the matter upon advice of counsel because it was still pending in the courts.

In order to determine the reasons for Mr. Sereni's failure to disclose a portion of his criminal record history, his credibility must be assessed. Initially, his position in this matter must be recognized. He is the applicant for licensure and also seeks to prevent revocation of his registration, 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 that from my observations of the applicant's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the applicant testified truthfully in this regard. Also, the applicant's testimony was consistent with the documentary evidence and his prior statements to the detective. Accordingly, I am persuaded to believe that the reasons given by Mr. Sereni for his failing to disclose the three arrests and charges raised by the Division, although erroneous, were the result of ignorance.

Mr. Sereni described his various attempts to stop using drugs, specifically heroin. He attended but did not complete satisfactorily various detoxification programs from 1980 until 1982. In fall 1982 and following his most recent indictment, Mr. Sereni voluntarily entered and successfully completed a 21-day detoxification program. He stated that he has been free from drug use since that time. Since there was no evidence to the contrary and because of Mr. Sereni's apparent credibility, I accept his testimony that he is now free from drug use.

I so FIND.

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(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

Although the reasons offered by Mr. Sereni for the nondisclosure of the three arrests and charges raised by the Division were erroneous, the nature of nondisclosures, together with his credibility and other responses on his PHDF-2, indicate that the nondisclosures were the result of ignorance. A perusal of the PHDF-2 reveals several other errors in responding to questions, including, but not limited to, disclosing a portion of his criminal record history in response to question number 45 when it should have been in response to question number 46. I am persuaded that the nondisclosures are excusable.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that Mr. Sereni is disqualified from licensure by operation of N.J.S.A. 5:12-86b.

(B) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-129(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure.

As alleged by the Division, Mr. Sereni's conviction for a violation of N.J.S.A. 2C:20-3a and N.J.S.A. 2C:5-1, attempted theft of property with a value in excess of \$500, is a statutory disqualifying offense under section 86c(1) of the Act. However, it appears from the records admitted into evidence that it was not possible to determine what items within the locked cabinet Mr. Sereni might have attempted to steal, nor was it possible to determine their value (P-7, P-8 and R-3). Nevertheless, Mr. Sereni pled guilty to the charge as set forth in the indictment, which is determinative of this issue. The question of the value will be considered under the rehabilitation, good character and penalty issues, infra.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Sereni's conviction for a violation of N.J.S.A. 2C:20-3a and N.J.S.A. 2C:5-1 mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1). I further **CONCLUDE** that Mr. Sereni's conviction subjects his casino hotel employee registration to revocation, suspension or limitation, pursuant to section 91b of the Act.

(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. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions...are designed to extend strict State regulation to all persons...are designed 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 has raised nothing other than Mr. Sereni's convictions to establish that continued registration would be inimical to the Act. The Division stressed the nature of his conduct, in this regard. Nevertheless, the inimicality of the misconduct was established by the conclusion that the conviction is a per se disqualifier under section 86c(1) of the Act. Therefore, section 86c(4) does not apply. There was no charge that Mr. Sereni had committed any other act which would render his continued registration to be inimical to the Act.

(D) N.J.S.A. 5:12-89b(1)

Under Section 89b(1) of the Act, Mr. Sereni was required to establish, by clear and convincing evidence, that he possesses financial stability, integrity and responsibility. The Division raised issue with Mr. Sereni's late payments on two loans.

During the past ten years. There was no dispute that Mr. Sereni has encountered difficulties meeting his financial obligations. However, he has recently satisfied all obligations except for his debt to the Chase Manhattan Bank. He has reduced this debt by making regular monthly payments. It appears that Mr. Sereni has gained control of his personal financial affairs and his past difficulties should not now reflect

adversely upon his qualifications. He has demonstrated that he now possesses the requisite degree of financial stability, integrity and responsibility for licensure.

I **CONCLUDE** that Mr. Sereni has established, by clear and convincing evidence, his current financial stability, integrity and responsibility, pursuant to N.J.S.A. 5:12-89b(1).

(E) 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 had the applicant under their supervision.

First, Mr. Sereni is registered as a hotel employee and has applied for licensure to be employed as a boiler operator. In these capacities he would have no responsibilities for actual gaming activities and would not have substantial contact with patrons of the casino.

Second, Mr. Sereni's criminal record history, specifically his recent history between October 31, 1980 and April 1983, reflects the commission of very serious indictable offenses, including the possession and use of heroin, illegal entry, theft of valuable property and possession of a weapon.

Third, by Mr. Sereni's testimony it was established that his various criminal offenses were directly related to drug abuse, specifically heroin. This is a very grave circumstance.

Fourth, the incidents of misconduct appeared to be grouped into two chronological time periods. More specifically, there were four arrests and charges which occurred between July 2, 1970 and April 13, 1973 (J-1, P-3, P-4 and P-5). Nevertheless, Mr. Sereni was convicted of only two of the offenses, and by virtue of the penalty they appear to be minor. The second period of misconduct involves his arrest and charges of criminal misconduct for nine separate incidents which occurred between October 31, 1980 and June 5, 1982. The most recent offenses were disposed of in April 1983, less than one year ago. Of great significance is the fact that Mr. Sereni's most recent offenses were also of the most serious.

Fifth, at the time of his most recent offense, Mr. Sereni was 30 years of age. Therefore, his misconduct was not due to immaturity.

Sixth, Mr. Sereni's misconduct involved the commission of many serious offenses, the great majority of which and the most serious thereof occurred within the past three and one-half years.

Seventh, there were no social conditions which contributed to his misconduct. The single contributing factor appeared to be his drug abuse, which does not mitigate his misconduct.

Eighth, Mr. Sereni has demonstrated some rehabilitation. He admitted his misconduct both in response to the various charges filed against him and at the hearing.

Further, despite several failed attempts, he appears to have overcome his drug abuse. He has not committed any criminal acts for the past 19 months. He is completing satisfactorily the requirements of his probation. Also, Mr. Sereni has continued to build upon his licensing qualifications as a boiler operator and has established a positive work record since November 1982.

Nevertheless, I am not persuaded that Mr. Sereni has met his statutory burden to establish his rehabilitation. Although he has made positive achievements in various aspects of his personal and work life, these accomplishments have occurred only within the past 19 months, during which he was under the threat of prosecution and during which he has been on probation. Given the severity and duration of his misconduct prior to this period, an insufficient period of time has passed by which to measure accurately his rehabilitation.

I **CONCLUDE** that Mr. Sereni has not established, by clear and convincing evidence, his rehabilitation, pursuant to section 90h or section 91d of the Act.

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

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

Although Mr. Sereni has made significant and meaningful strides toward rehabilitation, his failure to establish, by clear and convincing evidence, his rehabilitation cannot be separated from his affirmative burden to establish his qualifications for licensure under section 89b(2).

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

(G) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct is purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activities;
- e. To prevent future misconduct of a like nature from recurring.

Although Mr. Sereni could not establish his rehabilitation, there is reason to believe that he will not return to criminal mischief. Nevertheless, it must be noted that a significant portion of his most serious criminal misconduct occurred during a period of time when he held a casino hotel employee registration. This reflects a serious disregard and/or lack of appreciation of his attendant responsibilities. The very limited period in which he has been free of misconduct and free of drug abuse is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be, reluctantly, revoked. However, in the event Mr. Sereni continues with his rehabilitation, favorable consideration should be given to a request to make an

early reapplication to hold a registration or for licensure, pursuant to N.J.A.C. 19:41-8.8(g). I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Gary A. Sereni be **GRANTED** and that the registration be **REVOKED**. It is further **ORDERED** that the application of Gary A. Sereni 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.

January 6, 1984  
DATE

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

10 JAN 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan 12, 1984  
DATE  
bm

Ronald J. Packey  
OFFICE OF ADMINISTRATIVE LAW

LIST OF EXHIBITS

- J-1 Personal History Disclosure Form-2, Gary A. Sereni, filed on June 8, 1981 (26 pages)
- P-1 Credit Bureau Associates—Updated Credit Profile, Gary A. Sereni, June 22, 1981
- P-2 United States Department of Justice, Federal Bureau of Investigation—Criminal Record History Sheet, Gary A. Sereni, July 10, 1981
- P-3 Township of Hamilton, Police Department—Offense Report, prepared by J. Marjarum, August 4, 1971 (3 pages)
- P-4 Hamilton Township Police Department — investigation report, prepared by Patrolman Clarence Harvell, October 9, 1972; Supplementary Investigation Report, prepared by Patrolman Nicholas R. Gaug, October 9, 1972; Supplementary Investigation Report, prepared by Patrolman William Clegg, October 9, 1972; Supplementary Investigation Report, prepared by Lieutenant Thomas C. Lechner, October 10, 1972; Arrest Report, prepared by Patrolman Clarence Harvell, October 16, 1972 (5 pages)
- P-5 Hamilton Township Police Department — Investigation Report, prepared by Patrolman John H. McHugh, April 13, 1973
- P-6 Trenton Police Department — Investigation Report, October 31, 1980; Arrest Report, prepared by Patrolman R. Szejner, October 31, 1980; Property Report, prepared by R.K. Cochran, October 31, 1980; Waiver of Rights, Gary A. Sereni, October 31, 1980 (5 pages)
- P-7 Lawrence Township Police Department — Offense Report, prepared by Patrolman Robert Janoski, March 4, 1981; Supplementary Offense Report, prepared by Patrolman Robert Janoski, March 21, 1981; Arrest Report, March 4, 1981 (4 pages)

P-8 The State of New Jersey v. Gary A. Sereni, Superior Court of New Jersey, Law Division Criminal, Mercer County, File No. 81-0890-Indictment No. 1057-81, filed July 21, 1981; Judgment of Conviction, April 30, 1982; Order of Dismissal of counts 1 and 3 of indictment, April 30, 1982 (9 pages)

P-9 The State of New Jersey v. Gary A. Sereni, Superior Court of New Jersey, Law Division - Criminal, Mercer County, Indictment No. 685-82 (3 pages)

R-1 Letter from Rich Dean, August 16, 1982

R-2 Resume of Gary A. Sereni (2 pages)

R-3 Mercer County Probation Office — Presentence Report regarding Gary A. Sereni, submitted by E. Richard Ciesielski, April 13, 1982 (9 pages)

WITNESS LIST

FOR THE DIVISION:

Stephen Mihalow

FOR MR. SERENI:

Gary A. Sereni

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-311  
OAL DOCKET NO. CCC 8594-83  
REGISTRATION NO. 43818-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
JEREMY F. SHICK, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 23, 1984, concluding that the respondent had demonstrated his rehabilitation from a disqualifying conviction pursuant to N.J.S.A. 5:12-91(h) and recommending that, the complaint which sought, among other things, the revocation of respondent's casino hotel employee registration be dismissed with prejudice; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of May 30, 1984, to modify the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement,

IT IS on this 11th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

In view of the finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1), based upon his May 12, 1983, conviction for theft contrary to N.J.S.A. 2C:20-3, that portion of the Initial Decision which finds that this same offense rendered the respondent's continued licensure "inimical to the policies of the Act, pursuant to section 86c(4)," [Initial Decision at 6] is rejected as unnecessary.

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 8594-83

AGENCY DKT. NO. 83-311

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

Petitioner,

v.

**JEREMY F. SHICK,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Jeremy F. Shick, pro se**

Record Closed: March 13, 1984

Decided: April 19, 1984

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Jeremy F. Shick, respondent. The Division alleged that Mr. Shick had committed a disqualifying criminal offense, for which the Division sought revocation of the respondent's casino hotel employee registration, pursuant to section 129 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 6, 1983. By letter filed on October 17, 1983, the respondent requested a hearing. On October 27, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 20, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Shick is currently 21 years of age and resides in Turnersville, New Jersey. The respondent is the holder of a casino hotel employee registration, number 43818-40.

As of October 20, 1982, the respondent was employed at the Golden Nugget Hotel/Casino (Golden Nugget). The respondent operated a stockroom for the housekeeping department, where he had been employed for approximately five months. Also at that time, the respondent resided with three friends, each of whom was employed by the Golden Nugget. The respondent was 19 years of age.

On October 20, 1982, the respondent was involved in an incident emanating from his employment at the Golden Nugget. The respondent and John T. Baldosaro, one of his roommates and fellow employees in the housekeeping department, took four ceramic statues with a value of \$150 each from the Lilly Langtry Restaurant at the Golden Nugget (P-1). The restaurant was closed at the time of the theft. When the respondent reported for work on October 21, 1982, he returned two of the statues to a linen closet. In the early morning of October 22, 1982, Baldosaro returned the two statues to the restaurant. Baldosaro was observed returning the statues.

On the morning of October 22, 1982, Mr. Shick approached his supervisor and admitted his role in the theft. Immediately thereafter, the respondent again admitted his involvement in the theft to State Police investigators. At this time, the respondent was

unaware that Baldosaro was being questioned by the State Police and had stated that he had found the two statues in the linen closet. The respondent did not identify Baldosaro as a participant in the theft. Subsequently, Baldosaro admitted that his attempt to return the statues was done as a favor to Mr. Shick, but he continued to deny participation in the theft. Thereafter, Baldosaro admitted having prior knowledge of the theft. On a later date, Baldosaro admitted his participation in the theft.

Also on October 22, 1982, the respondent was arrested and charged with violations of N.J.S.A. 2C:20-3, theft by unlawful taking with a value in excess of \$500, and of N.J.S.A. 2C:5-2, conspiracy. The respondent was released on his own recognizance. The respondent's employment at the Golden Nugget was terminated effective October 22, 1982.

On April 18, 1983, Mr. Shick signed a Waiver of Indictment and Trial by Jury (P-2). Pursuant to a plea bargain agreement, the respondent pled guilty to a violation of N.J.S.A. 2C:20-3, theft by unlawful taking with a value in excess of \$500. The remaining charge was dismissed. On May 6, 1983, the respondent was sentenced to 18 months' probation, a fine of \$250 payable within 90 days, and was ordered to pay \$25 to the Violent Crimes Compensation Board. The respondent paid his fine. The respondent has complied satisfactorily with the requirements of his probation, which will be completed on November 6, 1984. The respondent now reports once per month.

Mr. Shick described the circumstances underlying the incident. Immediately prior to the theft, the respondent had been drinking with Baldosaro. They took the statues for no specific reason and used them to decorate their apartment. When they awoke on the morning of October 20, 1982, the respondent and Baldosaro immediately realized their error and considered what course of action they should follow. They attempted unsuccessfully to return the statues on the evening of October 21, 1982. Nevertheless, the respondent voluntarily presented himself to his supervisor on October 22, 1982, and admitted his involvement in the incident.

The respondent is currently employed as a gas station attendant on a part-time basis in Turnersville, New Jersey. During the course of his employment, the respondent applied for credit from the Snap-on Tool Company in order to purchase tools for his employment. The respondent was issued credit in the amount of \$1,000, which is repayable at the rate of \$20 per week for 51 weeks.

The respondent also currently attends Camden County College, where he is taking courses which could lead to an associate degree. The respondent intends to apply to the General Motors Institute for admission to the auto mechanics program.

The respondent expressed regret for his misconduct, for which he stated he has paid a heavy price. The respondent has not been in any trouble since the incident. The respondent has established certain goals for himself and is making a sincere attempt to meet those goals.

Although the Division did not offer any rebuttal to the respondent's testimony, it is essential to assess Mr. Shick's credibility. Initially, the respondent's position in this matter must be recognized. As the holder of a casino hotel employee registration and as the respondent, he has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during a 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 misconduct and the documentary evidence and my examination of the documentary evidence, the respondent testified truthfully. The respondent's testimony was candid, consistent, believable, sincere and most persuasive. The respondent acknowledged fully the extent of his wrongdoing and accepted full responsibility for his misconduct. Also, the respondent made a sincere expression of remorse for his misconduct. In the final analysis, I am persuaded to accept his testimony in all respects.

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

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license 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. Shick's conduct constitutes a violation of section 86c(1) of the Act, and, accordingly, establishes that he is not qualified to continue to hold a casino hotel employee 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" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The respondent's conviction of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking with a value in excess of \$500, is a statutory disqualifying offense 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 conviction for a violation of N.J.S.A. 2C:20-3 disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

(B) 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 associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(h)(6). Related directly to this purpose, the Legislature stated "that the regulatory provisions . . . are designed to extend to strict State regulations to all persons . . . practices and associations related to" casinos and that the "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The circumstances underlying the incident establish that the respondent committed his misconduct in a licensed casino-hotel and during the course of his employment for which he held a casino hotel employee registration. Therefore, this misconduct is directly related to the operating of the casino hotel and would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact upon the public perceptions of the integrity of the casino industry.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

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

A licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the 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. Shick is registered as a casino hotel employee and, although currently not employed by a casino-hotel, was employed in a stock room capacity in the housekeeping department at the Golden Nugget. As such, he has no responsibilities for actual gaming activities, nor did he have substantial contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial patron contact.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking with a value in excess of \$500. Pursuant to section 86c(1) of the Act, the respondent's conviction is a statutory disqualifying offense and, as such, is serious. Although any incident of criminal misconduct is serious, this offense was minimally serious.

Third, the respondent testified that he committed the misconduct after having consumed alcoholic beverages. Nevertheless, the voluntary consumption of alcoholic beverages, which may have caused a state of intoxication, cannot be relied upon to mitigate the misconduct. Essentially, the respondent offered no excuse for his misconduct. On the day following the incident, the respondent recognized the seriousness of the situation and quickly admitted his misconduct to his supervisor and the state police. Further, the respondent accepted full responsibility for his misconduct.

Fourth, the respondent's misconduct occurred on October 20, 1982, approximately two and one-half years ago.

Fifth, at the time of the offense, the respondent was 19 years of age. It is likely that his misconduct was, in part, due to immaturity.

Sixth, the respondent's misconduct was an isolated incident.

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

Eighth, the respondent has demonstrated substantial rehabilitative efforts. He recognized immediately the nature of his misconduct and attempted to undo the wrong by returning the statues. Further, the respondent presented himself voluntarily to the proper authorities and admitted his involvement in the incident. He pled guilty to the charge, paid his fine and has complied satisfactorily with all of the requirements of his probation to date. Clearly, his misconduct constitutes aberrational behavior. In addition, the respondent has established a positive employment record since the incident, and has obtained credit for the purposes of enhancing his employability. Also, the respondent is currently pursuing educational opportunities for the purpose of improving his future employment opportunities. Given the respondent's age at the time of the offense and the fact that the offense is an isolated incident, a sufficient time has passed during which the respondent has demonstrated his rehabilitation. In the final analysis, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct.

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 petition of the Division to revoke the casino employee registration of Jeremy J. Shick be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

April 19, 1984  
DATE

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

Receipt Acknowledged:

April 23, 1984  
DATE

[Signature]  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

April 25, 1984  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 New Jersey State Police - Investigation Report, prepared by Detective A.C. Gatto, October 22, 1982; and Arrest Report, prepared by Detective A.C. Gatto, October 22, 1982 (3 pages)
- P-2 State of New Jersey v. Jerry Shick, Superior Court of New Jersey Law Division - Criminal, Waiver of Indictment and Trial by Jury; Accusation, April 18, 1983; and Statement by Defendant, April 18, 1983 (5 pages)
- P-3 State of New Jersey v. Jerry Shick, Superior Court of New Jersey, Law Division -Criminal (Atlantic County), Judgment of Conviction, May 6, 1983 (6 pages)

WITNESS LIST

For petitioner:

None

For respondent:

Jeremy F. Shick

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-181  
OAL DOCKET NO. CCC 4753-83  
REGISTRATION NO. 43137-40

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

Complainant, :

V. : FINAL ORDER

JOSEPH SIMPSON, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 20, 1984, recommending that the petition of the Division of Gaming Enforcement be denied and dismissed with prejudice; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of February 15, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement with prejudice,

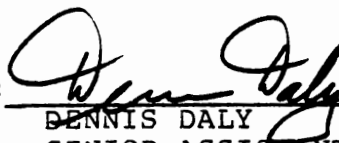
IT IS on this 23rd day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed with prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4753-83

AGENCY DKT. NO. 83-181

**DIVISION OF GAMING ENFORCE-  
MENT, DEPARTMENT OF LAW AND  
PUBLIC SAFETY,**

Petitioner

v.

**JOSEPH SIMPSON,**

Respondent.

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**APPEARANCES:**

**Anthony Delia**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Deputy Attorney General Patricia M. Wild at the prehearing conference)

**Joseph Simpson**, Pro Se

Record Closed: December 5, 1983

Decided: January 19, 1984

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Joseph Simpson, respondent. The Division alleged that Mr. Simpson had committed a criminal violation for which it seeks revocation of his hotel employee registration, number 43137-40, pursuant to section 129 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 26, 1983. By letter filed on June 16, 1983, the respondent requested a hearing. On June 27, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 21, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

During at least the first half of the 1970's, Mr. Simpson owned and operated a tavern, cocktail lounge and catering business in Essex County. During early 1977, he sold the business. The respondent received a small down payment and held a mortgage on the business. In late 1977/early 1978, the respondent relocated to Ocean City for the purpose of seeking employment in the casino industry.

The two partners who had purchased the business were unable to operate it successfully. Ultimately, they stopped making payments to the respondent. Upon advice of counsel, the respondent reassumed ownership and control of the business.

The business was in a poor condition. There were no glasses or bar stools and no patrons. This was corroborated by the testimony of Michele Grainger. Also, the respondent assumed liability for the debts of the purchasers, which were in excess of \$20,000.

Upon resumption of the business, the respondent was in a severe financial condition. He was approached by a person who informed him that if he referred to him all football bets in the tavern, the respondent would receive 25 percent of the amount wagered. Because of the respondent's financial difficulties he began to refer bets. At first, this involved five to six patrons of the tavern, who bet \$25 to \$50 per game. Later, the respondent was told to receive wagers by telephone. He received a few telephone bets, some in the amount of \$1,000; however, the respondent received no commission on these wagers.

On December 7, 1980, the respondent was arrested by the Essex County Prosecutor's Office (P-3). At that time the respondent was in possession of a notebook which contained bets totalling approximately \$10,000.

On April 16, 1981, the respondent, together with others, was indicted by an Essex County Grand Jury, and was charged with violations of N.J.S.A. 2C:5-2, conspiracy; two counts of N.J.S.A. 2C:37-2, promoting gambling - third degree; and N.J.S.A. 2C:37-3, possession of gambling records (P-1).

On January 22, 1982, the respondent pled guilty to a single violation of N.J.S.A. 2C:37-2, promoting gambling - third degree (P-2). The remaining charges were dismissed upon motion of the prosecutor pursuant to the plea agreement. On March 10, 1982, the respondent was sentenced to two years' probation, with the condition that he serve 90 days, and was ordered to pay a fine of \$1,000 and a penalty of \$25 (P-2).

The respondent served two months in the Essex County Jail and was released on May 5, 1982 (R-1). His probation was transferred to and monitored by the Ocean County Probation Department (R-1). The respondent met all reporting requirements and has paid his fine and penalty in full (R-1). The respondent is currently under a minimum supervision level; further, the probation department has made application for early release.

At about the time of his arrest, the respondent sold his business and paid off all outstanding debts.

On July 29, 1982, and upon the recommendation of Ms. Grainger, the applicant was employed by the Sands Hotel and Casino (Sands) as a cook. The respondent has earned a very positive work record, has not missed any work and has not been the subject of any disciplinary proceedings. He is well regarded by his employment supervisors (R-2 and R-3).

The respondent has never been arrested or charged with any offenses either before or since the subject incident.

Mr. Simpson testified on his own behalf. He conceded and accepted full responsibility for his misconduct. His misconduct has caused suffering for his family and

himself, personally. He has no intention of repeating his misconduct. The respondent wants to continue his employment and career as a cook in the casino industry.

Although no facts were in dispute, it is important to assess the sincerity of the respondent's assertions of remorse and his expressed intentions of not repeating his misconduct, which determination must rest upon the respondent's credibility. Initially, his position in this matter must be recognized. As the respondent, he seeks to prevent revocation of his registration 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 discussed openly the circumstances of the criminal proceedings, which were extremely embarrassing to him. Accordingly, I am persuaded to accept his testimony in all respects.

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

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure/registration 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. Simpson's conviction constitutes a violation of section 86c(1) of the Act, and, accordingly, establishes that he is not qualified for continued registration. Although the respondent acknowledged his misconduct, he contended that he has established his rehabilitation, pursuant to section 91d of the Act.

#### (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 constitutes a violation of a statutory disqualifier, pursuant to section 86c(1) of the Act.

There is no doubt that the respondent's conviction for a violation of N.J.S.A. 2C:37-2, promoting gambling-third degree, is a statutory disqualifying offense 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 conviction for a violation of N.J.S.A. 2C:37-2 disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Simpson is registered as a hotel employee and is employed as a cook at the Sands. 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 the casino.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:37-2, promoting gambling-third degree. Under section 86c(1) of the Act, this is a statutory disqualifier. Further, it was evident that the respondent's misconduct involved the commission of several offenses of the same nature. The respondent's actions constituted a knowing violation of the law, which involved illegal gambling activity. This offense was serious.

Third, the respondent knew that his conduct was criminal in nature, but he did not withdraw therefrom. However, the respondent did not initiate his involvement in the commission of the crime. Further, although I recognize that the respondent had substantial financial obligations which tempted him into participation, the respondent could have disassociated himself from the illegal activities.

Fourth, the misconduct occurred in December 1980, three years ago.

Fifth, at the time of his offense, the respondent was a middle-aged adult. His misconduct was not the result of immaturity.

Sixth, the respondent's misconduct occurred only once. There was no other indication of wrongdoing of any kind.

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

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. He pled guilty to the charges and accepted fully his responsibility for his misconduct. He served his time in prison, paid his fine and completed his probation almost in its entirety. The respondent has also established a very positive employment record within the casino industry since his release. For the past 20 months he has been employed by the Sands as a cook and has performed in an exemplary manner. Most significant is the fact that this employment is within the casino industry. The respondent

has pursued the opportunities available to him and has distinguished himself. Although he cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation, but for the completion of probation. However, sufficient time has passed since the incident during which the respondent has demonstrated 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 petition of the Division to revoke the casino hotel employee registration of Joseph Simpson be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

January 19, 1984  
DATE

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

20 JAN 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Jan. 24, 1984  
DATE

Mailed to Parties:  
Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

m/E

LIST OF EXHIBITS SUBMITTED INTO EVIDENCE

- P-1 The State of New Jersey v. Joseph Simpson, et als., Superior Court of New Jersey, Essex County (Law Division - Criminal), Indictment, filed April 16, 1981 (39 pages)
- P-2 The State of New Jersey v. Joseph Simpson, Judgment of Conviction, March 10, 1982 (2 pages)
- P-3 Essex County Prosecutor's Office—Preliminary Report, prepared by Sergeant Raymond Gilhooly, December 8, 1980 (2 pages)
- R-1 Letter from Michael Carpenter, Probation Officer, September 19, 1983 (2 pages)
- R-2 Letter from Raymond F. Lopez, Executive Chef, Food and Beverage, September 20, 1983
- R-3 Letter from Joseph Blackburn, Sous Chef, December 1, 1983

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Michele Grainger

Joseph Simpson

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-196  
OAL DOCKET NO. CCC 9865-83  
APPLICATION NO. 46442-21

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APPLICATION OF ANTHONY R. SORCE  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 17, 1984, recommending that the application of Anthony R. Sorce for a casino employee license be denied; and Mr. Sorce having filed exceptions to the Initial Decision on May 7, 1984; and the Commission having considered the entire record of these proceedings resolved at its public meeting on May 30, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 4th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 9865-83

AGENCY DKT. NO. 83-EA-196

**ANTHONY R. SORCE,**

Petitioner,

v.

**STATE OF NEW JERSEY,**

**DEPARTMENT OF LAW AND**

**PUBLIC SAFETY, DIVISION**

**OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Ronald N. Manos, Esq.,** for petitioner

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

Record Closed: March 5, 1984

Decided: April 17, 1984

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

Anthony R. Sorce seeks a license as a casino employee from the Casino Control Commission (Commission). He wishes to work in the casino industry as a roulette dealer and blackjack floorperson. On October 18, 1983, the Division of Gaming Enforcement forwarded to the Commission a letter in which it raised certain questions concerning whether the petitioner should be licensed but took no position with respect to whether the license should be granted. The Commission transmitted the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Administrative Law Judge Jeff S. Masin on February 17, 1984, and a Prehearing Order was issued on March 1, 1984. A hearing was held on March 5, 1984, at the Camden County Hall of Justice, Camden, New Jersey.

The facts of this case are relatively simple. As gleaned from testimony taken at the hearing, particularly that of Anthony Sorce, Mr. Sorce was formally a principal and then superintendent of schools in the Pine Hill School District. He served as superintendent from 1973 to 1979. He has a bachelor's degree from Seton Hall University and a masters from Kean College in supervision and administration of education. He has also done post-graduate work.

On July 31, 1980, Mr. Sorce left the Pine Hill School District to engage in employment as a principal in a company called Whitewall Specialists. This employment lasted from August through November. The company, which was unsuccessful, is now defunct. Thereafter, in November 1980, Sorce became employed by the Golden Nugget Casino as a blackjack dealer. He obtained his license and worked from November 1980, until he was injured in December 1981. He was then out on a temporary medical leave of absence for all of 1982 into 1983. He was released by his doctor in March 1983. He was then told to report to work.

On March 30, 1983, Sorce reported to the casino administrator. He was asked whether his license was up-to-date. It was not; however, Sorce did not reveal this to the administrator.

According to Sorce's testimony, at the time he reported back to work on March 30, 1983, he was at his lowest financial ebb ever. He had been on temporary disability for three months. He had had no employment since his injury. His worker's compensation claim had been unsuccessful. He was on food stamps and on a verge of applying for welfare. Sorce had a wife and two children. His wife was working part-time as a teacher's aid. His mortgage was in arrears. He was very despondent. He also had a \$35,000 debt from his previous business and a second mortgage as a result of that financial involvement.

Sorce testified that after being asked whether his license was up-to-date, he determined that he would attempt to work out some kind of an arrangement with the Casino Control Commission to allow him to get his license renewed even though he did not

have the money to pay the renewal fee. He left the Golden Nugget and went to the Commission's office, intending to explain the situation. While waiting on line, he heard someone say that it would take eight months to a year and a half for licenses to be renewed. At this point, Sorce claims that he "panicked." When he reached the desk, he was asked if his license had been renewed and he said that it had. In fact, it had not.

Sorce testified that he had his briefcase in his car outside the Commission's office. Inside the briefcase was the original check which he had used to pay his original licensing fee in 1979. As standard procedure in the Golden Nugget Casino, employees were to carry the original check in the badge which they wore so that could produce the check at any time to prove that their license fee had been paid. Sorce took the check and altered the date, using a fine tip Bic pen. The alteration changed the original date of June 11, 1979, to read June 11, 1982. Sorce also wrote on the check "license renewal." He also attempted to alter the date of the processing stamp on the back of the check. This activity occurred in Sorce's car. The changes were accomplished between approximately 9:00 a.m. and 12:00 p.m. This was done after he had sat on the Boardwalk for approximately one hour, while deciding what to do. Sorce then made a photocopy of the check.

When Sorce presented the altered check to the Commission personnel, it took no more than ten minutes for him to be arrested. A discussion then ensued between commission personnel and a deputy attorney general about what offense he should be charged with. He was eventually charged with attempting to offer an altered instrument, a violation of N.J.S.A. 2C:5-1. This charge was dismissed in municipal court, on the apparent basis that it was conceived that there was no offense of attempting to commit a disorderly persons offense.

The applicant testified that the renewal fee was \$75. A reapplication would cost \$360. The reason for the alteration of the check was that Sorce did not have \$75 to pay for the renewal of his license. In addition, it appears that he may have been concerned that there would be a significant delay in obtaining licensure in any legitimate way.

The applicant testified that his actions on March 30, 1983, were "ignorant, unintelligent" and the stupidest thing he had ever done.

Following his arrest, Sorce remained unemployed until May 1983. He had no income and friends and relatives helped to pay his bills. He then obtained a job with the Philadelphia Baking Company working as a machine operator for \$7.95 an hour.

According to the applicant, he has been advised by the administrator of the Golden Nugget Casino that the casino would be more than happy to take him back as an employee if he can clear up his difficulties with the Division and Commission.

While employed at the casino, Sorce was the president of the dealer's council and met with management once a month or so to discuss mutual problems. He also presented at the hearing evaluations of his performance as a school superintendent. His November 1978 evaluation indicates he was performing "well." He presented several commendations and letters of appreciation from parents and teacher groups, as well as a letter of appreciation for his work as secretary of the Camden County Association of School Administrators in the 1978-1979 school year.

In addition to the documentary evidence in support of Mr. Sorce's background, he also presented the testimony of Cynthia G. Chazanoff, who worked as a fifth grade teacher in the Pine Hill School District and has known Mr. Sorce since 1970. She worked together with him for many years and was president of the Pine Hill Education Association. When Sorce was the superintendent of the system, Chazanoff was involved with him in the negotiation of the new teacher's contract each year. She had no questions whatsoever about Sorce's honesty and integrity and found him to be quite fair. She became quite friendly with him and maintains a friendly relationship with the Sorce family. She became employed at the Golden Nugget Casino as a blackjack dealer and now is a roulette dealer. This employment began in 1979. Chazanoff now owns a nursery school and Sorce serves as an advisor for that school. She confirmed that it was the firm policy of the Golden Nugget for employees to carry their original check exhibiting payment of the licensing fee.

Charles Short, a maintenance supervisor for Certain-Teed Company in Berlin and a resident of Pine Hill since 1957, testified on behalf of Mr. Sorce. Short was a member of the Pine Hill Board of Education for six years and was on the negotiating committee. He frequently met with Sorce in connection with budget and contract negotiation matters and found no reason to doubt Sorce's honesty at any time. His wife served as the superintendent's secretary.

DISCUSSION

This case presents some serious difficulties. A review of Mr. Sorce's background indicates quite plainly that until his action of March 30, 1983, he was an outstanding citizen who held responsible positions and who was recognized for his achievements. There was certainly nothing in Mr. Sorce's background that would indicate that he would ever attempt the type of action which occurred on March 30. However, it appears that having made a decision, for reasons which are not part of this record, to leave the field of education and pursue business interests, Mr. Sorce found himself in financial difficulty and then, after securing a position in the casino industry, suffered further difficulties brought on by his injury. By the time he was again in physical condition sufficient to permit him to returning to work, he was in desperate straits. There is no doubt in my mind that he was financially disabled at the time that he appeared in the Commission's office on March 30.

If one looks at the entire record, it certainly does appear that Mr. Sorce's action was of an aberrational nature. At first blush, one may be strongly influenced to ignore or excuse what occurred and and grant the license which the applicant seeks. However, a reflection on what occurred raises some serious doubts about that course. When Mr. Sorce determined that it was necessary for him to obtain his license so he could return to work, he chose to engage in an attempt to defraud the Casino Control Commission itself by deceiving the Commission through the use of an altered check. According to Sorce's testimony, he did this after spending some time on the Boardwalk contemplating his situation. Having apparently given thought to the matter, he undertook it upon himself to attempt to circumvent the regulations, and obtain his license by fraud. Although what he did may not have actually constituted a criminal offense because of the minimal amount of money involved and the fact that the agency was smart enough to see through the ruse and prevent its success, the fact that no criminal liability attached was only the result of a number of fortuitous circumstances.

The Casino Control Act is intended to establish standards to control the licensure of individuals and entities who seek to operate in the casino industry. The entire act is geared toward assuring that those who obtain licensure are as honest, dependable and of as good character as any licensing scheme can assure. There could be no greater indictment of an individual's lack of reliability and honesty as a casino industry employee than evidence that he had attempted to defraud the Casino Commission itself. While

others who have been denied licenses have suffered such a fate because of actions not directly related to the casino industry and the licensing scheme, this petitioner's offense goes to the very heart of the system.

Much as this court sympathizes with Mr. Sorce's predicament and the problems which he has, I cannot understand why a person of his intelligence and his background did not realize that the relatively minimal amount of money necessary to procure his license could have been obtained in other ways. While no doubt Sorce was desperate to come back to work and would have found it perhaps difficult to ask friends, relatives, or others for a few more dollars so that he could get his license, such an action would have been far preferable to the method that he used to attempt to obtain a valid license. I cannot in good conscious agreed to the licensure of someone who has demonstrated within this past year, that given circumstances of a pressing nature, he may undertake actions which threaten the integrity of the system. While it may well be that this action was a single aberrational act in the life of Mr. Sorce, I cannot conceive that licensure of an individual who has undertaken this type of action is consistent with the policies of the Casino Control Act and in the best interests of the casino industry. With a good deal of reluctance and yet with the firm conviction that one who attempts to defraud the Commission should not be involved in the industry, I must deny this applicant's application for licensure. He has not demonstrated by clear and convincing evidence that he has the requisite good character, honesty and integrity required for licensure under N.J.S.A. 5:12-90(b), incorporating 5:12-89(b)2. In addition, it appears that licensure would be inimical, pursuant to N.J.S.A. 5:12-86(c)4.

It is **ORDERED** that the petitioner's application be **DENIED**.

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

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

April 17, 1984  
DATE

April 17, 1984  
DATE

April 23, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:  
Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW *phs*

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EVIDENCE LIST

On behalf of Petitioner:

- P-1 Superintendent's Evaluation
- P-2 Letter of July 20, 1979, from James P. Carden
- P-3 Letter of January 15, 1979, from Sandy Wells, Board Secretary
- P-4 Letter of December 14, 1979, from Harriett S. Weisenfeld, In-Service Director, New Jersey Association of School Administrators, with attachment
- P-5 Letter of February 26, 1976, from the Title I Staff
- P-6 Front page of November 22, 1976 issue of N.J.A.S.A. On Target, Volume I, Number 1
- P-7 Two-page letter of May 25, 1977, from Mr. and Mrs. George Schmidt
- P-8 Letter of March 3, 1978, from Richard E. Chandler, ED.D.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-28  
APPLICATION NO. 40565-21  
OAL DOCKET NO. CCC 1988-83

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APPLICATION OF ROLAND M. SPENCER :  
FOR A CASINO EMPLOYEE LICENSE :

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 18, 1983, recommending that the casino employee license application of Roland M. Spencer be denied; and the Applicant having filed exceptions on December 12, 1983, to which the Division of Gaming Enforcement filed a response on December 19, 1983; and the Commission having considered the entire record of these proceedings, resolved at its public meeting on January 25, 1984, to reject certain findings and conclusions contained in the said Initial Decision and to grant the application,

IT IS on this 14<sup>th</sup> day of May 1984, ORDERED that the following findings and conclusions stated in the Initial Decision of the Office of Administrative Law be and hereby are rejected by the Casino Control Commission:

1. The applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, in regard to his failure to disclose completely his criminal record on his PHDF-2 and during his telephonic interview with a Division of Gaming Enforcement investigator. [Initial Decision at 13].
2. The applicant has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h. [Initial Decision at 15].
3. The applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act. [Initial Decision at 16].
4. The application of Roland M. Spencer for licensure as a casino employee be denied. [Initial Decision at 16].

IT IS FURTHER ORDERED that the application of Roland M. Spencer be and hereby is granted based upon the following findings of the Casino Control Commission:

1. Based upon the record, the Commission finds that, in consideration of: (a) the applicant's disclosure of certain aspects of his criminal record, including his most serious offense, i.e. a 1975 conviction for grand larceny; (b) the circumstances surrounding his completion of the license application form; (c) his limited formal education, and (d) his statement to the effect that the local police could provide information concerning any arrest he may have omitted, the applicant's failure to disclose the full extent of his criminal arrest and conviction record was not an intentional non-disclosure made in conscious disregard of the regulatory process, and should, therefore, not result in his disqualification pursuant to N.J.S.A. 5:12-86(b).

2. Pursuant to N.J.S.A. 5:12-90(h), the Commission finds that Mr. Spencer has adequately demonstrated rehabilitation from his disqualifying offense, i.e., grand larceny in violation of N.J.S.A. 2A:119-2 which occurred in 1975, considering: (a) the four years that have elapsed since his last contact with the criminal justice system, and the passage of approximately nine years since Mr. Spencer's commission of a statutory disqualifying offense; and (b) his commendable employment record which includes a position with Caesars Boardwalk Regency since July 1983, and his employment for the preceding 3 1/2 years as a parking supervisor; (c) favorable references from his present and previous employers attesting to his good character and business ability; and (d) his discontinuance of the use of alcohol and controlled dangerous substances, which contributed in large part to his prior unlawful conduct.
  
3. There being no other bases for disqualification and considering the ALJ's finding that the applicant enjoys a favorable reputation for good character, honesty and integrity [Initial Decision at 11], the Commission finds that Mr. Spencer has adequately demonstrated his qualifications for licensure, pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1988-83

AGENCY DKT. NO. 83-EA-28

**ROLAND M. SPENCER,**

Applicant

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW AND**

**PUBLIC SAFETY,**

Respondent.

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**APPEARANCES:**

**Charles J. Indyg, Esq.,** for the applicant

**William J. Walsh,** Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 3, 1983

Decided: November 17, 1983

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

**STATEMENT OF THE CASE**

This matter concerns the application of Roland M. Spencer, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division),

Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose information material to licensure, had been convicted of disqualifying criminal offenses and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Spencer filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission on February 16, 1982 (J-2). By letter dated February 15, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated January 26, 1983, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter dated March 8, 1983, the applicant requested a hearing. On March 14, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 20, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Spencer was born in Wilmington, Delaware, and is now 32 years of age (J-2).

The applicant was involved in an incident on November 8, 1966, which led to his arrest on that date by the New Castle, Delaware, Police Department (R-1). He was charged with grand larceny (comparable to N.J.S.A. 2C:20-2b) and was convicted and sentenced to the Ferris School for Boys in Delaware. The applicant was 15 years of age at the time of the offense.

The applicant left high school in 1967.

On November 17, 1969, the applicant was arrested by the Delaware State Police and was charged with larceny of an automobile (comparable to N.J.S.A. 2C:20-3a) (R-1 and R-2). The charges were downgraded to driving a motor vehicle without the consent of the owner (comparable to N.J.S.A. 2C:20-10). The applicant pled guilty and was sentenced to 90 days and one year probation. He was 18 years of age at the time of the offense.

In 1972 the applicant was married (J-2). This marriage ended in a divorce in 1978.

From 1972 to 1976, the applicant was employed by a dairy in Wilmington, Delaware as a driver/salesman (J-2).

In 1973, the applicant earned a graduate equivalency degree (J-2).

On July 30, 1974, the applicant was arrested by the Wilmington, Delaware, Police Department (R-1). He was charged with being in possession of marijuana (comparable to N.J.S.A. 24:21-20A(3)), being in possession with intent to distribute (comparable to N.J.S.A. 24:2119A(1)), keeping and maintaining a disorderly house (comparable to N.J.S.A. 2C:33-12B), being in possession of a hypodermic needle (comparable to N.J.S.A. 2A:170-77.5), and being in possession of a syringe (comparable to N.J.S.A. 2A:170-77.5). On September 17, 1982, the Wilmington Municipal Court dismissed the charges. Nevertheless, the applicant admitted that the marijuana was his. He was 22 years of age on the date of the arrest.

On May 22, 1975, the applicant was arrested in Lower Township, Cape May County, New Jersey (R-2, R-4 and R-5). He was charged with violations of N.J.S.A. 2A:94-1, breaking and entering (comparable to N.J.S.A. 2C:18-2), and N.J.S.A. 2A:119-2, larceny (comparable to N.J.S.A. 2C:20-2). On July 22, 1975, the applicant was indicted by a Cape May County Grand Jury for a violation of N.J.S.A. 2A:119-2, larceny. On January 19, 1976, the applicant failed to appear for trial and a bench warrant was issued. On April 27, 1976, the applicant was arrested by the New Castle County, Delaware, Police Department, on the warrant. On June 7, 1976, the applicant pled guilty to the indictment. On July 30, 1976, the applicant was sentenced to six months, suspended, was fined \$500 and was placed on two-years' probation. The applicant was 23 years of age at the time of the offense.

On July 6, 1975, the applicant was arrested by the Rehoboth, Delaware, Police Department (R-1). He was charged with destruction of property (comparable to N.J.S.A. 2C:17-3). The applicant was found guilty in the Rehoboth Municipal Court and received a \$10 fine plus costs. He was 23 years of age at the time of the offense.

From 1976 to 1978, the applicant was employed by D & M Construction in Wilmington, Delaware, as a labor supervisor (J-2).

From 1978 to 1980, the applicant was employed by Red Letter Specialties as a driver/salesman (J-2).

On November 6, 1979, the applicant was arrested by the Wilmington, Delaware, Police Department on a fugitive warrant (comparable to N.J.S.A. 2C:98-3), concerning his failure to appear in Cape May County and his failure to pay monies owed in connection with his probation concerning the sentence for his guilty plea to the larceny indictment (R-2, R-4, R-5 and R-6). On December 4, 1979, and after the fine had been paid, the bench warrant and charges were dismissed. On January 7, 1980, the applicant was discharged from probation. He was 28 years of age at the time of the arrest.

From 1980 to 1983, the applicant was employed by 20-20 Parking in Atlantic City as a parking supervisor (J-2). The facility provided valet parking services for Aubrey's Restaurant. The applicant was a full-time employee and worked six days per week. His tenure was satisfactory.

In October 1981, the applicant relocated his residence to Atlantic City.

On February 16, 1982, the applicant filed his PHDF-2 with the Commission (J-2). In response to question number 45, which concerned juvenile offenses, the applicant disclosed the larceny charge and conviction which stemmed from his arrest on May 22, 1975, in Lower Township (R-2, R-4 and R-5), and he also disclosed that he had been charged with possession of marijuana concerning his arrest on July 30, 1974 (although the year was misstated as 1976) in Wilmington, Delaware (R-1). The applicant also made the following statement: "Clean since then as far as I can remember. Please contact Wilm. Del. City Police." In response to question number 46, which concerned the adult criminal record history of the applicant, he replied in the negative and made the following

statement: "I don't know." In response to question number 52, which concerned charges which were other than criminal, the applicant disclosed that he had been charged with disorderly conduct in Wilmington, Delaware, during the 1970's. However, the applicant did not disclose on the PHDF-2 his arrest on November 8, 1966, by the New Castle Police Department and charges (R-1), his arrest on November 17, 1969, by the Delaware State Police and charges (R-1 and R-2), his arrest on July 6, 1975, by the Rehoboth Police Department and charges (R-1), and his arrest on November 6, 1979, by the Wilmington Police Department and charges (R-6).

On March 25, 1982, the applicant successfully completed a course in craps at the Atlantic Community College (J-1).

From July 14, 1983, to the present, the applicant has been employed by the Boardwalk Regency Corporation (BRC) in the Housekeeping Department (P-1). His employment is full-time (P-2). The applicant's employment record has been satisfactory, and he has missed one day of work because of illness.

Mr. Spencer was interviewed regarding his application by Dwaine K. Brooks, an investigator with the Division, by means of a telephone conference.

The applicant has done some work for the American Cancer Society during the past year (P-3). More specifically, he worked a fight.

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's arrests, charges and convictions, the reasons for the applicant's purported failure to disclose his criminal record on his PHDF-2 and during a telephonic interview with a Division investigator, and his good character, honesty and integrity.

With regard to his arrest in November 1966 (R-1) when he was a juvenile, the applicant stated that he had been drinking alcoholic beverages with friends. They were intoxicated and stole an automobile. At the time of the incident, the applicant knew the automobile was stolen.

With regard to his arrest of November 17, 1969, and charges regarding the use of an automobile without the consent of the owner (R-1 and R-2), the applicant stated that he had again been drinking alcoholic beverages with a friend. Nevertheless, the applicant knew that he and his companion were stealing an automobile. The applicant was a passenger in the vehicle.

With regard to his arrest on July 6, 1975, and charge of destroying property, the applicant stated that he tore up a parking ticket in front of a police officer. He pled guilty to the charges.

With regard to the incident of July 30, 1974, the applicant stated that a friend, who was a fugitive from a rehabilitation center, visited the applicant at his apartment. This was observed by law enforcement authorities. While the applicant was out of the apartment, law enforcement authorities entered the premises and arrested the applicant's friend. Various drugs and drug-related paraphernalia were discovered in the premises. The applicant stated that, with the exception of the marijuana, the drugs and drug-related paraphernalia belonged to his friend, who had dropped them on the floor just prior to his arrest. The charges against the applicant were dismissed because the applicant's friend admitted sole possession of the contraband.

With regard to the incident of May 22, 1975 (R-2, R-4 and R-5), the applicant stated that he and friends were en route to Cape May from Delaware for a short vacation. They had begun consuming alcoholic beverages upon their departure at 11:00 p.m. on May 21, 1975. They stopped at the Lower Township Police Department to ask directions. The applicant remained outside the station and ransacked a police vehicle. The applicant took a walkie-talkie with a value in excess of \$500. The police discovered the theft and traced it to the applicant's party. The applicant stated that in response to assurances by the police that no action would be taken, he turned over the walkie-talkie. Nevertheless, he was arrested and charged as previously stated. The applicant pled guilty to the indictment without benefit of counsel, although a public defender had been assigned to him.

At this point, it should be noted that because the applicant's testimony regarding the previously discussed incidents was unrefuted, was plausible and was generally consistent with the documentary evidence, I am persuaded to accept his version of those incidents.

The applicant also described the circumstances underlying his failure to comply with the requirements of his probation, which resulted from his guilty plea on June 7, 1976, to the indictment for larceny. The applicant had failed to report once per month by mail and had not paid his fine; the last payment was made on April 19, 1977 (R-6). The applicant stated that he had not complied with the requirements of his probation from 1977 until his arrest on November 6, 1979, because he did not want to go back to court for fear of being incarcerated and because he had no money with which to pay the fine, as he was unemployed and because he was getting married. However, I am not persuaded to believe this explanation.

The applicant's explanation of the circumstances underlying his failure to comply with the requirements of his probation is not consistent with the documentary evidence and the remainder of his testimony at the hearing. More specifically, although the applicant stated that he had no money because he was unemployed between 1977 and 1979, in response to question number 31 on his PHDF-2 he claimed to have been employed and did not reveal any period of unemployment. Further, the applicant was married in 1972, as established by his response to question number 19 on his PHDF-2 and by his testimony, well before the issuance of the bench warrant.

Mr. Spencer also described the circumstances under which he completed his PHDF-2. More specifically, the applicant attempted to explain away the apparent nondisclosures of a portion of his criminal record history.

He completed the PHDF-2 during an evening while at work at the parking lot. Further, he completed the application in a rush because the gaming school wanted the application back by the next class. Nevertheless, the applicant knew that the application was important and he had read the warning on the first page of the form. However, he did not read the form thoroughly, did not understand portions of the form, did not make any inquiries to any source for clarification of his purported confusion and did not understand that his answers were under oath. The applicant stated that he assumed the Commission would contact him if there was a problem with the application. Further, with regard to his criminal record history, the applicant stated that he commenced disclosure at age 18. Also, he did not remember specific charges, dates or dispositions. The applicant claimed that he disclosed the more serious incidents in response to question number 45 because the

other charges seemed like school pranks. In addition, his response to question number 52 was intended to identify the incident of July 6, 1975, in Rehoboth, Delaware (R-1). However, the applicant also testified that he informed a Division investigator that he did not disclose this incident because it had been forgotten. The applicant further testified that because all other questions on the application referred exclusively to the applicant, he believed question number 46 referred to his family. Nevertheless, the applicant also testified that he had responded in the negative to question number 46 because he believed it would further his chances for licensure.

Most significant regarding the applicant's explanation of the reasons for the nondisclosure of his full criminal record history was Mr. Spencer's credibility as a witness. Initially, the applicant's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. Further, the applicant's testimony on several critical points was inconsistent. First, he stated that he had commenced disclosure of his criminal record at age 18. Nevertheless, that which was disclosed was set forth in response to question number 45, which concerned juvenile offenses. Second, the applicant claimed that his response to question number 52 was intended to disclose his arrest of July 6, 1975, in Rehoboth, Delaware. However, he also testified that he had informed the Division investigator that the incident was not disclosed on the PHDF-2 because it had been forgotten. Third, the applicant testified that he had responded in the negative to question number 46 because of his belief that it concerned only his family members. Nevertheless, he also testified that his response was an attempt to enhance his chances for licensure. These responses were mutually inconsistent and are not subject to reconciliation. Also, they concern the most critical issues in this proceeding. These explanations, when viewed in light of the applicant's testimony concerning his abilities to read and write and his actions and attitudes at the time he completed the PHDF-2, establish unequivocally that his testimony in this regard is not worthy of belief.

It must also be noted that the applicant knowingly ignored and disregarded all warnings and directions placed on the PHDF-2 with regard to full and accurate disclosure of all facts requested. Further, although the applicant stated that he completed the form under time pressures, it was apparent that he had approximately 48 hours to complete the form, which was more than sufficient, but spent only a very brief period of time in doing

so. In addition, the applicant's testimony revealed that his efforts to complete the PHDF-2 were cavalier in nature and careless at best. It was abundantly evident that the applicant knowingly subjected himself to and willfully accepted a substantial risk of error. Such conduct cannot constitute a basis upon which to excuse a failure to disclose. Therefore, there is no viable explanation for the applicant's failure to disclose fully his criminal record history on his PHDF-2.

The applicant also described the circumstances surrounding his telephonic interview by Investigator Brooks. Essentially, the applicant claimed that the interview consisted of a brief conversation in which he participated while under time pressures because of his work responsibilities. The applicant had an unclear recollection of the specific events which occurred during the interview.

Investigator Brooks testified that he read question number 46 to the applicant and that the applicant disclosed only the incidents concerning his arrest on July 30, 1974, in Wilmington, Delaware (R-1) and concerning his arrest on May 22, 1975, in Lower Township, New Jersey (R-2, R-4 and R-5). However, the applicant conceded his involvement in the other incidents upon confrontation therewith. In addition, the investigator testified that the applicant did not claim that he had completed the PHDF-2 under time pressures while at work, nor that he did not understand substantial portions of the form, nor that he disclosed only his adult offenses, nor that he believed question number 46 referred exclusively to family members. Rather, the applicant claimed only that he had forgotten about the incidents not disclosed.

Although telephonic interviews are fraught with confusion and inaccuracies at best, I am persuaded that the applicant did not disclose fully his criminal record history to Investigator Brooks. The lack of any specific recollection of the interview by the applicant and Investigator Brooks' specific recollection of the events of the interview, when viewed with the applicant's testimony regarding his failure to disclose on his PHDF-2, lead inescapably to the conclusion that the applicant did not disclose fully his criminal record history to the investigator and provided no explanation therefore.

The applicant further testified that he no longer abuses alcoholic beverages as he did when he was younger. Nevertheless, the applicant stated although he drinks no hard liquor, he does consume a few beers on occasion. The applicant reformed his use of alcoholic beverages subsequent to the incident of May 22, 1975, in Lower Township because of his realization of the negative effect it had upon his life. Further, the applicant has not used marijuana during the past three years because he does not need it anymore.

Michael R. Freedman, formerly the manager of Aubrey's restaurant, testified on behalf of the applicant. Mr. Freedman was of the opinion that the applicant was a dedicated, trustworthy, honest and loyal employee. His opinion was based upon the fact that the applicant was responsible for the handling of \$4,000 in revenues per week and upon the fact that the applicant was reliable and covered for other employees on a regular basis. The witness further testified that the applicant enjoys a good reputation among friends and acquaintances. Mr. Freedman is a friend of the applicant and learned of the applicant's criminal record history subsequent to the issuance of the Division's objection letter (P-4).

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

1. The applicant's explanations of the circumstances underlying his arrests on November 8, 1966, November 17, 1969, July 30, 1974, May 22, 1975, and July 6, 1975, and the criminal proceedings that resulted therefrom were believable.
2. The applicant's testimony of the circumstances underlying his failure to comply with the "Requirements of Probation" which resulted from his conviction for a violation of N.J.S.A. 2A:119-2 was not believable.
3. The applicant knowingly subjected himself to and willfully accepted a substantial risk of error with regard to his failure to disclose fully his criminal record history on his PHDF-2.
4. The applicant's testimony with regard to his failure to disclose fully his criminal record history on his PHDF-2 was not believable.

5. The applicant offered no viable explanation for his failure to disclose fully his criminal record history on his PHDF-2.
6. The applicant did not disclose fully his criminal record history to Investigator Brooks during his telephonic interview.
7. The applicant offered no viable explanation for his failure to disclose fully his criminal record history to Investigator Brooks.
8. The applicant is no longer an abuser of alcohol or marijuana.
9. The applicant enjoys a favorable reputation for good character, honesty and integrity among his friends and acquaintances.

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(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes as well as employment discharges are facts material to qualification. Here the Division contends that Mr. Spencer's failure to disclose fully his criminal record history on his PHDF-2 and during his telephonic interview by Investigator Brooks establishes a violation of section 86b of the Act.

Various questions on the PHDF-2 call for a full and complete disclosure of an applicant's criminal record history. Even accepting the possibility that Mr. Spencer's response to question number 52 was sufficient to identify the incident of his arrest on July 6, 1975, in Rehoboth, Delaware, it was abundantly clear that the applicant did not disclose his arrest on November 8, 1966, in New Castle, Delaware, and the charges resulting therefrom, his arrest on November 17, 1969, in Delaware, and the charges resulting therefrom, nor his arrest on November 6, 1979, in Wilmington, Delaware, concerning a fugitive warrant. Further, the statement made by the petitioner in response to question number 45 that he has been clean since 1976 and that the Division should contact the Wilmington, Delaware, Police Department does not sufficiently identify offenses which occurred prior to that date nor that there might have been offenses subsequent thereto. That statement is a disclaimer of involvement in any other criminal proceedings rather than a claim of lack of specific knowledge regarding the existence of such matters. Further, the applicant well understood, as he testified, his obligation to disclose fully his criminal record history; or, in the alternative, again as he testified, he had the necessary skills to establish that he should have known of his obligation. Two factors are evident: (1) the applicant failed to disclose at least the three incidents set forth above, and (2) the applicant did not make a reasonable effort to make full disclosure of his criminal record history in the completion of his PHDF-2 or during his interview by Investigator Brooks. The applicant's explanations of the reasons for his failure to disclose were inconsistent, unreasonable and not believable. Accordingly, there is no reason to believe that the applicant's failure to disclose was due to ignorance, inadvertence or was a good faith error. Therefore, the failure to disclose must serve to disqualify the applicant from licensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, in regard to his failure to disclose completely his criminal record history on his PHDF-2 and during his telephonic interview by Investigator Brooks.

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

Section 86c(1) of the Casino Control Act (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. It was established that the applicant's conviction for a violation of N.J.S.A. 2A:119-2, larceny, is comparable to a violation of N.J.S.A. 2C:20-2, which is a listed statutory disqualifier.

I CONCLUDE that the applicant's conviction for a violation of N.J.S.A. 2A:119-2 mandates that he be disqualified from licensure, pursuant to 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 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.

Mr. Spencer established some of the criteria by which to demonstrate his rehabilitation. There has been a passage of time since his most recent offense, he has completed his probation, he has terminated his alcohol and drug use, he has maintained steady employment and he has improved his employment qualifications in regard to the casino industry. Nevertheless, the extent of his employment in the casino industry is not sufficient by which to measure his rehabilitation.

However, an applicant cannot rehabilitate himself or herself under Section 90h from a Section 86b disqualifier.

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

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

Under section 89b(2) of the Act, Mr. Spencer was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the 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, supra, at 2. Here, the Division has raised issue regarding the applicant's failure to disclose fully his criminal record history on his PHDF-2 and during his telephonic interview by a Division investigator.

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

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

**DISPOSITION**

I **ORDER** that the application of Roland M. Spencer for licensure as a casino employee (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.

November 17, 1983  
DATE

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

Receipt Acknowledged:

18 NOV 1983  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

November 23, 1983  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

bm

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Letter to Chairman, Casino Control Commission, from Frank A. Creveling, March 25, 1982
- J-2 Personal History Disclosure Form-2, Roland Michael Spencer, filed on February 16, 1982 (26 pages)
- P-1 Letter from Catherine D. Zisman, October 3, 1983
- P-2 Boardwalk Regency Corporation - Statement of Earnings, Michael Spencer, August 23, 1983
- P-3 Letter to Michael Spencer from Elwood T. Gundaker, September 29, 1983
- P-4 Letter to Walter N. Read, Chairman, from William J. Walsh, Deputy Attorney General, January 26, 1983 (4 pages)
- R-1 Delaware State Police, State Bureau of Identification — Criminal Record History, Roland Michael Spencer
- R-2 United States Department of Justice, Federal Bureau of Investigation, Criminal Record History, Roland Michael Spencer (3 pages)
- R-3 New Jersey State Police, State Bureau of Identification, Criminal Record History, Roland Michael Spencer (3 pages)
- R-4 State of New Jersey v. Roland Michael Spencer, Cape May County, Superior and County Court Criminal Record, Docket Number 621-74, Statement of Proceedings; Indictment, filed July 22, 1975; and Judgment of Conviction, July 30, 1976 (5 pages)

- R-5 County of Cape May - Uniform Arrest Report, prepared by Patrolman Robert Hughes, May 22, 1975; State of New Jersey v. Roland Michael Spencer, Township of Lower Municipal Court, Complaint, May 22, 1975; County of Cape May - Uniform Investigation Report, prepared by Patrolman Robert Hughes, June 2, 1975 (2 pages)
- R-6 State of New Jersey v. Roland M. Spencer, Jr., Cape May County Superior Court, Indictment Number 621-74, filed March 22, 1979

WITNESS LIST

FOR THE APPLICANT:

Michael R. Freedman

Roland Michael Spencer, Jr.

FOR THE RESPONDENT:

Dwaine K. Brooks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-58  
OAL DOCKET NO. CCC 7355-81  
LICENSE NO. 00362-11

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

vs. :

THOMAS BYRON STANLEY, :  
Respondent. :

---

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a Stipulation of Settlement with the Commission on August 2, 1983, whereby respondent admits that, while employed as a Director of Casino Marketing at the Sands Hotel Casino (formerly Brighton Hotel), he accepted the use of a Mercedes Benz from a casino patron for less than its fair rental value in violation of N.J.S.A. 5:12-100(o)(1) and agrees to pay the sum of \$611.77 in full settlement of the Complaint of the Division of Gaming Enforcement (Docket No. 81-58) filed on September 2, 1981; and this Stipulation having superseded the Order Concluding Contested Case Settlement filed by the Office of Administrative Law with the Commission on May 13, 1983; and, the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of August 17, 1983, to adopt the Stipulation of Settlement

and assess a civil penalty upon respondent in the amount of \$611.77 for violating N.J.S.A. 5:12-100(o)(1),

IT IS on this <sup>15<sup>th</sup></sup> day of FEBRUARY 1984, ORDERED THAT the Order Concluding Contested Case Settlement of the Office of Administrative Law be and hereby is rejected based upon the superseding Stipulation of Settlement filed by the parties on August 2, 1983; and,

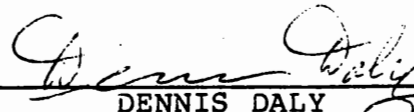
IT IS FURTHER ORDERED THAT the Stipulation of Settlement filed on August 2, 1983, be and hereby is approved by the Casino Control Commission; and,

IT IS FURTHER ORDERED THAT respondent pay a civil penalty in the amount of \$611.77 as provided in the Stipulation of Settlement which is incorporated herein by reference, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and,

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 1, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-58  
OAL DOCKET NO. CCC 7355-81  
LICENSE NO. 00362-11

---

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

v. :

THOMAS BYRON STANLEY, :  
Respondent. :

---

This matter having been opened to the New Jersey Casino Control Commission upon the motion of the respondent filed January 9, 1984, which seeks to amend the Commission's Final Order of October 21, 1983, based upon the respondent's assertion that said order does not accurately reflect the Stipulation of Settlement which was filed with the Commission on August 2, 1983, and approved and adopted by the Commission at its public meeting of August 17, 1983; and the Division of Gaming Enforcement having indicated that it does not oppose the motion to amend; and the Commission, having considered the entire record of the proceedings, and having resolved, for good cause shown, at its public meeting of January 25, 1984, to grant the motion to amend said final order,

IT IS ON THIS 1<sup>ST</sup> day of February 1984, ORDERED that the motion to amend the Commission's Final Order of October 21, 1983, be and hereby is granted; and

IT IS FURTHER ORDERED that an amended order be issued consistent with the Commission's determination herein; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 1, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-58  
OAL DOCKET NO. CCC 7355-81  
LICENSE NO. 00362-11

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

Complainant,

v.

THOMAS BYRON STANLEY,

Respondent

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a Stipulation of Settlement with the Commission on August 2, 1983, whereby Respondent admits that, while employed as a Director of Casino Marketing at the Sands Hotel Casino (formerly Brighton Hotel), he accepted the use of a Mercedes Benz from a casino patron for less than its fair rental value in exchange for Respondent's assistance in obtaining a \$25,000 line of credit for the patron at the Sands in violation of N.J.S.A. 5:12-100(o)(1) and agrees to pay the sum of \$611.77 in full settlement of the Complaint of the Division of Gaming Enforcement (Docket No. 81-58) filed on September 2, 1981; and this stipulation having superseded the Order Concluding Contested Case Settlement filed by the Office of Administrative Law with the Commission on May 13, 1983, and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of August 17, 1983, to adopt the Stipulation of Settlement and

assess a civil penalty upon Respondent in the amount of \$611.77 for violating N.J.S.A. 5:12-100(o)(1),

IT IS on this *11th* day of October 1983, ORDERED that the Order Concluding Contested Case Settlement of the Office of Administrative Law be and hereby is rejected based upon the superseding Stipulation of Settlement filed by the parties on August 2, 1983; and

IT IS FURTHER ORDERED that the Stipulation of Settlement filed on August 2, 1983, be and hereby is approved by the Casino Control Commission; and

IT IS FURTHER ORDERED that Respondent pay a civil penalty in the amount of \$611.77 as provided in the Stipulation of Settlement which is incorporated herein by reference, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

*Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: *October 11 1983*

FILED  
NEW JERSEY  
AUG - 2 1983

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

CASINO CONTROL COMMISSION

By: Howard M. Barman  
Deputy Attorney General  
(609) 984-7223

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

STATE OF NEW JERSEY, )  
DEPARTMENT OF LAW & PUBLIC SAFETY, )  
DIVISION OF GAMING ENFORCEMENT )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THOMAS BYRON STANLEY, )  
 )  
Respondent. )

AGENCY DOCKET NO. 81-37  
OAL DOCKET NO. CCC 7355-81

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 Howard M. Barman, Deputy Attorney General, and Raymond M. Brown, Esquire, Attorney for Respondent, Thomas Byron Stanley, 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 key employee

licensee #00362-11 issued by the Casino Control Commission in January of 1980; and

2. WHEREAS Respondent was employed by the Boardwalk Regency Hotel and Casino from May 1, 1979 through February 27, 1981 in the capacity of Director of Casino Marketing; and

3. WHEREAS during the course of his employment with the Boardwalk Regency Hotel and Casino, Respondent was supplied an automobile for his use by the Boardwalk Regency Corporation; and

4. WHEREAS personnel records reflect Respondent was employed by the Sands Hotel and Casino, formerly called the Brighton Hotel, from March 2, 1981 through December 19, 1981 acting in the capacity of Director of Casino Marketing, from October 5, 1981 through December 19, 1981 in the capacity of Director of Marketing and from December 19, 1981 through December 14, 1982 as an Administrative Assistant; and

5. WHEREAS on March 7, 1981, Respondent in his capacity as Director of Casino Marketing was one of four casino executives who approved a credit line in the amount of Twenty-five Thousand Dollars (\$25,000) for Mr. Frederick Forte; and

6. WHEREAS Mr. Frederick Forte has been a credit patron of the Sands Hotel and Casino from March 7, 1981 until the present date; and

7. WHEREAS at the commencement of Respondent's employment at the Sands Hotel and Casino, no company automobile was available for his personal use. Accordingly, Respondent was given authority

by his employer to rent a vehicle for an amount not to exceed \$300.00 per month; to be reimbursed by his employer; and

8. WHEREAS Respondent is a personal friend of Mr. Fred Forte; and

9. WHEREAS Respondent told Mr. Forte that he was without an automobile for his use upon his employment at the Sands Hotel and Casino; and

10. WHEREAS Mr. Forte offered to allow Respondent use of an automobile leased by the Star Stone Company, a company owned and controlled by Mr. Forte, and further Respondent offered to pay \$300.00 for its use for one month; and

11. WHEREAS Respondent did accept from Mr. Forte use of one 1980 Mercedes Benz 450SL, color white, N.J. registration 104-NNC, serial #10704412062810 and Respondent did use same as his company vehicle; and

12. WHEREAS said Mercedes Benz accepted by Respondent for his use was being rented by the Star Stone Company for Nine Hundred Eleven Dollars and Seventy-Seven Cents (\$911.77); and

13. WHEREAS on April 10, 1981 Respondent was arrested and charged with accepting a gratuity from a casino patron, in violation of N.J.S.A. 5:12-100(o)1; and

14. WHEREAS on April 27, 1981 Respondent remitted a personal check in the amount of Three Hundred Dollars (\$300.00) payable to the order of Star Stone Company; and

15. WHEREAS the criminal charges against Respondent were administratively dismissed on June 17, 1981.

16. WHEREAS on September 2, 1981, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violation of N.J.S.A. 5:12-100(o)1.

17. WHEREAS Respondent acknowledges that a violation of N.J.S.A. 5:12-100(o)1 did occur.

18. WHEREAS Respondent was unaware that use of said vehicle constituted a violation of N.J.S.A. 5:12-100(o)1.

19. WHEREAS Respondent would not have accepted the offer of the automobile for his use from Mr. Forte had he known that it would constitute a violation of the Casino Control Act.

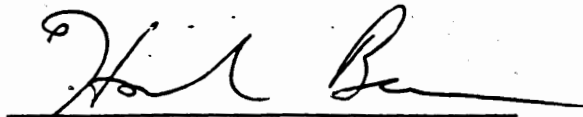
20. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Thomas Byron Stanley has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between the parties hereto that:

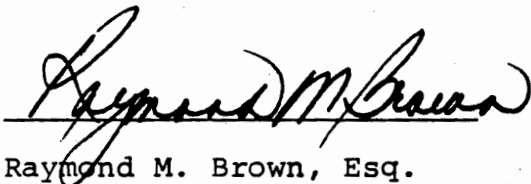
A. Respondent agrees to pay to the Casino Control Commission a fine of Six Hundred Eleven Dollars and Seventy-Seven Cents (\$611.77).

B. This settlement shall be full and final settlement of all matters contained herein and shall not be used as the sole basis for any action by the Division of Gaming Enforcement concerning renewal of Respondent's casino key employee license.

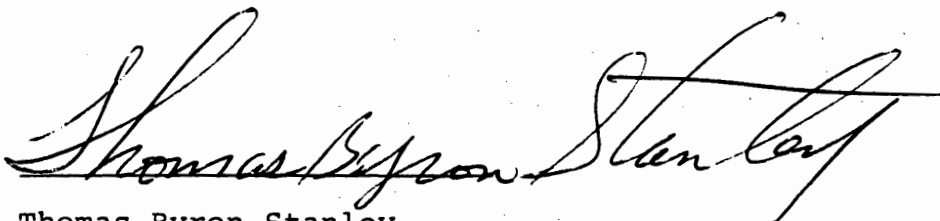
The undersigned consent to the form and entry of the above  
Stipulation of Settlement.



Howard M. Barman  
Deputy Attorney General  
Attorney for Plaintiff



Raymond M. Brown, Esq.  
Attorney for Respondent



Thomas Byron Stanley  
Respondent



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**ORDER**  
**CONCLUDING CONTESTED CASE**  
**SETTLEMENT**

OAL DKT. NO. CCC 6561-81  
AGENCY DKT. NO. 81-58

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner

v.

**THOMAS BRYON STANLEY,**

Respondent.

---

**APPEARANCES:**

**Howard Barman**, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

**Raymond M. Brown, Esq.**, for respondent

Record Closed: April 26, 1983

Decided: April 26, 1983

**BEFORE NORMAN D. SMITH, ALJ:**

On September 2, 1981 the Division of Gaming Enforcement filed an administrative complaint against respondent alleging violation of N.J.S.A. 5:12-10(o)(1). Respondent appealed this action.

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The parties have agreed to a settlement and have prepared a letter/stipulation indicating the terms thereof, which is attached and fully incorporated herein.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be and are hereby concluded. The agency having consented to the settlement terms, this order under N.J.A.C. 1:1-17.1(f) becomes the final decision in the case and shall be served by the Clerk of the Office of Administrative Law upon the parties.

DATE

4/2/03

  
\_\_\_\_\_  
NORMAN D. SMITH, ALJ

fms

RECEIVED  
STATE OF N.J.  
OFFICE OF ADM. LAW

APR 26 9 10 AM '83

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: Howard M. Barman  
Deputy Attorney General  
(609) 633-7110

STATE OF NEW JERSEY, DEPARTMENT	)	STATE OF NEW JERSEY
OF LAW & PUBLIC SAFETY, DIVISION	)	CASINO CONTROL COMMISSION
OF GAMING ENFORCEMENT,	)	AGENCY DOCKET NO. 81-58
	)	OAL DOCKET NO. CCC 6561-81
Plaintiff,	)	STIPULATION OF SETTLEMENT
vs.	)	
THOMAS BYRON STANLEY,	)	
Respondent.	)	
	)	

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Howard M. Barman, Deputy Attorney General, and Raymond M. Brown, Esquire, Attorney for Respondent, Thomas Byron Stanley, 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 key employee license #00362-11 issued by the Casino Control Commission in January of 1980.

2) WHEREAS Respondent was employed by the Boardwalk Regency Hotel and Casino from May 1, 1979 through February 27, 1981 in the capacity of Director of Casino Marketing.

3) WHEREAS during the course of his employment with the Boardwalk Regency Hotel and Casino, Respondent was supplied an automobile for his use by the Boardwalk Regency Corporation.

4) WHEREAS Respondent was employed by the Sands Hotel and Casino, formerly called the Brighton Hotel, from March 2, 1981 through December 14, 1982 in the capacity of Director of Casino Marketing.

5) WHEREAS Respondent was promised, as a condition of his employment at the Sands Hotel and Casino, the use of an automobile supplied by the Sands Hotel and Casino.

6) WHEREAS at the commencement of Respondent's employment at the Sands Hotel and Casino, no company automobile was available for his personal use. Accordingly, Respondent was given authority by his employer to rent a vehicle for an amount not to exceed \$300.00 per month, to be reimbursed by his employer.

7) WHEREAS Respondent is a personal friend of Mr. Fred Forte.

8) WHEREAS Respondent mentioned to Mr. Forte that he was without an automobile for his use upon his employment at the Sands Hotel and Casino.

9) WHEREAS Mr. Forte offered to loan Respondent an automobile which was one of several automobiles rented by Mr. Forte through Mr. Forte's business enterprises.

10) WHEREAS Respondent did accept use of one 1980 Mercedes Benz 450SL, color white, N.J. registration 104-NNC, serial #10704412062810; and used same as his personal vehicle.

11) WHEREAS Respondent was unaware that use of said vehicle constituted a violation of N.J.S.A. 5:12-100(o) (1).

12) WHEREAS on April 10, 1981 Respondent was arrested and charged with accepting a gratuity from a casino patron, in violation of N.J.S.A. 5:12-100(o) (1).

13) WHEREAS the criminal charges against Respondent were administratively dismissed on June 17, 1981.

14) WHEREAS on September 2, 1981 the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violation of N.J.S.A. 5:12-100(o) (1).

15) WHEREAS Respondent would not have accepted the offer of the automobile for his use from Mr. Forte had he known that it would constitute a violation of the Casino Control Act.

16) WHEREAS the vehicle was rented by Mr. Forte for Nine Hundred Eleven Dollars and Seventy-Seven Cents (\$911.77), and WHEREAS respondent believed the vehicle was owned by Fred Forte.

17) WHEREAS Respondent paid to Star Stone Company, a company owned and controlled by Fred Forte a personal check in the amount of Three Hundred Dollars (\$300.00).

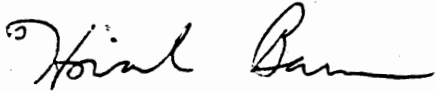
18) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Thomas Byron Stanley, has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between the parties hereto that:

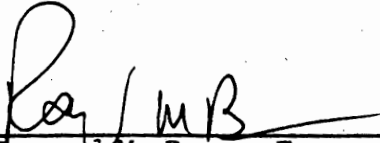
A. Respondent agrees to pay to the Casino Control Commission a fine of Six Hundred Eleven Dollars and Seventy-Seven Cents (\$611.77).

B. This settlement shall be full and final settlement of all matters contained herein and shall not be used against Respondent in any further proceeding before the Casino Control Commission.

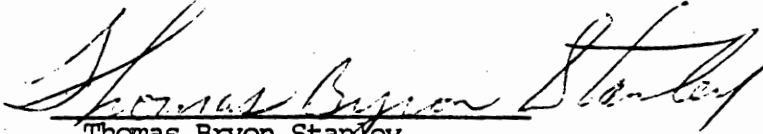
The undersigned consent to the form and entry of the above Stipulation of Settlement.



Howard M. Barman  
Deputy Attorney General  
Attorney for Plaintiff



Raymond M. Brown, Esq.  
Attorney for Respondent



Thomas Bryon Stanley  
Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 82-EA-276 AND  
82-CSI-24  
OAL DOCKET NO. CCC 575-83  
(CONSOLIDATED)  
APPLICATION NOS. 02325-11 AND  
1006-70

---

IN THE MATTER OF THE APPLICATION OF  
ELLIOT D. STRAHL FOR LICENSURE  
AS A CASINO KEY EMPLOYEE  
(JUNKET REPRESENTATIVE)

AMENDED  
FINAL ORDER

AND

IN THE MATTER OF THE APPLICATION  
OF ATLANTIC CITY TOURS, INC. FOR  
LICENSURE AS A JUNKET ENTERPRISE

---

These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 22, 1983, recommending that the casino key employee license application as a junket representative of Elliot D. Strahl and the junket enterprise license application of Atlantic City Tours, Inc. be granted subject to specified conditions; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on August 12, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 7, 1983, to modify the said Initial Decision and to grant the aforementioned applications of Elliot Strahl and Atlantic City Tours, Inc.

IT IS ON this *24<sup>th</sup>* day of January 1984, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. Condition number three as set forth in the Initial Decision "... (3) that the employment of Irene Strahl by Atlantic City Tours be terminated, prior to the issuance of the subject licenses...." be and hereby is rejected as unnecessary and unsupported by the record.

IT IS FURTHER ORDERED that the casino key employee license application of Elliot D. Strahl and that the junket enterprise license application of Atlantic City Tours, Inc. be and hereby are granted based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof, and which conditions such licensure upon the following:

- (1) Elliot Strahl and Atlantic City Tours, Inc. have no business activities with Arthur Strahl, Sun Ray Tours, or any affiliated companies of Sun Ray Tours as well as any business entities in which Arthur Strahl may hereinafter acquire an interest.
- (2) No employee of Atlantic City Tours shall have any business activities with Arthur Strahl, Sun Ray Tours, any affiliated companies or any business entity in which Arthur Strahl may hereinafter acquire an interest.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Elliot D. Strahl, Atlantic City Tours, Inc. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: January 24, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 82-EA-276 AND  
82-COI-24  
OAL DOCKET NO. CCC 575-83  
(CONSOLIDATED)  
APPLICATION NOS. 02325-11 AND  
1006-70

---

IN THE MATTER OF THE APPLICATION OF  
ELLIOT D. STRAHL FOR LICENSURE  
AS A CASINO KEY EMPLOYEE

AND

FINAL ORDER

IN THE MATTER OF THE APPLICATION  
OF ATLANTIC CITY TOURS, INC. FOR  
LICENSURE AS A CASINO SERVICE INDUSTRY

---

These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 22, 1983, recommending that the casino key employee license application of Elliot D. Strahl and the casino service industry license application of Atlantic City Tours, Inc. be granted subject to specified conditions; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on August 12, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 7, 1983, to modify the said Initial Decision and to grant the aforementioned applications of Elliot Strahl and Atlantic City Tours, Inc.

IT IS ON this <sup>21<sup>ST</sup></sup> day of September 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. Condition number three as set forth in the Initial Decision "... (3) that the employment of Irene Strahl by Atlantic City Tours be terminated, prior to the issuance of the subject licenses...." be and hereby is rejected as unnecessary and unsupported by the record.

IT IS FURTHER ORDERED that the application of Elliot D. Strahl for licensure as a casino key employee and that the application of Atlantic City Tours, Inc. for licensure as a casino service industry be and hereby are granted based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof, and which conditions such licensure upon the following:

- (1) Elliot Strahl and Atlantic City Tours, Inc. have no business activities with Arthur Strahl, Sun Ray Tours, or any affiliated companies of Sun Ray Tours as well as any business entities in which Arthur Strahl may hereinafter acquire an interest.
- (2) No employee of Atlantic City Tours shall have any business activities with Arthur Strahl, Sun Ray Tours, any affiliated companies or any business entity in which Arthur Strahl may hereinafter acquire an interest.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Elliot D. Strahl, Atlantic City Tours, Inc. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: September 21, 1983



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 0575-83

AGENCY DKT. NO. 82-EA-276

82-CSI-24

**ELLIOT D. STRAHL; and  
ATLANTIC CITY TOURS, INC.,**

Applicants

v.

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

Respondent.

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**APPEARANCES:**

**Donald G. Targan, Esq., for the applicants (Targan & Higbee, P.C., attorneys)**

**Rosemary Quinn, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: June 8, 1983

Decided: July 20, 1983

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

**STATEMENT OF THE CASE**

This matter concerns the applications of Elliot D. Strahl, applicant, to the Casino Control Commission (Commission) for licensure as a junket representative, pursuant to N.J.S.A. 5:12-102b, and the application of Atlantic City Tours, Inc. (ACT), applicant, to the Commission for licensure as a junket enterprise, pursuant to N.J.S.A. 5:12-102c. The Division of Gaming Enforcement (Division), Department of Law and Public

Safety, respondent, opposed licensure on the basis of the purported business relationship between Elliot D. Strahl and Arthur J. Strahl, his father, and the purported role of Arthur J. Strahl in the operation of ACT.

### PROCEDURAL HISTORY

Mr. Strahl filed a Personal History Disclosure Form-1 and ACT filed a Business Entity Disclosure Form with the Commission. By letter, the Commission advised the applicants that, based upon information received in a report from the Division, dated October 26, 1982, there was a "substantial possibility" that the Commission would deny the applications and that they had a right to a hearing. On January 6, 1983, the applicants requested a hearing. On January 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 30, 1983, and the matter was scheduled for hearing.

### FINDINGS OF FACT

#### (A) UNDISPUTED FACTS

Elliot D. Strahl is 32 years of age. He resides in West Yarmouth, Massachusetts, with his wife, Deirdre Cunningham.

The applicant is a 1969 high school graduate. He also attended Grand Junior College in Boston, where he studied electronics.

In 1974, the applicant relocated to California. He was enrolled at Orange Coast College in Costa Mesa, California, where he studied ornamental horticulture. While a student, he was employed as a lab technician on a part-time basis for the horticulture department.

In 1976, the applicant left school one semester short of earning his degree. He commenced employment with the El Modeno Gardens Nursery in Santa Ana, California. He was employed by the nursery for approximately three and one-half years. At the time

of his employment, the nursery consisted of 150 acres, 30 of which were under glass. The applicant was first employed as the Assistant Production Manager at an annual salary of \$9,000; which position he held for approximately nine months. He supervised eight crews which worked all areas of the business. The applicant was promoted to the position of Production Manager, which he held for six months. The applicant was 27 years of age at the time. His duties were similar to his prior position, except that he exercised more control and supervised approximately 150 employees. Thereafter, the nursery expanded to a location in central California. The applicant was promoted to the position of Branch Manager. He was responsible for the design, layout, excavation, irrigation and personnel management for 300 acres. The applicant held this position for approximately one year and earned a salary of \$25,000. The applicant resigned his position in March 1981 because of the breakup of his marriage.

Arthur J. Strahl is the applicant's father. From 1960 to 1969, Arthur Strahl was involved in the tour and junket business.

On April 20, 1977, Arthur Strahl was indicted in United States District Court for the District of Massachusetts. He was charged with violations of 18 U.S.C. § 1708, theft or receipt of stolen mail; 18 U.S.C. § 471, uttering counterfeit obligations or securities; 18 U.S.C. § 371 and § 471b, conspiracy to forge securities of the United States; and 18 U.S.C. § 472, possession of counterfeit securities of the United States, regarding his activities from November 1975 to March 1976 (R-1). On September 12, 1977, Arthur Strahl was found guilty on each of the four counts of the indictment (R-2). He was sentenced to four years' imprisonment on each count, each to run concurrently. The charges concerned Arthur Strahl's participation in the making of counterfeit United States Treasury notes.

On January 31, 1979, Arthur Strahl was again indicted in the United States District Court for the District of Massachusetts. He was charged with violations of 18 U.S.C. § 371, conspiracy to counterfeit, possess and transfer obligations of the United States; 18 U.S.C. § 473 and § 2, transferring 47 counterfeit obligations of the United States on January 3, 1976; 18 U.S.C. § 472 and § 2, passing 11 counterfeit obligations of the United States on January 28, 1976; and 18 U.S.C. § 471 and § 2, passing 47 counterfeit obligations of the United States on December 29, 1975, regarding his conduct from

August 1, 1974 to January 31, 1977 (R-3). On March 3, 1980, Arthur Strahl pled guilty to the conspiracy charge and to passing counterfeit United States obligations on January 3 and 28, 1976 (R-4). On March 4, 1980, he was sentenced to one year and one day on each count to run concurrently with each other and consecutive to his sentence for the 1977 conviction. Arthur Strahl was incarcerated at Lewisburg Federal Penitentiary from January 31, 1979 to July 21, 1980. Thereafter, he was transferred to a Boston halfway house, where he remained until September 23, 1980, when he was released on parole.

Upon leaving El Modeno Gardens Nursery, Elliot Strahl returned to the East Coast. The reasons for his relocation were his father's recent release from prison and his desire to be closer to his present wife.

From March to June 1981, the applicant lived in Brockton, Massachusetts. He discovered that employment opportunities in the nursery business were not as lucrative as in California, nor did they hold the same career potential as he had experienced there.

During spring 1981, the applicant made a loan of \$8,000 to Arthur Strahl in order to assist his father in starting a tour business. This loan was made without benefit of an agreement for repayment, and no repayment has been made to date. The circumstances underlying this loan were in dispute.

Although the date was in dispute, Sun Ray Tours, Inc. (SRT), was formed by Arthur Strahl and began operations in approximately June 1981. Paul Holian, the attorney for SRT, owned 100% of the stock. Arthur Strahl was the president and chief executive officer of SRT. Elliot Strahl was employed by SRT until August 1981, and he held the position of vice president until January 1982. The applicant has never held an ownership interest in SRT. The applicant performed office and marketing services for SRT.

Also, the applicant became a field representative for the Sands Hotel and Casino (Sands) in Atlantic City during July 1981, and he conducted one trip to the Sands. Arthur Strahl assisted the applicant in the development of this trip by means of Arthur Strahl's contacts with the Sands. The applicant hired the plane, for which he was reimbursed by the Sands, and charged patrons a service fee. The applicant secured his patrons partially from a mailing list of gamblers accumulated by Arthur Strahl during his tenure in the tour business between 1960 and 1969.

During summer 1981, the applicant learned that Arthur Strahl would probably not be licensed by the Commission because of his convictions.

In August 1981, the applicant incorporated ACT. Mr. Holian did the legal work for the incorporation. The applicant was and remains the only stockholder of ACT. The reasons for the formation of ACT were in dispute.

Also during August 1981, the applicant began to share an apartment with Deirdre Cunningham. From January 1975 to May 1977, Ms. Cunningham was employed by the Rosendale Cooperative Bank as a teller and bookkeeper. From May 1977 until mid-1981, she was employed in a bookkeeping capacity by Faneuil Hall Travel Associates. She was later promoted and became involved in retail sales and ticket writing.

From August 1981 to January 1982, ACT operated from offices located at 515 Main Street, West Yarmouth, Massachusetts. These were the same offices used by SRT. Ms. Cunningham was the office manager for ACT and drew a small salary. She also worked for SRT on a part-time basis in a bookkeeping capacity. The applicant's mother, Irene, was employed by SRT. The reasons why ACT and SRT shared office space were in dispute.

The applicant was permitted by Arthur Strahl to use his client list without charge. Initially, the list was outdated because of Arthur Strahl's incarceration. However, the applicant has constantly updated and revised the list.

The applicant planned and operated tours to the Sands, Boardwalk Regency Corporation (BRC) and the Tropicana. These tours were primarily one-day trips. Patrons paid a service charge to the applicant, and the sponsoring casino supplied an airplane and other complimentary services. The applicant solicited patrons by telephone and mail. The applicant would meet customers at the airport and accompany them to Atlantic City as a representative of the casino. Arthur Strahl served as a field representative for ACT. He solicited patrons and was compensated on a per customer basis.

In January 1982, Elliot Strahl was approached by the Tropicana to work in its branch office. At that time, the branch office was very unsuccessful, while the applicant's business was improving. The applicant was offered the position of marketing

representative at an annual salary of \$25,000, an expense account, a car, complimentary privileges at the casino and the cost of processing his key employee license application. In addition, Ms. Cunningham was to be employed in a secretarial capacity at an annual salary of \$12,000. The applicant and Ms. Cunningham determined that the offer was a good opportunity for both and accepted. On March 8, 1982, the applicant filed his PHDF-1 with the Commission. In May 1982, he received a temporary license as a junket representative limited to the Tropicana.

The branch office was located at 515 Main Street, West Yarmouth, Massachusetts, and office space was shared with SRT. The Tropicana paid one-half of the monthly rent and shared other expenses with SRT. Ms. Cunningham operated the branch office. She was still employed in a bookkeeping capacity on a part-time basis by SRT. The applicant worked to develop the New England market from Boston and Worcester, Massachusetts, Providence, Rhode Island, and Hartford and New Haven, Connecticut. The applicant was on the road approximately 60% of the time. He worked four trips per week, which were overnight trips. The applicant stated that this position was both challenging and grueling. In April 1982, the applicant was made the branch manager. The branch office used eight to ten field agents, including Arthur Strahl, in eight cities. In August 1982, the Tropicana closed the branch office because of severe budgetary cutbacks.

On September 17, 1982, the applicant and Ms. Cunningham were married.

Although the Tropicana had closed the branch office, it asked the applicant to become its independent field agent. The applicant and Ms. Cunningham decided to reactivate ACT. From September 1982 to December 1982, ACT served as a field agent for the Tropicana. ACT continued to share office space with SRT. In December 1982, the applicant terminated the business relationship with the Tropicana because of patron dissatisfaction. In dispute was Arthur Strahl's role, if any, in the operation of ACT.

In December 1982, ACT became the field agent for Harrah's, and has so remained until the present time.

In January 1983, SRT was removed from the office space it shared with ACT; however, SRT currently occupies office space in the same building as ACT, together with a realtor and a dentist (P-12 to P-14). In dispute were the circumstances underlying SRT's relocation.

ACT currently employs four people. The applicant is the president, Ms. Cunningham is the office manager, and Irene Strahl and Bridget Carew are sales representatives. Although Irene Strahl remains the wife of Arthur Strahl, she terminated her employment with SRT in December 1982/January 1983. All employees of ACT are free to discuss the business operations and make suggestions. In dispute was the role of Irene Strahl in the operation of ACT.

In the spring of 1983, the applicant was issued a temporary license as a junket representative.

ACT currently operates four trips to Atlantic City per week. The trips consist of two one-day trips and two two-night trips (P-8 to P-11). The applicant is of the opinion that his customers are satisfied with the service provided by ACT and Harrah's. His client list has constantly grown. Ms. Cunningham was of the opinion that she was instrumental in establishing operations policy for ACT. ACT does not operate to casinos in any other jurisdiction.

ACT and SRT currently use the same computer company for mail solicitations. Each company has a separate print-out of the list.

Elliot Strahl has two joint savings accounts with Arthur Strahl. The first is account number 919911 with the Boston Five Cents Savings Bank, which was opened in March 1981 (P-1). The applicant stated that this account was opened prior to the initial operations of SRT or ACT. Between March 4, 1981 and April 13, 1981, the date of the last transaction, six transactions were conducted and the account had a maximum balance of \$291.01. As of August 16, 1982, the balance in the account was \$12.66. The second is account number 41-16-00004-44979 at the Freedom Federal Savings and Loan Association, which was opened by the applicant in June 1981 (P-2). The applicant testified that this was his personal savings account and that Arthur Strahl was merely the beneficiary. Between June 11, 1981 and May 22, 1982, there were 23 transactions and the account had a maximum balance of \$281.21. In dispute was the relationship, if any, of the two accounts to the start-up or operations of SRT.

The applicant's personal financial records revealed checks drawn on his personal checking account payable to Arthur Strahl during the period from June 1981 to January/February 1982. In dispute was the significance, if any, of these checks.

On May 28, 1982, the applicant made a check drawn on his personal account at the Bay Bank Norfolk County Trust Company in an amount of \$800, which was payable to SRT. In dispute was the significance, if any, of the check.

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

#### DISPUTED FACTS

The basic issue concerns the role of Arthur Strahl, if any, in the operations of ACT. There were several sub-issues of fact which generally concerned the applicant's relationship with Arthur Strahl, the reasons for the incorporation and operation of ACT, Arthur Strahl's role, if any, in the operations of ACT and the character, honesty and integrity of the applicant.

The Division questioned the purposes of the \$8,000 loan made by the applicant to Arthur Strahl. The applicant testified that the loan was made during the spring of 1981 from the proceeds of the sale of his residence in California. The loan was made to assist his father in starting SRT and in order to assist Arthur Strahl in supporting himself following his release from prison in September 1980. The applicant also stated that his father needed the money and, as his father, was entitled to it. The Division offered no evidence to rebut the applicant's testimony. As will be discussed, infra, the applicant's testimony was believable; therefore, I accept his explanation of the circumstances underlying the loan.

Also in dispute was the significance of the two savings accounts in the names of both the applicant and his father (P-1 and P-2). The applicant testified that the account with the Boston Five Cent Savings Bank (P-1) was merely a joint account he shared with his father. The applicant testified that the savings account with the Freedom Federal Savings was his personal account and that his father's name was included as a

beneficiary (P-2). The applicant further stated that neither account had any relationship to the operations of SRT or ACT. The Division offered no evidence to rebut any portion of the applicant's testimony. Again, because the applicant's testimony was believable, I am persuaded to accept his explanation regarding the savings accounts. I also note that there appears to be an insufficient number of transactions and an insufficient amount of monies transacted to indicate, even remotely, that the accounts were related to the business operations of SRT or ACT.

The Division also questioned the reason for the commencement of the operations of ACT in August 1981. The applicant testified that he had determined that it was in his best career interests to attempt to develop a junket enterprise. The applicant intended to capitalize upon his business and management expertise and Ms. Cunningham's knowledge of the travel industry. The applicant readily conceded that he understood it was unlikely that Arthur Strahl would be licensed by the Commission and that SRT would be precluded from operating tours to the casino hotels in Atlantic City. The applicant intended to develop the New England to Atlantic City market. In addition, the applicant stated emphatically that ACT was not created as a means of permitting Arthur Strahl to operate fraudulently to the casino hotels in Atlantic City and as a means of circumventing the Commission's regulations; rather, ACT was the applicant's business enterprise. Given the absence of any evidence to the contrary and given the applicant's credibility, there is no reason to disbelieve his testimony. The applicant's testimony was corroborated by Ms. Cunningham and was consistent with the explanation he gave to Division Investigator Charles Littlefield during an interview on July 14, 1982. The applicant's decision to operate ACT, in light of Arthur Strahl's licensing problems and the applicant's contacts and business potential, indicates nothing other than a perceptive, logical and intelligent business decision.

Also in dispute was the reason and significance of the fact that SRT and ACT shared office space from mid-1981 to January 1982 and again from September 1982 to January 1983, as well as the fact that the Tropicana branch office shared space with SRT from January to August 1982. The applicant testified that ACT, at the time operations were originally commenced, shared office space with SRT in order to reduce operating costs at a time when revenues were low. Because SRT's office facilities were available to the applicant, his only initial expenses were legal fees. The Tropicana branch office

shared space with SRT as a convenience. Further, ACT continued to share office space with SRT from September 1982 to January 1983 for the same reasons that it had previously, i.e., cost savings. This explanation was corroborated by Ms. Cunningham and is the same explanation the applicant provided to Division Investigator Detective Douglas Osborne during an interview on June 8, 1982. Also significant are the circumstances under which SRT relocated to new, although adjacent offices. The applicant testified that he insisted that SRT relocate because he was aware of the potential denial of his and ACT's applications for licensure. Ms. Cunningham's testimony corroborated that it was the applicant who forced SRT to relocate. Again, given the absence of any evidence to the contrary and given the believability of the applicant's testimony, I am persuaded to accept his explanations concerning the circumstances underlying the sharing of office space by SRT and ACT and the circumstances underlying SRT's relocation of its offices.

Also in dispute were the checks written from the applicant's personal account to Arthur Strahl during the period from June 1981 to January/February 1982. The applicant testified that following his relocation from California, he had established a checking account with a bank in Brockton, Massachusetts, which did not have a branch office on Cape Cod. However, beginning in June 1981, the applicant lived on Cape Cod while he worked for SRT and ACT. When the applicant needed cash, he wrote a check to his father, who in turn cashed it at his bank. In early 1982, the applicant's bank opened an automatic teller office on Cape Cod, where the applicant began to do his banking business. The applicant produced several receipts from transactions conducted at the automatic teller (P-15). The applicant further testified that these transactions were unrelated to the operations of SRT and ACT and did not represent business transactions between himself and Arthur Strahl. Again, the Division has produced no evidence to rebut the applicant's testimony, which was believable. Therefore, I am persuaded to believe the applicant's explanation.

The Division also raised issue with regard to a check made payable to SRT from the applicant's personal account on May 28, 1982, in the amount of \$800 (R-5). The reference on the check indicates that it was reimbursement for mailing costs. The applicant testified that the check was made to reimburse SRT for services rendered on behalf of the Tropicana. More specifically, SRT had purportedly obtained tickets to a fight at Bally's Park Place Casino Hotel and made other purchases at the applicant's request on behalf of the Tropicana. The applicant reimbursed SRT and, upon the

submission of expense reports to the Tropicana, was in turn personally reimbursed for the expenses (P-16 to P-19). There was no evidence to rebut this testimony. Therefore, I am persuaded to believe the explanation offered by the applicant. Nevertheless, the explanation does indicate that on occasion the applicant has used means available to SRT to facilitate the business of ACT.

The Division also contends that the cumulative effect of the closeness between Arthur Strahl and the applicant on a personal and business level indicates that Arthur Strahl has a role or an interest in the operations of ACT. This was denied by the applicant. In addition to the undisputed facts and the foregoing, the applicant stated that Arthur Strahl has never held an interest in ACT and the applicant has no intention of permitting Arthur Strahl to have an interest in ACT. More specifically, Arthur Strahl has never had a formal or informal business relationship with ACT and it is ACT office policy that he not have such a relationship in the future. Ms. Cunningham corroborated this position and stated that she helped establish this policy and intends to enforce it rigidly.

At this point it is appropriate to discuss the testimony of Elliot Strahl. In essence, the persuasiveness of the applicant's testimony is dependent solely upon his credibility. Initially, Elliot Strahl's position in this matter must be recognized. He is the applicant for licensure and the sole owner of the applicant company, and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear during the hearing, from my observations of the applicant's demeanor, the fact that Ms. Cunningham and the Division's investigators corroborated the applicant's testimony on all critical points, from my examination of the documentary evidence and during my review of the record, that the applicant testified truthfully. The applicant's testimony was consistent, plausible in every respect, sincere, believable and most persuasive. In the final analysis, I am persuaded to accept his testimony in all respects. Highly significant, is that the Division produced no evidence whatsoever to refute any portion of the applicant's testimony. The Division raised issue with the applicant's credibility by reason of alleged inconsistencies between his testimony at the hearing and his prior statements made during a sworn interview and other interviews with Division representatives. However, the inconsistencies were minor and concerned insignificant detail. The applicant's testimony was consistent in all respects with the substance of his prior statements; more specifically, the applicant never denied his relationship to or the limited extent of his financial business relationship with Arthur Strahl. Similarly, although Ms. Cunningham had an interest in the outcome of the proceedings substantially similar to

that of the applicant, her testimony was unrefuted and was equally believable and as persuasive as that of the applicant. There was absolutely no evidence that Arthur Strahl had, has or will have an interest in the operations of ACT.

The remaining issue concerns Elliot Strahl's good character, honesty and integrity. The applicant called three witnesses to testify on his behalf. The first witness was Ms. Cunningham, his wife. She testified that the applicant's reputation is the basis of his business success and that he has conducted all of his business dealings with the highest degree of integrity.

Violet Mather, the applicant's second witness, has known the applicant for the past 25 years. He grew up with her sons and attended school with them. The applicant has also maintained contact with Ms. Mather and her husband. The witness was of the opinion that the applicant enjoys a "100%" reputation in the community. She has never heard any negative comment regarding his conduct. Also, Ms. Mather has never observed the applicant to act in an improper manner.

The applicant's third witness, Fred T. Mather, Sr., the husband of Violet Mather, has known the applicant for 25 years. Mr. Mather is the retired owner/operator of a service station. The witness stated that the applicant enjoys a reputation of being a person of the highest caliber. Mr. Mather's personal opinion of the applicant is also as a person of the highest caliber.

The applicant also offered numerous letters in support of his application, primarily from persons employed in the gaming industry. Each attested to the applicant's qualifications and good character, honesty and integrity.

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

1. The applicant loaned \$8,000 to Arthur Strahl for the purpose of assisting him in the establishment of SRT.

2. The two savings accounts in the names of the applicant and Arthur Strahl have no relationship to the operations of SRT or ACT.
3. ACT was incorporated as a means of self-employment by the applicant, which was intended to draw upon his business experience and skills as well as the business experience and skills of Ms. Cunningham.
4. ACT was incorporated for the purpose of developing casino markets for junket operations between New England and the casino hotels in Atlantic City.
5. ACT was not created for the purpose of providing Arthur Strahl with access to the Atlantic City casino hotels in contravention of the regulatory scheme established by the Casino Control Act and the regulations adopted thereunder.
6. ACT shared office space with SRT from August 1981 to January 1982 because the space was available and as a means of reducing operating costs.
7. The Tropicana branch office shared office with SRT from January 1982 to August 1982 as a matter of convenience.
8. ACT shared office space with SRT from September 1982 to January 1983 because the space was available and as a means of reducing operating costs.
9. That ACT and the Tropicana branch office shared office space with SRT does not establish that the business functions of SRT and ACT and/or the Tropicana branch office were commingled.
10. In January 1983, the applicant caused SRT to relocate to new offices.

11. Checks written by the applicant on his personal account and made payable to Arthur Strahl during the period from June 1981 to January/February 1982 were for the purpose of the applicant obtaining spending money and were not related to the business operations of SRT or ACT.
12. A check drawn on the applicant's personal account and made payable to SRT, dated May 28, 1982, and in the amount of \$800 was for the purpose of the applicant making reimbursement to SRT for purchases made by SRT on behalf of the Tropicana branch office, and for which the applicant was ultimately reimbursed by the Tropicana.
13. On occasion, the applicant used means available to SRT to facilitate the operations of the Tropicana branch office.
14. The applicant's testimony was credible, believable and persuasive in all respects.
15. Arthur Strahl has never had, does not now have and is not likely to have in the future any interest in the operations of ACT.
16. The applicant enjoys a reputation for good character, honesty and integrity within the business and civic elements of the communities in which he works and resides.

#### DISCUSSION OF LAW AND CONCLUSIONS

All junket representatives are required to be licensed as casino employees and must satisfy the requirements of section 90 of the Act, pursuant to section 102b. Also, all junket enterprises are required to be licensed, pursuant to section 102c of the Act. The entity, as well as its owners, management and supervisors, must satisfy the licensing requirement for a casino employee, pursuant to section 90 of the Act. It is well-settled

that the character and responsibility of a corporate entity can be judged only by that of its owners or managers, those that 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 ACT must be evaluated upon the qualifications of Elliot Strahl.

Under section 89b(2) of the Act, Mr. Strahl was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the 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, supra, at 2. Here, the Division has raised issue regarding the applicant's relationship with Arthur Strahl.

There is obviously and admittedly a close familial relationship between the applicant and Arthur Strahl. However, and most significant, no business relationship between Arthur Strahl and ACT or the applicant was established. On the contrary, despite the proximate business locations of SRT and ACT, the close personal relationship and the fact that Arthur Strahl has performed services on a fee basis for ACT in the past, it was well-established and unrefuted that the applicant has conducted the business of ACT as an entity separate and apart from SRT and Arthur Strahl. Arthur Strahl has no interest in or role in the operations of ACT. In addition and because of Arthur Strahl's criminal record, it would appear to be unacceptable for ACT to continue to share office space and facilities with SRT. The applicant has, wisely, accomplished this separation.

It was undisputed that the applicant was not involved in Arthur Strahl's criminal conduct. Also, Arthur Strahl's criminal conduct was not related to his business activities or the casino industry. Therefore, even though it appears at this time that Arthur Strahl would not be suitable for licensure, the potential disqualification of Arthur Strahl is not attributable to this applicant or ACT.

It is abundantly clear that the applicant has established his qualifications for licensure. There were no allegations of wrongdoing of any kind by the applicant. Further, the applicant has affirmatively demonstrated that his business activities are separate and apart from those of Arthur Strahl and will remain so in the future. The applicant presents no risk to the public or to the integrity of casino gaming in this state. An examination of the "whole man" clearly and convincingly establishes that Elliot Strahl is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corp., supra, at 51, 52. Accordingly, ACT is similarly qualified for licensure.

Nevertheless, the applicants should be required to meet certain conditions designed to assure that Arthur Strahl does not acquire an interest in or influence the operations of ACT. More specifically, the applicant and ACT should not have any business activities of any kind with Arthur Strahl, SRT or any affiliated companies of SRT, as well as any other business entities in which Arthur Strahl may hereinafter acquire or have an interest. Further, no employee of ACT should be employed by Arthur Strahl or SRT or any affiliated companies of SRT or any other business entity in which Arthur Strahl may hereinafter acquire an interest. Last, although there was no allegation that Irene Strahl was a surrogate of Arthur Strahl in her capacity as an employee of ACT, given the obvious relationship, she should not continue as an employee of ACT.

I **CONCLUDE** that Elliot Strahl has established, by clear and convincing evidence, his good character, honesty and integrity under Section 89b(2) of the Act. Accordingly, I further **CONCLUDE** that ACT has established, by clear and convincing evidence, its good character, honesty and integrity under Section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Elliot Strahl for licensure as a junket representative and that the application of Atlantic City Tours, Inc., for licensure as a junket enterprise, be **GRANTED**, upon the conditions that: (1) Elliot Strahl and ACT have no business activities with Arthur Strahl, SRT, or any affiliated companies of SRT as well as any business entities in which Arthur Strahl may hereinafter acquire an interest, (2) no employee of ACT shall have any business activities with Arthur Strahl, SRT, any affiliated companies or any business entity in which Arthur Strahl may hereinafter acquire an interest, and (3) that the employment of Irene Strahl by ACT be terminated, prior to the issuance of the subject licenses.

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 20, 1983  
DATE

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

Receipt Acknowledged:

July 22, 1983  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

July 26, 1983  
DATE

Ronald L. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS

- P-1 The Boston Five Cents Savings Bank, Savings Book for account number 919911, Arthur J. Strahl, Elliot D. Strahl
- P-2 Freedom Federal Savings and Loan Association, Savings Book for account number 41016-00004-44979, Elliot D. Strahl or Arthur J. Strahl
- P-3 Letter from Raymond Semiraglio, June 6, 1983
- P-4 Letter from Tim Dougall, June 7, 1983
- P-5 Letter from Arturo Camacho, June 6, 1983
- P-6 Letter from Martin L. Dryer, June 7, 1983
- P-7 Letter from Stephan H. Sepesy, May 30, 1983
- P-8 Brochure distributed by Elliot D. Strahl
- P-9 Brochure distributed by Elliot D. Strahl
- P-10 Brochure distributed by Elliot D. Strahl
- P-11 Brochure distributed by Elliot D. Strahl
- P-12 Photograph
- P-13 Photograph
- P-14 Photograph
- P-15 Bay Banks Express 24, receipts from automatic teller transactions (10 pages)
- P-16 Ramada Expense Report, Elliot D. Strahl, June 23, 1982 (7 pages)
- P-17 Ramada Expense Report, Elliot D. Strahl, May 12, 1982 (4 pages)
- P-18 Ramada Expense Report, Elliot D. Strahl, April 27, 1982 (5 pages)
- P-19 Ramada expense report, Elliot D. Strahl, March 10, 1982 (3 pages)

- R-1 United States v. Arthur J. Strahl, et al., United States District Court for the District of Massachusetts, Criminal Number 77-00009-F Indictment, April 20, 1977 (4 pages)
- R-2 United States v. Arthur J. Strahl, United States District Court for the District of Massachusetts, Docket No. CR77-9-F, Judgment of Conviction, September 12, 1977
- R-3 United States v. Arthur J. Strahl, et al., United States District Court for the District of Massachusetts, Criminal No. 79-00401-2, Indictment (27 pages)
- R-4 United States v. Arthur J. Strahl, United States District Court for the District of Massachusetts, Docket No. CR79-00401-Z, Judgment and Probation/Commitment Order, March 3, 1980
- R-5 Check drawn on the personal account of Elliot Strahl at the Bay Bank Norfolk County Trust Company payable to Sunray Tours, May 28, 1982, check no. 513
- R-6 In the Matter of the Sworn Interview of Elliot Strahl by the Division of Gaming Enforcement, pages 2, 6, 14, 15, 19, 20 and 62 (9 pages)

WITNESSES

For the Applicants:

Deirdre Cunningham  
Violet Mather  
Fred T. Mather, Sr.  
Elliot D. Strahl

For the Respondent:

Charles Littlefield  
Douglas Osborne

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-172  
OAL DOCKET NO. CCC 4905-83  
LICENSE NO. 42623-21  
REGISTRATION No. 43718-40

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

Complainant,

FINAL ORDER

v.

HAROLD STRICKLAND,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 16, 1984, recommending that the respondent be assessed a civil penalty in the amount of \$200 for violating N.J.S.A. 5:12-100(o)(1); and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record in this matter resolved at its public meeting of May 30, 1984, to affirm and adopt the Initial Decision and assess a civil penalty upon the respondent in the amount of \$200,

IT IS on this 5th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

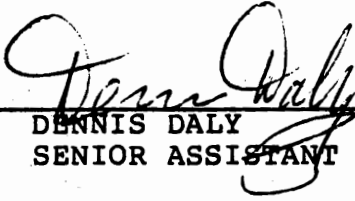
IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$200, based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the sum of \$200 is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4905-83

AGENCY DKT. NO. 83-172

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**HAROLD STRICKLAND,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Harold Strickland,** respondent, pro se

Record Closed: March 1, 1984

Decided: April 16, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 25, 1983, seeking judgment revoking the respondent's casino employee license and casino hotel employee registration, or some other sanction, pursuant to sections 100o(1) and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's alleged acceptance of a gratuity from a casino patron while employed as a lieutenant of security at a licensed casino. The issues to be determined in this matter are as follows:

Whether the respondent has accepted a gratuity from a casino patron while employed in a supervisory position at a licensed casino, and, if so, whether revocation of the respondent's casino employee license and casino hotel employee registration, or some other appropriate sanction, should be imposed, pursuant to sections 100o(1) and 129 of the Casino Control Act.

#### PROCEDURAL HISTORY

On June 27, 1983, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On June 30, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

This matter was originally scheduled to be preheard on October 11, 1983, but the respondent did not timely receive the notice of prehearing conference. The matter was subsequently preheard on January 31, 1984, and the hearing was held on March 1, 1984.

#### FINDINGS OF FACT

The respondent is a resident of Sicklerville, New Jersey, and the holder of Casino Employee License No. 32265-21. The respondent also holds Casino Hotel Employee Registration No. 43718-40. At the present time, the respondent is employed by Resorts International Casino as a coin handler. On April 12, 1983, the respondent resigned from his employment as lieutenant of security at Ceasar's Boardwalk Regency Hotel and Casino as a result of his involvement in an incident concerning the acceptance of a gratuity from a casino patron.

The respondent had been a security supervisor at Ceasar's for three and one-half years. It was his testimony that he was aware that it was not permissible for a casino employee in a supervisory position to solicit or accept a gratuity from a player or patron at the casino where he was employed. However, it is undisputed that it was an internal procedure at Ceasar's Boardwalk Regency at the time of the respondent's employment there that no security personnel were to accept a gratuity from a patron, unless the patron would feel slighted by the refusal. In that event, the gratuity would be accepted and turned over to the employee's Sunshine Fund. According to the respondent, he

understood this to be the policy of the casino and this understanding was shared by his fellow security officers.

On April 13, 1983, the respondent was questioned by Ceasar's security supervisors concerning an allegation that he had received a gratuity from a casino patron on February 5, 1983, and that he had kept the money. A memorandum from Division of Gaming Enforcement Detective William Lyden to Captain Jankowski indicates that Lyden was contacted by Ceasar's Director of Security Frank Miraglia and that Lyden was informed that the respondent had admitted to the violation and had submitted his resignation (Exhibit P-1).

The respondent denied at the hearing that he had kept any money. He explained that the night of February 5, 1983, had been a busy one and that he had provided quite a few escorts for patrons who were carrying large sums of money. The respondent acknowledged that he had provided an escort for a gentleman to the Tropicana Casino to pay a marker, and that he had carried \$100,000. Testifying sincerely and credibly, the respondent denied that he had accepted a gratuity from the gentleman being escorted. The respondent maintained his credible denial even after hearing a passage from a transcript of the testimony in another proceeding of Captain Robert Heller, wherein Captain Heller alleged that the respondent had accepted a gratuity while escorting the gentleman to the Tropicana Casino Hotel.

Nevertheless, the respondent did acknowledge that he had received a gratuity later in the evening from another patron. According to the respondent, he had escorted a patron to his room, at which time the patron offered the respondent some money. When the respondent refused the gratuity, the patron threw the money on the floor and entered his room. The respondent then picked up the money and put it into his pocket and resumed his normal duties.

Near the end of his shift on February 5, 1983, the respondent had an opportunity to mention to Captain Heller that he had performed quite a few escorts and that the two of them needed to get together. However, they were unable to meet after the shift. At work the next day, the respondent told Captain Heller that he had received a gratuity thrown onto the floor by the casino patron, and the respondent agreed that the gratuity would be turned in. However, he did not have the money with him that night, so

he turned in the money the next night. According to the respondent, the gratuity was approximately \$25, but he did not receive a receipt.

It was the testimony of the respondent that he was not questioned about his receipt of any gratuity until April 13, 1983. At that time, he told his security supervisors that he had received a tip, but he did not say when or where it was received. When the respondent was informed that it would not hurt his chances of obtaining other employment if he resigned, the respondent agreed to submit his resignation. The respondent testified in a straightforward and sincere manner that he had not intended to commit a violation of the Casino Control Act and that he feels the loss of his job has been punishment enough.

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

#### CONCLUSIONS OF LAW

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

It shall be unlawful for any casino key employee or box man, floor man, or any other casino employee who shall serve in a supervisory position to solicit or accept, and for any other casino employee to solicit, any tip or gratuity from any player or patron at the casino where he is employed.

The credible evidence in the record establishes that the respondent, while employed in a supervisory position at a licensed casino, did accept a gratuity left for him by a casino patron. It is undisputed that it was the policy of the Caesar's Boardwalk Regency casino at the time of the respondent's employment that no security personnel were to accept a gratuity unless the patron would feel slighted. In that event, the gratuity would be accepted and then turned over to the employees sunshine fund. The credible evidence in the record establishes that the patron threw the gratuity onto the floor and entered his room when the respondent initially refused to accept the gratuity. The respondent then took the money, which was approximately \$25. Two days later, after discussing the matter with his supervisor, the respondent turned in the money, in accordance with the policy of his employer.

Based upon the foregoing findings of fact and the applicable law, I **CONCLUDE** that the respondent has accepted a gratuity from a casino patron while employed in a supervisory position at a licensed casino, contrary to Section 100o(1) of the Casino Control Act. Section 129 of the Casino Control Act provides, in part, that the Casino Control Commission may, after appropriate hearing and factual determination assess such civil penalties as may be necessary to punish misconduct and to deter future violations. Based upon the foregoing discussion, I further **CONCLUDE** that the punitive and deterrent purposes of Section 129 would best be served by imposing upon the respondent a civil penalty in the amount of \$200.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent, Harold Strickland, be assessed a civil penalty in the amount of \$200.

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 16, 1984  
DATE

16 APR 1984  
DATE

April 18, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:  
Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Memo, dated April 13, 1983, from Detective Lyden to Captain Jankowski
- P-2 Transcript, dated December 2, 1983

For the Respondent:

None

WITNESSES

For the Petitioner:

Harold Strickland

For the Respondent:

Harold Strickland

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-75  
OAL DOCKET NO. CCC 4383-83;  
CCC 5997-82 (ON REMAND)  
APPLICATION NO. 23183-22

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APPLICATION OF ALTON C. THOMPSON  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 27, 1984, recommending that the casino employee license application of Alton C. Thompson be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 7, 1984, to modify the said Initial Decision and to grant the application,

IT IS on this 21st day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified by the Casino Control Commission as follows:

1. Based upon the record, the Commission finds that the applicant has established by clear and convincing evidence his qualifications for licensure pursuant to N.J.S.A. 5:12-89(b) and -90(b).

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4383-83

REMAND OF CCC 5997-82

AGENCY DKT. NO. 82-EA-75

**ALTON C. THOMPSON,**

Petitioner

v.

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

Respondent.

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**APPEARANCES:**

**Alton C. Thompson, petitioner, Pro Se**

**William J. Walsh, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: December 13, 1983

Decided: January 26, 1984

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

This matter concerns the recommendation by the Division of Gaming Enforcement (hereinafter referred to as the "Division") that the petitioner, Alton C. Thompson, not be granted a casino employee license (bartender). Mr. Thompson requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for August 24, 1982, in the Office of Administrative Law in Trenton, New Jersey. Prior to the date set for the conference, Mr. Thompson advised the Office of Administrative Law that he was unable to travel to Trenton because of a medical condition and requested that the prehearing conference be held in the Atlantic County area. Mr. Thompson was advised that the prehearing conference could not be scheduled in the Atlantic County area but that he could request that the conference be held by way of a telephone conference call. After Mr. Thompson failed to make a timely request for such a conference and failed to appear at the rescheduled prehearing conference, Administrative Law Judge Voliva issued an initial decision dismissing Mr. Thompson's request for a hearing and concluded that his license application should be denied.

After considering the initial decision, the Casino Control Commission accepted Mr. Thompson's explanation for his nonappearance and by order dated May 17, 1983, remanded the matter to the Office of Administrative Law.

Thereafter, a prehearing conference was held by way of a telephone conference call on August 10, 1983. During this prehearing conference, the parties agreed that the issue in this matter is:

Whether the petitioner failed to reveal his entire criminal record and, if so, whether his action disqualifies him from licensure.

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

- (1) Mr. Thompson filed an application for a casino employee license (bartender) on November 3, 1980, after he had completed a bartender training course.
- (2) In his personal history disclosure form, Mr. Thompson revealed the fact that he had a criminal record as a juvenile (R-1, question 45).
- (3) Mr. Thompson gave a negative response to question 46 on the personal history disclosure form (R-1), which states:

Have you or has any member of your immediate family, (as defined on page 2 of this application) ever been arrested, indicted, charged with or convicted of a crime or disorderly persons offense in this State or in any jurisdiction. (For the purposes of this question, the word "arrest", "indictment" or "charge" includes any questioning, detaining, holding or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other State or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations. The only such "arrest", "indictment", or "charge" which an applicant is not required to disclose on this application is one which has been legally expunged by written order of a court of this State.)

- (4) In 1975, when he was 19 years old, Mr. Thompson was arrested by the Atlantic City Police Department for uttering an altered instrument (R-2, R-3, R-4, R-5), a violation of N.J.S.A. 2A:109-1. This charge was later downgraded to a disorderly persons offense under N.J.S.A. 2A:170-1, and Mr. Thompson pled guilty and was fined \$100 and \$10 in court costs (R-5).
  
- (5) In 1979, a vehicle driven by Mr. Thompson was stopped and the Atlantic City police officer determined that his license and registration were suspended. According to his report, the police officer saw Mr. Thompson take off a shoulder pouch and put it on the floor of the vehicle. The officer then conducted a search of the vehicle and found marijuana, CDS and a knife in a sheath (R-6). The petitioner was arrested and later he was indicted. The indictment, No. 49451-79, charged Mr. Thompson with the possession of a controlled dangerous substance, marijuana, a violation of N.J.S.A.

24:21-20a(4), and N.J.S.A. 24:21-19a(1); the possession of a controlled dangerous substance, methamphetamine, a violation of N.J.S.A. 24:21-20a(1); and the possession of a dangerous instrument, a knife, a violation of N.J.S.A. 2A:151-41C (R-7). On November 16, 1979, Mr. Thompson was granted a conditional discharge for a period of one year and after he had satisfactorily completed the terms and conditions of the conditional discharge, the indictment was dismissed on June 3, 1981 (R-7).

- (6) After obtaining information regarding the 1975 and 1979 criminal charges brought against Mr. Thompson, Trooper Anthony Kowal of the New Jersey State Police, who was assigned to the Division at the time, had a telephone conversation with Mr. Thompson regarding his application.

On his own behalf, Mr. Thompson testified that he really did not have an adult criminal record but admitted that he was involved in certain matters. In 1975, Mr. Thompson received a money order through the mail made out to him for the amount of \$1,000 and he could not recall why anybody was paying him that amount of money. He decided to deposit it with a bank to see if it was any good and he was arrested for the possession of a forged check. According to Mr. Thompson, he went to trial and was aware that the matter was downgraded to a disorderly persons offense. The petitioner did not recall pleading guilty, nor did he recall paying a fine. Mr. Thompson thought that the matter was dropped.

As to the 1979 incident, Mr. Thompson stated that he was driving his car and he picked up a friend prior to being stopped by the police officer who informed him that his license and registration were suspended. According to Mr. Thompson, the drugs found in the car belonged to his friend and he thought that he was arrested and charged because he owned the car. Later he found out that his license and registration were suspended because he did not turn in his old motor vehicle license plates. Mr. Thompson stated that he was represented by a public defender and it was his understanding that the entire incident was wiped out when he received a conditional discharge and that he did not have to reveal the incident when he applied for a position.

Mr. Thompson also stated that he admitted that he was arrested in 1975 and 1979 on his personal history disclosure form (R-1) but when he was given a copy of the form, he was unable to locate where he had listed these arrests.

When he was in the tenth grade, Mr. Thompson was thrown out of school. He admitted that he did not pay much attention while he was in school, and he stated that he has learned more since he left school. Mr. Thompson received the casino license application from a person in the CETA program and he filled out the form himself. The petitioner understood that he had to answer the questions truthfully or he would not be given a license.

In answering the question relating to his formal education, Mr. Thompson did not list the grades he attended as required on the form but in the column he listed the years he had attended school (R-1 at p. 10). As to the question on the form relating to any juvenile criminal record (R-1, question 45), Mr. Thompson answered by writing "Disorderly persons" because he recalled that he had trouble as a youngster, when he was 11 or 12 years old, but could not recall the details. As to the question relating to an adult criminal record (R-1, question 46), Mr. Thompson stated that he may have read the question too fast and later stated that he felt that he had to list arrests only if he were found guilty.

During the cross-examination, Mr. Thompson seemed to be confused between what was required by question 45 (juvenile criminal record) and question 46 (adult criminal record) in the personal history disclosure form, and when the two questions were explained to him by Mr. Walsh, the petitioner stated that he should not have given a negative response to question 46.

As to his conversation with Trooper Kowal, Mr. Thompson stated that the trooper had told him that his application was still under investigation and when he asked why, the trooper stated that it was because he had two prior arrests which were not listed on his personal history disclosure form. Mr. Thompson told Trooper Kowal that he thought he had listed these arrests.

Trooper Kowal testified that when he spoke to Mr. Thompson on the telephone, he read to the petitioner question 46 (adult criminal record) and Mr. Thompson denied that he had an adult criminal record. After he told Mr. Thompson that he had the information

regarding the 1975 and 1979 criminal charges, Mr. Thompson admitted his involvement and answered all the trooper's questions regarding the incidents. As to the 1975 incident, Mr. Thompson told Trooper Kowal that he had received a money order for \$500 from a person he had worked for and that he took it to the bank to deposit it. Mr. Thompson admitted that he was arrested in the bank but denied that he was found guilty of any criminal charge. As to the 1979 incident, Mr. Thompson told Trooper Kowal that he did not reveal this incident since he had received a conditional discharge which wiped out the entire matter and that he was no longer required to reveal it.

In closing, Mr. Walsh stated that the questions on the personal history disclosure form are set forth in clear language and that a person of ordinary intelligence should have no difficulty understanding what is meant by the questions. In this case, Mr. Thompson admitted that he read the questions and that he understood them. As to the 1975 incident, Mr. Thompson was unable to offer any reason for not listing his arrest and Mr. Walsh questioned Mr. Thompson's testimony that he forgot that he had pled guilty. As to the 1979 matter, Mr. Walsh stated that he understands that Mr. Thompson might have been confused regarding the effect of a conditional discharge but that there is no question that Mr. Thompson was arrested and there is no basis for Mr. Thompson's conclusion that a conditional discharge would somehow wipe out the entire record. In conclusion, Mr. Walsh argued that Mr. Thompson's failure to disclose was willful.

Mr. Thompson argued that he did not intentionally misrepresent anything on his personal history disclosure form and that he had nothing to hide. Mr. Thompson stated that the incidents occurred a number of years ago and that he should not be penalized because he has a bad memory.

Pursuant to the Casino Control Act, an applicant for licensure is required to provide the Casino Control Commission with all pertinent information, and the failure to disclose material information is grounds for disqualification, N.J.S.A. 5:12-86(b). This disqualification is clearly set forth in the personal history disclosure form (R-1).

The obvious purpose for N.J.S.A. 5:12-86(b) is to ensure that the Casino Control Commission is provided with all the information necessary to make a decision on an application for licensure, In the Matter of Harl Lee Cooper, OAL DKT. CCC 1276-79 (Aug. 29, 1979), mod., Casino Control Commission (Feb. 7, 1980). It was recognized by

the Commission in the Cooper matter that not every nondisclosure necessitates disqualification and that there is a difference between mere inadvertence or ignorance and an intentional and willful omission done in bad faith. It is clear that if the nondisclosure resulted from a genuine misunderstanding of the nature of the criminal act or from forgetfulness, disqualification is not required, while on the other hand if the applicant fails to disclose information out of fear that a license would be denied that disqualification is warranted, Cooper, supra; In the Matter of the Application of Steven M. Cohen, OAL DKT. CCC 3133-79 (Dec. 6, 1979), mod., Casino Control Commission (Jun. 30, 1980); In the Matter of the Application of William Gonzales, OAL DKT. CCC 685-82 (Jul. 17, 1980), mod., Casino Control Commission (Sept. 5, 1980). In order to determine whether the disclosure results from inadvertence or ignorance it is necessary to look at the surrounding circumstances in each case, In the Matter of the Application of Ted's World of Flowers, Inc., OAL DKT. CCC 706-81 (Jan. 22, 1982), adopted, Casino Control Commission (Mar. 15, 1982).

Based on the testimony in this matter, I **FIND** that Mr. Thompson did not carefully read and fully understand question 46 on the personal history disclosure form. In addition, I **FIND** that Mr. Thompson did not fully understand the effect of a conditional discharge and thought that that discharge cleared the record as to the entire matter including his arrest. Lastly, I **FIND** that Mr. Thompson did not understand the court proceedings as to the 1975 charge and with the passage of time, he convinced himself that he was found innocent because he was neither placed in jail nor put on probation. As to the question of why he did not list the 1975 arrest, I accept Mr. Thompson's explanation that he felt it was not necessary to list an arrest unless there was a conviction.

Therefore, I **CONCLUDE** that Mr. Thompson is not disqualified for licensure pursuant to N.J.S.A. 5:12-86(b), and I **ORDER** that the application of Alton Thompson for licensure as a casino employee (bartender) 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.

January 26, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

27 JAN 1984  
DATE

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

January 31, 1984  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

APPENDIX

**Exhibits admitted into evidence for the respondent:**

- R-1 Personal history disclosure form submitted by Mr. Thompson
- R-2 Money order payable to Alton Thompson and deposit slip
- R-3 Request for criminal history record information from the New Jersey State Police
- R-4 Information regarding Alton Thompson from the Federal Bureau of Investigation
- R-5 Investigation report regarding the arrest of Alton Thompson, dated June 11, 1975
- R-6 Investigation report regarding the arrest of Alton Thompson, dated January 17, 1979
- R-7 Indictment filed against Alton Thompson and the disposition regarding said indictment

WITNESSES

**For the petitioner:**

**Alton Thompson**

**For the respondent:**

**Trooper Anthony Kowal**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-325  
OAL DOCKET NO. CCC 9602-83  
REGISTRATION NOS. 27074-40 and  
46369-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
HECTOR M. VASQUEZ  
A/K/A JOSE A. RIVERA,  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 4, 1984, recommending that the respondent's casino hotel employee registrations be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of June 13, 1984 to modify the said Initial Decision and to revoke the respondent's casino hotel employee registrations,

IT IS on this 20th day of June 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The conclusion that the respondent's continued registration is inimical to the policy of the Casino Control Act requiring disqualification under N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary in view of the findings of disqualification pursuant to N.J.S.A. 5:12-86(b).

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 9602-83

AGENCY DKT. NO. 83-325

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

Petitioner,

v.

**HECTOR M. VASQUEZ  
A/K/A JOSE A. RIVERA,**

Respondent.

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**APPEARANCES:**

**William Mountford, Jr.,** Deputy Attorney General, on behalf of the petitioner

**Hector M. Vasquez,** respondent, pro se

Record Closed: April 2, 1984

Decided: May 3, 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 (hereinafter referred to as the "Commission") on September 12, 1983, seeking the revocation of the casino hotel employee registrations issued to the respondent, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Vasquez 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 on January 13, 1984, and at that time, the parties agreed that the issues in this matter are:

- (1) Whether the respondent intentionally gave another person's identity and submitted a false birth certificate as part of his application for a casino hotel employee registration which was issued in the name of Jose A. Rivera.
- (2) Whether the respondent's action warrants the revocation of either or both of his casino hotel employee registrations, pursuant to N.J.S.A. 5:12-86 and 5:12-91b.
- (3) Whether the respondent's action makes his continued licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-91b.

The hearing in the matter took place on April 2, 1984, and the record closed on that date.

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

- (1) The respondent's legal name is Hector M. Vasquez and his social security number is 156-60-6225.
- (2) In December 1980, the respondent submitted a Personal History Disclosure Form-4 as part of his application for registration as a casino hotel employee (P-1). In that disclosure form, the respondent identified himself as Jose A. Rivera and listed 156-60-6225 as his social security number, and gave false information regarding his birth date and prior employment. Although someone else filled out this disclosure form, the respondent signed the form as Jose A. Rivera.
- (3) As part of his 1980 application, the respondent submitted a birth certificate in the name of Jose Antonio Rivera Morales (P-6).
- (4) In 1980, the respondent had his fingerprints taken by a representative of the Division and he signed his name as Jose Rivera and listed 156-60-6225 as his social security number (P-2).

- (5) Respondent received a casino hotel employee registration, number 24074-40, in the name of Jose A. Rivera.
- (6) In 1983, the respondent received a casino hotel employee registration, number 46390-40, in the name of Hector M. Vasquez. In his application for this registration, the respondent gave his birth date as September 26, 1964, and listed 156-60-6225 as his social security number.
- (7) In 1983, the respondent had his fingerprints taken by a representative of the Division and he signed his name as Hector Vasquez (P-3).
- (8) During a social security computer check, the Division found that there were two registrations issued in different names with the same social security number (P-4).
- (9) John Zamrok, an investigator employed by the Division, was assigned to investigate the matter. On June 22, 1983, Mr. Zamrok called the respondent on the phone to set up a personal interview. During the telephone conversation, the respondent stated that his legal name was Hector M. Vasquez and that he had used his step-brother's name when he applied for the 1980 registration since his mother had given him the wrong birth certificate. Although the respondent agreed to a date and place for the personal interview, he did not appear. Thereafter, the respondent did not respond to Mr. Zamrok's telephone calls.
- (10) A copy of the Division's complaint was sent to the respondent by letter, dated September 20, 1983.
- (11) By letter dated October 17, 1983, the respondent stated that he tried to straighten the "foul-up" regarding his name at the time he acquired the second registration. He stated that Jose Rivera is his step-brother, that his mother had given him the wrong birth certificate, and that he had used his step-brother's name when he applied for his 1980 registration (P-5).
- (12) By letter dated November 16, 1983, the respondent requested a hearing.

At the hearing, the respondent testified that in 1980, when he was 15 years old, he quit school since his mother could not support him and he had to support his child pursuant to a court order. The respondent graduated from the eighth grade and had spent two months in high school before he quit school. The respondent stated that he was born in Puerto Rico, that he came to the United States when he was five years old and that his entire formal education has been in United States schools.

Because he was underage, the respondent filed for a casino hotel employee registration in the name of Jose A. Rivera. The respondent denied that he had a step-brother named Jose A. Rivera or that his mother gave him the wrong birth certificate. The respondent stated that the birth certificate he used in 1980 was one that he found in the street (P-1, P-2, P-6). Sometime afterwards, the respondent thought that he might have a problem because the 1980 registration was not in his own name. The respondent stated that he went to the Commission's office and asked that the name on his 1980 registration be changed to Hector M. Vasquez. The respondent stated that he told a representative of the Commission that he had used a fictitious name in 1980. According to the respondent, the name on the 1980 registration was not changed but instead he received another registration.

In response to my question, the respondent stated that he had never had a casino job and that he is currently unemployed and looking for a position.

On cross-examination, the respondent stated that after he signed the name Jose A. Rivera on his 1980 registration application, he went to a notary public who said nothing to him but signed his application form. The respondent had some difficulty reading the notice in the Personal History Disclosure Form stating that "failure to answer any question completely and truthfully will result in denial of your license application" (P-1, p. 1). After he read the notice, the respondent indicated that he did not understand what it meant.

As to the statements in his October 17, 1983 letter (P-5), the respondent stated that he asked his girl friend to write the letter but did not tell her to say that Jose A. Rivera was his step-brother. The respondent could not offer any reason as to why his girl friend would put such a statement into the letter, nor could he explain why he continued to represent that Jose A. Rivera was his step-brother when he discussed the matter with Mr. Zamrok or at the prehearing conference.

On cross-examination, the respondent admitted that he used the 1980 registration when he worked for a short time for the Golden Nugget Casino as Jose A. Rivera. The respondent also admitted that he worked for Tropicana Hotel and Casino using the registration issued in the name of Hector M. Vasquez.

On his own behalf, the respondent stated that he made a mistake and that he needs a job to support himself and to pay the court-ordered support payments for his three children.

In closing, Mr. Mountford argued that the facts show a blatant disregard of the requirement for truthful information in an application for registration and that the facts warrant the revocation of the respondent's registrations.

Based on his testimony, I **FIND** that the respondent was not a credible witness. It is apparent, from the uncontested facts as well as the testimony of the respondent, that he intentionally gave a false name and other inaccurate information when he applied for registration in 1980. In part, this may have been motivated by his desire to get a job to help support his child; however, I question the respondent's testimony that a court ordered him to support his child when he was either 15 or 16 years old.

Based on the respondent's testimony and my observation regarding his ability to speak English, I do not believe the respondent's testimony regarding how he got his second registration. Although I recognize that Mr. Vasquez speaks with an accent and apparently has a limited ability to read and write in English, I do not believe that the respondent asked the Commission to change the name on his 1980 registration. More likely, the respondent applied for and received a registration in his own legal name and hoped that the first registration with the fictitious name would expire before anyone found out that he had two registrations.

In addition, I **FIND** that the respondent intentionally fabricated the excuse that he had used his step-brother's name in the hope that it would mitigate his wrongdoing if he alleged that he had used the name of a member of his family. Further, I do not believe that the respondent found a birth certificate (P-6) in the street which just

happened to belong to a person who was born in Puerto Rico approximately two years before the respondent. It appears obvious that the respondent used the birth certificate of a friend or relative and is now claiming that he found the birth certificate in order to protect said person from any involvement in this matter.

Although I sympathize with Mr. Vasquez's concern regarding his ability to find employment in the Atlantic City area and recognize that he was 15 or 16 years old when he received the 1980 registration, I cannot ignore the fact that the respondent made misrepresentations as to the facts relating to his applications for both registrations to Mr. Zamrok in 1983 as well as during the proceedings in this matter.

Therefore, based on the facts, I **CONCLUDE** that the Division has shown that the respondent intentionally made misrepresentations for purposes of obtaining a registration to which he was not entitled to and that he is disqualified from licensure, pursuant to N.J.S.A. 5:12-86 and 5:12-91B. Further, I **CONCLUDE** that the respondent's actions relating to both of his registration applications and as well as his later statements regarding these applications, show that his licensure would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-91d.

Further, I **ORDER** that the casino hotel employee registrations issued to the respondent in the name of Hector M. Vasquez and Jose A. Rivera 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 3, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

04 MAY 1984  
DATE

Anna A. McDowell  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 8 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW /phb

ij/ee

**APPENDIX**

**EXHIBITS ADMITTED INTO EVIDENCE**

**For the Petitioner:**

- P-1 Personal History Disclosure Form-4, in the name of Jose A. Rivera filed on December 16, 1980.
- P-2 Fingerprints of a person claiming to be Jose A. Rivera
- P-3 Fingerprints of a person claiming to be Hector M. Vasquez
- P-4 Letter from Al Falco, Supervisor, Data Processing Unit, Division of Gaming Enforcement to Deputy Attorney General Robert Bunting, dated May 19, 1983.
- P-5 Letter from Hector Vazquez [sic], dated October 17, 1983
- P-6 Birth Certificate in the name of Jose Antonio Rivera Morales

**WITNESSES**

**For the Petitioner:**

John Zamrok

**For the Respondent:**

Hector M. Vasquez

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-143  
OAL DOCKET NO. CCC 4425-83  
REGISTRATION NO. 43345-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
EDGAR L. VILLANUEVA, SR., :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 1, 1983, recommending that the petition of the Division of Gaming Enforcement be denied; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of January 25, 1984, to affirm and adopt the said Initial Decision and to dismiss the Complaint,

IT IS on this <sup>1<sup>ST</sup></sup> day of February 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: February 1, 1984



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4425-83

AGENCY DKT. NO. 83-143

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

Petitioner

v.

**EDGAR L. VILLANUEVA, SR.,**

Respondent.

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**APPEARANCES:**

**Patricia M. Wild, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Edgar L. Villanueva, Sr., respondent, Pro Se**

Record Closed: October 17, 1983

Decided: December 1, 1983

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Edgar L. Villanueva, Sr., respondent. The Division alleged that Mr. Villanueva had committed a disqualifying criminal offense, for which the Division sought revocation of his casino hotel employee registration, number 43445-40, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on May 17, 1983. By letter filed on June 6, 1983, the respondent requested a hearing. On June 10, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 21, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Villanueva is currently 30 years of age (P-1).

As of July 1972, the respondent was employed by the Vineland Memorial Home, Department of Institutions and Agencies (now Department of Human Services). He resided at home with his mother and father (Maria, age 40, and Carmello, age 50), his sisters (Maria, age 18, Daisy, age 16, Carmen, age 10, and Margaret, age 7) and his brother Jose (age 14).

On July 5, 1972, the respondent was involved in an incident which led to the death of his father. At approximately 9:17 p.m., the respondent, his brother Jose and Terrence Conroy, age 17, a boyfriend of the respondent's sister Maria, went to a gas station in Millville where the respondent's father was employed as an attendant. As a result of a dispute which ensued, Carmello Villanueva died from multiple stab wounds (P-8).

The respondent, his mother, sister Maria, sister Daisy, brother Jose, Terrence Conroy, Peter Figureo and Jose Santos were all arrested on July 9, 1972, and were charged with murder. The respondent, his mother and his sister Maria were charged as adults, and the remaining individuals were charged as juveniles. Each of the members of the Villanueva family who were arrested voluntarily gave statements to the police, although those statements are not now available. On July 25, 1972, the respondent was indicted by a Cumberland County Grand Jury for alleged violations of N.J.S.A. 2A:113-1, murder, and N.J.S.A. 2A:113-2, degrees of murder, designation and verdict (comparable to N.J.S.A. 2C:11-3, murder) (P-2).

On August 4, 1972, the respondent pled not guilty to the indictment (P-3). However, on January 15, 1973, and with the advice of a public defender, the respondent pled non vult to the indictment. On February 2, 1973, the respondent was sentenced to an indeterminate custodial term at the Youth Reception and Correction Center, Yardville, for a maximum period of 10 years and with credit for 209 days served (P-3). The respondent did not appeal his conviction. The remaining active defendants were treated as juveniles.

While at Yardville, the respondent completed satisfactorily several courses. More specifically, the respondent earned certificates awarded by the State Department of Education in Auto Mechanics, on June 25, 1974, in Basic Auto Mechanics, on October 29, 1974, in Adult Basic Education, on October 29, 1974, and in English as a Second Language, on April 9, 1974. The respondent also helped to teach the English language to other Hispanics. The respondent was released from prison on or about January 1975, with a record of good conduct.

In 1975, the respondent attended Cumberland County College and earned approximately one and one-half years worth of credits. On October 3, 1975, the respondent was married. Thereafter, he relocated to Lancaster, Pennsylvania. He became employed by K and W Tire Company, and worked in the manufacturing and delivery of tires until his layoff after four and one-half months.

The respondent relocated back to Vineland. On May 5, 1976, his child was born.

During the summer of 1976, the respondent worked at the Progresso Food Company.

Thereafter, the respondent again relocated to Lancaster, Pennsylvania. He enrolled at the MTA Truck Driving School. He also worked at the Lancaster Carpet Mart in the manufacture of rugs.

At or about this time, the respondent's wife left him. Thereafter, the respondent again returned to Vineland. During the summer of 1977, the respondent again worked at the Progresso Food Company.

On March 13, 1980, the respondent earned a successful course completion certificate from the MTA Truck Driving School.

Commencing in April 1982 and for the subsequent five and one-half months, the respondent was employed by Airline Express Freight and operated a truck in the delivery and pickup of flowers. He was laid off from this position.

Thereafter, and for a period of five to six months, the applicant was employed as a delivery driver by an ice factory in Vineland. Again, he was laid off from this position.

At the end of 1981/early 1982, the applicant was employed by Bally's Park Place Casino Hotel (Park Place) in Atlantic City for a period of four months. He left the position because of differences with his supervisor.

From March 14, 1983 to the present, the applicant has been employed by the Tropicana Hotel and Casino (Tropicana). For the first three months of his employment, the applicant worked on the third shift as a pot washer in the kitchen. Thereafter, he was assigned to the second shift (4:00 p.m. to 12:00 a.m.) based upon the recommendation of his supervisor. The respondent is now employed as a dishwasher in the employees' cafeteria. He has earned a positive work record (R-1 and R-3) and has been informed that he is qualified for promotional opportunities.

The respondent was divorced in mid-1983. He makes child support payments for two children, although he denies parenthood of the second child. In addition, the respondent currently supports his fiancée and her three children.

On August 10, 1982, the respondent filed his Personal History Disclosure Form-4 with the Commission. In response to question number 8, the respondent did not disclose his conviction. The respondent explained that he had made an inquiry to his most recent parole officer in Pennsylvania and had been advised that it was not necessary for him to disclose his criminal record history because he had completed his parole. The Division verified this advice with the parole officer.

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

(B) DISPUTED FACTS

In dispute were the circumstances that preceded the incident of July 5, 1972, the events that occurred at the time Carmello Villanueva was murdered and the circumstances underlying the respondent's plea of non vult to the indictment.

The documents offered by the Division, which consist primarily of police investigation reports, do not establish what transpired preceding or during the incident. Further, although the documents refer to the voluntary statements made by each of the members of the Villanueva family who were arrested, those statements were unavailable to the Division.

The respondent described the circumstances preceding and during the incident. The respondent's sister Maria had a boyfriend named Terrence Conroy. The respondent's father opposed this relationship. Conroy and Carmello Villanueva had a fight. Thereafter, Conroy threatened Carmello Villanueva. Nevertheless, Conroy and Maria Villanueva continued to see each other. Upon discovery of the continuation of this relationship, Carmello Villanueva beat and raped both Maria and Daisy, his daughters. The two sisters were afraid to report the attack. The respondent, Conroy and Jose Villanueva discussed the situation with the two sisters and the respondent's mother. Thereafter, the respondent, Conroy and Jose Villanueva went to the gas station to discuss the matter with Carmello Villanueva. The respondent told his father that, because he had beaten his wife and children, abandoned them, then returned, and continued to beat them, took their money and gambled it away and raped the two sisters, that Carmello Villanueva was to leave the home once and for all. Carmello Villanueva slapped the respondent on the face, kissed him and said that everything would be all right. The respondent replied that it would not. At that point, the others attacked Carmello Villanueva and stabbed him to death. The respondent contended that he did not stab his father. Nevertheless, the respondent fled the scene with the others. The respondent asserted that the statement he gave to the police at the time of his arrest was the same as his testimony at this hearing.

The respondent also described the circumstances surrounding the entry of his plea of non vult to the indictment. He claimed that he had no knowledge of the meaning of a plea of non vult; however, his attorney advised him that by going to trial he faced the prospects of a longer sentence, including a possible life sentence. Further, although he

advised the trial judge that he was not guilty, the respondent agreed to the plea. The respondent did not appeal because he was unable to secure the necessary assistance.

Following his release from prison, the respondent was advised by his sister Maria that she and Conroy had planned the murder of Carmello Villanueva.

Although I cannot look behind the respondent's conviction for purposes of a redetermination of his guilt or innocence, the circumstances underlying the incident can be considered with regard to rehabilitation. In this regard, consideration of Mr. Villanueva's credibility is essential in reaching a determination in this matter. However, the respondent's position in this matter must be recognized. As the respondent, 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 and my examination of the documentary evidence, that the respondent believed his testimony to be truthful. The absence of any evidence to the contrary leads me not to disbelieve the respondent's testimony, which was plausible. However, I am not completely convinced to accept as fact his testimony in all respects.

The respondent offered four letters in support of his continued registration. The first, from William R. Simpkins, a casino security officer at the Tropicana, states that the respondent has been a hard worker and a reliable employee (R-1). The second letter is from Harold Ryan, an employee of the change department at the Tropicana, who stated that the respondent is a person of good character and integrity (R-2). The third letter is from Jose M. Flores, Sr., a co-employee of the respondent (R-3). Mr. Flores stated that the respondent is a hard and productive worker, has a very positive attitude and has not been involved in any problems. The fourth letter is from Emanuel Lapura, who formally worked with the respondent at the Tropicana (R-4). Mr. Lapura stated that the respondent is "a very kind, friendly and hard working person."

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

1. The respondent's involvement in the incident which led to the death of his father was attributable, in part, to the unconscionable conduct of Carmello Villanueva preceding the incident.

2. Regardless of the extent of the respondent's conduct during the incident of July 5, 1972, the respondent was a primary participant in the incident which led to the death of Carmello Villanueva.
3. Although the respondent may have had some confusion regarding the legal proceedings pertaining to the indictment, he knowingly and voluntarily plead non vult to the indictment.
4. The respondent believed his testimony to be truthful in all respects.
5. The respondent is held in a high esteem by co-workers and associates.

DISCUSSION OF LAW & 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 respondent's conviction for violations of N.J.S.A. 2A:113-1 and N.J.S.A. 2A:113-2 (comparable to N.J.S.A. 2C:11-3) is a statutory disqualifying offense 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 conviction for violations of N.J.S.A. 2A:113-1 and N.J.S.A. 2A:113-2 disqualify him from being a registrant, pursuant to Section 86c(1) of the Act.

(B) 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 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 thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division has raised nothing other than the applicant's conviction to establish that continued registration would be inimical to the Act. The Division stressed the nature of the respondent's conduct, i.e., murder, in this regard. Nevertheless, the inimicality of the misconduct has been established by the conclusion that the conviction is a per se disqualifier under section 86c(1) of the Act. Therefore, section 86c(4) does not apply. There was no charge that the applicant had committed any other act which would render his continued registration to be inimical to the Act.

I **CONCLUDE** that the Division has not established that the continued registration 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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Villanueva is registered as a hotel employee and is employed as a dishwasher in the employees' kitchen at the Tropicana. As such, he has no responsibilities for actual gaming activities, nor does he have contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino.

Second, the respondent was convicted of violations of N.J.S.A. 2A:113-1 and N.J.S.A. 2A:113-2, murder. This offense is extraordinarily heinous and serious, and there are few, if any, crimes which are more serious.

Third, the respondent portrayed indescribable and despicable conduct by Carmello Villanueva prior to the incident which resulted in his death. More specifically, the victim had repeatedly beaten various members of his family and, immediately prior to the incident, had beaten and raped his two teenage daughters. Such conduct could understandably have led the respondent to despise his father and consider retaliation. However, in our society such retaliation cannot be condoned, especially when there is ample opportunity for reflection prior to the retaliatory act. Although the circumstances described mitigate the seriousness of the respondent's retaliatory actions, the mitigation is minimal in light of the fact that a murder occurred.

Fourth, the offense occurred on July 5, 1972, approximately eleven and one-half years ago.

Fifth, at the time of the offense, the respondent was 19 years of age. It is likely that his misconduct was, in part, due to immaturity.

Sixth, the respondent's misconduct was an isolated incident.

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

Eighth, the respondent has demonstrated substantial rehabilitative efforts. He pled non vult to the indictment and accepted responsibility for the crime. He served his time in prison. During his incarceration, the respondent participated in several education programs and assisted other Hispanics to learn the English language. The respondent successfully completed his parole in 1977 without any difficulty. The respondent also secured additional education and training in order to improve his employment opportunities. Although the respondent's employment record is less than enviable, it does establish a sincere effort on his part to be employed. In addition, despite his brief employment with Park Place, the respondent has established a very positive employment record in the casino industry at the Tropicana and has sought to improve his position. It was well-established that the respondent is a responsible, reliable, hard-working and trustworthy person. The respondent has successfully re-entered his community. He contributes to the support of his children and supports his fiancée and her children. In the

final analysis, although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation, but for a more positive employment record. However, his employment record in the casino industry is sufficient and positive. Also, a sufficient time has passed since the incident during which the respondent has demonstrated a total abstinence from criminal misconduct. Although the nature of the previous misconduct, i.e., murder, is extraordinarily serious, the Act provides the opportunity for any prior violator of the criminal laws to establish his rehabilitation. The respondent has earned the privilege of continued registration.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

**ORDER OF DISPOSITION**

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of Edgar L. Villanueva, Sr., 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 1, 1983  
DATE

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

Receipt Acknowledged:

December 1, 1983  
DATE

Bernadette T. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

December 5, 1983  
DATE

Ronald J. Parker/r.s.  
OFFICE OF ADMINISTRATIVE LAW

fms/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Personal History Disclosure Form 4, Edgar Luis Villanueva, Sr., filed August 10, 1982 (6 pages)
- P-2 The State of New Jersey v. Edgar Villanueva, New Jersey Superior Court—Law Division (Criminal), Cumberland County, Indictment Number 513-71, July 25, 1972 (3 pages)
- P-3 The State of New Jersey v. Edgar Villanueva, Indictment Number 513-71, Judgment, February 2, 1973 (2 pages)
- P-4 Millville Police Department Uniform Arrest Report, prepared by Detective Robert Hulitt, July 9, 1972
- P-5 Millville Police Department Uniform Investigation Report, prepared by Officer D.P. Ferus, July 5, 1972 (2 pages)
- P-6 Millville Police Department Uniform Supplementary Investigation Report, prepared by Detective Robert Hulitt, July 7, 1972
- P-7 Millville Police Department Uniform Supplementary Investigation Report, prepared by Detective Lawrence C. Stiles, July 7, 1972 (4 pages)
- P-8 Millville Police Department Uniform Supplementary Investigation Report, prepared by Chief Charles Sangburn, July 10, 1972 (4 pages)
- P-9 Millville Police Department Uniform Supplementary Investigation Report, prepared by Detective Lieutenant George Garrison, July 11, 1972 (6 pages)
- P-10 Millville Police Department Continuation Page, July 10, 1972

OAL DKT. NO. CCC 4425-83

R-1 Letter from William K. Simpkins, September 4, 1983

R-2 Letter from Harold Ryan

R-3 Letter from Jose M. Flores, Sr., September 6, 1983

R-4 Letter from Emanuel Lapura, August 17, 1983

WITNESS LIST

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

Edgar L. Villanueva, Sr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-201  
OAL DOCKET NO. CCC 5107-83;  
CCC 9688-82 (ON REMAND)  
APPLICATION NO. 31892-22

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APPLICATION OF HELEN R. WALKER  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 10, 1984, recommending that the application of Helen R. Walker for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, having considered the entire record of these proceedings resolved at its public meeting on June 13, 1984, to modify the said Initial Decision and to deny the application,

IT IS on this 18th day of JUNE 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The conclusion that licensure of Ms. Walker is inimical to the policy of the Casino Control Act requiring disqualification under N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary in view of the findings of disqualification pursuant to N.J.S.A. 5:12-86(c)(3).

2. The ALJ failed to make any findings or conclusions on the issue of the applicant's good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b), notwithstanding the fact that the prehearing conference order dated November 2, 1983, included such issue. Based upon the record, the Commission finds that Walker has not adequately demonstrated her qualifications for licensure 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 of Helen R. Walker for a casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

*Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5107-83

AGENCY DKT. NO. 82-EA-201

**HELEN R. WALKER,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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APPEARANCES:

**Helen R. Walker, pro se**

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

Record Closed: March 26, 1984

Decided: May 10, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement objected to the petitioner's application for licensure as a casino employee because of the petitioner's arrest and conviction of possession with intent to distribute heroin, in violation of 21 U.S.C. § 841, corresponding to N.J.S.A. 24:21-19(a)(1), and conspiracy to distribute heroin, in violation of 21 U.S.C. § 846, corresponding to N.J.S.A. 24:21-19(a)(1), raising the following issues:

- A. Does the petitioner have the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2)?
- B. Has the petitioner committed an offense requiring disqualification, pursuant to N.J.S.A. 5:12-86(c)(3) and N.J.S.A. 5:12-86(g)?

C. Can the petitioner establish her rehabilitation pursuant to N.J.S.A. 5:12-90(h)?

Mrs. Walker 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 facts are undisputed. Mrs. Walker is a 50-year-old woman who, on May 10, 1976, entered a plea of guilty in the United States District Court for the eastern District of Pennsylvania, to the charges of possession with intent to distribute a narcotic controlled substance and conspiracy to distribute, in violation of Title 21 of the United States Code Sections 841 and 846. Her custodial sentence of three years was subsequently shortened and she was released in summer 1977. She immediately became employed through a temporary employment office in Virginia. Since that time she has worked principally for two companies. She has been continually employed and has impressed her employers and coworkers with her reliability and competency. Several affidavits of reference, which have been marked into evidence, so attest. Her political disabilities (prohibition against voting, holding public office and serving on a jury) were restored by the Governor of Virginia on March 5, 1981.

The federal offenses committed by Mrs. Walker are comparable to offenses requiring disqualification under N.J.S.A. 5:12-86c(2). Mrs. Walker must show rehabilitation by clear and convincing evidence. I **CONCLUDE** that she has not done so.

I can understand why Mrs. Walker has impressed her employers and coworkers. She is an intelligent, poised, and well-spoken individual. At the time that she began her involvement with narcotics, she was approximately 40 years old and owned and operated her own retail business in New York City. She became a dealer of heroin for the sole purpose of making money. She earned approximately \$25,000 in the first two weeks. She purchased the narcotics from a supplier and distributed it to a buyer who sold it for her on the streets of New York. The buyer turned the profits over to Mrs. Walker. Mrs. Walker continued this practice for approximately two years. She herself never used narcotics.

Mrs. Walker's conduct was not a result of her own addiction as is sometimes the case, nor was it an isolated incident, nor was it the act of an immature youth. It was a calculated, protracted, knowing violation of law, creating a substantial danger to our society and performed for the profit motive. In light of these facts, the burden of establishing rehabilitation is very great and has not been met.

I further CONCLUDE that the licensing of Mrs. Walker would be inimical to the policy of the Casino Control Act and casino operations. N.J.S.A. 5:12-86c(4).

For the foregoing reasons, the application of Helen Walker for licensure as a casino employee 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.

May 10, 1984  
DATE

Norman D. Smith  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

May 10, 1984  
DATE

Nancy D. Smith  
CASINO CONTROL COMMISSION  
Assistant Council

Mailed to Parties:

MAY 14 1984  
DATE

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-EA-192  
OAL DOCKET NOS. CCC 6148-83 and  
9396-82 (ON REMAND)  
APPLICATION NO. 32501-22

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APPLICATION OF MICHAEL O. WATSON  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 12, 1984, recommending that the casino employee license application of Michael O. Watson be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 15, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 23rd day of February 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

IT IS FURTHER ORDERED that, Michael O. Watson 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 Michael O. Watson from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6148-83

(ON REMAND CCC 9396-82)

AGENCY DKT. NO. 82-EA-192

**MICHAEL O. WATSON,**

Applicant

v.

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

Respondent.

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**APPEARANCES:**

**Michael O. Watson, applicant, Pro Se**

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

Record Closed: November 23, 1983

Decided: January 9, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Michael O. Watson, applicant, for licensure by the Casino Control Commission (Commission) 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 on the basis that the applicant failed to disclose information material to licensure, was convicted of a disqualifying criminal offense and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Watson filed his Personal History Disclosure Form -2 (PHDF-2), with the Commission on July 7, 1981 (J-1). By letter, the applicant was advised by the Commission that, based upon information received in a report from the Division, dated August 19, 1982, there was a "substantial possibility" that it would deny his application and that he had a right to a hearing. By letter dated October 5, 1982, Mr. Watson requested a hearing. On October 8, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Because Mr. Watson failed to appear for a prehearing conference scheduled for February 2, 1983, an initial decision denying his application, dated April 28, 1983, was issued. However, by an order, dated August 3, 1983, the Commission determined to retransmit the matter to the Office of Administrative Law for a hearing. A prehearing conference was conducted on September 23, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Watson is 31 years of age (J-1). He has resided in New Jersey since his relocation from Massachusetts in 1970. He is a 1970 graduate of Everett High School in Everett, Massachusetts. The applicant is the father of two children, ages eight and thirteen, who live with their mother in Massachusetts. The applicant supports them when able.

From May 1976 to September 1977, the applicant was employed as a forklift driver by National Freight in Vineland. He was laid off from his position.

From February 1978 to June 1979, the applicant was employed as a foreman by S & O Pallets Co. in Vineland. The applicant's employment ceased when the company went out of business.

On January 16, 1979, the applicant was indicted by a Cumberland County Grand Jury and charged with a violation of N.J.S.A. 2A:102-5, embezzlement of merchandise in the amount of \$828 (comparable to N.J.S.A. 2C:20-9, embezzlement), concerning an incident which occurred during 1977 (R-1). On February 5, 1979, the applicant pled not guilty. However, on April 26, 1979, the applicant retracted his plea of not guilty and entered a plea of guilty to the indictment. On May 14, 1979, the applicant was sentenced to three months, suspended, two years' probation, a fine of \$250 and was ordered to make restitution in the amount of \$828. On October 20, 1980, because the applicant failed to make any payments pursuant to his sentence, he was convicted of a violation of probation and sentenced to three months. Further, on June 25, 1982, and because he had not yet made restitution, the applicant was held in contempt of court and was sentenced to and served 42 days in lieu of restitution.

The applicant described the circumstances underlying the incident. During 1977, when he was 25 years of age and unemployed, the applicant helped coach a little league baseball team. The coach became ill during the time of a cookie sale effort, the proceeds of which were to be used to purchase equipment. As a result, the applicant held the sales receipts in the amount of \$828. Unknown to the applicant at that time, one of his brothers took approximately \$500 of the money. The applicant was unable to replace the missing funds. Further, he did not turn in the balance of the monies because he was afraid. During a conference with the little league president, the applicant denied any knowledge of the whereabouts of any of the monies. Nevertheless, the applicant spent the balance of the monies going out on dates in Philadelphia.

In response to question number 31 on his PHDF-2, the applicant indicated that from July 1979 to May 1980 he had been employed as a driver by Melini Brothers Tires in Vineland and that he had been laid off from this position. At the hearing, the applicant confirmed the employment, but conceded that the period of employment was only two to three months. The applicant intentionally misstated the period of employment in order to give the impression that he had worked steadily. His purpose was to enhance his opportunities for employment in the casino industry and was based upon his belief that the Commission provided employment services for the casino hotels.

On July 29, 1980, the applicant was arrested by the Vineland Police Department and was charged with a violation of N.J.S.A. 24:21-19a(1), possession of marijuana with intent to distribute (R-2). On February 9, 1981, the Cumberland County

Prosecutor's Office downgraded the charges to possession of marijuana under 25 grams and returned the matter to the Municipal Court of the City of Vineland. Because of the applicant's failure to appear in the municipal court on January 7 and March 9, 1982, to answer the complaint, two bench warrants were issued for his arrest. The applicant was found guilty of a violation of N.J.S.A. 24:21-19a(1) and placed on one-year probation. The applicant continues to maintain his innocence of the charges. Further, he stated that he did not appear in municipal court because of conflicts with his work schedule.

Also in response to question number 31 on his PHDF2, the applicant stated that from October 1980 until July 1981 he had been employed by Vineland Kosher as a packer. At the hearing, the applicant confirmed the employment, but again conceded that the period of employment was intentionally misstated and was, in reality, only two to three months. The reasons for the misstatement were the same as those given for the employment at Melini Brothers Tires.

On February 18, 1981, the applicant was arrested and was charged with a violation of N.J.S.A. 2C:14-2a, aggravated sexual assault of a minor. The applicant was found not guilty by a jury in Cumberland County. The applicant stated that the charges were initiated by a jealous former girlfriend.

On July 7, 1981, the applicant filed his PHDF-2 with the Commission. In response to question number 46, which sought information about the his criminal record history, the applicant stated that he had none (J-1). Nevertheless, the applicant testified that he was well aware of his criminal record history and that he knew of his obligation to answer the questions truthfully. However, he did not disclose his criminal record history because of his fear that the two convictions would impair his future employment, and because he had been unemployed for substantial periods of time and was desperate for a job. In addition, he did not disclose the charge of July 29, 1980, possession of marijuana, because of his fear that a drug-related offense would have a substantial impact upon any future employment. However, the applicant contended that his failure to disclose his arrest on February 18, 1981, and charges which emanated therefrom, was excusable. This will be discussed in greater detail, infra.

Also, in response to question number 49 on his PHDF-2, which inquired of any prior drug use, the applicant responded in the negative (J-1). However, the applicant testified that he had used marijuana previously and that he had responded untruthfully in order to enhance his employment opportunities.

The applicant also testified that his employment history as stated in response to question number 31 on his PHDF-2 was incomplete. More specifically, he was employed as a shipper at a glass company in Millville for two years and for a lawn care services company, where he was paid under the table. These employments were not disclosed. The applicant offered no explanation for these failures to disclose.

On June 8, 1982, the applicant was interviewed by telephone by Division Investigator Ronald Rauer. The investigator read question number 46 to the applicant, who responded that he had no criminal record history. The reasons for this response were in dispute and will be discussed, infra.

From November 1981 until May 1983, the applicant was employed by the Tropicana Hotel and Casino in a maintenance and cleaning capacity. More specifically, the applicant was a rug shampooer and a floor buffer. The applicant's employment was terminated in May 1983 for cause. The applicant cracked a mirror while shampooing a floor with the wrong machine. At the time, he was working for a supervisor other than his regular supervisor. He reported the accident to his temporary supervisor and, upon her direction, reported the incident to the engineering department. Nevertheless, the temporary supervisor "wrote up" the incident because he did not report it to his regular supervisor. Following disciplinary proceedings, the applicant was terminated. His overall record, which included incidents of lateness and unauthorized absences, was considered.

In May 1983, the applicant relocated to Camden County, where he resides with his fiancée and her two teenage sons. The applicant has been employed for approximately four months as a nurse's aide at a nursing home in Maple Shade. His employment has been satisfactory.

The applicant is currently taking a home study course in electronics offered by the Cleveland Institute, and he hopes to qualify for employment in the electronics industry.

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

(8) DISPUTED FACTS

In dispute were the reasons for the applicant's failure to disclose his arrest on February 18, 1981, and resulting charges on his PHDF-2 and the reasons for his failure to disclose his criminal record history during a telephonic interview with a Division investigator.

The applicant testified that he did not disclose his 1981 arrest and charges in response to question number 46 on his PHDF-2 because he had been found not guilty. Further, in regard to the telephonic interview, the applicant testified that he had just completed a double shift and believed the inquiry concerned only charges pending at that time.

Investigator Rauer testified that during the telephonic interview he read question number 46 to the applicant, who responded in the negative. Upon being confronted with the embezzlement charges, the applicant stated that his nondisclosure resulted from his belief that the charges had been dropped when he made restitution. In addition, when confronted with the 1980 arrest and charges, the applicant stated that the nondisclosure was due to his belief that he would be found not guilty. Also, with regard to the 1981 arrest and charge, the applicant stated that his nondisclosure was due to the fact that he was found not guilty of the charges.

Essential to a resolution of the testimonial dispute is a determination of the credibility of the witnesses, i.e. the believability of their testimonies.

Initially, Mr. Watson's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. In this instance, it is appropriate to view the applicant's conduct in completing his PHDF-2 and his testimony as a whole. More specifically, the applicant admitted that he intentionally and knowingly and while under oath provided false answers and information in responses to question number 31 concerning his employment history, question number 46 regarding his adult criminal record history and question number 49 regarding his prior use of drugs. Further, the applicant testified that he did not respond

accurately and truthfully to the investigator's questions during his telephonic interview because he believed the inquiry concerned only pending charges. Nevertheless, the charges emanating from both the 1979 and 1980 incidents were still pending at that time. Further, the applicant stated to the investigator that his reasons for not disclosing the 1979 incident were that he believed the charges were dropped after he made restitution, and he did not disclose the 1981 incident because he believed he would be found not guilty. These responses indicate an awareness that the matters were still pending. In addition, the applicant never made restitution, although he was employed at the Tropicana at the time, and, the applicant was found guilty of the possession charge. In essence, the applicant's testimony consisted of admissions of intentional false statements, some made under oath, which were inconsistent with prior statements and which are not subject to reconciliation. Also, the inconsistencies concern the most critical issues in this proceeding. These explanations, when viewed in light of the applicant's testimony concerning his abilities to read and write and his actions and attitudes at the time he completed the PHDF-2, establish unequivocally that his testimony is not worthy of belief.

Investigator Rauer had no interest in the outcome of the proceeding. Further, his recollection of the telephonic interview was precise and detailed. Although telephonic interviews are fraught with confusion and inaccuracies at best, I am persuaded to believe that the applicant did not disclose his criminal record history to the investigator.

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

1. The applicant's testimony regarding the circumstances underlying his failure to disclose his entire criminal record history in response to question number 46 on his PHDF-2 and during a telephonic interview with a Division investigator was not credible nor believable in any respect.
2. The applicant offered no viable explanation for his failure to disclose his arrest on February 18, 1981, and the charges which emanated therefrom, in response to question number 46 on his PHDF-2, and for his failure to disclose any portion of his criminal record history in response to a reading of question number 46 from the PHDF-2 by a Division investigator to the applicant during a telephonic interview on June 8, 1982.

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. 5:12-89(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(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes as well as employment discharges are facts material to qualification. Here the Division contends that Mr. Watson's failure to disclose his criminal record history fully on his PHDF-2 and during his telephonic interview by Investigator Rauer establishes a violation of section 86b of the Act.

Mr. Watson candidly testified that he knowingly and intentionally and while under oath failed to disclose any portion of his criminal record history in response to question number 46 on his PHDF-2. In addition, the applicant admitted that he had answered untruthfully several other questions on the PHDF-2. Further, the applicant offered no credible explanation for his failure to disclose his 1981 arrest and charges on his PHDF-2 or his entire criminal record history to a Division investigator during a telephonic interview. The applicant's explanations for the reasons for his failures to disclose were inconsistent, unreasonable and not believable. Accordingly, there is no reason to believe that the applicant's failures to disclose were due to ignorance, inadvertence or were good faith errors. Rather, the applicant's actions were intentional and were made for the express purpose of enhancing his chances for licensure. Therefore, the failures to disclose must serve to disqualify the applicant from licensure.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, in regard to his failure to disclose his criminal record history completely on his PHDF-2 and during a telephonic interview by Investigator Rauer.

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

Section 86c(1) of the Act (ct) 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. It was established that the applicant's conviction for a violation of N.J.S.A. 2A:102-5 is comparable to a violation of N.J.S.A. 2C:20-2, which is a listed statutory disqualifier.

I **CONCLUDE** that the applicant's conviction for a violation of N.J.S.A. 2A:102-5 mandates that he be disqualified from licensure, pursuant to 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 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.

Mr. Watson established some of the criteria by which to demonstrate his rehabilitation; however, under section 90h an applicant cannot rehabilitate himself from a section 86b disqualifier.

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

(D) N.J.S.A. 5:12-8b(2)

Under section 89b(2) of the Act, Mr. Watson was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the 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 Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra at 2. Here, the Division has raised issue regarding the applicant's failure to disclose fully his criminal record history on his PHDF-2 and during his telephonic interview by a Division investigator, and regarding the nature of his criminal record history.

The Commission has held that the disqualification criterion found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzales, supra at 8. Therefore, the conclusion that Mr. Watson failed to disclose fully his criminal record history in violation of section 86b automatically precludes the applicant from meeting his burden under

section 89b(2) of the Act. Further, an applicant's willingness to disclose fully his criminal record history is the most direct and reliable means of testing his or her good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he does, in fact, possess good character, honesty and integrity.

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

**DISPOSITION**

I **ORDER** that the application of Michael O. Watson 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.

January 9, 1984  
DATE

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

Receipt Acknowledged:

1/12/84  
DATE

Zubor-Linde  
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 17, 1984  
DATE

Ronald L. Percepko  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Personal History Disclosure Form - 2, Michael O. Watson, filed on July 7, 1981 (28 pages)
- R-1 The State of New Jersey v. Michael Watson, Indictment Number 275-78, Indictment filed January 16, 1979; Judgment of conviction, May 14, 1979; Judgment of Conviction and Order for Commitment, October 20, 1980; Judgment, June 25, 1982 (4 pages)
- R-2 The State of New Jersey v. Michael Watson, Vineland Municipal Court of the City of Vineland, Docket Number C-2800-80, Complaint, July 29, 1980; Letter to the Vineland Municipal Court from Kenneth A. Pagliughi, Prosecutor of Cumberland County, February 9, 1981 Bench Warrant, January 13, 1982; Bench Warrant, August 4, 1982 (4 pages)

WITNESS LIST

FOR THE APPLICANT:

Michael O. Watson

FOR THE RESPONDENT:

Ronald Rauer

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-222  
OAL DOCKET NO. CCC 5769-83  
REGISTRATION NO. 21500-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. :  
ARTHUR WILLIAMS, :  
Respondent. :

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 30, 1984, recommending that respondent's casino hotel employee registration be revoked; and the respondent having offered two letters attesting to his good character for inclusion in the record and the Division of Gaming Enforcement having waived any objection pursuant to N.J.S.A. 52:14B-10; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of March 21, 1984, to modify the said Initial Decision and to revoke respondent's casino hotel employee registration,

IT IS on this *26<sup>th</sup>* day of March 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

That portion of the Initial Decision which finds that respondent has failed to demonstrate his good character, honesty and integrity [Initial Decision at 3] be and hereby is rejected as unnecessary pursuant to N.J.S.A. 5:12-91(b), as amended, L. 1981, c. 503, §12, effective February 15, 1982.

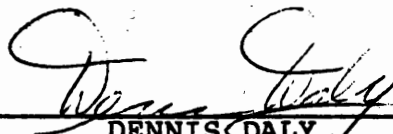
IT IS FURTHER ORDERED that respondent's casino hotel employee registration be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5769-83

AGENCY DKT. NO. 83-222

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner

v.

**ARTHUR WILLIAMS,**

Respondent.

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**APPEARANCES:**

**William Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Arthur Williams, respondent, Pro Se**

Record Closed: January 12, 1984

Decided: January 27, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement seeks to revoke the casino hotel employee registration, pursuant to authority of N.J.S.A. 5:12-129(1). Mr. Williams requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

Arthur Williams was convicted of robbery in violation of N.J.S.A. 2A:141-1, and atrocious assault and battery with a knife in violation of N.J.S.A. 2A:90-1, as a result of conduct that occurred on May 31, 1979 (P-3). The sentencing judge gave the following statement of reasons for the imposition of a sentence on both counts totaling not less than six nor more than ten years in state prison:

The nature and quality of these offenses indicate to the Court that a severe sentence is required as punishment, as a deterrent and for rehabilitation. This is so despite defendant's apparently clear prior record for criminal convictions. This fact and his good work record and even his educational pursuits while they are all mitigating factors, cannot in my judgment reduce the sentence to anything less than a lengthy State's Prison term. It should be observed that the victim was robbed and atrociously assaulted while walking to his car approximately 1-2 blocks from the Resorts International Casino where he had been a patron. The assault has caused injury to one of the eyes of the victim which had recently undergone a corneal transplant, and it appears that the injuries sustained by the victim to that eye may well result in permanent diminished vision in that eye and perhaps even total blindness or functional blindness.

Mr. Williams, at the age of 20, was paroled from Yardville on August 16, 1980. Seventeen days later, on September 2, 1980, he filled out a personal history disclosure form, no. 4, for hotel employee registration. In response to question no. 8, "Have you ever been convicted of a crime . . .?" Mr. Williams checked the box marked "No." He further wrote "dose [sic] not apply" in the box marked "Nature of Conviction." (P-1)

Shortly after his release, Mr. Williams began working at two jobs in Atlantic City, in order to support himself. He reported monthly for his parole. He was still on parole at the time of his hearing. He now supports a three-year-old son. He testified that he has coached a little league team sponsored by the Golden Nugget Hotel. He presented a letter of reference from his supervisor at Bally's where he works in the public areas department (R-1).

The Division first alleges that Mr. Williams has committed two offenses requiring disqualification by virtue of N.J.S.A. 5:12-86c(2). This is patently correct. In order to overcome this impediment, Mr. Williams must establish rehabilitation from the offense in accordance with N.J.S.A. 5:12-90h. However, considering the seriousness of the offense (assaulting and injuring a patron of Resorts International two blocks from the hotel casino with a knife and robbing), the recent date of the offense, and the evidence offered by Mr. Williams concerning rehabilitation, I **CONCLUDE** that Mr. Williams has not established rehabilitation by the greater weight of the evidence. This conclusion is also inextricably interwoven with the following issue, failure to disclose relevant information.

The Commission alleges that Mr. Williams failed to disclose material information in violation of N.J.S.A. 5:12-86b. This is patently correct. Mr. Williams

clearly lied when he answered his personal history disclosure form, under oath, and claimed he had not been convicted of a crime. This form was filled out a mere two weeks after his parole from Yardville. With regard to this issue, Mr. Williams testified that a relative had filled out the form for him. Mr. Williams stated that he did not know what was on the form or what answers the relative had placed on the form. He stated that at the time he filled out the form he was unable to read English as he had only a ninth grade education. He admits that he does read English now, although not too well, but does not explain how or where he learned to read English in the interim. I paid close attention to the appearance and demeanor of Mr. Williams, as well as the content of his testimony. I find it incredible and unbelievable that someone filled out the form for Mr. Williams without asking him any information, without reading the questions to him. Mr. Williams signed the application under oath and initialed each page. He certified that he personally answered the questions and personally typed or printed them on the form. I find his denial of the certification now to be totally unbelievable. Therefore, I CONCLUDE that Mr. Williams did fail to disclose material information, which failure requires disqualification.

N.J.S.A. 5:12-86b is mandatory in language:

The Commission shall deny a casino license to any applicant who . . . [fails] to reveal any fact material to qualification . . . [or who supplies] information which is untrue or misleading as to a material fact pertaining to qualification criteria . . . .

The language of the statute is clear and incapable of misinterpretation. An administrative agency may not interpret a statute in such a manner as to change the scope of the statutory language. In re Estate of Fisher, 165 N.J. Super. 122, 128 (Probate 1978); Service Armament Co. v. Hyland, 70 N.J. 550, 563 (1976). Where statutory language is unambiguous, courts cannot give it a different meaning. In re Jamesburg High School Closing, 83 N.J. 540, 547 (1980). Were I to choose to ignore the mandatory nature of this statute, I would be derelict in my duty. This failure to disclose material information, coupled with the criminal offense previously described, also renders it impossible to find by clear and convincing evidence that the petitioner has the good character, honesty and integrity required by N.J.S.A. 5:12-89b(2).

In summary, I CONCLUDE that Mr. Williams had committed an offense requiring disqualification and has not established rehabilitation. Mr. Williams has intentionally failed to disclose material information. Mr. Williams does not have the requisite good character, honesty and integrity required by the statute.

For the foregoing reasons, it is hereby ORDERED that the casino hotel employee registration of Arthur Williams 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.

1/27/84  
DATE

Norman D. Smith  
NORMAN D. SMITH, ALJ

30 JAN 1984  
DATE

Receipt Acknowledged:  
Dynia J. McDowell  
CASINO CONTROL COMMISSION

February 1, 1984  
DATE

Mailed to Parties:  
Ronald J. Parley  
OFFICE OF ADMINISTRATIVE LAW / s.

sc/ee

EXHIBITS AND WITNESSES:

As set forth in the transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. CCC 1873-83  
CCC DOCKET NO. 83-EA-35  
APP. NO. 02177-11

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APPLICATION OF EDWARD F. WUNSCH, SR.  
FOR LICENSURE AS A CASINO KEY EMPLOYEE

---

FINAL ORDER

This matter having been brought before the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on August 19, 1983, recommending that the casino key employee license application of Edward F. Wunsch, Sr. be denied; and both parties having filed exceptions and objections to the initial decision and replies thereto; and the Commission having considered the entire record of the proceedings and having resolved at its public meeting of October 5, 1983, to modify the initial decision and to deny the casino key employee license application of Edward F. Wunsch, Sr.,

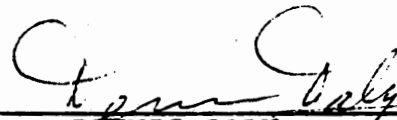
IT IS on this *17th* day of November 1983, ORDERED that the initial decision of the Office of Administrative Law be and hereby is modified for the reasons stated on the record of the Commission's October 5, 1983, public meeting and in the Final Commission Decision to be issued forthwith by the Commission which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the casino key employee license application of Edward F. Wunsch, Sr. be and hereby is denied.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Edward F. Wunsch, Sr., the Division of Gaming Enforcement and the authorized agents of the currently operating casino hotels within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

DATED: November 17, 1983

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-35  
OAL DOCKET NO. CCC 1873-83  
APP. NO. 2177-11

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IN THE MATTER OF THE APPLICATION :  
OF EDWARD F. WUNSCH, SR., FOR A :  
CASINO KEY EMPLOYEE LICENSE : FINAL COMMISSION  
DECISION

---

Charles Matison, Esq., appeared for the applicant.

Mary Jo Flaherty, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

INTRODUCTION

The purpose of this decision is to set forth the factual and legal bases for our determination on October 5, 1983, to deny the application of Edward F. Wunsch, Sr., (applicant) for a casino key employee license.

PROCEDURAL HISTORY

Mr. Wunsch filed an application for a casino key employee license with the Commission on September 9, 1981. See, N.J.S.A. 5:12-89. The Division of Gaming Enforcement (DGE) conducted a background investigation into the qualifications of the applicant and by letter-report dated January 20, 1983, took no position with regard to licensure. See, N.J.S.A. 5:12-76. Nevertheless, the Commission determined that a full hearing was necessary before licensure

of the applicant could be considered. N.J.A.C. 19:42-2.2(a). Following the written request of the applicant for a hearing, the contested case was transmitted to the Office of Administrative Law (OAL) in accordance with 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 May 3, 1983, and the issues framed for consideration were: (1) whether the applicant established by clear and convincing evidence his reputation for good character, honesty and integrity with specific reference to his purchase of stock in the National Kinney Corp., his association with Daniel J. Sullivan and an incident which occurred during his tenure as the police chief of Lower Southampton Township, Pennsylvania; and (2) whether the applicant possessed the requisite business ability.

N.J.S.A. 5:12-89(b)(2) and (3). A hearing before the Honorable Jeff S. Masin, Administrative Law Judge (ALJ) was held on July 5, 6 and 7, 1983. During the hearing, the ALJ granted the motion of the DGE to amend the prehearing order to include two additional issues: (1) whether the applicant provided false and misleading information to the DGE contrary to section 86(b) of the Casino Control Act (Act); and (2) whether he failed to cooperate with and provide information to the DGE during its investigation of his background in violation of sections 80(b) and (d) of the Act.<sup>1</sup>

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1 Throughout the Final Commission Decision sections of the Casino Control Act are sometimes cited by section number only. To obtain full citation, add the prefix N.J.S.A. 5:12-\_\_\_.

On August 19, 1983, ALJ Masin filed an initial decision with the Commission in which he recommended denial of the application for licensure solely upon the failure of the applicant to establish his business ability pursuant to section 89(b)(3) of the Act. The ALJ concluded that the applicant had met his burden of establishing his good character, honesty and integrity; however, he made no findings concerning the issues raised by the amendment to the prehearing order. A copy of the initial decision is appended hereto at A1-A33.

The applicant filed exceptions to the initial decision with the Commission on September 6, 1983. The DGE replied by letter dated September 12, 1983, and specifically addressed the failure of the ALJ to disqualify the applicant on the bases of the issues raised in the amended prehearing order. The DGE requested that, in addition to the reasons contained in the initial decision, the Commission deny licensure of the applicant based upon his lack of good character, honesty and integrity, his failure to provide information to and cooperate with the DGE during its investigation and his provision of false and misleading information to the DGE. N.J.S.A. 5:12-89(b)(2), -80(b) and (d), and -86(b). Because

these issues were not previously considered by the ALJ in the initial decision, the Commission afforded the applicant an opportunity to respond to the DGE. The applicant did so by letter dated September 22, 1983, and the DGE replied on September 28, 1983.

Following a duly authorized extension of time, the Commission determined at its public meeting of October 5, 1983, to modify the initial decision and deny the casino key employee license application of Edward F. Wunsch, Sr. The Commission agreed with the ALJ that the applicant had failed to establish his business ability. However, the Commission further found that the record contained additional bases for disqualification of the applicant. In addition to the reasons set forth in the initial decision, the Commission denied the application of Mr. Wunsch based upon his lack of good character, honesty and integrity, his failure to provide information to and cooperate with the DGE and his provision of false and misleading information to the DGE.

#### FACTUAL BACKGROUND

The factual information contained in the initial decision is thorough and accurate. In his exceptions, the applicant concurs. Therefore, with the exception of a few

relatively minor or technical matters which are clarified below,<sup>2</sup> the facts as set forth in the initial decision are incorporated here by reference. Relevant portions will be discussed as the need arises.

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2 On p.4, the ALJ states: "On February 8, 1981, Weber telephoned Wunsch." The correct year is 1982.

On p.7, the ALJ states: "Daniel Sullivan testified that he told Wunsch very little about the relationship between the Bureau and Wunsch." The second reference to Wunsch should be "Trump."

On p.9, the ALJ states that in its letter-report dated January 20, 1983, to the Commission, the DGE "opposed" licensure of the applicant. As previously noted, the DGE took no position with regard to his licensure.

On p.16, the ALJ evaluates a report placed in evidence by the DGE in accordance with the residuum rule. N.J.A.C. 1.1-15.8. The residuum rule notwithstanding, the admissibility of hearsay evidence is governed by section 107(a)(6) of the Act. In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (1980); aff'd o.b., unreported App. Div. opinion, June 24, 1981. Nevertheless, in view of the outcome of this matter, there is no need to challenge the application of the residuum rule here.

On p.22, the ALJ states that had the applicant been ordered by the FBI to lie, his failure to disclose information to the DGE would have been excusable. This notion is specifically rejected. When an applicant disregards the licensing requirements and intentionally lies to the regulatory authorities, denial of the application is an appropriate result.

On p.25, the ALJ incorrectly cites the financial stability, good character and business ability sections of the Act as N.J.S.A. 5:12-89 6(1), 6(2) and 6(3). The correct citations are N.J.S.A. 5:12-89(b)(1), (b)(2) and (b)(3), respectively.

## DISCUSSION

As an applicant for a casino key employee license, Mr. Wunsch is required to establish by clear and convincing evidence his: (1) financial stability, integrity and responsibility; (2) reputation for good character, honesty and integrity, and (3) business ability and casino experience. N.J.S.A. 5:12-89(b). In addition, this applicant has the affirmative responsibility and the continuing duty to provide assistance or information requested by the Commission or DGE and to cooperate in any investigation conducted by the regulatory authorities. N.J.S.A. 5:12-80(b) and (d). An applicant who provides false or misleading information or who fails to comply with any of the previously mentioned criteria will not be licensed by this Commission. Here, the ALJ found that the applicant's decision to lie, conceal, and bear false witness to the DGE illustrated a serious lack of judgment which precluded an affirmative finding of business ability. This finding is more than borne out by the record under review.

The applicant is employed, and has been for over 31 years, as the Chief of Police in Lower Southampton Township, Pennsylvania. He is an associate of Daniel Sullivan, formerly one of several landlords of the proposed Trump-Harrah's casino hotel facility now known as Harrah's Boardwalk at Trump Plaza. Sometime in late 1980 he inquired of Sullivan as to employment opportunities with Trump in Atlantic City. Sullivan suggested that the applicant forward

a resume to a real estate office in Atlantic City through which the Trump organization was doing business. Sullivan testified that in early 1982 negotiations were going on between Trump and the FBI to allow the Bureau to place individuals in the organization to conduct investigations into casino-related illegal activities. According to Sullivan, the FBI was going to investigate the background of anyone, like the applicant, seeking a security-related position. Sullivan advised the applicant that he would have to be checked out by the "federal people". Thereafter, on a street corner in New York city, the applicant and Sullivan had a 15 minute meeting with Special Agent Walter Stowe of the FBI. Sullivan advised the applicant to keep the meeting confidential. As a result of the meeting, the applicant surmised the existence of an undercover operation involving the Trump organization and the FBI.

During the course of the background investigation, Douglas Weber, the DGE investigator assigned to the case, had numerous telephone conversations with the applicant. On February 4, 1982, the applicant advised Weber that he had a promise of employment from the Trump Organization, which would also be paying the cost of his investigation. The following day Weber sought to confirm this information with Robert Trump who advised that he had neither heard of the applicant nor made any agreements regarding either his

employment or the investigative fees. On February 8, 1982, Weber asked the applicant for the name of the Trump official with whom he had spoken. The applicant stated he could not remember but would find out and call back. On February 16, 1982, the applicant advised Weber that he had met Robert Trump personally, having been introduced to him by a third party whose name he could not pronounce. Thereafter, the applicant informed Weber that he had met Robert Trump at Bally's hotel casino and, at Trump's invitation, submitted a resume for employment. During his sworn interview with the DGE on April 1, 1982, the applicant reaffirmed much of the information he gave to Detective Weber. In addition, he denied knowing Daniel Sullivan.

At the hearing, the applicant admitted that much of the information he had given to both Investigator Weber and the DGE at the sworn interview was false. He testified that the Trump organization neither agreed to hire him nor pay for the cost of his background investigation. Based upon his decision not to reveal Sullivan's name to the DGE, he lied about meeting Robert Trump. While he had briefly met Donald Trump, Robert's brother, at the Trump groundbreaking ceremonies, he had never met Robert and had never been solicited by him to submit a resume. The applicant testified that, based upon his meeting with Sullivan and Special Agent Stowe, he assumed an undercover operation was in effect. He explained that he lied to the DGE during the sworn interview

because his concern "was not to divulge any information that possibly would effect [sic] what I believed to be an undercover operation" lest it "possibly lead to someone getting hurt...." (2T119).<sup>3</sup>

During a period of extensive questioning by the ALJ, the applicant stated that, based upon his intuition, he surmised the existence of an FBI undercover operation. He admitted that he had never been instructed not to reveal either Sullivan's name or his conversation with Agent Stowe to the DGE; he made the decision unilaterally. Following the sworn interview on April 1, 1982, at which he gave false information to the DGE, the applicant testified that he did not later contact the DGE to correct matters. Moreover, he made no effort to contact Agent Stowe to ascertain what information he could disclose to the DGE, even after the Harrah's-Trump merger in the summer of 1982, which he believed had terminated any connection between Trump and the FBI. (2T210-2T213).

The lack of judgment and business ability of the applicant is further revealed by his involvement as chief of police of Lower Southampton Township, Pennsylvania, in the arrest of Harry Zambelli, a township supervisor, for drunken driving on March 12, 1981. The record reveals that the

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3 "T" refers to Volume I of the transcript of the administrative hearing, 2T refers to Volume II and 3T refers to Volume III.

applicant interceded between the arresting officers and Zambelli and inquired whether they would either "roll over on" or "go through with" the arrest. The matter was investigated fully by the Bucks County District Attorney's office which concluded that, although not criminal, the applicant's conduct was "inappropriate and ill-advised" (D30 in evidence).

The ALJ noted that this incident standing alone, was insufficient to deny licensure, but, in conjunction with the FBI/Trump matter, impugned the applicant's judgment and business ability. Once again we agree. The several instances where the applicant demonstrated deficient judgment serve to preclude him from establishing by clear and convincing evidence that he has sufficient business ability to establish the reasonable likelihood of success and efficiency in the position for which he seeks licensure. See, N.J.S.A. 5:12-89(b)(3).

We share the ALJ's conclusions that no negative inferences should be drawn from either the applicant's relationship with Daniel Sullivan or his purchase of stock in the National Kinney Corp. Sufficient credible evidence exists in the record to support these findings. Since the DGE has not taken exception to either matter, we see no reason to belabor these issues.

By way of exception and in connection with the ALJ's decision to grant its motion to amend the prehearing order, the DGE argued that the record contained additional bases to find the applicant disqualified from licensure. In addition to the reasons set forth in the initial decision, the DGE urged the Commission to deny licensure because the applicant: (1) provided false and misleading information to the DGE pursuant to section 86(b); (2) failed to provide information to and cooperate with the DGE during his background investigation contrary to sections 80(b) and (d); and (3) failed to establish his good character, honesty and integrity as required by section 89(b)(2). We find ample support in the record to deny licensure on these grounds as well.

It is uncontroverted that the applicant lied on numerous occasions to the DGE investigator concerning his relationship with the Trump organization. The applicant continued a trail of deceptions by lying, under oath, to the DGE concerning his association with Daniel Sullivan. When the applicant had the opportunity to rectify these falsehoods he failed to do so. We can draw no other conclusion but that the applicant failed to provide information and to cooperate with the DGE and that some of the information he did provide was false and misleading. Therefore, the applicant is disqualified from licensure pursuant to sections 80(b) and (d) and 86(b) of the Act.

We need go no further than his lack of candor to conclude that the applicant does not possess the good character, honesty and integrity to be licensed as a casino key employee. Never before has this Commission reached the anomalous conclusion that an applicant who has been disqualified for lying, concealing information, providing false and misleading information, and bearing false witness has, nevertheless, met his burden of establishing good character, honesty and integrity. We see no reason to deviate from that practice here.

An applicant for a casino key employee license is subject to the strictest scrutiny by this Commission. Alter, supra; Knight v. Margate, 86 N.J. 374, 381 (1981). The applicant's successful career in law enforcement, no matter how praiseworthy, does not overcome his selective compliance with our regulatory process. Therefore, the applicant is disqualified for failing to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

#### CONCLUSION

In addition to his disqualification for lack of business ability, the application of Edward F. Wunsch, Sr., for a casino key employee license is denied based upon his: (1) failure to provide information to and cooperate with the DGE;

(2) provision of false and misleading information to the DGE; and (3) failure to establish his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(3), -80(b) and (d), -86(b) and -89(b)(2). The initial decision is modified accordingly.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Walter N. Read  
WALTER N. READ, CHAIRMAN

Carl Zeitz  
CARL ZEITZ, VICE-CHAIRMAN

Joel R. Jacobson  
JOEL R. JACOBSON, COMMISSIONER

E. Kenneth Burdge  
E. KENNETH BURDGE, COMMISSIONER

Don M. Thomas  
DON M. THOMAS, COMMISSIONER



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1873-83

AGENCY DKT. NO. 83-EA-35

**EDWARD F. WUNSCH, SR.,**

Petitioner

v.

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

Respondent.

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**APPEARANCES:**

**Charles A. Matison, Esq.,** for petitioner (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, attorneys)

**Mary Jo Flaherty,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 7, 1983

Decided: August 16, 1983

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

Edward F. Wunsch, Sr., who presently serves as the Chief of Police of Lower Southampton Township, Pennsylvania, applied to the Casino Control Commission (Commission) for licensure as a casino key employee. The application filed by Chief Wunsch on September 9, 1981 indicated that he was applying for a license authorizing him to serve as a Director of Security, a Director of Surveillance, and/or a Security

Supervisor.<sup>1</sup> After reviewing the application and conducting an investigation, the Division of Gaming Enforcement (Division) advised the Commission on January 20, 1983, that it was objecting to Wunsch's licensure. Wunsch requested a hearing on the proposed denial and the matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on May 3, 1983 and a Prehearing Order was entered on May 10, 1983. Thereafter, hearings were held before Judge Masin on July 5, 6 and 7, 1983 at the Office of Administrative Law in Trenton. The record closed following completion of the hearing on July 7.

#### THE ISSUES

The Prehearing Order set forth a number of issues which had been raised by the Division in its January 20 correspondence to the Commission. Specifically, the Division raised questions as to whether Chief Wunsch possessed the requisite good character, honesty and integrity required for licensure as a key employee, pursuant to N.J.S.A. 5:12-89(b)(2), and whether he possessed the requisite business ability for the positions in which he sought licensure, as required by N.J.S.A. 5:12-89(b)(3). The Division questioned a number of prior events and circumstances which it believed gave rise to serious questions as to Chief Wunsch's qualifications for licensure. These can best be described as (1) the circumstances surrounding certain representations by Chief Wunsch as to his anticipated employment with the Trump Casino-Hotel; (2) the circumstances surrounding the arrest of former Lower Southampton Township Supervisor Harry Zambelli for drunk driving on May 12, 1981 by Patrolman Edward Krajewski (the Zambelli-Krajewski incident); (3) the relationship of Chief Wunsch with one Daniel J. Sullivan, including a purchase of stock in the National Kinney Corporation, and (4) certain other allegations by Krajewski related to Wunsch's conduct as police chief. Testimony and documentary evidence was presented as to each of these matters.

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<sup>1</sup> On May 2, 1983, Wunsch was offered a tentative position of Security Supervisor at the as yet uncompleted Penthouse Boardwalk Hotel. (P-66 in evidence).

THE CONCLUSION

After having given careful consideration to the evidence adduced, and having considered the credibility of witnesses as well as the documentary evidence presented, I must conclude that Chief Wunsch has failed to establish by the requisite degree of proof that he has the qualifications necessary for licensure as a casino key employee. Therefore, I CONCLUDE that his application for licensure must be denied.

THE EVIDENCE

In setting forth the factors which compel the conclusion that a denial of licensure is warranted, it is necessary to discuss the evidence and testimony in some detail.

CHIEF WUNSCH'S CONNECTION WITH TRUMP

In its letter of January 20, 1983, to the Commission, the Division noted that in the initial stages of the Division's investigation of Chief Wunsch's application, he had indicated to Division personnel that he anticipated employment with the Trump Plaza Corporation and that that company would be reimbursing the Commission for the cost of the Division's investigation. On February 4, 1982, Detective Douglas A. Weber of the New Jersey State Police, assigned to the Division of Gaming Enforcement and in charge of the investigation of Wunsch's application, contacted Wunsch by telephone to advise him of his involvement. According to a memorandum prepared by Weber on February 4, 1982, as confirmed by Weber's testimony in this hearing, on February 4, Wunsch advised Weber that he would be working for the Trump organization and that Trump would be paying for the investigation. The Trump Plaza Corporation, a company owned by Robert and Donald Trump of New York, was then contemplating the construction of a casino-hotel in Atlantic City. On February 5, 1982, Weber contacted Robert Trump, a principal in the Trump Plaza Corporation, and discussed with Trump the Wunsch application. Trump advised that neither he nor Donald Trump had ever heard of Wunsch. Robert Trump denied that his company would be paying for Wunsch's investigation. Trump promised Weber that he would search the Trump files for any resume which might have been submitted by Wunsch.

On February 8, 1981, Weber telephoned Wunsch. He questioned Wunsch as to who in the Trump organization the Chief had spoken to. The Chief indicated that he could not recall but would find out and call back. He again stated that he would probably be employed by Trump. Thereafter, on February 16, 1982, Weber telephoned Wunsch again. Wunsch told Weber that he had talked to Robert Trump, having met him personally through a third party. Wunsch indicated that he was unsure how to pronounce the name of the third party. He promised that he would get back to Weber and tell him who that individual was. Shortly thereafter, Wunsch called back and stated that he had talked to Robert Trump sometime previously in the Bally casino. At that time Trump had invited Wunsch to submit a resume. Wunsch stated that "he would not have gone this far with the process if he didn't think he had the job" (Memorandum of February 16, 1982, P-5 in evidence).

On February 19, 1982, Robert Trump informed the Division that he had found no resume for Edward Wunsch in his files. Trump indicated that in the course of his activities he was introduced to a large number of persons and that it was possible that he met Wunsch, but he could not remember. He also noted that whenever he was questioned about employment opportunities at the casino-hotel he would inform the questioner to submit a resume.

On February 23, 1982, Detective Weber and Investigator Marianne V. Salewski interviewed Chief Wunsch at the Lower Southampton Township Police Department. At that time Wunsch informed the investigators that he would have overall supervision of uniformed security at the Trump Plaza Hotel-Casino.

On March 1, 1982, Robert Trump telephoned Detective Weber and told him that he had received a resume from Edward F. Wunsch.

The circumstances surrounding Chief Wunsch's involvement with the Trump organization and the factors which led him to advise the Division's investigators of the information testified to by Detective Weber are indeed unusual. Wunsch's contacts with Trump arose through Trump's association with Daniel J. Sullivan. Mr. Sullivan is a member of an partnership which is the landlord of the Trump Plaza Corporation's project on the Atlantic City boardwalk. According to Sullivan's testimony, he is a self-employed

labor relations consultant for a number of firms in the northeast United States. He lives in Bucks County, Pennsylvania, wherein Lower Southampton Township is located. He first met Chief Wunsch in late 1973 or early 1974, when he was asked to serve on a fund raising committee for the family of the late police chief of Northampton Township. The committee was planning a dinner dance for February 28, 1975. Chief Wunsch was the chairman of the committee. Sullivan described his relationship with Wunsch as casual. They had no business or social relationship.

According to Sullivan, in late 1979 he received a telephone call from Eugene Alten, an officer of the Atlantic Riveria Hotel Corporation, who informed Sullivan that he had financial difficulties in regard to a property in Atlantic City. At the time Sullivan was representing National Kinney Corporation in labor matters. Sullivan was aware that National Kinney was interested in pursuing gaming-related investments. Sullivan introduced Alten to National Kinney representatives and discussions ensued, but National Kinney eventually lost interest and the negotiations were terminated. Thereafter, according to Sullivan, he became involved in a partnership known as S.S.G. Enterprises. The Division report to the Commission in reference to the application of the Trump Plaza Corporation for a casino license, filed with the Commission on October 16, 1981, and made a part of the record in this case as Exhibit D-39, indicates that S.S.G. Enterprises became active in approximately March or April 1980. The group eventually became the owner of a parcel of land along the boardwalk in Atlantic City upon which the Trump organization determined to build its casino-hotel.

According to the testimony of Chief Wunsch, sometime in 1980 he saw a newspaper article concerning Sullivan's involvement as the landlord of the Trump facility. About one month later he saw Sullivan in a restaurant in Bucks County. The meeting was strictly by chance. Wunsch congratulated Sullivan and a discussion ensued concerning the casino industry. Chief Wunsch, who at the hearing described himself as quite happy in his present job but interested in possibly pursuing other fields, mentioned to Sullivan his interest in casino related employment. A discussion ensued as to the possibility of Sullivan being able to help out Wunsch with regard to obtaining employment with Trump or another casino and Sullivan testified that he told Wunsch he would be delighted to make a recommendation. He suggested that Wunsch prepare a resume and send it to a real estate office in Atlantic City through which the Trump organization was conducting business. Wunsch prepared the resume and sent it to the Atlantic City address.

It is at this point that the story of Wunsch's relationship with Trump becomes rather unusual. According to Sullivan's testimony, as confirmed by that of Robert Trump, early on in the Trump organization's development of the casino-hotel concept, the Trumps, who are substantial real estate owners in the City of New York and who are apparently considered by law enforcement officials to be exceedingly "clean," were approached by Sullivan with the suggestion that the Federal Bureau of Investigation (FBI) might be interested in a relationship with the Trumps. The idea was that the FBI would place certain individuals in positions within the Trump organization through which the Bureau could obtain information and experience necessary to sharpen its skills in connection with the investigation of illegal activities within the casino industry. The Trump organization, which was not experienced in the operation of casinos, could benefit from the arrangement through the close working relationship with the Bureau and the security provided by the involvement of FBI agents in the Trump operation. Although the testimony indicates that the concept of a Trump-FBI connection was at all times rather nebulous, Sullivan did have contacts with the Bureau and he did bring about meetings between Bureau agents and the Trumps.

According to Sullivan's testimony, as part of the "understanding" between the Trumps and the FBI it was understood that any individual who was to be employed by the Trumps in a security related position would have to be checked out by the Bureau before the person could be hired. As a result, Sullivan testified that he took Wunsch's resume to Special Agent Walter Stowe of the New York Office of the Bureau. Thereafter, Sullivan arranged a meeting between Special Agent Stowe and Chief Wunsch in New York. According to Wunsch, Sullivan told him of the need for clearance of Wunsch's employment with Trump by "federal people." This caused Wunsch to believe that there was some unusual operation involved in the Trump casino. Thereafter, Wunsch received a telephone call from Sullivan early one morning advising him to meet Sullivan at the Grand Hyatt Hotel in Manhattan. The two had lunch at the Hyatt, and then proceeded to 86th Street where they met an individual who was introduced to Wunsch as Walter Stowe, a "leading agent" for the Bureau in New York. The conversation occurred on the street corner and lasted approximately 15 minutes. During the discussion, Stowe made reference to the FBI Academy, which Wunsch had attended. Wunsch mentioned the name of Neil Welch, who had previously been Special Agent in Charge of the Philadelphia office of the Bureau and had then moved to the same position in New York. Stowe knew Welch and the two discussed him for a few moments. As a result of this meeting, Wunsch became convinced that there was some connection between the FBI and the Trumps. Sullivan told Wunsch that the meeting with Stowe should be kept confidential.

Daniel Sullivan testified that he told Wunsch very little about the relationship between the Bureau and Wunsch. He did this because he could not provide any details to Wunsch without the approval of the Bureau. Following the meeting between Sullivan, Stowe and Wunsch, Sullivan forwarded the Wunsch application to the Trump organization. He testified that he personally handed it to Robert Trump at Trump's office. He also testified that he had previously mentioned Wunsch's name to Donald Trump on a number of occasions, because Donald needed recommendations for individuals for security positions. Thereafter, Sullivan told Wunsch that he had a shot at a position with Trump and that it was up to the company to decide whether they wished to hire Wunsch. Sullivan had no further involvement with the application, although he did introduce Wunsch to Donald Trump at the ground-breaking ceremonies for the hotel. This meeting occurred in the presence of about 700 to 1,000 people who were at the ground-breaking and it lasted for a very short time.

On cross-examination, Sullivan indicated that he may have discussed with Wunsch the various types of positions which might be available in the casino. These discussions would have been in the context of the possible availability of such jobs rather than any assurance that Wunsch would obtain such a position.

Chief Wunsch testified that he at no time made any independent attempt to check out the facts concerning the existence of a special relationship between the Bureau and the Trumps or Sullivan's relationship to such an involvement with the FBI. He had a very brief conversation with Agent Neil Shanahan of the Landsdown Office of the Bureau and only asked him if he knew Stowe. Shanahan answered in the affirmative, stating that he had worked with Stowe on previous occasions.

When Detective Weber contacted him on February 4, 1982, Wunsch recalled having told him that he hoped to be working for the Trump organization. He acknowledged that he might have told Weber that Trump would pay for the investigation. When Weber asked who he had spoken to at Trump, he told the detective that he did not recall, but that he would check out the answer and call back. Wunsch knew that the person he had spoken to was Daniel Sullivan, but he did not wish to mention his name at the time. Wunsch confirmed the details of Weber's February 16 memorandum, in which Weber reported that Wunsch had told him that he had spoken to Robert Trump at the Bally Casino and that Trump had invited Wunsch to submit a resume. Wunsch confirmed that this information was not true.

On April 1, 1982, Chief Wunsch was interviewed at the Division's headquarters in Trenton by Deputy Attorney General Mary Jo Flaherty and Detective Weber and Investigator Salewski. This interview was conducted under oath. During that interview, Chief Wunsch was asked whether Daniel Sullivan was involved in any way in Wunsch's meeting Robert Trump or submitting any application to the Trump organization. Wunsch answered "no." Wunsch indicated that it was possible that the Trumps denied knowledge of him, but that he could not possibly answer why that was so. Wunsch indicated that his meeting with Trump had been extremely short.

During the present hearing, Chief Wunsch attempted to explain the reasons why he had concealed Daniel Sullivan's involvement in his initial contacts with the Trump organization. He stated that at the time of the discussions with Detective Weber and at the time of the sworn interview with Deputy Attorney General Flaherty, he wished to conceal Sullivan's involvement because of his belief that there was in existence a confidential undercover relationship involving Sullivan, the Trumps and the FBI. Wunsch stated that at the time of his interview he believed that if everything had gone as he had expected he would have gotten a position with the Trump organization on his own merits. He openly admitted at the hearing that Sullivan had in fact been involved in his submission of an application to the Trump organization. He testified that his statements to the Division concerning his meeting with Trump at Bally's, the personal suggestion by Trump to submit a resume, the denial of Sullivan's involvement, the indication of his having a position secured with Trump and his representation that Trump had agreed to pay for the cost of his investigation were all false. Wunsch claimed that the motivation for all of these false statements was his desire to avoid compromising what he believed to be a confidential undercover operation. He acknowledged that no one from the FBI or the Trump organization had ever told him that he could not reveal the truth to the Division and/or the Commission and that only Daniel Sullivan had told him to keep the matter confidential.

According to Robert Trump, as far as the Trumps were concerned, the possibility of a relationship between the FBI and the Trump organization had become a dead issue by the time the Trump organization entered into negotiations with Harrah's in late April and early May 1982. These discussions eventually led to a partnership agreement which was executed on July 1, 1982. The involvement of another organization in Trump project seems to have finished off whatever possibilities still existed for the undercover operation.

According to Wunsch, some time in the summer of 1982 he learned from Sullivan that the agreement between Trump and Harrah's had eliminated any possibility of the FBI's involvement in the Trump project. This probably occurred shortly after newspaper articles were printed which reported the agreement between Trump and Harrah's. However, Wunsch also testified that he first learned that he could tell the truth about his involvements with Sullivan after his contacts with Mr. Matison, his present counsel. Prior to that time, he was not sure whether the FBI investigation was indeed concluded. In addition, he testified that he did not know that the FBI involvement was ended before the Division issued its January 20, 1983 letter opposing his licensure. It was only after he learned that Sullivan was going to testify in the licensing proceeding and after talking to his attorney that he knew that the FBI role in the Trump operation was ended. After that, he saw no reason to discuss with Sullivan whether it was permissible for him to tell the truth about Sullivan's role and the FBI involvement. Wunsch acknowledged that he knew that his contact with Sullivan and the questions and answers concerning how he had become involved with Trump were matters of importance to the Division. He gave the Division's representatives false information and incorrect answers because at the time that he was questioned he felt it necessary to do so.

#### THE ZAMBELLI-KRAJEWSKI INCIDENT

The second matter of significance with respect to Wunsch's qualifications arises out of his responsibilities as Chief of Police of Lower Southampton Township, a community of approximately 21,000 people located outside of Philadelphia in Bucks County, Pennsylvania. Wunsch has been the police chief of that community since 1951.

On March 12, 1981, Officer Edward Krajewski of Lower Southampton Township arrested Harry Zambelli for drunk driving. Zambelli was then a supervisor of Lower Southampton Township and in that role was a member of the governing body of the community. According to testimony received from Krajewski, who was laid-off from his position with the police department on July 10, 1981, when he arrested Zambelli the supervisor attempted to bribe him and made threats concerning Krajewski's job. He also made repeated telephone calls attempting to have Chief Wunsch intervene. Krajewski took Zambelli to the State Police Barracks for the purpose of giving him a breathalyzer test. An attorney representing Zambelli appeared at the State Police Barracks. The men

then went to Lower Southampton Township Police Headquarters and Chief Wunsch arrived. Krajewski described Wunsch as having gone into a room with Zambelli and his attorney. There was a great deal of yelling and screaming and shortly thereafter, Wunsch came out, approached Krajewski and another officer, Adams, and asked them to "roll over on this." Adams asked the chief what he meant by that statement and Wunsch said that the officers should forget about the incident and forget that the arrest ever happened. He then added "are you sure you want to go through with this?" The officers did indeed process the arrest. Ultimately, Zambelli pled guilty to the drunk driving charge, resigned his position as township supervisor, and also gave up several other positions he held in the county. It appears from testimony received from various witnesses that Zambelli had a drinking problem and that he went into a treatment center following his arrest.

On July 9, 1981, which was the last day of Krajewski's active service as an officer for the Lower Southampton Township Department, and the same day he had been notified that he was being furloughed, Krajewski signed a criminal complaint against Wunsch charging him with intimidation of a witness, obstructing the administration of justice and hindering a criminal prosecution by ordering Krajewski not to appear as a witness in certain criminal proceedings. On July 13, 1981, Krajewski was to appear as a witness in a drug case in Doylestown, Pennsylvania. On July 9, he was ordered not to appear by a Lieutenant in the police department. The Lieutenant informed Krajewski that the order was a direct one issued by the Chief of Police. Krajewski questioned the order, which he believed to be unlawful. The Lieutenant said that he was not going to argue whether it was lawful or not. Krajewski did appear at the criminal hearing, although he was never told that the order not to appear was rescinded. At the time of that hearing, Krajewski had already been furloughed.

On July 15, 1981, Krajewski, then acting as a private citizen after having been furloughed by the department, signed criminal complaints against Zambelli and Wunsch. Wunsch was charged with interfering with Zambelli's arrest and conspiring with Zambelli. He was also charged with obstructing justice because of his alleged order that Krajewski not appear in court in the drug case. A third complaint charged Zambelli with attempted intimidation of a witness, i.e., Krajewski, and also with conspiracy in connection with the drunk driving arrest.

During his testimony Krajewski was questioned as to the reason why he had not filed the complaints concerning the Zambelli arrest immediately after the incident. He explained that as a patrolman he was always being threatened that he would lose his job if he did or did not do something, but when he was actually furloughed he believed that the furlough was not for economic reasons, as had been represented to him, but was because of his not having fixed Zambelli's arrest. He then determined to file the criminal charges.

On July 17, 1981, Krajewski, Wunsch and the Lower Southampton Township Board of Supervisors entered into a stipulation in which they agreed to refrain from any further action until Krajewski had been given a hearing in Bucks County Court regarding the validity of his furlough. On August 18, 1981, Krajewski filed complaints against Zambelli and Wunsch in District Court. These complaints charged Zambelli with attempting to intimidate Krajewski so that he would not pursue the drunk-driving charge and also charged Zambelli and Wunsch with conspiracy. Complaints were filed against Wunsch charging interference with Zambelli's arrest and conspiracy with Zambelli. Another complaint charged Wunsch with acting improperly in connection with his order that Krajewski not appear at further court proceedings. A third complaint charged that Wunsch had used his position as police chief to obtain funds from the township for personal use.<sup>2</sup>

As a result of the charges brought by Krajewski, Michael Kane, the Bucks County District Attorney, conducted an investigation of the charges against Wunsch and Zambelli. A copy of the final report of that investigation was entered in evidence as exhibit D-30. According to that report, as well as the testimony given during this hearing, Wunsch recalled that when he emerged from the heated discussion with Zambelli and his attorney and confronted Adams and Krajewski he said "are you sure you want to go through with this." In his report, District Attorney Kane, who was charged by

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<sup>2</sup> Krajewski testified that he filed these complaints after he perceived that the agreement which had led to the earlier complaints being dismissed had been breached. The alleged breach was related to certain representations which Krajewski believed had been made to him regarding court dates and the processing of his appeal from the furlough. Whether such a breach actually occurred is not clear from the limited record before this Court.

Pennsylvania law with determining whether the complaint brought by Krajewski as a private citizen was to be approved for further proceedings or not, determined that the complaint should be disapproved. He characterized Chief Wunsch's conduct as "inappropriate and ill-advised" but he did not find any basis for concluding that Wunsch's conduct reflected criminal behavior. The report states:

The Chief of Police did not threaten, intimidate or coerce the officers to drop the charges, nor did he promise any benefit to the officers. When the Chief was advised that the officers were electing to file a DUI (driving under influence) arrest on Zambelli, the Chief did not pursue the matter.

With respect to the Zambelli incident, Chief Wunsch testified that on March 12, 1981, he received a telephone call from Daniel Lawler, Esq., the attorney for Zambelli. Lawler was also the township attorney. Wunsch described Lawler as a highly respected attorney who had never before called Wunsch in this fashion and, as a result, Wunsch agreed to come down to the police station. Zambelli was shouting to "do something." He was extremely boisterous. Lawler suggested that Zambelli should be removed from the police station and processed at a later date. Wunsch was aware that Zambelli was scheduled to report for treatment at an in-patient alcohol abuse center the next morning. He went out of the meeting with Zambelli and Lawler and approached Adams and Krajewski and asked them if they were "sure you wanted to go through with this." The officers agreed that they did and that was the end of the matter. Eventually, when Zambelli pled guilty to the charges as a result of a plea bargain, he was required to fulfill his stay at the rehabilitation center and forfeit his license for six months.

As noted above, Krajewski filed his charges against Wunsch and Zambelli after he learned that he was being furloughed from the department. Krajewski testified that he did not believe that the furlough was the result of a good faith attempt to economize, but was instead retaliation for his failure to agree to a "fix" of the Zambelli arrest. Chief Wunsch testified that he had been ordered to cut the police budget. The Board of Supervisors originally talked of a three man reduction, but then concluded that a one man reduction would be sufficient. Officer Krajewski was the last officer hired, having been hired under a federal grant which paid a substantial portion of his salary. He was, therefore, the first officer in line for layoff under the terms of the Police Tenure Act.

Krajewski testified that he was laid off under the guise of a reorganization, but that since 90 percent of his salary was paid by a federal grant he did not believe that the town was really saving any money by laying him off. He did not learn of the layoff until he returned from vacation and read about it in the newspaper. He questioned the sincerity of the township's efforts to save money. He has filed a civil suit seeking reinstatement and also quite recently filed a federal civil rights suit as a result of the furlough and the actions of the township and the police chief.

In District Attorney Kane's report on his investigation, he reviewed the circumstances of Krajewski's furlough. According to the report, Kane's investigators had learned that during preliminary discussions about the 1981 operating budget for the township it appeared that there would be a \$175,000 budget deficit. In light of this, the supervisors prepared a budget "calling for zero increases in the police department in order to hold the tax line." Collective bargaining with the Lower Southampton Police Benevolent Association (PBA) had begun prior to this budget being prepared and the PBA was demanding a 28 percent increase. The matter eventually went to arbitration. Personnel in other departments were eliminated in order to hold the budget. By June 1981 the police department appeared to be \$39,000 over its budget. At this time the chief was asked to submit a reorganization plan. Four officers were identified as having the least seniority, with Krajewski being the least senior of all. He had been hired on May 24, 1979, one week following the hiring of three other officers.

According to District Attorney Kane's report, the arbitration award to the PBA was made prior to July 2, 1981, on which date Wunsch presented the reorganization proposition to the Board of Supervisors. That plan involved Wunsch's recommendation of the promotion of four senior officers to the rank of Corporal and the recommendation that another officer be promoted to detective. An accident investigation bureau was also to be made a permanent unit in the department. Wunsch advised the board that these changes were essential to the operation of the department and the department determined that it had to furlough one officer with the least seniority. This was Krajewski. Harry Zambelli, still a supervisor at that time, cast a vote in favor of furloughing Krajewski.

District Attorney Kane's report concluded that there was "no factual evidence or documentation to support" the belief of Krajewski that he had been "furloughed as retaliation for his arrest of Harry Zambelli." The report further states:

If, following his arrest, Mr. Zambelli had abstained from voting in connection with the furlough matter, perhaps much of the present controversy would have been avoided.

As noted above, Krajewski's complaints against Wunsch also included charges that the chief had attempted to hinder criminal prosecutions and obstruct justice by ordering Krajewski not to appear at a criminal proceeding. Chief Wunsch did not deny that such an order had been issued. The District Attorney's report found that the order was given to Krajewski when he was furloughed. However, the Chief contacted the District Attorney's office to determine what the proper procedures were concerning Krajewski's appearances and Lieutenant Walter of the police department contacted District Attorney Kane personally at Wunsch's suggestion and asked for guidance as to how the matter of court appearances ought to be handled when they involved a furloughed police officer. Walter was advised by District Attorney Kane to have Krajewski appear in all cases in which he was properly subpoenaed. The order of July 9 was then rescinded. The District Attorney concluded in his investigation that there was:

no basis for criminal charges on this complaint to be approved against Chief Wunsch . . . . There is absolutely no factual basis to support the charges that Chief Wunsch attempted to fix any of the cases listed in the criminal affidavit, nor is there any reason to believe that Chief Wunsch intended to obstruct justice.

The last subject of Krajewski's complaints against Wunsch arose from the claim that Wunsch had attempted to use his official position to obtain funds from the township for personal use. The District Attorney's investigation reviewed this matter, which involved allegations surrounding a contingency fund which had been used to support investigations, generally those involving informants. Mr. Krajewski did not present any testimony at this hearing concerning these allegations. The District Attorney's report concluded that with respect to these charges, "There is absolutely no factual basis to support this investigation." It further states:

The investigation has clearly uncovered that Mr. Krajewski's complaint was based on hearsay, speculation and at best, personal belief.

Finally, the report concludes:

The allegations by Krajewski not only would not support a criminal conviction of Chief Wunsch, but they would fail to support the finding of a prima facie case or even probable cause to make an arrest.

WUNSCH'S RELATIONSHIP WITH DANIEL SULLIVAN AND THE NATIONAL KINNEY STOCK

The final area of concern expressed by the Division revolves around Wunsch's relationship with Daniel Sullivan, previously mentioned above in connection with the Trump employment matter. The Division questions the circumstances under which Chief Wunsch bought stock in the National Kinney Corporation, a company which Sullivan had served as a labor consultant and which, as previously noted, Sullivan had brought into discussions with Eugene Alten concerning the property which Sullivan ultimately became an owner of and upon which the Trump casino is being constructed. The concerns of the Division about Wunsch's association with Sullivan apparently center on concerns about Sullivan's background. The Division, in its letter to the Commission, referred to Sullivan's past history, which disclosed a number of criminal and quasi-criminal arrests and convictions. The letter also pointed out that newspaper articles published during the 1960's and early 1970's in New York newspapers mentioned Sullivan as having been involved, directly or indirectly, in certain matters concerning the labor area and possible labor racketeering or other criminal activities.<sup>3</sup> Considering these latter matters first, it appears that newspaper articles printed in the mid-1960's reflect that Sullivan was the last person known to have seen a prominent New York City labor attorney named Bauman alive prior to the attorney's disappearance in 1966. Sullivan had met with the attorney on a street corner and had admitted the meeting to the police, although he refused to discuss what the meeting was about. The attorney disappeared without a trace following that meeting. The attorney had been involved in representation of various companies in the soft drink industry and the industry had, just prior to the disappearance, been involved in an election battle between rival factions of a union.

In addition to the articles concerning Sullivan's meeting with Bauman, other newspaper articles were introduced in evidence in this proceeding in which Sullivan was reported to have told the FBI that James R. Hoffa, former president of the Teamster

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<sup>3</sup> Sullivan described his background during the hearing. According to his testimony he joined the Teamsters Union in his late teens, became a dissident, was involved in activities aimed at "educating" the Kefauver Committee about labor racketeering and was eventually a member of about 40 labor union locals.

Union who disappeared in 1975 without a trace and who is suspected of having met with foul play, had told Sullivan that he had received death threats from Anthony Provenzano, another Teamster official who had served time with Hoffa in federal prison. No evidence was produced concerning either the Hoffa or the Bauman matters during this hearing, other than the presentation of the newspaper articles.

Concerning Mr. Sullivan's criminal record, in his testimony he acknowledged that he had been convicted in the early 1960's of a "bad check related" charge in New York City. He recalled serving 30 to 60 days. He also recalled having been convicted in New Jersey in 1963 and having spent a weekend in jail. The Division failed to adduce properly admissible documentation of the convictions, as the documents which it produced were not certified copies. The Trump report, which is in evidence in this proceeding, has significant reference to Mr. Sullivan because of his relationship to the Trump project. That report references Sullivan's criminal history. Although the information is hearsay and has not been supported by admissible evidence in this proceeding other than Sullivan's hazy recollections, it does appear that in September 1960 Mr. Sullivan was charged with larceny under N.J.S.A. 2A:119-2(2). He was convicted in municipal court and fined \$50, \$10 court costs and sentenced to 10 days in jail. The early 1960's check related offense in New York was originally a grand larceny charge which was later downgraded to attempted petty larceny. The sentence, according to the report, was 60 days in jail.

Mr. Sullivan also recalled that he had been charged with a weapons related offense in New York, for which he received a conditional discharge. The transcript of the sentencing in that matter is in evidence in this proceeding. As noted in the Trump report the case had a long history through the New York courts, including a reversal by the New York Court of Appeals, the highest court in New York State. Ultimately, it appears that Sullivan entered a plea of guilty in January 1975 to attempted criminal possession of a dangerous weapon, a misdemeanor offense.

Testimony concerning the purchase by Chief Wunsch of stock in the National Kinney Corporation was quite limited. Sullivan testified that he never discussed with Wunsch anything concerning stock of the National Kinney Corporation nor did he discuss anything concerning National Kinney's negotiations for hotel sites in Atlantic City or Las Vegas. Wunsch described his purchase of stock in several Atlantic City related companies. He stated he got no information from Sullivan concerning National Kinney.

He did not personally recall when he purchased the National Kinney stock. He obtained a letter from his broker informing him that the purchases were made on December 12, 1979. According to Wunsch, he frequently meets with a number of business people over coffee. During one conversation a friend suggested National Kinney as a stock to consider buying. A few days later, Wunsch spoke to his wife about the idea and he then called a broker named Hannigan and placed an order. He paid \$5,805 for 1,000 shares. This price included the commission. He had seen some information in the paper and also heard something on the Johnny Carson show about the possibility of a syndicate being formed to purchase the Aladdin Hotel in Las Vegas. Eventually the hotel was sold to Wayne Newton and the stock dropped considerably. He sold the stock on April 7, 1983, having lost \$4.50 in the transaction. He also purchased stock in Resorts, Ramada and the Del E. Webb Corporation.

THE RESPONDENT'S AFFIRMATIVE PROOFS CONCERNING CHARACTER

During the hearing, in addition to the testimony of several character witnesses, the applicant submitted in evidence a large number of letters from individuals attesting to his good character, honesty, integrity and professional abilities. These came from a wide range of law enforcement officials and business and civic leaders. It is not necessary at this time to note each and every comment made in these extremely favorable documents. Although the writers of these character references were not present at the hearing and, therefore, were not subjected to cross-examination, I believe their statements reflect their legitimately held beliefs as to the uprightness, honesty, integrity of Chief Wunsch, as well as their assessments of his professional abilities. Among the references were letters from the Special Agent in Charge of the Federal Bureau of Alcohol, Tobacco and Firearms for the Philadelphia, Pennsylvania region; the Supervisory Senior Resident Agent of the Federal Bureau of Investigation; a retired lieutenant colonel and command director of law enforcement and security for the Defense Personnel Support Center, United States Air Force, Philadelphia; the Executive Director of the Pennsylvania Crime Commission; the President of the Pennsylvania Police Chief's Association, the Executive Director of that association, superintendents and police chiefs of various police departments in the southeast Pennsylvania area; the Superintendent of Police of the Philadelphia-Baltimore division of Amtrak; members of the Pennsylvania Senate and House of Representatives; attorneys and physicians. Further reference to these letters will be made below.

DISCUSSION

As has been previously noted, the major concerns of the Division in its review of this application centered around whether the applicant was able to establish his good character, honesty and integrity, as required by N.J.S.A. 5:12-89(b)(2), and whether he had the requisite business ability for the positions in which he sought licensure, pursuant to N.J.S.A. 5:12-89(b)(3). With respect to the good character issue, the applicant, as noted above, has presented substantial testimony and documentary evidence which reflects his high standing in the law enforcement community and the community at large. The testimony of Peter J. Farmer, President of Horizon Financial Federal Savings and Loan Association, the parent corporation of the Trevoise Federal Savings and Loan which has offices in the Philadelphia area including Lower Southampton Township, reflected Mr. Farmer's belief, after an association with Chief Wunsch of over 20 years, as to Wunsch's high reputation for good character, honesty and integrity. In addition, it revealed Farmer's knowledge of Wunsch's reputation for his abilities in police work and his contributions to the community, both in terms of providing security services and security plans for the banking industry and in providing aid and assistance to such worthy causes as the flood relief program in the Wilkes Barre area. Farmer described Wunsch as of good character, as a "tough cop" and as "well respected, with the highest reputation in the community."

Pastor John A. Dietterly of St. Stephens Lutheran Church in Feasterville, who has known Wunsch since 1961 as a member of his church and has had numerous dealings with him, referred to Wunsch's compassion for first offenders and his excellent reputation as a respected person in the community. Pastor Dietterly referred to Wunsch as a "true professional" and noted that this is the way in which the community perceives the chief.

Sheriff Lawrence R. Michaels, the sheriff of Bucks County and former chief of police of Bensalem Township, a community which borders on Lower Southampton Township, referred to his long experience with Chief Wunsch during 25 years with Bensalem Township. He noted Wunsch's excellent reputation as a "cop's cop." Michaels spoke of Wunsch as an "honest, straight-forward" individual of integrity. According to the witness, Wunsch was a "man of his word", with an excellent reputation in the community.

Among those providing written references for the chief certain statements stand out and seem worthy of special attention. Neil P. Shanahan, Supervisory Senior Resident Agent of the Federal Bureau of Investigation in Lansdale, Pennsylvania, noted that Wunsch "has always been an enlightened leader in the police community." He referred to Wunsch's positions as an elected official of the Pennsylvania Police Chiefs Association and the Southeastern Pennsylvania Chiefs Association<sup>4</sup> and indicated that Wunsch "enjoy(s) the approval of his peers, who have always looked to him for his guidance and wisdom in handling their affairs." Shanahan continues that he would "not hesitate to recommend Chief Wunsch to anyone who might seek to hire him for any position in law enforcement.

Donald E. Cox, Special Agent in Charge, Federal Bureau of Alcohol, Tobacco and Firearms, an arm of the United States Treasury Department, writes:

Based upon my knowledge and association with him, I found him to be of excellent character and his integrity to be above reproach.

Cox also writes, in a letter to the Board of Supervisors of Lower Southampton Township written on June 10, 1983, commending Chief Wunsch for his "dedication, professionalism and cooperation" in connection with a recent incident involving the discovery and disposition of a large quantity of explosive material found at the Anna Catherina Emmerick Academy in Feasterville, an incident described in some detail by Chief Wunsch in his testimony in this hearing.<sup>5</sup>

Wallace P. Hay, Executive Director of the Pennsylvania Crime Commission, writes that he has known Wunsch professionally for the past seven years and that the chief is a "significantly contributing personality to the profession." He continues:

I commend to you Chief Wunsch as an experienced public official, whose integrity, trustworthiness and commitment to law enforcement is outstanding.

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<sup>4</sup> Wunsch is presently 3rd Vice-President of the State Association and 4th Vice-President of the Southeastern group, as well as a Past President and Treasurer of the Bucks County Police Chiefs Association.

<sup>5</sup> Wunsch had overall command responsibility for the large group of law enforcement and other personnel associated in this operation.

James J. McCaughey, Superintendent of the Lower Merion Township Police Department, writes that Wunsch is a "true professional" and states

Specifically, Chief Wunsch was involved in matters that required that he take on occasion positions, that were not popular but, nevertheless, were the proper position for a law enforcement to assume. He never hesitated; never lost control of his emotional stance, even when pushed to the brink by dissidents on the various executive bodies.

McCaughey presently serves as the Special Agent in Charge of the Bureau of Criminal Investigation for the Office of the Attorney General of Pennsylvania.

Daniel F. Dunn, Commissioner of the Pennsylvania State Police writes:

Chief Wunsch has consistently demonstrated the highest integrity and the esteem with which he has held by his colleagues demonstrates what a dependable person he has always been.

Chief Wunsch would be an asset to any well-run organization.

The above comments reflect the nature and degree of the many letters not specifically quoted herein. It is obvious from these that, to the extent that any of the individuals who have attested to the chief's character are familiar with him, they have always found him to be of the highest character, honesty and integrity. Were his application being decided solely upon these references, there can be no question that he would have established by clear and convincing evidence the existence of his good character, honesty and integrity. However, it is necessary that the record be examined to consider what adverse affects such matters as the false statements to the Division and the Zambelli-Krajewski incident may have on the overall impression drawn as to the applicant.

It is clear that the most detrimental information provided during this hearing was that Chief Wunsch had lied under oath to the Division of Gaming Enforcement. In addition, he admittedly made false statements in telephone conversations with Division investigators and in personal interviews prior to the sworn statement of April 1, 1982. When the chief asserted that he had employment promised to him by the Trump organization, that that company had agreed to pay for his investigation and that he had a personal meeting with Donald Trump in Bally's casino and ultimately when he denied under

oath that Daniel Sullivan had been involved in any way in his applying for work with Trump, the applicant knowingly and intentionally attempted to deceive the Division, and through it the Commission. The applicant himself testified that it was his intention to cover-up the involvement of Daniel Sullivan in the attempt to obtain employment with Trump. In order to accomplish this goal, the chief not only denied under oath the involvement of Sullivan, but also concocted the meeting at Bally's. In normal circumstances, such conduct by any applicant would in and of itself demand the denial of licensure. Here, we are faced with a high-ranking public official, a law enforcement officer who has been in a responsible supervisory position as chief of his department for over three decades. That such a person would knowingly mislead the Division and engage in false swearing is shocking and seemingly, on its face, sufficient to defeat the application. However, before such a conclusion can be reached, it is certainly necessary to consider the unusual circumstances attendant.

The record indicates, and I **FIND**, that Chief Wunsch, having an interest in obtaining employment in the Atlantic City casino industry, mentioned his interest to Daniel Sullivan, a passing acquaintance in the Bucks County area who the chief knew, from newspaper reports, to have a relationship with the Trumps. I **FIND** that as a result of this conversation Sullivan suggested that the chief apply for a security position with Trump and that Sullivan indicated that he would seek to support the application by his recommendation. I **FIND** that thereafter Sullivan told the chief of the necessity for clearance of the application by the federal authorities and that ultimately Sullivan arranged for Wunsch to meet with an FBI agent in New York City. I **FIND** that at no time did the FBI agent or anyone officially connected with the Bureau ever inform Wunsch that he could not tell New Jersey gaming officials of their meeting. However, I also **FIND** that Daniel Sullivan told Wunsch to keep the meeting and the discussions concerning the possibility of a Trump-FBI connection confidential and that Wunsch, without checking with the FBI at any time, determined not to reveal Sullivan's involvement or the existence of the connection. Further, I **FIND** that Chief Wunsch perceived the existence of an undercover operation from Sullivan's comments concerning the necessity for federal approval, the meeting with the FBI agent and Sullivan's comments concerning a role for the FBI in the Trump casino. I **FIND** that at no time did anyone on behalf of the Trump organization offer Chief Wunsch employment or promise to pay for his investigation or even imply that a job was forthcoming or that payment for the investigation was being considered.

In assessing the actions of the applicant in connection with this incident, I **CONCLUDE** that he demonstrated a lack of judgment in his dealings with the Division of Gaming Enforcement. Undoubtedly the applicant felt ill at ease when he found himself in a position where he was drawn peripherally into an apparent FBI undercover operation, and no doubt he must have been distressed when he decided that, in order to avoid the possibility of revealing this operation, he would have to lie to the Division's representative. However, I believe that the Chief can be faulted for not having taken what appears to have been the most appropriate and reasonable step available to him prior to ever talking with the Division's representatives. There is nothing in the record to indicate that the Chief was in any way prevented, before he ever filed his application or, at the latest, when he received the first phone call from Detective Weber, from contacting the FBI, either through Agent Stowe or through other sources in the Bureau, and determining whether he should be honest and up front with the Division or whether he was being ordered by the Bureau to take whatever steps were necessary to protect any ongoing or contemplated Bureau activity. This contact could have been made before the Chief took it upon himself to provide false information to the Division. Such a contact with the Bureau, in and of itself, particularly if directed to Agent Stowe, would not have compromised anything and would have avoided the necessity of the applicant violating the oath and the trust and confidence of those charged with investigating his application. However, the Chief never took such a step and, solely on the basis of a single comment made by Sullivan many months before the first contact with the Division, he chose to set forth a series of untruths. I **FIND** the chief's conduct in this circumstance to be something less than should be expected of one who seeks licensure from the Commission in such a highly sensitive position as is here sought.

Although I believe that the applicant's actions in connection with this incident reflect adversely on his judgment as a person with an extensive background in law enforcement, I am not at all unsympathetic to his quandry. Faced with what he believed to be a secretive operation of the FBI and faced with the obligation of cooperating with the Division, the Chief could rightly have suspected that there might be a necessity to deal less than truthfully with the Division. Had he been ordered by the FBI to lie, had he been ordered to conceal the undercover operation and had that led him to lie under oath, I would have little doubt that the Chief's actions would be excusable. In such a circumstance, one could hardly blame the Chief for following the orders of the Bureau, since he would have no way of knowing the exact extent or nature of the Bureau's investigation, including the possibility that the Bureau was investigating the Division.

However, here, the Chief, in a moment when his judgment was lacking, determined on his own to conceal, to lie, to bear false witness. Given the circumstances, and in light of the extremely supportive evidence as to his character and integrity, I have little doubt but that the applicant agonized over his actions and took them in a sincere belief that he was doing what was necessary. Despite this, since the actions taken are of such significance, I **FIND** them to demonstrate a serious lack of judgment appropriate to the situation for one with this applicant's history and experience.

As for the Zambelli-Krajewski matter, I **FIND** that that incident in and of itself reveals nothing particularly adverse concerning the chief's overall character and abilities. Having reviewed the testimony of Wunsch and Krajewski, as well as the complaints and the report of District Attorney Kane, I **CONCLUDE** that at no point did Chief Wunsch attempt to have his officers fix a case, at least in the criminal sense. I do not believe that the comment which I **FIND** to have been made by the Chief, that is "are you sure that you want to go through with this", was an attempt to threaten or cajole the officers into dropping the charge. I believe that what occurred was that the Chief was faced with an individual who was demanding special treatment and consideration and who, to the Chief's knowledge, had a drinking problem and was on the verge of obtaining treatment for it. The Chief, under some pressure, and out of a sense of compassion, merely suggested to his officers that perhaps they should just let Zambelli go home and sleep it off and go ahead with his planned treatment. I cannot agree more with District Attorney Kane's characterization of this conduct as being "inappropriate and ill-advised," however, I do not **FIND** it to be criminal.

Despite the fact that the applicant's conduct in connection with the Zambelli arrest was not violative of the criminal law, he should have known better. The fact that he made the statement to Krajewski and Adams connotes a lack of judgment. Here we have an experienced police officer, chief of his department for many years, stating to two of his officers, one of whom at least was very new to the force, that perhaps they should just let Zambelli go. Even if he was not threatening them, even if he did not intend that anyone do anything illegal, he should have known better, for he should have realized that any attempt to do anything less than go forward with the charge in a normal manner

would imply to the officers that the supervisor was attempting to fix the case, that the chief was at least acquiescent in that attempt, and that a person in high authority in the township was receiving special treatment. The mere mention by the Chief of anything which suggested that the case not go forward in the normal manner was fraught with a possibility for misunderstandings, false impressions and future difficulties.<sup>6</sup>

I FIND no evidence that Officer Krajewski was laid-off for any reasons other than economic considerations. Based on the evidence that has been presented, it appears that there were financial difficulties facing the township and that the Board of Supervisors did seek a reduction in the manpower of the department. Officer Krajewski was admittedly last in and it was therefore not at all surprising that the law required that he be the first out. While one can readily understand that Krajewski might find his furlough suspect in light of his all too recent run-in with Zambelli and the implications that might flow from his not having acceded to Wunsch's implied request, I FIND no evidence in the record to support a conclusion that the layoff was not done in good faith.

If the Division's objections to licensure in this case arose solely out of the Zambelli-Krajewski incident, I would be quite reluctant to deny licensure, even though I FIND Wunsch's judgment was lacking. However, when one combines the lack of judgment shown in connection with the Zambelli arrest with the lack of judgment demonstrated by Wunsch's decision to enter into a course of misrepresentation to the Division regarding his employment possibilities, one is forced to conclude that, despite the chief's otherwise unblemished record and reputation, to license him for the sensitive roles of Director of Security and/or Security Supervisor would be inappropriate.

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<sup>6</sup> A similar concern about a failure to realize the potential of seemingly minor actions to give false impressions might be raised in connection with the testimony which revealed that Wunsch once paid a parking ticket for Supervisor Zambelli. The Chief explained that the ticket was given by a young officer during a difficult period of PBA negotiations. Zambelli's car was parked in a handicapped zone outside City Hall. Wunsch believed that the ticket was unfair, as other vehicles of city officials on business had not been so ticketed. He felt the officer had been pressured. He decided to pay the ticket himself. Zambelli later reimbursed him. The incident itself seems worthy of mention, but I do not feel it is of great significance, given the circumstances. It is far less troublesome than the drunk-driving incident.

In setting the standards for determining whether a license should be granted to an applicant for a casino key employee position, the Legislature decided that certain characteristics of the applicant were of such importance that the burden of proving that the applicant was qualified should be set at the clear and convincing standard, rather than at the usual civil standard of proof by a preponderance of the evidence. N.J.S.A. 5:12-89 6(1), (financial stability), 6(2), (good character), 6(3), (business ability). The Legislature, in so acting, alerted the Commission to be extremely careful who it permitted to hold responsible positions in the industry. There can be no more responsible, significant and sensitive spot in the entire casino operation than the person in charge of security. Thus, in determining whether this applicant should be licensed, the Commission must take into account whether the evidence demonstrating a lack of judgment on the part of this applicant in the Zambelli matter and with regard to his investigation reveals sufficient doubt as to the applicant's professional judgment so as to limit the significance of the positive proofs and prevent the applicant from claiming that he has demonstrated his professional abilities to the degree required by statute.

I **CONCLUDE** that the applicant has failed to demonstrate by clear and convincing evidence that he has the requisite business ability to hold the extremely sensitive positions in the casino industry for which he seeks to be licensed. I **CONCLUDE** that while there is little doubt that Chief Wunsch is of good character and is generally honest and a man of integrity, that his judgment is sufficiently in question as to raise doubt as to how he would successfully meet his professional and business responsibilities were he put in the kind of pressure situations and dilemmas which could easily be thrown in his path during employment in the casino industry.

Despite my conclusion that licensure is not warranted, I believe it appropriate to also reflect on certain other questions raised by the Division which I do not **FIND** to be dispositive of this case. Specifically, despite the Division's having presented evidence that Daniel Sullivan's background contains a few relatively minor criminal matters and some involvement in unexplained ways with the disappearance of Bauman and the Hoffa matter, I **FIND** nothing in any of these which demonstrates that merely because Wunsch had a relationship with Sullivan which led to the filing of the application with Trump such an association taints Wunsch and requires that he not be licensed. There is no implication that Mr. Sullivan is a career offender, that he is a member or an associate of a crime

cartel, or even that Sullivan could not himself be licensed at some level in the casino industry. The criminal convictions are quite old and not especially severe. As for the Bauman and Hoffa matters there is no implication that Sullivan did anything wrong in either of these cases. He has never been charged with anything in connection with Bauman's disappearance and at most the newspaper articles reveal only that he told federal authorities something that Hoffa had said to him. Why the Division feels that these constitute a taint on Sullivan is questionable. Although one wonders what Sullivan spoke to Bauman about, no one has ever suggested, at least on the record before this court, that Sullivan had anything to do with Bauman's disappearance.

As for the purchase of National Kinney stock, there is no evidence whatsoever that there was any improper dealing or that Wunsch did not buy these stocks other than in a legitimate manner. Neither he nor Sullivan revealed anything that would suggest that they had discussed the purchase before it occurred and even if they had there is no charge here that Wunsch profited improperly because of a tip which he might have received from Sullivan. I **FIND** that there was no prior discussion and that Wunsch's purchase of these stocks, along with those of other casino-related or potentially casino-related companies occurred not because of any discussions with Sullivan. I also **FIND** nothing to have been vague or incomplete in the information provided to the Division or Commission concerning the purchase of the National Kinney stock.

#### CONCLUSION

As is perhaps obvious, this court's determination to deny Chief Wunsch a license is reached reluctantly. However, that does not diminish the firm belief that such action by the Commission is necessary. While the circumstances existent in this case are no doubt unique, the actions of the applicant in providing false information to the Division and lying under oath are of sufficient severity that they call for the drastic consequence of denial. I can **FIND** nothing in the record which would serve to excuse the applicant for such conduct, and while I understand his motivations, I do not understand his failure to take steps to assure himself of the circumstances before he engaged in such obviously improper conduct. Therefore, for the reasons set forth above, the license shall be **DENIED**.

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

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

August 16, 1983  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

8/19/83  
DATE

David C. Musnier  
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 23, 1983  
DATE

Charles J. ...  
OFFICE OF ADMINISTRATIVE LAW

ij

EVIDENCE LIST

On behalf of petitioner:

- P-1 Letter from Donald E. Cox, Special Agent-In-Charge, Bureau of Alcohol, Tobacco and Firearms, dated June 17, 1983
- P-2 Letter from Jack L. Hopson, Training Officer, Bureau of Narcotics and Drug Control, Office of Attorney General, dated June 15, 1983, 2 pages
- P-3 Letter from Donald E. Cox to Board of Supervisors, Lower Southampton Township, dated June 10, 1983
- P-4 Letter of June 9, 1983, from Nancy R. Shanahan, M.D.
- P-5 Letter of June 2, 1983, from Thomas R. Hecker, Esq.
- P-6 Letter of June 6, 1983, from William M. Power, Esq.
- P-7 Letter of June 6, 1983, from James L. Wright, Jr., Member, Pennsylvania House of Representatives
- P-8 Letter of June 7, 1983, from Donald R. Hamrick, 3 pages
- P-9 Letter of June 7, 1983, from Neil P. Shanahan
- P-10 Letter of June 6, 1983, from Henry G. DeVincent, M.D.
- P-11 Letter of June 7, 1983, from Bob Ficinus, Retired, Director Special Investigations (U.S. Air Force), 3 pages
- P-12 Letter of June 2, 1983, from Honorable Roy Reinard, Member, Pennsylvania House of Representatives
- P-13 Letter of May 31, 1983, from Wallace P. Hay, Executive Director, Pennsylvania Crime Commission
- P-14 Letter of June 1, 1983, from Harry J. Gaab, President, Pennsylvania Police Chiefs Association
- P-15 Letter of May 31, 1983, from Francis J. Schafer, Executive Director Pennsylvania Chiefs of Police Association
- P-16 Letter of June 2, 1983, from Ward F. Clark, Esq.
- P-17 Letter of May 31, 1983, from James J. McCaughey, Special Agent-In-Charge, Office of Attorney General, 2 pages
- P-18 Letter of May 27, 1983, from George L. Schwab, Business Administrator, Neshaminy School District

- P-19 Letter of May 27, 1983, from Honorable Domic C. Spadaccino, District Justice
- P-20 Letter of May 27, 1983, from Daniel F. Dunn, Commissioner, Pennsylvania State Police
- P-21 Letter of May 26, 1983, from W. F. Reynolds, Superintendent of Police, Philadelphia-Baltimore Division, Amtrak
- P-22 Letter of May 26, 1983, from John J. Gonzales, Esq.
- P-23 Letter of May 26, 1983, from Walter C. Stephens, Chief of Police, Upper Southampton Township, 2 pages
- P-24 Letter of May 26, 1983, from Honorable H. Craig Lewis, Member, Pennsylvania Senate
- P-25 Letter of May 25, 1983, from Daniel J. Lawler, Esq.
- P-26 Letter of May 25, 1983, from M. Milestone
- P-27 Letter of September 22, 1982, from Kevin M. Tucker, Special Agent-In-Charge, United States Secret Service, re - recent visit of Vice President Bush
- P-28 Letter of appointment of December 29, 1982, from Leo F. Callahan, President, International Association of Chiefs of Police, Inc.
- P-29a Letter of February 15, 1979, from Kenneth C. Biehn, District Attorney
- P-29b Letter of March 25, 1980, from Murray G. Dickman, Deputy Executive Assistant to the Governor - re appointment to Municipal Police Officers' Education & Training Commission
- P-29c Letter of February 9, 1979, from Edward G. Biester, Jr., Acting Attorney General
- P-29d Letter of March 4, 1980, from Honorable Vincent J. Fumo, Member, Pennsylvania Senate
- P-29e Letter of March 10, 1980, from Honorable Robert J. Mellow, Member, Pennsylvania Senate
- P-29f Letter of March 10, 1980, from Honorable H. Craig Lewis, Member, Pennsylvania Senate
- P-29g Letter of March 19, 1980, from Honorable Dick Thornburgh, Governor of Pennsylvania
- P-29h Letter of February 27, 1975, from Honorable Milton J. Shapp, Governor of Pennsylvania

- P-30 Certificate of appointment to Municipal Police Officers' Education and Training Commission, dated February 21, 1975
- P-31 Certificate of appointment to Municipal Police Officers' Education and Training Commission, dated March 25, 1976
- P-32 Certificate of appointment to Municipal Police Officers' Education and Training Commission, dated March 19, 1980
- P-33 Certificate of completion awarded by FBI National Academy, United States Department of Justice
- P-34 Retraining session - certificate of completion
- P-35 Certificate of completion of FBI National Academy, Refresher Course, 1974
- P-36 Certificate of completion, FBI National Academy Sectional Retraining Session, 1974
- P-37 Certificate of appreciation - 1974 Utilization Review
- P-38 Certificate of completion - course in Executive Protection
- P-39 Certificate of Appreciation - International Association of Chiefs of Police
- P-40 Certificate of Appreciation - Vehicle Theft Committee, International Association of Chiefs of Police, dated November 1, 1978
- P-41 Certificate of Appreciation - Organized Crime Committee, International Association of Chiefs of Police, November 17, 1980
- P-42 Certificate of Appreciation - Organized Crime Committee, International Association of Chiefs of Police, October 15, 1981
- P-43 Certificate of Achievement - Law Enforcement Officers Training School
- P-44 Certificate of Attendance - Police Management - Law Enforcement Officers Training School
- P-45 United States Department of Justice, Bureau of Narcotics and Dangerous Drugs - certificate of participation, dated November 20, 1970
- P-46 Certificate of Attainment - Police Service to Juveniles, dated November 20, 1970
- P-47 Certificate of Attainment - Auxiliary Police Procedure, June 1, 1970
- P-48 Law Enforcement Officers Training School - Certificate of Attendance - Human Relations of the Community, 1969

- P-49 Certificate of participation - United States Department of Justice, Bureau of Narcotics and Dangerous Drugs, April 11, 1969
- P-50 Law Enforcement Officers Training School - Certificate of Achievement, November 1968
- P-51 Certificate of Training - Food and Drug Administration, Bureau of Drug Abuse Control, October 13, 1967
- P-52 Certificate of Achievement, Law Enforcement Officers Training School - Advanced Firearms, September 1967
- P-53 Certificate of Achievement, Law Enforcement Officers Training School, Police Management, May 1967
- P-54 Certificate of Achievement, Law Enforcement Officers Training School - Police-Public Relations, 1966
- P-55 Certificate of Achievement, Law Enforcement Officers Training School - Administrative Techniques, May 1966
- P-56 Certificate of Achievement, Law Enforcement Officers Training School - Advanced Firearms Training, June 1964
- P-57 Certificate of Achievement, Law Enforcement Officers Training School - Police Administration, 1964
- P-58 Certificate of completion - Pennsylvania State University - Traffic Officers Training School, May 18, 1956
- P-59 Certificate of Attainment, Department of Health, Bureau of Preventable Disease - Narcotics Seminar, May 11, 1960
- P-60 Certificate of completion, University of Pennsylvania, Program of Study in Local and State Administration for the Public Service, 1961
- P-61 Letter of appointment as Director of Civil Defense from Honorable Raymond P. Shafer, Governor, April 7, 1969
- P-62 Letter of March 25, 1976, from Honorable Milton J. Shapp, Governor
- P-63 Certificate of Honorable Discharge from United States Marine Corps Reserve, January 11, 1951
- P-66 Letter of May 2, 1983 from Anthony T. Torcasio, Vice President, Director of Gaming, Penthouse Boardwalk Hotel
- P-67 Program - Memorial Dinner & Dance, February 28, 1975

- P-68 Letter of May 4, 1983 from Harry C. Hannigan, Account Vice President
- P-69a Letter of June 15, 1983 from Robert D. Tait
- P-69b Securities Transaction List
- P-70 Letter of June 30, 1983 from Joseph C. Lennon

On behalf of respondent:

- D-1 Sworn interview of Edward F. Wunsch held April 1, 1982 with attachments
- D-2 Personal History Disclosure Form No. 1
- D-3 Memorandum from Detective Weber, dated February 4, 1982
- D-4 Memorandum from Detective Weber, dated May 5, 1982
- D-5 Memorandum from Detective Weber, dated February 16, 1982
- D-6 Memorandum from Detective Weber, dated February 19, 1982
- D-7 Memorandum from Detective Weber, dated February 23, 1982
- D-8 Memorandum from Detective Weber, dated March 2, 1982
- D-10 Memorandum from Robert Trump and attached resume.
- D-13 Letter of September 3, 1980, from Chief Wunsch to Officer Krajewski
- D-14 Letter from Edward Krajewski to United States Attorneys Office, dated October 27, 1981
- D-15 Memorandum from Detective Weber, dated April 1, 1982
- D-20 Criminal Complaint C 19650, dated July 9, 1981
- D-21 Criminal Complaint C 12783, C 12784, C 12786
- D-22 Notice regarding lawsuit - Krajewski v. Board of Supervisors of Lower Southampton Township
- D-29 Criminal Complaint C 12811, C 12812, C 12813, C 12815, dated August 18, 1981, with attached affidavits
- D-30 Bucks County District Attorney's Office Investigative Report
- D-32 Criminal complaints and affidavits

- D-33 Letter from Judge Dorothy Pollock, dated March 26, 1981
- D-34 Criminal Bail Receipt, dated March 24, 1982
- D-35 Letter from Ward Clark, Esq. to Judge Pollock, dated March 23, 1982
- D-37 Report from Detective Weber, dated May 10, 1982
- D-39 Report to the Casino Control Commission - IN RE THE APPLICATION OF TRUMP PLAZA CORPORATION FOR A CASINO LICENSE, THE QUALIFICATIONS OF DONALD J. TRUMP AS SOLE STOCKHOLDER, OFFICER AND DIRECTOR THEREOF AND THE APPLICATION OF DONALD J. TRUMP FOR A CASINO KEY EMPLOYEE LICENSE AS CHIEF EXECUTIVE OFFICER/PRESIDENT, dated October 16, 1981
- D-45 Transcript of plea and sentencing, dated January 23, 1975, People of the State of New York v. Daniel J. Sullivan
- D-46 New York Daily News Article, dated December 20, 1966, entitled "Labor Attorney Vanishes: Cops Seek Link to Union"
- D-47 New York Daily News article, dated January 25, 1967, entitled "95G Reward Offered for Lawyer's Return"
- D-48 New York Times article, dated December 10, 1967, and entitled "Fate of Labor Lawyer Missing a Year Remains a Mystery"
- D-49 New York Daily News article, dated January 5, 1968, entitled "Last to See 'Lost Lawyer' Is Indicted"
- D-50 New York Times article, dated August 13, 1975 and entitled "The Hoffa Puzzle: Pieces Still Don't Fit"
- D-51 Bucks County Courier Times article, entitled "Ex-Bucks official nets casino deal"
- D-53 Letter of January 20, 1983, from Mary Jo Flaherty, Deputy Attorney General to Honorable Walter N. Read, Chairman, Casino Control Commission

**CASINO CONTROL COMMISSION DECISIONS**

**JULY - DECEMBER 1984**

**PREPARED BY THE LEGAL DIVISION**

<u>NAME OF CASE</u>	<u>DOCKET NO.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
1. <u>State of New Jersey v. James L. Adair, Jr.</u>	OAL Docket No. CCC-9211-83 Agency 83-370	10/12/84	1
2. <u>State of New Jersey v. Adamar of New Jersey, Inc.</u>	Agency 83-387	11/16/84	9
3. Application of <u>Richard Alexander</u> for a Casino Employee License	OAL Docket No. CCC-4456-84 Agency 84-EA-97	12/20/84	14
4. Application of <u>Randy J. Ashburn</u> for Renewal of his Casino Employee License	OAL Docket No. CCC-1332-84 Agency 84-EA-24	09/12/84	23
5. <u>State of New Jersey v. William F. Bagnell</u>	OAL Docket No. CCC-5460-83 Agency 83-17	12/14/84	34
6. <u>State of New Jersey v. Bally's Park Place, Inc.</u>	Agency 83-64	07/02/84	48
7. <u>State of New Jersey v. Bally's Park Place, Inc. and Dorie V. Marcus</u>	Agency 83-434	08/30/84	53
8. <u>State of New Jersey v. Bally's Park Place, Inc., James A. Paisley and Frederick B. Zeller</u>	OAL Docket No. CCC-1821-84 Agency 83-415	11/28/84	62
9. Application of <u>Doris L. Barnes</u> for a Casino Employee License	OAL Docket No. CCC-3030-84 Agency 84-EA-45	11/16/84	81
10. <u>State of New Jersey v. Jose Bonilla</u>	OAL Docket No. CCC-8593-83 Agency 83-283	12/03/84	93
11. Application of <u>Steven M. Bucher</u> for a Casino Employee License	OAL Docket No. CCC-8660-83 Agency 83-EA-78	08/09/84	107
12. <u>State of New Jersey v. Ronald E. Conklin</u>	OAL Docket No. CCC-338-84 Agency 83-444	09/20/84	113

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13. State of New Jersey v. <u>Dawn D. Cooper</u>	OAL Docket No. CCC-9396-83 Agency 83-301	11/07/84	123
14. State of New Jersey v. <u>Charles J. Dellaria, III</u>	OAL Docket No. CCC-6948-83 Agency 83-230	10/18/84	130
15. Application of <u>John J. Desimone, Jr.</u> for a Casino Employee License	OAL Docket No. CCC-4460-84 Agency 84-EA-93	12/27/84	138
16. In the Matter of the Qualification of <u>Edward M. Doumani; and</u>	Petition No. 072401 (Consolidated)	12/12/84	148
In the Matter of the Petition of <u>GNAC Corp.</u> for a Delaratory Ruling that <u>Edward M. and Fred Doumani</u> are not Persons Required to Qualify and for a Waiver of Quali- fication of <u>Lawrence, Eleonore, Cindy and Fred Doumani, Jr.</u>			
17. Application of <u>Beverly Dunn</u> for a Casino Employee License; and  State of New Jersey v. <u>Beverly Dunn</u>	OAL Docket Nos. CCC-4292-83 and CCC-5314-83 (Consolidated) Agency 83-EA-77 and 83-194	07/31/84	188
18. Application of <u>Sidney M. Feld</u> for a Casino Key Employee License	OAL Docket No. CCC-1013-84 Agency 84-EA-7	12/14/84	205

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19. <u>State of New Jersey v. Michael D. Fowlkes; and Application of Michael D. Fowlkes for a Casino Employee License</u>	OAL Docket Nos. CCC-1682-82 and CCC-5220-84 (Consolidated) Agency 84-EA-111 and 83-195	11/20/84	218
20. <u>State of New Jersey v. Albert K. Geisler, Jr.</u>	OAL Docket No. CCC-2571-84 Agency 83-212	10/23/84	226
21. <u>State of New Jersey v. Frank J. Gleba, Jr.</u>	OAL Docket No. CCC-10064-83 Agency 83-103	08/02/84	236
22. <u>State of New Jersey v. GNOC Corp., t/a/ Golden Nugget, Kyong Kim, Joyce Caparele, Maxwell Spinks and Robert Barnum</u>	Agency 84-6	10/02/84	247
23. <u>Application of Teodoro Gonzalez for a Casino Employee License; and State of New Jersey v. Teodoro Gonzalez</u>	OAL Docket Nos. CCC-8186-83 and CCC-9210-83 (Consolidated) Agency 83-EA-173 and 83-367	10/18/84	262
24. <u>Application of Leonard Grabel for a Casino Employee License</u>	OAL Docket No. CCC-4210-82 and CCC-3108-81 (On Remand) Agency 81-EA-161	08/02/84	279
25. <u>Application of Robert J. Gracco for a Casino Employee License</u>	OAL Docket No. CCC-1754-84 Agency 83-EA-105	09/21/84	287

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26. <u>State of New Jersey v. Paul E. Gusty, Jr.</u>	OAL Docket No. CCC-766-84 Agency 83-229	08/02/84	305
27. <u>State of New Jersey v. Greate Bay Hotel &amp; Casino, Inc., t/a Sands Hotel &amp; Casino of Atlantic City</u>	OAL Docket No. CCC-7431-83 Agency 83-63	12/20/84	322
28. <u>State of New Jersey v. Greate Bay Hotel &amp; Casino, Inc., t/a The Sands</u>	Agency 83-231	11/07/84	344
29. <u>State of New Jersey v. Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino of Atlantic City and Patricia Jean DiGiacomo</u>	OAL Docket No. CCC-5460-83 Agency 83-17	08/06/84	356
30. <u>State of New Jersey v. Carlos Augusto Hincapie, a/k/a Carlos A. Pineda</u>	OAL Docket No. CCC-2545-84 Agency 84-49	12/27/84	441
31. <u>In the Matter of the Petition of International Gaming Consultants for a Declaratory Ruling Pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 19:42-4.1</u>	---	11/09/84	452
32. <u>State of New Jersey v. Ricky J. Klinger</u>	OAL Docket No. CCC-2544-84 Agency 84-83	11/15/84	480
33. <u>State of New Jersey v. George J. Kuhna</u>	OAL Docket Nos. CCC-739-84 and CCC-5194-83 (On Remand) Agency 83-169	07/13/84	490
34. <u>State of New Jersey v. Aurelia R. Lyons; and Application of Aurelia R. Lyons for a Casino Employee License</u>	OAL Docket Nos. CCC-3034-84 and CCC-3871-84 (Consolidated) Agency 84-150 and 84-EA-71	11/16/84	500

<u>NAME OF CASE</u>	<u>DOCKET NO.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
35. Application of <u>Michael Marko</u> for Renewal of his Casino Key Employee License	OAL Docket No. CCC-0263-84 Agency 83-EA-206	11/27/84	524
36. State of New Jersey v. <u>Santos Martinez</u>	OAL Docket No. CCC-1242-84 Agency 82-198	12/27/84	552
37. State of New Jersey v. <u>Terry Lee Newman</u> ; and Application of <u>Terry Lee Newman</u> for a Casino Employee License	OAL Docket Nos. CCC-2543-84 and CCC-5678-84 (Consolidated) Agency 84-86 and 84-EA-115	12/04/84	564
38. Application of <u>Earl Osborne</u> for a Casino Employee License (Junket Representative); and Application of <u>Mande Travel, Inc. d/b/a Gala Tours</u> for a Casino Service Industry License (Junket Enterprise)	OAL Docket No. CCC-10040-83 (Consolidated) Agency 83-EA-199 and 83-CSI-12	11/19/84	579
39. State of New Jersey v. <u>Joseph Paterson</u>	OAL Docket Nos. CCC-740-84 and CCC-6818-83 (On remand) Agency 83-264	07/13/84	591
40. In the Matter of the Qualification of <u>Manuel O. Peredo</u> , a Person Who Must Be Qualified in Connection With the Application of <u>Greate Bay Hotel and Casino, Inc.</u> , and <u>Pratt Hotel Management Company, Inc.</u> , for Renewal of Their Plenary Casino License	OAL Docket No. CCC-3388-84 Agency 84-CL-3	08/09/84	599

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41. <u>Petition of the Atlantic City Casino Hotel Association</u>	Petition No. 279401	11/01/84	620
42. <u>State of New Jersey v. Miguel Angel Posada</u>	OAL Docket No. CCC-7715-83 Agency 83-279	09/05/84	688
43. <u>In the Matter of Resorts International Hotel, Inc., \$1,000,000 Housing Program</u>	Petition No. 243203	10/31/84	697
44. <u>State of New Jersey v. Nicholas J. Renzetti</u>	OAL Docket No. CCC-3314-84 Agency 84-37	10/30/84	720
45. <u>State of New Jersey v. Resco Hotel Planning and Purshasing Corporation</u>	Agency 84-29	12/18/84	735
46. <u>Application of Bryant Rogers for a Casino Employee License</u>	OAL Docket Nos. CCC-9516-83 Agency 83-EA-198	07/13/84	740
47. <u>Application of Timothy A. Sanders for a Casino Employee License</u>	OAL Docket No. CCC-265-84 Agency 83-EA-204	07/05/84	748
48. <u>Application of Shreve-Lazar Travel Service, Inc. for a Casino Service Industry License</u>	OAL Docket No. CCC-7698-82 Agency 82-CSI-11	11/29/84	759
49. <u>Application of Leonora S. Tennant (nee Taylor) for Licensure as a Casino Employee</u>	OAL Docket No. CCC-7429-83 Agency 83-EA-85	09/25/84	772
50. <u>Application of Michael A. Tompis for Renewal of his Casino Key Employee License</u>	OAL Docket No. CCC-8493-83 Agency 83-EA-178	09/25/84	779

<u>NAME OF CASE</u>	<u>DOCKET NO.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
51. Application of <u>Olga Watts</u> for a Casino Employee License	OAL Docket No. CCC-264-84 Agency 83-EA-203	12/27/84	787
52. Application of <u>Riccardo A. Whittington</u> for a Casino Employee License	OAL Docket No. CCC-4886-83 and CCC-11155-82 (On Remand) Agency 81-EA-288	07/10/84	797
53. Application of <u>Jacqueline Wilson</u> for a Casino Employee License	OAL Docket No. CCC-4359-84 Agency 84-EA-89	12/27/84	804

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-370  
OAL DOCKET NO. CCC 9211-83  
LICENSE NO. 32265-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. :  
JAMES L. ADAIR, JR., :  
Respondent. :

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 16, 1984, recommending that the complaint filed by the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of May 30, 1984, to modify the Initial Decision and to dismiss the complaint,

IT IS on this *15th* day of OCTOBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

That portion of the Initial Decision which states that Mr. Brummett left the casino without being questioned is rejected. [I.D. at 3]. According to the report of Detective Sergeant Charles Brennan, Gary Brummett identified himself to Claridge Security Lieutenant Al Barrett, as George Swartz. Brummett was not detained and walked out of the casino [P-3 in evidence].

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9211-83

AGENCY DKT. NO. 83-370

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**JAMES L. ADAIR, JR.,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**James L. Adair, Jr., respondent, pro se**

Record Closed: March 1, 1984

Decided: April 16, 1984

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on October 26, 1983, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to Sections 100n and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's alleged gaming at a licensed casino. The issues to be determined in this matter are as follows:

Whether the respondent gambled at a licensed casino on October 10, 1983, in violation of Section 100n of the Casino Control Act, and, if so, whether revocation of his casino employee license, or some other appropriate sanction, should be imposed, pursuant to Section 129 of the Act.

#### PROCEDURAL HISTORY

On November 9, 1983, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On November 18, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 31, 1984, and the hearing was held on March 1, 1984.

#### FINDINGS OF FACT

The respondent is a resident of Medford, New Jersey, and he is the holder of Casino Employee License No. 32265-21, issued by the Casino Control Commission on November 17, 1981, and renewed in November of 1982. The respondent had been employed as a craps dealer by Harrah's Casino, but was terminated from that position on November 30, 1983, as a result of an alleged gaming incident which occurred at the Claridge Casino.

On October 10, 1983, the respondent was to have worked the 8:00 p.m. to 4:00 a.m. shift at Harrah's. However, he called in sick because he had a back problem. The respondent had been staying at a friend's house. This friend, Gary Brummett, was employed as a floor person in craps at Harrah's, and was also the respondent's supervisor. It was the testimony of the respondent that Brummett said he would "like to take a shot," which meant that he wanted to go gamble at a casino. The respondent knew that it was not permitted for a casino employee to gamble, but he did not attempt to dissuade his friend.

The respondent and Brummett went to the Claridge Casino and Brummett proceeded to place small wagers of \$5.00 and \$10.00 at a craps table while the respondent took a walk. The respondent then returned to the craps table to watch Brummett play, and was informed by Brummett that he was losing. The respondent declined Brummett's request for a loan of money.

After the respondent had been watching and conversing with Brummett for a while, he was approached by a casino security officer and asked to produce identification. After showing the security officer his casino license, the respondent voluntarily left the casino floor and remained in the security officer's custody, while they waited for the arrival of Division of Gaming Enforcement detectives. Meanwhile, Brummett left the casino without being questioned.

When the Division of Gaming Enforcement detectives arrived, they began to question the respondent. The respondent was shown a photograph of Brummett and he provided the detectives with his friend's name. ~~It was the testimony of the respondent that he told the detectives that he had not been gambling. It is undisputed that the respondent was not observed actually placing a wager and that a videotape of the incident which was made by Claridge surveillance personnel shows that only Brummett was making any wagers. It is also undisputed that the videotape shows that Brummett and the respondent were conversing while Brummett gambled.~~

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

The factual dispute in this matter concerns the nature of the respondent's interaction with Brummett while Brummett was wagering. The Claridge security personnel and the Division of Gaming Enforcement detectives filed brief reports concerning this incident (Exhibits P-1 through P-4). Detective Charles Brennan filed a memo (Exhibit P-3) which states that the respondent had admitted that he and Brummett were partners and that the respondent had been sharing his thoughts with Brummett as to how Brummett should bet. After being shown this memo at the hearing, the respondent testified sincerely and credibly that he did not tell the detective that he had been partners with Brummett. According to the respondent, he did converse with Brummett while he was gambling, but the conversation consisted of questions such as, "How are you

doing, how are you making out?" The respondent acknowledged that he may have told the detective that he had shared in his thoughts with Brummett, but it was his testimony that he did not mean that he had been telling Brummett how he should bet.

It was the testimony of the respondent that he is no longer friends with Brummett. He did not dispute that Brummett may have told Division of Gaming Enforcement investigators that they were both gambling and that they were partners, but the respondent emphatically denied that he had been gambling and that he had been partners with Brummett. The testimony of the respondent was straightforward and sincere and entirely worthy of credit. Therefore, I further **FIND** that the respondent and Brummett were not partners in wagering and that the respondent conversed with Brummett while Brummett wagered, but the respondent did not direct Brummett as to how he should place his wagers.

#### CONCLUSIONS OF LAW

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

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

It is undisputed that the respondent was not observed actually wagering at a casino. In addition, I have found that the respondent was merely conversing with a friend who was gambling, and the respondent was not directing the friend's placing of bets. I have also found that the respondent was not a partner with his friend in the sense of having any stake in the outcome of his friend's wagering.

Based upon the foregoing discussion and the applicable law, 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.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against James L. Adair, Jr., be and hereby is **DISMISSED**.

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

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

April 16, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

16 APR 1984  
DATE

Receipt Acknowledged:

John A. McDaniel  
CASINO CONTROL COMMISSION

Mailed to Parties:

April 18, 1984  
DATE

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

**For the Petitioner:**

- P-1 Memo, dated October 10, 1983, from Inspector Cain to Senior Inspector Shaw
- P-2 Memo, dated October 10, 1983, from Senior Inspector Shaw to Principal Inspector Ford
- P-3 Memo, dated October 10, 1983, from Detective Brennan to Captain Jankowski
- P-4 Memo, dated October 15, 1983, from Detective Brennan to Captain Jankowski

**For the Respondent:**

None

WITNESSES

**For the Petitioner:**

James L. Adair, Jr.

**For the Respondent:**

James L. Adair, Jr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-387

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

Complainant, :

FINAL ORDER

v. :

ADAMAR OF NEW JERSEY, INC. :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of a proposed stipulation of settlement on April 5, 1984, wherein the respondent admitted that it wrongfully operated a promotion known as the "Trop Stamp Program" from July 1 through December 22, 1983, in violation of N.J.S.A. 5:12-99(a), N.J.A.C. 19:45-1.3(a) and (b) and N.J.A.C. 19:45-1.46(a); and it appearing that the parties have agreed that the respondent would pay a civil penalty in the sum of \$7,000 in full settlement of the complaint filed by the Division of Gaming Enforcement on November 7, 1983; and the Commission, after considering the entire record in this matter, having resolved at its public meeting of November 14, 1984, for good cause shown, to approve the proposed stipulation of settlement and assess a civil penalty upon respondent in the amount of \$7,000,

IT IS on this 16th day of NOVEMBER 1984, ORDERED that the proposed stipulation of settlement in this matter be and hereby is approved; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$7,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

**FILED**

**APR - 5 1984**

**CASINO CONTROL COMMISSION  
LEGAL DIVISION**

IRWIN I. KIMMELMAN  
ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF GAMING ENFORCEMENT  
Hughes Justice Complex  
CN-047  
Trenton, NJ 08625

STEVEN BOLSON, Esquire  
Adamar of New Jersey, Inc.  
P.O. Box 59  
Atlantic City, NJ 08401

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	STATE OF NEW JERSEY CASINO CONTROL COMMISSION DOCKET NO. 83-387
Charging Party	:	CIVIL ACTION
vs.	:	STIPULATION OF FACTS AND SETTLEMENT
ADAMAR OF NEW JERSEY, INC. Respondent.	:	

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Charging Party, by Fredric E. Gushin, Deputy Attorney General, representing the Charging Party, State of New Jersey, Division of Gaming Enforcement and Steven R. Bolson, Esq. representing Respondent, Adamar of New Jersey, Inc., and the parties agree to the following Stipulation of Facts and Settlement:

1. By letter dated June 13, 1983, Tropicana submitted proposed internal and accounting control procedures to the Casino Control Commission for a promotion to be known as "the Trop Stamp Program".
2. Tropicana did not provide the Division with a copy of its submission in this regard.
3. On June 29, 1983, the Commission staff submitted to Tropicana

comments indicating various deficiencies in the internal and accounting control procedures of the Trop Stamp Program. Said communications specifically stated that the promotion could not begin until the internal and accounting control procedures were approved and further stated that the promotion should not commence on July 1, 1983.

4. On June 30, 1983, Tropicana submitted revised internal and accounting control procedures to the Casino Control Commission and Division.

5. On July 1, 1983, Tropicana commenced its Trop Stamp Program even though the internal and accounting control procedures had not been specifically approved by the Commission.

6. On November 18, 1983, the Commission staff requested further clarification on the internal and accounting control procedures relative to the Trop Stamp Program.

7. On November 29 and October 20, 1983, Tropicana responded to the Commission staff requests for additional clarification and information.

8. On December 22, 1983, the Commission staff, under the delegation of authority, approved the internal and accounting control procedures for this promotion.

9. Between July 1, 1983, through December 22, 1983, Tropicana continued to operate the Trop Stamp Program even though the internal and accounting control procedures were not approved.

It is therefore agreed and stipulated by and between the parties hereto that:

(a) Respondent admits to the allegations contained in the complaint and admits that it violated N.J.S.A. 5:12-99(a), N.J.A.C. 19:45-13(a) and (b), and N.J.A.C. 19:45-1.46(a) as charged:

(b) Respondent acknowledges and admits that it was in violation of the aforementioned statutory and regulatory sections and represents that in the future it will not commence promotions requiring Commission approval until such time as all approvals are obtained;

(c) Respondent agrees to pay to the Casino Control Commission a fine of seven thousand dollars (\$7,000);

(d) This settlement shall be in full and final settlement for the aforementioned violations;

(e) The set fine of seven thousand dollars (\$7,000) is just and equitable in light of the statutory guidelines set forth in N.J.S.A. 5:12-130; and

(f) This settlement must be accepted by the full Commission before it becomes effective.

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

ADAMAR OF NEW JERSEY, INC.

DIVISION OF GAMING ENFORCEMENT

BY: Steven Bolson  
Steven Bolson  
Attorney for Respondent

BY: Fredric E. Gushin  
Fredric E. Gushin  
Deputy Attorney General  
Attorney for Charging Party

DATED: 3/28/84

DATED: 3/23/84

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 44913-21  
AGENCY DOCKET NO. 84-EA-97  
OAL DOCKET NO. CCC 4456-84

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IN THE MATTER OF THE APPLICATION  
OF RICHARD ALEXANDER  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 30, 1984, recommending that the application of Richard Alexander for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on December 12, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 20th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

IT IS FURTHER ORDERED that, Richard Alexander 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 application shall not prevent Richard Alexander from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALRY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 4456-84**

**AGENCY DKT. NO. 84-EA-97**

**RICHARD ALEXANDER,**

Petitioner,

v.

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

Respondent.

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**Howard A. Kleinman, Esq.,** for petitioner

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

Record Closed: September 17, 1984

Decided: October 26, 1984

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

Richard Alexander seeks licensure as a casino employee with a position designation of blackjack dealer. The Division of Gaming Enforcement opposed his licensure in a letter sent to the Casino Control Commission on May 11, 1984. Mr. Alexander 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 before Administrative Law Judge Jeff S. Masin on August 9, 1984, and a prehearing order was issued on August 17, 1984. A hearing was held before Judge Masin on September 17, 1984, at the Brigantine Municipal Court.

In the prehearing order, the parties designated the issues for consideration to be those concerning whether Mr. Alexander possessed the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90(b), and whether the applicant had failed to disclose information of a material nature with respect to licensure, in violation of N.J.S.A. 5:12-86(b). In addition, the Division contended that Alexander had committed an act which if it had been prosecuted would constitute a grounds for denial of licensure, pursuant to N.J.S.A. 5:12-86(c). The Division intended to proceed in attempting to establish the nature of such act and the responsibility of Mr. Alexander for such act, pursuant to N.J.S.A. 5:12-86g which permits denial of licensure even where an offense, which would otherwise constitute a ground for denial, had not been prosecuted. The specific incident involved was a 1979 arrest in Fayetteville, North Carolina upon a charge of abduction of a female and kidnapping. It is this same charge that the Division initially contended that Mr. Alexander had failed to disclose on his Personal History Disclosure Form - 2A, which was filed with the Commission on February 19, 1983.

At the hearing, the Division also contended that Mr. Alexander had failed to disclose a 1977 arrest in Philadelphia for theft by receiving stolen property, resisting arrest and conspiracy.

Evidence concerning the 1979 North Carolina arrest was presented by the Division in the form of police records prepared by officers of the Fayetteville Police Department. No live witnesses were presented. These records indicate in essence that a purported victim, Patricia McQueen, was standing at an intersection when a vehicle drove up and one of two men in the vehicle got out and with a knife in hand, forced Ms. McQueen to get into the vehicle. A short time later, as the vehicle approached another intersection and slowed to make a turn, the victim "jumped from the vehicle." The vehicle was later sighted on the Fort Bragg Military Reservation and Alexander and another gentleman, named Gregory Ginyard, were arrested.

In addition to the police reports, the Division's evidence included a statement purportedly made by Patricia McQueen to the police. This affidavit was sworn on September 16, 1979.

According to representations made by the Division in its letter of May 11, 1984, all charges which stemmed from the Fayetteville incident were dismissed "due to an inability to locate the victim."

Richard Alexander testified that following the dismissal of the kidnapping charge, he was told that there would be no record of it. According to Alexander, he was driving the vehicle, and his friend Gregory Ginyard was in the car. Ginyard knew the alleged victim. At some point during the time when all three were in the vehicle, Ms. McQueen wished to be let out of the car. Alexander stopped the vehicle and she got out. About 20 minutes later, the car was pulled over by the police and Alexander and Ginyard were advised that they were being arrested for kidnapping. According to Alexander, neither he nor Ginyard had any weapons. He believes that Ms. McQueen was "after Ginyard" and, he, Alexander, was "just there."

Mr. Alexander did not disclose this incident in any way in answer to question 16 on the Personal History Disclosure Form which requested information as to whether he had ever been arrested or charged, even if not convicted, with any "felony, crime, misdemeanor, disorderly person offense, etc." During his testimony, Alexander initially advised that he had read the instructions concerning the filling out of the form and at the top of question, but then said that he didn't read the definition of arrest and the other terms defined at the beginning of that question. He did not list this arrest, or others to be noted below, because he was "thinking of convictions."

On cross examination, Mr. Alexander acknowledged that in connection with the North Carolina offense, he was put in jail at the time of his arrest and was there for one or two days before bail was set. He had to get in contact with a lawyer in order to get the bail set by a judge and then had to travel to North Carolina from Philadelphia at least four times before the matter was disposed of.

In connection with an alleged arrest in 1977, in Philadelphia, for theft, receiving stolen property, resisting arrest and conspiracy, Mr. Alexander stated that he had no recollection of this incident whatsoever. It came to his attention only when he was advised of it by Deputy Attorney General D'Elia. He does have some vague recollection of going to a police station, but he does not remember which one. He has been taken to the police station in Philadelphia at least twice. He also had some recollection that at some time he pled guilty to a charge of receiving stolen property and was placed on a

nonreporting probation for two years. Mr. Alexander was unsure of the date of this incident. He denied that he was guilty of the charge, but he did admit that he had pled guilty.

Mr. Alexander is 26 years old. He has worked at the Claridge Casino Hotel since August 7, 1983, and previously was employed in the Tropicana for nine months. In 1980, he worked at Bally's as a bar porter, but was terminated after he did not show up for work. He had one write-up at the Tropicana when he fell asleep on a double shift. He has had no problems at the Claridge. He is a graduate of Casino Schools, Inc.

The applicant presented a number of letters of recommendation from individuals who apparently are friends of his. They each attest to his ambition, his trustworthiness and the general good relations between the writers and the applicant. None of the letters appear to come from any work supervisors.

#### DISCUSSION

The evidence presented in this case indicates that Mr. Alexander, for reasons which are not excusable, did not disclose his 1979 arrest on the kidnapping charges in Fayetteville, North Carolina. It is difficult to believe that Mr. Alexander was not aware of this incident, since he had a good deal of involvement in the matter, being jailed, bailed and then being required to travel on several occasions from Philadelphia to North Carolina. His excuse for not listing the incident is that he was only thinking of convictions. While it is true that he did list a disorderly persons offense on his Personal History Disclosure Form, I believe that he was aware that he was required to list arrests, and that he did not list the North Carolina incident on purpose because of the rather serious allegations. (Indeed the listed disorderly was also dismissed.) Further, and of additional significance, he did not list his conviction on the receiving stolen property charge. While he expressed some confusion about the dates of this incident and said that he only recalled the 1977 arrest when Mr. D'Elia called it to his attention, I FIND that he was well aware that he had pled guilty to receiving stolen property in the Philadelphia court system, and that he did not list this matter because it did in fact include a conviction.

I CONCLUDE that the applicant purposely and intentionally withheld information concerning both the North Carolina arrest and the Philadelphia arrest and

conviction and that since these are matters which were material to the question of licensure, that Mr. Alexander is barred from licensure by virtue of N.J.S.A. 5:12-86(b).

With respect to the allegation that he is barred pursuant to section 86c because of his conduct in connection with the North Carolina incident, I **FIND** that based on the evidence presented no determination of his guilt or innocence for that matter can be made. The Division has presented documentary evidence in the form of police reports and an affidavit by the purported victim. These records, in a case in which the victim could not be located in order to proceed with the prosecution, are extremely unsatisfactory in terms of proving, even by a preponderance of the evidence, that Mr. Alexander was responsible for the rather serious charge of kidnapping a female at knife point, or being an accomplice in such an incident. While a knife was indeed found "on one of the subjects" (otherwise unidentified in the police report), the report further indicates that when this knife was shown to the "victim," she said it was not the one which had been pointed at her. No other knife was found.

There are too many unanswered questions concerning the alleged kidnapping to permit any finding that Mr. Alexander had any criminal responsibility for the matter. The facts and circumstances alluded to in the police reports and the statement by Ms. McQueen are not sufficiently persuasive to allow any reasonable finder of fact to conclude that Mr. Alexander indeed was involved in a kidnapping and abduction, even under the preponderance of the evidence standard. Therefore, I **FIND** that the Division has failed to establish the necessary basis for denying licensure, pursuant to section 86(c).

Finally, having considered all of the evidence, I **CONCLUDE** that Mr. Alexander, having purposely and intentionally withheld information concerning his past criminal history from the Division and Commission, including a conviction for receiving stolen property, does not have the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90(b). This constitutes an additional ground for denying licensure.

For the reasons expressed, I **CONCLUDE** that this license must be **DENIED**. It is so **ORDERED**.

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

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

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

October 26, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 01 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml

EXHIBIT LIST

Joint exhibit:

J-1 Personal History Disclosure Form - 2A

On behalf of petitioner:

P-1 Diploma from Casino Schools, Inc.

P-2 Letter from Kevin Johnson

P-3 Letter from Regina Thompkins

P-4 Letter from Ulysses Gillette, Jr.

P-5 Letter from Micheline Kirkland

P-6 Letter from Mr. and Mrs. Monroe

On behalf of respondent:

R-1 Police Report and North Carolina Internal Records, Incident and Investigation Reports, with attached statement of Patricia Ann McQueen, dated September 16, 1979

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-EA-24  
OAL DOCKET NO. CCC 1332-84  
LICENSE NO. 10276-21

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IN THE MATTER OF THE APPLICATION  
OF RANDY J. ASHBURN FOR RENEWAL  
OF HIS CASINO EMPLOYEE LICENSE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 10, 1984, recommending that the renewal application of Randy J. Ashburn for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on July 23, 1984; and the applicant having filed a reply on July 24, and July 27, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on August 22, 1984, to modify the Initial Decision and to grant the application,

IT IS on this 12th day of SEPTEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

- (1) The finding of the ALJ that the failure of the applicant to disclose his criminal record on the renewal application was excusable by reason of his intoxication on drugs and alcohol at the time he prepared the application is rejected; and

- (2) Upon consideration of the entire record, particularly the testimony of Agent Donahue of the Division of Gaming Enforcement concerning the interview he conducted with the applicant, the Commission finds no basis to disqualify the applicant for an intentional non-disclosure pursuant to N.J.S.A. 5:12-86(b).

IT IS FURTHER ORDERED that the application of Randy J. Ashburn for renewal of his casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1332-84

AGENCY DKT. NO. 84-EA-24

**RANDY J. ASHBURN,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Ralph B. Hill, III, Esq.,** for petitioner (Sgro, Farsetta & Hill, attorneys)

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

Record Closed: May 24, 1984

Decided: July 9, 1984

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

STATEMENT OF THE CASE

This matter concerns the application of Randy J. Ashburn to the Casino Control Commission for renewal of a casino employee license permitting him to work in a casino as a craps box person. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Section 89b(2) of the Casino Control Act, as incorporated in Section 90 of the act.

2. Whether the petitioner, with specific reference to his record of arrests and an employment discipline, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of Sections 86b and 90e of the act.

### PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated January 4, 1984, the Division of Gaming Enforcement recommended that the petitioner's application for renewal of his casino employee license be denied. By letter to the petitioner, dated February 14, 1984, the Commission informed the petitioner that he had the right to request a hearing on his license application. On February 22, 1984, the Commission received the petitioner's request for a hearing, and the Commission thereafter transmitted the matter to the Office of Administrative Law on February 28, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

### FINDINGS OF FACT

The petitioner is a 23-year-old resident of Brigantine, New Jersey. In January 1980, the Casino Control Commission issued to the petitioner casino employee license No. 10276-21. This license was renewed in 1981.

The petitioner is presently employed as a craps dealer on the night shift at the Sands Casino, and has been so employed for approximately 13 months. Prior to this employment, the petitioner was a dealer at the Claridge Casino for approximately one year. He was first employed as a craps dealer at Caesar's Boardwalk Regency for approximately two and one-half years.

It is undisputed that the petitioner completed an employee license renewal application on January 26, 1983. In response to question No. 6 on the renewal application, which requires that the applicant disclose any criminal or disorderly persons arrests or charges since his last license renewal, the petitioner answered yes, with the description, "outstanding parking summons," in July 1982 (Exhibit P-6). In fact, the petitioner had been arrested on charges of possession of a dangerous weapon (numchucks), contrary to N.J.S.A. 2C:39-5d, and possession of a controlled dangerous substance (marijuana under 25 grams), contrary to N.J.S.A. 24:21-20a4 (Exhibits R-1 through R-5).

Question No. 4 of the renewal application (Exhibit P-6) requires that the applicant disclose any reprimands, suspensions or terminations by an employer since his last license renewal. In response to this question, the petitioner answered "No." It is undisputed that the petitioner received numerous verbal warnings and at least two written warnings for lateness at Caesar's Casino. It is also undisputed that the petitioner's termination from the Claridge Casino did not occur until after he had filed his renewal application.

Testifying on his own behalf, the petitioner explained his failure to disclose his arrests on his renewal application. According to the petitioner, he was under the influence of methamphetamines and alcohol at the time he prepared the renewal application. In fact, the petitioner admitted that he was regularly under the influence of these substances while working six days a week at the Claridge Casino. According to the petitioner, his drug use had begun approximately one year after he started his casino employment at Caesar's. The petitioner used a lot of cocaine socially, and if he were unable to obtain drugs, he would not go to work.

It was the testimony of the petitioner that he was informed by a personnel employee at the Claridge that it would be necessary for him to immediately prepare his renewal application if he wanted to keep working. Under the influence of drugs and alcohol, he simply filled out the application as quickly as he could. It was the sincere and credible testimony of the petitioner that it had not been his intention to hide any information at the time he filled out the application. At that time, he did not remember the lateness warnings which he had received from Caesar's Casino.

Division of Gaming Enforcement Agent Brian Donahue testified that he interviewed the petitioner by telephone on July 11, 1983. At that time, Agent Donahue was aware that the petitioner had several arrests since his last renewal and that these arrests had not been disclosed on his latest renewal application. The agent testified that he read question No. 6 to the petitioner over the telephone and asked for his response. The petitioner replied that yes, he had been arrested. When asked why he had described parking summonses instead of his criminal and disorderly persons arrests, the petitioner stated that he could not understand why he had so answered; he had meant to accurately describe his arrests.

Agent Donahue also testified that he verified the lateness warnings which the petitioner received from Caesar's Casino. Agent Donahue also learned from the Claridge Casino that the petitioner had been terminated following a verbal altercation on the casino floor with his fellow employees. The petitioner confirmed that the altercation had taken place and explained that his coworkers had been harassing him on the job at the Claridge because he had been dating a floor person's girlfriend. The petitioner's drug and alcohol use, and a volatile temper, led to his termination.

It was the credible testimony of the petitioner that he stopped his drug use and alcohol abuse in February 1983. He has been successfully employed at the Sands Casino for approximately 13 months. He has had no problem with lateness and he has not received any warnings. His performance evaluations have rated him from very good to outstanding (Exhibits P-3 through P-5).

Sands Casino Pit Boss Francisco Quinones testified that he is the petitioner's direct supervisor at the Sands Casino. Mr. Quinones was formerly the games manager at Caesar's and was familiar with the petitioner during his employment at that casino. According to Mr. Quinones, the petitioner had an attitude problem with his supervisors and an absenteeism problem at Caesar's. However, Mr. Quinones feels that the petitioner is now a totally different person. He is one of the Sands' best dealers, he has no lateness problem, and he gets along well with his supervisors and the casino patrons. According to Mr. Quinones, he depends on the petitioner and it is his opinion that the petitioner is honest and has good character and integrity.

Also testifying on behalf of the petitioner was his mother, Rita Santora. Ms. Santora has been employed as a compensation specialist at the Sands Casino and as a compensation supervisor at Bally's Casino. According to Ms. Santora, the petitioner's former drug problem had been so severe that he was incoherent most of the time. His entire personality was adversely affected by his drug use and it was necessary that Ms. Santora put her son out of her home. However, the petitioner has now been free of drug use for over a year and he has regained the trust of his family. At his mother's urging, the petitioner sought medical help for his problem. Blood and urine checks conducted by Dr. Robert Hong have confirmed that the petitioner is now drug free ( Exhibit P-1).

On May 15, 1984, the petitioner received a psychiatric evaluation from Dr. Vincent P. Mahoney (Exhibit P-2). According to Dr. Mahoney, the petitioner has a good

insight into his problem with drugs and knows that he must stay away from them. Dr. Mahoney found no evidence of any substance abuse and concluded that it is likely that there will be none in the future.

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

#### CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for renewal of a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86b of the act, the Commission shall deny licensure to any applicant who has failed to reveal any facts material to qualification, or who has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that the petitioner did not disclose on his renewal application his lateness warnings from Caesar's Casino. However, it is apparent from question No. 4 of the renewal application that disclosure of reprimands, suspensions and terminations is sought. The question does not specifically identify warnings as subject matter to be disclosed.

It is also undisputed that the petitioner failed to disclose his record of arrests which occurred since his last license renewal. However, the credible evidence in the record establishes that the petitioner's failure to disclose resulted from his drug and alcohol intoxication at the time he prepared his renewal application. It is clear that the petitioner's failure to disclose was not the result of a conscious disregard of the request for his arrest and conviction record. Accordingly, I must **CONCLUDE** that the petitioner has not intentionally failed to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

The remaining issue to be resolved is whether the petitioner possesses the requisite good character, honesty and integrity for licensure. It will not surprise the petitioner to be reminded that there are serious consequences from his heavy drug and alcohol involvement. He is surely all too familiar with the toll these substances have

exacted on his physical and mental well-being, not to mention the adverse affect on his family harmony. There must be another consequence as well; the petitioner has caused his suitability for licensure as a casino employee to be placed in substantial doubt. However, he has demonstrated that his admitted failure to disclose was not the result of any intent to deceive the Casino Control Commission. Rather, it resulted from his drug and alcohol abuse, which he has since overcome. The petitioner has also demonstrated, with his drug and alcohol abuse behind him, that he is able to again perform satisfactorily as a casino employee, with a favorable reputation for good character, honesty and integrity. Accordingly, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he now possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Randy J. Ashburn, for renewal 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.

July 9, 1984  
DATE

Joseph E. Fidler  
JOSEPH E. FIDLER, ALJ

Receipt Acknowledged:

July 10, 1984  
DATE

Murray D. Hill  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

JUL 12 1984  
DATE

Ronald J. Tucker  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Letter report of Dr. Hong, dated May 22, 1984
- P-2 Letter report of Dr. Mahoney, dated May 22, 1984
- P-3 Performance rating, dated April 25, 1983
- P-4 Performance rating for August 1983
- P-5 Performance rating for period December 1, 1983 to February 29, 1984
- P-6 Employee license renewal application

FOR THE RESPONDENT:

- R-1 Arrest report, dated June 1, 1981
- R-2 Arrest report, dated March 5, 1982
- R-3 Arrest warrant, dated May 20, 1982
- R-4 Arrest report, dated July 9, 1982
- R-5 Complaints, dated July 9, 1982

WITNESSES

FOR THE PETITIONER:

Randy J. Ashburn  
Francisco Quinones  
Rita Santora

FOR THE RESPONDENT:

Brian Donahue

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-17  
LICENSE NO. 01096-11  
OAL DOCKET NO. CCC 5460-83

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

Complainant, :

V. : FINAL ORDER

WILLIAM F. BAGNELL, :  
CASINO CONTROLLER, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 2, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 28, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint; and the Commission having further resolved to authorize the legal division to seal Exhibit P-3 in evidence, which information is confidential pursuant to N.J.S.A.

5:12-74(d),

IT IS on this 14<sup>th</sup> day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement against William F. Bagnell be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the legal division be and hereby is authorized to seal Exhibit P-3 in evidence in this matter in conformance with N.J.S.A. 5:12-74(d); and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5460-83

AGENCY DKT. NO. 83-17

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

Plaintiff,

v.

**WILLIAM F. BAGNELL,  
CASINO CONTROLLER,**

Respondent.

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Kevin O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

Charles A. Matison, Esq., for respondent (Cooper, Perskie, April, Niedelman,  
Wagenheim & Weiss, attorneys)

Record Closed: August 17, 1984

Decided: October 1, 1984

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

This matter was originally transferred to the Office of Administrative Law as part of a complaint filed by the Division of Gaming Enforcement (Division) against the Greate Bay Hotel and Casino, Inc. t/a Sands Hotel and Casino of Atlantic City (Greate Bay) and employees Patricia Jean Di Giacomo, Casino Cage Manager, and respondent herein, William F. Bagnell, the Casino Controller. Prior to hearing the original action, the corporate respondent and Di Giacomo entered into a series of stipulations with the

Division of Gaming Enforcement which Mr. Bagnell chose not to agree to. As a result, the actions were severed for trial. A decision in the action against Greate Bay and Di Giacomo was filed with the Casino Control Commission (Commission) on March 26, 1984, and the Commission subsequently modified that decision, increasing the penalties previously recommended by the administrative law judge.

Respondent Bagnell filed a motion for summary decision. This application was denied by order, dated July 5, 1984. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Northfield Municipal Court on August 17, 1984.

A detailed discussion of the facts surrounding the incident of August 15, 1982, which led to the filing of the charges against the respondents Greate Bay, Di Giacomo and Bagnell, is not necessary at this time. It is sufficient, despite the absence of the detailed stipulations which were reached in the companion case, to refer to the court's findings in the initial decision of March 26, 1984, in the Greate Bay and Di Giacomo matter. There is no dispute between the parties in this action that on Sunday, August 15, 1982, at approximately 4:30 p.m., a large group of non-English speaking gamblers from Hong Kong arrived at the Sands Hotel and Casino. The group, consisting of approximately 80 persons, 32 of whom were players and the rest, wives, children and other relatives, were ultimately taken to a fourth floor conference room where a large amount of cash and numerous checks, totaling \$2,950,000, were presented to and accepted by the respondent Greate Bay. The findings contained in the initial decision, which were adopted by the Commission, indicate that a number of violations of applicable rules and regulations governing the acceptance of cash equivalence, as well as violations with respect to record keeping, recording of complementary services and recordation of safe keeping deposit receipts, occurred.

With respect to the action against Bagnell, the parties have entered into stipulations as to certain violations charged in the amended complaint of July 27, 1983. Specifically, they have stipulated that:

On or about August 15, 1982, representatives of the Sands Casino Cage Department did, in fact, accept \$2,950,000 in cash and checks from the Hong Kong group as patron safe keeping deposits. Said acceptance occurred in the fourth floor conference room located at the Sands, in violation of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.24(a), N.J.A.C. 19:45-1.15(b), and N.J.A.C. 19:45-1.25(e).

Further, the parties stipulate that:

On or about August 15, 1982, representatives of the Sands Casino Cage Department, while in the fourth floor conference room accepting the patron safe keeping deposits from the Hong Kong group as described in Count I of this complaint, . . ., prepared thirty-two (32) Customer Deposit Forms for the purpose of accounting for the patron safe keeping deposits presented by the Hong Kong group.

The parties further stipulate that the Sands failed to determine the validity of 22 bank checks prior to their acceptance, a violation of N.J.A.C. 19:45-1.25(e) and that the casino accepted 26 third party checks, some drawn on other casinos, as cash equivalents, when they did not qualify as such under N.J.A.C. 19:45-1.1, thus violating N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a).

In this action, the Division seeks to sanction William Bagnell in his role as casino controller for the violations committed by the casino on August 15, 1982. Unlike Ms. DiGiacomo, who was on duty at the time of the arrival of the Hong Kong group and who was personally present in the conference room where the violations occurred, and who was penalized by the Commission presumably with respect to her failure to properly supervise the cage personnel and to properly carry out her functions as cage manager in connection with the transactions which occurred on August 15, 1982, Mr. Bagnell was not present at the hotel at anytime on August 15, 1982 and in fact, according to his own testimony, which I FIND to be true, spent a good portion of that Sunday fishing off the New Jersey coast. I also FIND, based on Mr. Bagnell's undisputed testimony, that he had no contact whatsoever with any personnel of the Sands Hotel and Casino on August 15, 1982, and that he was not apprised of the arrival of the Hong Kong group at the hotel and casino until his arrival at work on August 16, 1982. I further FIND, based on his testimony, that despite the fact that his home phone number had been provided and that he had advised his subordinates, as well as his superiors, of his general availability when not on duty, that there was no contact with Mr. Bagnell on August 15, nor was there apparently any attempt to contact him with respect to any matters involving the operations of the casino that day, whether related to the Hong Kong group or not.

As the parties have recognized in connection with this matter, since Mr. Bagnell had no personal involvement with the actual transactions which occurred on August 15, and only became involved as a follow-up to those matters, if he is to bear any

responsibility with respect to this matter and to suffer any sanctions, these must be premised upon conclusions that he failed to properly carry out his functions as casino controller, not specifically on August 15, 1982, but presumably prior to that date. Generally, it is the contention of the Division that Bagnell was in violation of his responsibilities in that he failed to properly prepare his personnel for dealing with the type of situation which arose on August 15 and to assure that they were sufficiently aware of appropriate regulations and procedures so as to handle the type of situation which occurred without violating the law.

The limited evidence presented at the hearing below centered upon the knowledge of several high ranking casino employees of the possibilities and potentialities of a visit by a group of Hong Kong gamblers to the Sands in Atlantic City. It further dealt with Bagnell's own foreknowledge of what might occur.

William P. Weidner, who in August 1982, was president of Greate Bay Hotel and Casino, Inc., testified that prior to the arrival of the Hong Kong group on August 15, 1982, he was aware that several groups of Hong Kong gamblers were "washing" around the gambling centers in Las Vegas. He had had no direct contact with the Sands Hotel in Las Vegas concerning these groups. There had been discussions prior to August 1982, of the possibility of the Sands in Atlantic City accommodating Hong Kong groups and these discussions had been carried on on a number of occasions with Robert G. Goldstein, now executive vice-president of the operating company, who had been in charge of marketing prior to the 1982 incident. According to Weidner, it was well known in the casino industry that groups of Hong Kong gamblers travel around the world to various gambling meccas between late June and early September. In Weidner's experience, these groups generally consisted of only males, in numbers ranging from one to seven or eight men. They generally do not speak English and travel with large amounts of money. The group which arrived at the Sands on August 15, consisting of 32 gamblers and a total of 80 persons, was perhaps six to ten times larger than any Hong Kong group which Weidner had ever heard of in his time in the casino industry dating back since February 1978.

Weidner testified that there had been discussions concerning Hong Kong groups throughout the summer prior to mid-August. Rumors concerning the possibility of the arrival of this or that Hong Kong group would surface with some regularity. Sometime prior to August 15, Weidner became aware that there was a group of Hong Kong patrons at the Playboy Hotel and Casino in Atlantic City. Mr. Goldstein had advised Weidner

that the Playboy group might wish to come to the Sands. This information was conveyed to Weidner sometime within the week prior to their arrival. There was speculation on several days prior to August 15 that some of the Playboy patrons might come to the Sands on each of those days. However, they did not.

Weidner described discussions between he and Goldstein with respect to Hong Kong groups as generally relating to what complementary services should be provided them, what betting limits should be set, and the amounts of cash that various groups were said to be traveling with. In addition, discussions would center around the possibility of cheating by groups and how to counteract such tactics as might be employed.

Weidner was contacted at home on August 15, by Goldstein, who advised him that the Hong Kong group had arrived. There was some discussion about the size and character of the group, but Weidner is unsure of whether he was told all the details on the 15th. He was surprised to hear of the character and size of the group, but was not surprised to hear about the nearly \$3,000,000 which the group presented.

Weidner testified that none of the information that he and Goldstein and other senior officials of the company might have discussed concerning the Hong Kong groups, either generally or specifically with respect to the rumored arrival of the group from Playboy, was ever discussed with William Bagnell or any cage personnel.

Robert E. Goldstein, Executive Vice-President of the Greate Bay Casino Corporation, and in August 1982, the Director of Casino Marketing, testified that he had received some information from persons in Las Vegas that there were "Chinese" groups gambling in Las Vegas. The conversations revolved around such matters as the amount of money the groups were gambling, playing limits, minimum/maximum bets, cheating tactics and complementary services. According to Goldstein, his information was that the groups in Las Vegas were small. He doubts if there was any discussion about the specific size thereof and also doubts that there were any discussions about language problems, because as a rule of thumb it was generally understood that Hong Kong groups would not be able to speak English. The general expectations about a Hong Kong group were that it would be "a nice small group" carrying millions of dollars. Goldstein advised that he believes that he was aware that some of the people gambling in Las Vegas had left the Sands in Las Vegas at the time of his conversations.

The witness testified that he had no conversations at all with anyone connected with the casino cage or the controller's office with respect to the handling of the Hong Kong groups which might arrive at the casino. He assumed that any transactions with such groups would be handled in the normal fashion as with any other group. According to the witness it would not have occurred to him to discuss the matter with the casino controller or cage personnel.

Goldstein testified that there had been discussions about whether and how to accommodate Hong Kong groups all throughout the Summer of 1982. These conversations were with such persons as Larry Woo, the company's representative for Oriental relations, William Weidner, persons from the hotel side of the operation and legal counsel with respect to junket regulations. It was generally determined that if a Hong Kong group showed up they would be accommodated.

Goldstein testified that when the Hong Kong group was at Playboy there was general knowledge that there were Chinese gambling all over town. He understood that some of the gamblers were considering visiting any of the casinos in Atlantic City. He does not recall speaking with any Chinese person who eventually showed up at the Sands prior to their arrival. He assumes that Larry Woo talked to them as Woo was in charge of Oriental marketing.

On August 15, Goldstein was in the hotel. He heard that the group came in from the casino operations vice-president. He was shocked at the amount of people and learned that bedlam had occurred.

Mr. Goldstein concluded his direct testimony by noting that he had been in the marketing field for casinos since 1976 and that he had never seen or heard of a Hong Kong group or any other similar foreign group arriving in such size as occurred on August 15, 1982.

William F. Bagnell testified that he has been the casino controller of the Greate Bay Hotel and Casino, Inc., for two and three-quarter years, having served in that capacity following a year and one-half to two years in service as assistant casino controller and prior thereto one year as a supervisor of casino accounting. He has degrees in accounting and finance. His responsibilities involve writing the format for the casino accounting and internal control submissions and submitting these regulations to the Commission for approval. The casino cage falls within his sphere of responsibility.

Approximately two to three weeks prior to the arrival of the Hong Kong group on August 15, Bagnell became aware of speculation that a Hong Kong group might arrive. These rumors were frequent and on several occasions the "word" was that the group was arriving and it did not appear. Bagnell may have had some discussion of these rumors with Pat Di Giacomo, but there were no specific discussions with the cage personnel concerning any specific groups.

Bagnell testified that in his experience the casino had previously been presented with groups of players from Hong Kong consisting of from two to seven persons who arrived with large amounts of cash. There had been no discussions with respect to how to deal with large groups in excess of the relatively limited numbers who had previously been seen. All responsible individuals in the cage operation had been provided with the necessary regulations and relevant portions of the accounting and internal controls and that there had been regular reviews of the rules and regulations governing the cage operation with Bagnell's subordinates, so that it was assumed that upon the arrival of any group they would be handled in accordance with the regulations.

The respondent testified that normally Hong Kong groups did not speak English and that the hotel did not have a specific in-house interpreter. It was generally the practice to try to get an employee who spoke the language of any foreign group who arrived.

Bagnell learned of the arrival of the Hong Kong group on August 16, when he arrived at work and followed his normal practice of calling the various departments under his control. When he called the cage he was told that the group had arrived and that there had been a problem with respect to the acceptance of certain third party checks. Bagnell immediately advised his boss, Lee Johnson, who was the Assistant Corporation Controller, legal counsel Esther Sylvester, and Frank McCarthy, the Corporate Controller, of the problems. Sylvester was advised to call the Commission.

With respect to the procedure used by the Hong Kong group in which money allegedly belonging to several individuals was pooled and presented in one large amount to the casino, there had been no specific training with respect to this procedure. Bagnell had never encountered such pooling techniques before. He also could not specifically recall whether there had been any training of his personnel with respect to how to account for customer deposits of "front money" which was deposited in multiple forms, such as

some cash and some cash equivalents. However, the witness added, that the personnel had been trained to record both types of funds, when presented, on the applicable customer deposit receipts.

During training sessions held for cage personnel, particularly during January, February and March 1982, the personnel were instructed to review any purported cash equivalents presented to assure that they were authentic and to make sure that they were not third party checks. There were not specific policies at the time for the handling of large groups of gamblers and therefore there was no training with respect to such, but personnel were generally advised in the course of their training that with respect to any transactions they were to follow procedures contained in the applicable casino regulations. Bagnell had instituted training sessions during the slower winter months when he took over his position as casino controller.

The respondent testified that he was advised by Ms. Di Giacomo following the August 15th incident that she had assumed that the holding of the cage transactions in the fourth floor conference had been approved. According to the witness, there had been discussions in the past with cage personnel that where there was any doubt as to a procedure to be followed, that it was the responsibility of the personnel involved to speak with the commission inspector on duty at the casino to assure that whatever action was taken would be in compliance with regulations or to obtain a ruling from the Commission where necessary, particularly where the regulations may not have covered the specific problem. Bagnell further testified that he had never authorized casino cage transactions to occur outside of the cage. In addition, he was questioned as to whether he was aware of a suitcase which the cage personnel kept in the cage and used to transport necessary paper work and the cash and "cash equivalents" received on August 15, back and forth from the cage and to the conference room. According to the witness, he had no knowledge whatsoever of this suitcase.

The Commission presented no witnesses.

#### DISCUSSION

Any responsibility to be attached to William Bagnell for the incident of August 15, 1982, must arise from some failure of his to properly assure that the casino cage personnel under his supervision and within the sphere of his responsibility would

function properly in connection with their duties of accepting, verifying and recording deposits by patrons. It is quite obvious that on August 15, his personnel failed to so function. From Ms. Di Giacomo on down, those who actively engaged in the transactions which occurred with the Hong Kong group failed to follow the applicable rules and regulations and allowed activity to occur for which the corporate entity and Ms. Di Giacomo have paid dearly. However, since Mr. Bagnell was not present and was totally unaware of what occurred on August 15, if he is to be criticized at all, it must be for something which occurred prior to that date. I can find absolutely no basis for concluding that Bagnell knew anything about the specific incident itself when it occurred or that he in any way authorized any of the actions which occurred on August 15, 1982. Indeed, from the evidence before me, I **CONCLUDE** that he had generally instructed his personnel through the training seminars which he instituted and through other training activities that they were to follow applicable Casino Commission regulations and the internal controls approved by the Commission for the Sands Casino in any transactions involving the presentation of monies for deposit by gamblers. I can find nothing which indicates that Bagnell in any way encouraged anyone to believe that casino cage transactions could properly be conducted anywhere other than in the cage or that the type of slipshod recording of transactions, acceptance without verification, and other violations which occurred were to be permitted.

The sole remaining question seems to be whether Mr. Bagnell should have foreseen possibility that a large group of gamblers might arrive at the Sands, that perhaps they might not speak English, and that some consideration might have to be given to how to deal with such an incident. From the evidence presented, which stands uncontradicted, no one with any responsibility for the operation of this casino had ever heard of anything like a group of 32 foreign gamblers descending on the casino at one time, much less a group accompanied by, as Weidner put it, "wives, children, nannies" and other assorted individuals. It seems quite clear, from the uncontradicted evidence, which I **FIND** to be true, that Hong Kong groups generally consisted of small numbers of individuals, up to perhaps seven or eight, who brought with them large amounts of cash, frequently in the millions of dollars, and who spoke no English. I also **FIND** that there had never been any incidents at this casino, or within the knowledge of any of the responsible individuals involved, of significant problems arising in the handling of such small groups of Hong Kong gamblers, despite the language barrier. Therefore, I think that it is difficult at best to criticize Mr. Bagnell for poor planning with respect to how to deal with an occasion which no one appears to have had any reasonable grounds to foresee.

All of the above does not excuse the actions of Di Giacomo nor negate the responsibility of the corporate respondent for what actually occurred on August 15. The casino licensee is responsible for carrying out all of its functions in accordance with applicable regulations. Where they are grossly violated, as in connection with this matter, it is certainly logical that, despite the absence of reasonable grounds for foreseeing such a specific incident, that the casino licensee be subjected to discipline for its failure to properly handle the situation within acceptable bounds. Further, where an individual with significant responsibility for the operation of a function such as the cage allows the type of totally unacceptable conduct which occurred here, some degree of discipline is called for. In the case of Bagnell, the circumstances differ, since he had no specific involvement or knowledge of the incident itself and his responsibilities as an individual, as against those of the casino licensee, differ.

With all due respect for the importance of assuring that casinos operate within the realm of statutes and regulations and that individual casino key employees carry out their functions in accordance with the requirements of those regulations and assure their subordinates also so perform, in this case, given the unlikely possibilities that such a large group would arrive and given the fact that Bagnell's training programs appeared to have reasonably trained his personnel in how to perform their functions with respect to the acceptance of cash and cash equivalents, recording and verification of the same, I can find no reasonable basis for sanctioning Mr. Bagnell in connection with the August 15 incident. I believe that it would be entirely unfair to place sanctions against him where there is no evidence whatsoever that he encouraged anyone to believe that what they did on that date was correct, where he took all reasonable steps to see that his personnel were trained with respect to the authorized practices which they were to follow, and where there is no evidence that he should have reasonably foreseen that such an unusual situation might occur. Therefore, I **CONCLUDE** that the charges against Mr. Bagnell should 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.

October 1, 1984  
DATE

*Jefe S. Masin*  
**JEFE S. MASIN, ALJ**

Receipt Acknowledged:

11/2/84  
DATE

*Mary Ann Torczyk*  
**CASINO CONTROL COMMISSION**

Mailed to Parties:

OCT 04 1984  
DATE

*Ronald L. Parker*  
**OFFICE OF ADMINISTRATIVE LAW**  
*phb*

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EXHIBITS

On behalf of the petitioner:

P-1 Manifest List (2 pages)

P-2 Job Description

P-3 Accounting and Internal Control Submission, Volume I, March 3, 1980,  
Amended as of April 10, 1982

P-4 Manual Safekeeping Forms

P-5 48 checks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-64

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

Complainant,

FINAL ORDER

v.

BALLY'S PARK PLACE, INC.

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement on March 15, 1983, alleging that the respondent had violated N.J.S.A. 5:12-103(f), N.J.A.C. 19:50-1.6(g), N.J.A.C. 13:2-23.16(a)(1) and (3) and ABC Bulletin #2381; and the parties having submitted a proposed stipulation of settlement on May 9, 1984, wherein the respondent admitted that on January 17, 1983, it mailed a coupon to certain preferred customers offering them free admission for two to the "More Outrageous" review and two complimentary beverages in violation of N.J.S.A. 5:12-103(f), N.J.A.C. 19:50-1.6(g), N.J.A.C. 13:2-23.16(a)(1) and (3), and ABC Bulletin #2381; and it appearing that the parties have agreed that the respondent would pay a civil penalty in the sum of \$12,500 in full settlement of the complaint; and the Commission having considered the entire record in this matter and having

resolved at its public meeting of June 13, 1984, for good cause shown, to approve the proposed stipulation of settlement and assess a civil penalty upon respondent in the amount of \$12,500,

IT IS on this <sup>2nd</sup> day of JULY 1984, ORDERED that the proposed stipulation of settlement in this matter be and hereby is approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$12,500, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

IRWIN I. KIMMELMAN  
ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF GAMING ENFORCEMENT  
Hughes Justice Complex  
CN-047  
Trenton, N.J. 08625

FILED

MAY 09 1984

STEPHEN H. JOSEPH, ESQUIRE  
SILLS BECK CUMMIS ZUCKERMAN RADIN & TISCHMAN  
One South New York Avenue  
Atlantic City, N.J. 08401

CASINO CONTROL COMMISSION  
LEGAL DIVISION

---

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	STATE OF NEW JERSEY CASINO CONTROL COMMISSION DOCKET NO. 83-64
Charging Party	:	CIVIL ACTION
vs.	:	STIPULATION OF FACTS AND SETTLEMENT
BALLY'S PARK PLACE, INC.	:	
Respondent	:	

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The parties involved in the above-captioned matter, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Charging Party, by Fredric E. Gushin, Deputy Attorney General, representing the Charging Party, State of New Jersey, Division of Gaming Enforcement and Stephen H. Joseph, Esquire, of the law firm of Sills Beck Cummis Zuckerman Radin and Tischman, PA, Attorneys for Respondent, Bally's Park Place, Inc., hereby stipulate to the following facts:

1. On July 1, 1982, the Division filed Complaint #82-64 against Bally for a Two for One promotion which took place in May and June 1982.

2. On or about October 18, 1982, the Division filed a warning letter against Bally for a promotion offering free admission to Bally's "More Outrageous" review and two complimentary beverages.

3. On or about January 17, 1983, Bally mailed a coupon to certain preferred customers offering them free admission for two to Bally's "More Outrageous" review and two complimentary beverages each.

4. Said offer was not contingent on the purchase of any product or service. Both admission and drinks were complimentary.

5. Said coupon was valid through March 31, 1983.

6. In connection with Bally's Park Place, Inc., 1982 license renewal proceedings, the Division raised the issue of Bally's "More Outrageous" Promotions in its 1982 "Outstanding Issues and Recommendations" section of its operational report to the Casino Control Commission.

7. In response to the operational report, Bally stated its position that the "More Outrageous" coupons were complimentary, and thus, subject to the Casino Control Act rather than the bulletins of the Division of Alcoholic Beverage Control.

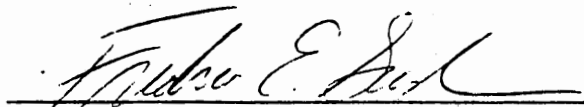
8. On February 22, 1984, after a full hearing on Complaint #82-64, the Commission, in a case of first impression, rejected Bally's position regarding coupons as complimentary and found Bally in violation of N.J.S.A. 5:12-103(f) (2), and ABC Bulletin #23-81. As a result of these violations, Bally was fined \$20,000.

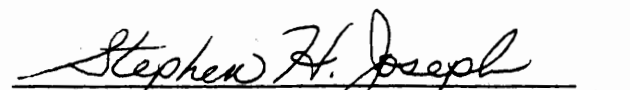
9. Bally has not run a Two for One or similar promotion since its mailing of January 17, 1983.

It is therefore agreed and stipulated by and between the parties hereto that:

- a. Respondent admits that it violated N.J.S.A. 5:12-103(f), N.J.A.C. 19:50-1.6(g), N.J.A.C. 13:2-23-16(a) (1) and (3), and ABC Bulletin #2381;
- b. Respondent represents that in the future it will not commence any Two for One promotions;
- c. Respondent agrees to pay to the Casino Control Commission in full and final settlement for the aforementioned violations a fine of twelve thousand five hundred dollars (\$12,500);
- d. The set fine of twelve thousand five hundred dollars (\$12,500) is just and equitable in light of the statutory guidelines set forth in N.J.S.A. 5:12-130; and
- e. This Stipulation of Facts and Settlement is contingent on approval by the full Commission.

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

  
FREDRIC E. GUSHIN  
Deputy Attorney General  
Attorney for Charging Party

  
STEPHEN H. JOSEPH  
Sills Beck Cummis Zuckerman  
Radin & Tischman, PA  
Attorney for Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-434

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

Complainant,

FINAL ORDER

v.

BALLY'S PARK PLACE, INC. AND  
DORIE V. MARCUS, CASINO CREDIT  
EXECUTIVE (1743-11),

Respondents.

---

This matter having been opened to the New Jersey Casino Control Commission on the filing of an amended stipulation of settlement on July 23, 1984; and it appearing that the amended stipulation of facts conforms to the stipulation of settlement filed on May 11, 1984, as orally modified by the parties at the Commission meeting of June 25, 1984; and the Commission, after considering the entire record, having resolved at its public meeting of June 25, 1984, to affirm and adopt the stipulation of settlement as amended and further having resolved at its public meeting of August 15, 1984, to authorize the legal division to seal or redact portions of the record concerning information which is confidential pursuant to N.J.S.A. 5:12-74(d), the parties having consented to such sealing or redacting,

IT IS on this 30th day of AUGUST 1984, ORDERED that the amended stipulation of settlement be and hereby is accepted by the Commission and, as redacted, incorporated herein by reference; and

IT IS FURTHER ORDERED that, pursuant to the terms of the stipulation of settlement, respondent Bally's Park Place, Inc., contribute the sum of \$7,500 to the Compulsive Gamblers Clinic associated with the Mental Health Institute, John F. Kennedy Medical Center, Edison, New Jersey, said contribution to be made within 15 days of receipt of this order; and

IT IS FURTHER ORDERED that, pursuant to the terms of the stipulation of settlement, respondent Bally's Park Place, Inc., forgive any outstanding indebtedness incurred by the patron in the transactions which resulted in the filing of the subject complaint; and

IT IS FURTHER ORDERED that, pursuant to the terms of the stipulation of settlement, respondent Bally's Park Place, Inc., refund to the payor any amounts heretofore paid in reduction of the indebtedness described in the subject complaint; and

IT IS FURTHER ORDERED that, pursuant to the terms of the stipulation of settlement, respondent Doris V. Marcus be and hereby is assessed a civil penalty of \$1,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), both Bally's Park Place, Inc., and Dorie V. Marcus be and hereby are formally reprimanded for their conduct in violation of the Act and Commission regulations as more fully described in the stipulation of settlement; and

IT IS FURTHER ORDERED that the legal division be and hereby is authorized to seal or redact portions of the record in this matter in conformance with N.J.S.A. 5:12-74(d); and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

**FILED**

**JUL 23 1984**

**CASINO CONTROL COMMISSION  
LEGAL DIVISION**

**IRWIN L. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Plaintiff  
Richard J. Hughes Justice Complex  
Trenton, New Jersey 08625**

**By: KEVIN F. O'TOOLE  
Deputy Attorney General**

**Joseph G. Ragno, Esquire  
WATERS, McPHERSON, McNEILL, P.A.  
32 Journal Square  
Jersey City, New Jersey 07306  
Attorneys for Respondents  
BALLY'S PARK PLACE, INC. and  
DORIE V. MARCUS**

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO.: 83-434**

**STATE OF NEW JERSEY, )  
DEPARTMENT OF LAW & PUBLIC )  
SAFETY, DIVISION OF GAMING )  
ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BALLY'S PARK PLACE, INC. )  
and DORIE V. MARCUS, Casino )  
Credit Executive, #1743-11, )  
 )  
Respondents. )**

**Civil Action  
AMENDED STIPULATION OF SETTLEMENT**

With 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 Kevin F. O'Toole, Deputy Attorney General, and Joseph G. Ragno, Esquire of Waters, McPherson, McNeill, P.A., Attorneys for Respondents, Bally's Park Place, Inc. and Dorie

V. Marcus, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent, Bally's Park Place, Inc., is the operator of a casino hotel licensed pursuant to the laws of the State of New Jersey and in particular, N.J.S.A. 5:12-1 et seq. and the regulations of the Casino Control Commission; and,
2. WHEREAS Respondent, Dorie V. Marcus, license #1743-11, is and was at all times relevant to this matter employed by Bally's Park Place, Inc. as a credit executive; and,
3. WHEREAS on April 26, 1983, a patron named [REDACTED] submitted to Bally's Park Place, Inc., an application for casino credit requesting a credit line of [REDACTED] and,
4. WHEREAS on said application, which is attached as Exhibit A, [REDACTED] listed his residence address as [REDACTED], his occupation as salesman-men's clothing for [REDACTED], and two (2) banking references:
5. WHEREAS [REDACTED] also provided Bally with his driver's license number, his social security number, his American Express credit card number and his Visa credit card number; Mr. [REDACTED] then signed the credit application form and it was dated [REDACTED] by a Bally cage cashier; and,
6. WHEREAS by letter dated and mailed April 26, 1983, Donald A. Williams, Credit manager requested of the [REDACTED] Bank that they provide information regarding Account # [REDACTED], the checking account which [REDACTED] had listed as a reference; and,

7. WHEREAS on April 28, 1983 a Bally credit employee ran a Central Credit Check on ██████████, revealing "no record" of the patron; and,
8. WHEREAS on May 1, 1983, a Sunday, the patron, ██████████, returned to the Bally casino at which time his credit application for \$██████ was approved by Credit Executive Dorie V. Marcus; and,
9. WHEREAS according to Dorie V. Marcus, his decision to approve said application on May 1, 1983 was based upon the completeness of the application form and the fact that the report obtained through Central Credit indicated "no record"; and,
10. WHEREAS on May 1, 1983, the patron, ██████████, drew three (3) separate counterchecks (nos. ██████████) each in the amount of \$██████ in exchange for extensions of credit with which he played craps and blackjack. The checks were drawn against Account # ██████████ at the ██████████ Bank; and,
11. WHEREAS by the end of his gaming activity on May 1, 1983, the patron, ██████████, indebted to Bally in the amount of \$██████; and,
12. WHEREAS on May 2, 1983 a bank call was made to the ██████████ Bank by a Bally credit employee for the purpose of confirming Account # ██████████. It was revealed at that time by a bank employee named Jennifer that "\$██████ not good at present"; and,
13. WHEREAS on May 4, 1983 Bally received by return mail the completed request for bank information from ██████████, Assistant Vice-President, signed the bank letter which was dated April 29, 1983, and which stated:

"As of this date we have no record of any account in this name. Account No. [REDACTED] belongs to another account holder and Mr. [REDACTED] has no withdrawal rights to this account." See Exhibit A.

14. WHEREAS immediately upon receipt of the above information contained in the bank letter, [REDACTED]' credit line was cancelled by Bally's; and,
15. WHEREAS on May 9, 1983, counterchecks nos. [REDACTED] were deposited for collection; and,
16. WHEREAS on May 19, 1983 and May 27, 1983 those counterchecks were returned by the bank dishonored by reason of unauthorized signature; and,
17. WHEREAS on May 23, 1983, upon receiving a returned check letter from Bally dated and mailed on May 20, 1983, [REDACTED] telephoned the Bally collection department and advised them that "his wife put all funds in a trust account"; and,
18. WHEREAS, between July 5, 1983 and November 7, 1983 the amount of \$[REDACTED] was paid on this account by [REDACTED], the wife of the patron [REDACTED], and,
19. WHEREAS, according to [REDACTED], Assistant Vice-President of [REDACTED] Savings Bank, account # [REDACTED] is a [REDACTED] checking account belonging to [REDACTED], the wife of [REDACTED]. [REDACTED] has represented that [REDACTED] was, and currently is, the only authorized signer on this account and at no time has [REDACTED] been an authorized signer thereon; and,
20. WHEREAS on or about May 24, 1983, Respondents, Bally's Park Place, Inc. and Dorie V. Marcus, became aware that [REDACTED] had sought the assistance of Gamblers Anonymous when Mr. Arnold Wexler of Gamblers Anonymous contacted Bally's collection department on behalf of Mr. [REDACTED].
21. WHEREAS on December 14, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondents alleging violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27(d)5; and,

22. WHEREAS Respondents acknowledge that violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27(d) did occur; and,
23. WHEREAS the parties recognize the need to comply with the Casino Control Act and regulations promulgated therefrom, and Bally's Park Place, Inc. and Dorie V. Marcus have agreed to comply with the aforementioned statutory and regulatory provisions; and,
24. WHEREAS Respondent, Bally's Park Place, Inc., has agreed to contribute the sum of seven thousand five hundred dollars (\$7,500) to the Compulsive Gamblers Clinic associated with the Mental Health Institute, John F. Kennedy Medical Center, Edison, New Jersey, upon resolution of the instant matter; and,
25. WHEREAS Respondent Bally's Park Place, Inc. has agreed to forgive the above described indebtedness of [REDACTED] upon the resolution of this matter; and,
26. WHEREAS Respondent, Bally's Park Place, Inc., has agreed to refund to [REDACTED] the amount of \$120.00 heretofore paid by her in reduction of the indebtedness of [REDACTED] which has by this document been forgiven upon the resolution of this matter; and,
27. WHEREAS Respondent Dorie V. Marcus has agreed to pay the amount of \$1,000.00 by way of civil sanction upon the resolution of this matter.

IT IS THEREFORE consented to and agreed upon by and among the parties that:

- A. Respondent, Bally's Park Place, Inc., acknowledges that this Stipulation of Settlement shall act as a letter of reprimand pursuant to N.J.S.A. 5:12-129(8), describing their conduct and statutory and regulatory violations committed, and shall be placed in their file at the Casino Control Commission.
- B. Respondent, Dorie V. Marcus, acknowledges that this Stipulation of Settlement shall act as a letter of reprimand pursuant to N.J.S.A. 5:12-129(8), describing

his conduct and statutory and regulatory violations committed, and shall be placed in his file at the Casino Control Commission.

The undersigned consent to the form and entry of the above Amended Stipulation of Settlement.

Kevin F. O'Toole

Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

Dated 7/3/84

Joseph G. Ragno

Joseph G. Ragno, Esquire  
Waters, McPherson, McNeill, P.A.  
Attorneys for Respondents

Dated 7-11-84

Dorie V. Marcus

Dorie V. Marcus  
Respondent

Dated 7/16/84

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-415  
OAL DOCKET NO. CCC 1821-84

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

Complainant, :

FINAL ORDER

v. :

BALLY'S PARK PLACE, INC., :  
JAMES A. PAISLEY AND :  
FREDERICK B. ZELLER :

Respondents. :

---

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 on October 1, 1984, recommending that the corporate respondent, Bally's Park Place, Inc., pay a civil penalty in the sum of \$6,000 for admitted violations of N.J.A.C. 19:45-1.25(e) in full and final settlement of the complaint filed by the Division of Gaming Enforcement on December 6, 1983, and that upon payment of said penalty the complaint shall be dismissed with prejudice as to respondents Paisley and Zeller; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 21, 1984, to affirm and adopt the said Initial Decision Settlement and to impose a civil sanction in the amount of \$6,000 upon Bally's Park Place, Inc.,

IT IS on this 28th day of NOVEMBER 1984, ORDERED that the Initial Decision Settlement of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that Bally's Park Place, Inc. pay a civil penalty in the amount of \$6,000, as stipulated to in the Initial Decision Settlement, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, upon payment of the aforestated civil penalty, the complaint shall be dismissed with prejudice as to James A. Paisley and Frederick B. Zeller; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 1821-84

AGENCY DKT. NO. 83-415

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

Petitioner,

v.

**BALLY'S PARK PLACE, INC.,  
JAMES A. PAISLEY AND  
FREDERICK B. ZELLER,**

Respondents.

---

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Kenneth F. Oettle, Esq., for respondents (Sills, Beck, Cummis, Zuckerman, Radin & Tischman, attorneys)

Record Closed: August 17, 1984

Decided: October 1, 1984

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

Petitioner filed a complaint on December 6, 1983, alleging that respondents violated N.J.S.A. 5:12-99, 5:12-101 and N.J.A.C. 19:45-1.1 et seq. Notice of Defense and Request for Hearing was filed by the respondents on January 10, 1984. A prehearing conference was held on February 28, 1984, at the Casino Control Commission office in Lawrenceville, New Jersey, resulting in a First Prehearing Conference Order being entered on or about March 14, 1984. Pursuant to the prehearing order, the matter was transferred to the Office of Administrative Law as a contested case.

After notice, a prehearing conference in the above entitled matter was held at the Office of Administrative Law, Trenton, New Jersey, on June 4, 1984, resulting in a prehearing order being entered on June 18, 1984. Pursuant to the prehearing order, the following issues to be resolved at the hearing were identified:

- A. Is a cashier's check made payable to a patron a cash equivalent within the meaning of N.J.A.C. 19:45-1.1?
- B. What procedures are required pursuant to N.J.A.C. 19:45-1.25(e) to verify a cashier's check presented as a cash equivalent prior to its acceptance?
- C. What is the role, if any, of the credit executive in the acceptance of cash equivalents? Would such role place credit executives in an incompatible function contrary to N.J.A.C. 19:45-1.11?
- D. Pursuant to the criteria of N.J.S.A. 5:12-129 and 5:12-130, what sanctions, if any, should be imposed against each respondent if violations are found to have occurred?
- E. The following factual issues are to be determined:
  1. What steps did the corporate respondent perform to determine the validity of two (2) \$10,000 checks submitted to corporate respondent as a patron safekeeping deposit by a person who identified himself as Tiensi Mao? Was the verification procedure utilized by the corporate respondent adequate? When did the corporate respondent undergo the verification procedure?
  2. What role did respondent, Zeller, have in the acceptance of the two checks from Tiensi Mao?
  3. Was respondent, Zeller, in an incompatible function contrary to N.J.A.C. 19:45-1.11(b)?

A hearing was scheduled for 9:00 a.m. on Wednesday, August 8, 1984. Prior to the hearing date, the Office of Administrative Law was contacted by the attorneys involved in this matter, who indicated that settlement was imminent. The parties agreed to submit all stipulations of fact and settlement agreement (if finalized) by August 17, 1984. The parties then requested additional time in order to finalize the settlement agreement, which extension was granted. On August 29, 1984, a detailed stipulation of facts and settlement agreement (copy attached hereto) was submitted by the parties.

The Stipulation of Facts and Settlement Agreement consisting of 12 pages, plus exhibits A through E has been executed by (1) Kevin F. O'Toole, Deputy Attorney General for the Division of Gaming Enforcement, (2) Kenneth F. Oettle, Esq., attorney for the corporate and individual respondents, and (3) respondents James A. Paisley and Frederick B. Zeller.

The settlement agreement terminates all issues which were to be resolved at the hearing.

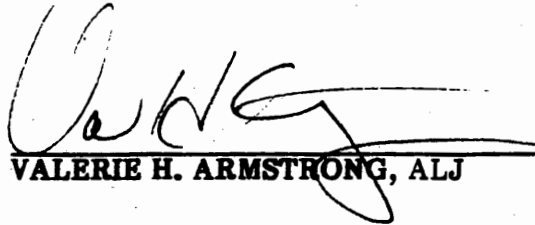
I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

It is hereby **ORDERED** that the parties comply with the terms of the attached settlement agreement and that the 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.

October 1, 1984  
DATE

  
VALERIE H. ARMSTRONG, ALJ

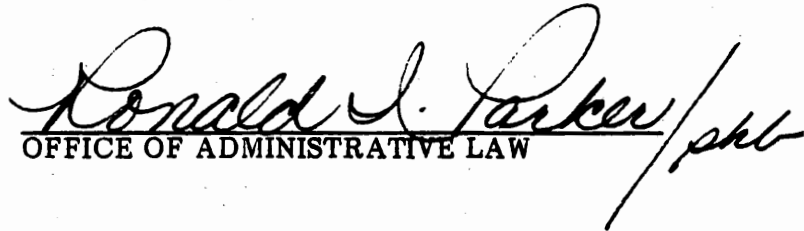
Receipt Acknowledged:

October 1, 1984  
DATE

  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

OCT 05 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

ij

EXHIBITS

None

**IRWIN I. KIMMELMAN**  
Attorney General of New Jersey  
Attorney for Plaintiff  
Richard J. Hughes Justice Complex  
Trenton, New Jersey 08625

By: **Kevin F. O'Toole**  
Deputy Attorney General

**Kenneth F. Oettle, Esq.**  
**SILLS, BECK, CUMMIS, ZUCKERMAN**  
**RADIN & TISCHMAN**  
33 Washington Street  
Newark, New Jersey 07102-3179  
Attorneys for Respondents  
**BALLY'S PARK PLACE, INC., JAMES**  
**A. PAISLEY, and FREDERICK B. ZELLER**

**STATE OF NEW JERSEY**  
**CASINO CONTROL COMMISSION**  
**OAL DOCKET NO. CCC 1821-84**  
**AGENCY DOCKET NO.: 83-415**

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

Plaintiff,

vs.

**BALLY'S PARK PLACE, INC.;**  
**JAMES A. PAISLEY, Casino Cage**  
**Supervisor, #1239-11; and**  
**FREDERICK B. ZELLER, Credit**  
**Executive, #688-11,**

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 Kevin F. O'Toole, Deputy Attorney General, and Kenneth F. Oettle, Esquire, of Sills, Beck, Cummis, Zuckerman, Radin & Tischman, Attorneys for Respondents, Bally's Park Place, Inc., James A. Paisley, and Frederick B. Zeller, and said matters having been resolved, it is hereby consented to and agreed by and between the parties that:

1. WHEREAS Respondent, Bally's Park Place, Inc., is the operator of a casino hotel licensed pursuant to the laws of New Jersey and in particular, N.J.S.A. 5:12-1, et seq. and the regulations of the Casino Control Commission.
2. WHEREAS Respondent, James A. Paisley, license #1239-11, is and was at all times relevant to this matter employed by Bally's Park Place, Inc. as a casino cage supervisor.
3. WHEREAS Respondent, Frederick B. Zeller, license #688-11, is and was at all times relevant to this matter employed by Bally's Park Place, Inc. as a casino credit executive.
4. WHEREAS on Saturday, April 30, 1983, Bally's Marketing Executive Ernest Cheung, license #43654-21 (at that time a temporary junket representative license), was contacted by telephone by one Dominic Saya, whom Mr. Cheung had known for approximately three (3) years, having met him when Cheung was a casino host at the Riviera Hotel in Las Vegas. Dominic Saya told Mr. Cheung he desired to bring in a customer from Las Vegas.
5. WHEREAS at approximately 10:00 p.m. that evening, April 30, 1983, Mr. Cheung met Dominic Saya at Bally's front desk, accompanied by an individual calling himself Tiensi Mao, described by Mr. Cheung as oriental, very well dressed, wearing

gold-rimmed glasses, in his late 40's, of medium build, and 5'10" tall.

6. WHEREAS prior to Mao's arrival at Bally's on April 30, 1983, no one at Bally's knew him, had ever seen him, or had any personal knowledge of him.
7. WHEREAS upon arrival at Bally's on April 30, 1983, Mao and Saya checked into the hotel, Mao registering as "Harry Mao, 17th floor, Desvoeux Road, Hong Kong." Mao gave no telephone number.
8. WHEREAS Ernest Cheung was then informed by Mao that he had cashier's checks that he wished to utilize for gambling purposes at Bally's.
9. WHEREAS Ernest Cheung then introduced Saya and Mao to Bally's Credit Executive Frederick (Rick) Zeller, license #688-11, for the purpose of approving Mao's deposit of two (2) cashier's checks of \$10,000 each. Mao represented to Zeller that he had just been gambling at Caesar's in Las Vegas, and that he had never gambled in Atlantic City. Mao had never before presented a cash equivalent at Bally's.
10. WHEREAS the two (2) cashier's checks presented by Mao on April 30, 1983, were nos. 19952 and 19992 respectively, each in the amount of \$10,000, dated April 28, 1983, drawn on the California Overseas Bank, Los Angeles, California, and payable to "Tiensi Mao." Attached hereto and incorporated herein and marked as Exhibit A are copies of said cashier's checks.
11. WHEREAS Mao professed to Mr. Cheung and Mr. Zeller to be good friends with the owner of the California Overseas Bank, on which

the two (2) \$10,000 cashier's checks were drawn. Mao told Cheung and Zeller that he had picked up the cashier's checks in Los Angeles, had gambled in Las Vegas, and had flown from Las Vegas to New Jersey with Dominic Saya.

12. WHEREAS Mao produced a Hong Kong passport for Mr. Zeller which contained a photograph and appeared to Mr. Zeller, Bally's credit executive, to be in proper form. Since Mr. Zeller's sister-in-law and husband live in Hong Kong, Mr. Zeller conversed with Mao about that area which satisfied him that Mao knew the city. Mao produced no identification credentials other than the passport described above. No copy of Mao's passport was obtained.
13. WHEREAS although Mr. Cheung and Mr. Zeller noticed that Mao had a number of cashier's checks with him, Mao limited his proffer to the two (2) \$10,000 cashier's checks described in paragraph #10, supra.
14. WHEREAS from 1974 until his employment in the casino industry in 1980, Mr. Zeller was employed in the banking industry in New Jersey, including the position of regional bank manager. On April 30, 1983, Mr. Zeller personally examined the face of the two (2) cashier's checks presented by Mao and noted the following: (1) the bank logo was stamped on the checks; (2) the checks had an "ABA" number encoded at the bottom left; (3) the check amount was stamped on, and the checks were perforated; (4) the heavy paper of the checks were characteristic of cashier's checks, and (5) the checks were stamped "Cashier's Check" and appeared to be signed

by an authorized representative of the bank. Based on his previous banking experience, Mr. Zeller's facial examination of the checks led him to believe that they were authentic checks of the California Overseas Bank and were not forged, altered or counterfeited.

15. WHEREAS Mr. Zeller then directed a credit clerk to review Bally's Bank Registry to determine if the ABA number on the checks proffered by Mao were correct. The ABA numbers checked out.
16. WHEREAS after examining the face of the checks, Mr. Zeller then brought Mao to the "side customer's window" at the cashier's cage where Mao's checks were presented to Cage Cashier Supervisor James Paisley, license #1239-11.
17. WHEREAS Mr. Paisley photocopied the checks, wrote "Please Verify" on the photocopy of the two (2) checks, and left the photocopy in the credit department in the casino cage for a cage credit clerk to call the California Overseas Bank on Monday, May 2, 1983, in order to determine if the checks had in fact been issued to Tiensi Mao in the stated amounts. Attached hereto and incorporated herein and marked as Exhibit B is a true copy of the photocopy of the checks with said notation contained thereon.
18. WHEREAS independently of Mr. Zeller's inspection, Cage Supervisor Paisley also examined Mao's passport and examined the face of the checks to determine that they were properly signed and dated, that the numerical amounts thereupon were identical

to the written amounts, and that they appeared to be cashier's checks drawn on a bank.

19. WHEREAS Mr. Paisley then prepared a safekeeping file with the name, address, and date of birth of patron Tiensi Mao along with the signature of Mao. Attached hereto and incorporated herein and marked as Exhibit C is a true copy of said safekeeping file.
20. WHEREAS Mr. Paisley also prepared Bally's Cash Deposit Receipt No. 25212 pertaining to the \$20,000 cash deposit of Tiensi Mao. All the requisite information was recorded and the customer signed the receipt. Attached hereto and incorporated herein and marked as Exhibit D is a true copy of said Cash Deposit Receipt.
21. WHEREAS Mao then endorsed the checks while at the casino cage, and Paisley and Zeller initialed them. The two (2) cashier's checks and Cash Deposit Receipt No. 25212 were then time stamped 12:11 a.m., May 1, 1983 (April 30, gaming day). A record was then made in a casino cage log book, which is used at Bally's in determining whether a patron has previously presented cash equivalents.
22. WHEREAS in conjunction with the acceptance of the two (2) \$10,000 cashier's checks, Zeller attempted to reach two (2) employees of Caesar's in Las Vegas, who possibly could have confirmed the type of player or person Mao was. Neither employee was available at the time they were called.
23. WHEREAS at 1:28 a.m. on May 1, 1983, Mao made a \$10,000 customer deposit withdrawal (C.D.W.) at a baccarat table at Bally's. At 11:44 a.m. Sunday, the next gaming day, Mao made a

\$4,000 C.D.W. at a blackjack table, and at 12:24 p.m. later that same Sunday, Mao withdrew the remaining \$6,000 at a baccarat table. Mao's player rating indicates that he lost \$3,900 gambling.

24. WHEREAS on Monday, May 2, 1983, Bally's telephoned the California Overseas Bank regarding the cashier's checks accepted from Tiensi Mao. Mr. Joseph del Rosario, Operations Manager of the California Overseas Bank, advised Bally's Credit Manager, Don Williams, that the cashier's checks had been stolen. Bally's deposited the two (2) cashier's checks nevertheless, and on or about May 17, 1983, they were returned as stolen. Mao's three (3) counter checks for \$10,000, \$4,000 and \$6,000 respectively, were never paid.

25. WHEREAS on Monday, May 2, 1983, a Bally's credit clerk contacted Central Credit to obtain any information available pertaining to Tiensi Mao. The credit clerk recorded the information obtained from Central Credit on Mao's safekeeping file. Subsequently, Bally's collection manager Paul Corvari contacted the Union Plaza Hotel and Casino, Las Vegas and the Sands Hotel and Casino, Las Vegas to obtain any information that would possibly aid in the collection process.

26. WHEREAS on May 5, 1983, representatives of Bally's Park Place, Inc. contacted Detective James Boylan of the Division of Gaming Enforcement for the purpose of reporting to the Division the fraudulent activity of Tiensi Mao in presenting the two (2) stolen cashier's checks described in paragraph #10, supra. The details of

presentment and acceptance, including the employees involved in the transaction, were reported to Detective Boylan at this time.

27. WHEREAS later that same date, May 5, 1983, Detective James Boylan contacted representatives of the California Overseas Bank and was advised that checks numbered 19952 and 19992 were from a series of 200 checks (19801 through 20000) stolen from the California Overseas Bank vault sometime between February 14, 1983 and April 13, 1983. The bank became aware of the theft on April 13, 1983 when an anonymous female contacted the bank to inquire about a \$15,000 check from the aforementioned series. When the bank attempted to verify the check, the theft was discovered. Detective Boylan was also advised that on Monday, May 2, 1983, the bank had received a call from the Sands Hotel and Casino in Las Vegas, regarding a \$50,000 check from the stolen series. Mao had apparently attempted, unsuccessfully, to cash the \$50,000 cashier's check at the Sands, Las Vegas.
28. WHEREAS on December 6, 1983, the Division of Gaming Enforcement filed the instant complaint against respondents Bally's Park Place, Inc., James A. Paisley, and Frederick B. Zeller.
29. WHEREAS said complaint charged respondent, Bally's Park Place, Inc., with violating Commission regulations in two respects: (1) failing to perform the necessary verification to determine the validity of the cashier's checks presented by Tiensi Mao prior to their acceptance as required by N.J.A.C. 19:45-1.25(e); and (2) having an internal policy whereby credit executives would approve

the acceptance of cash equivalents prior to their receipt by cage cashiers thereby placing credit executives in an incompatible function in violation of N.J.A.C. 19:45-1.11(b).

30. WHEREAS with respect to the incompatible function issue, the Division's position was that a credit executive's approval to accept cash equivalents from a patron was unduly relied upon by casino cage representatives responsible for making the decision as to whether or not to accept a cash equivalent, thereby placing credit executives in an incompatible function as that concept is defined in N.J.A.C. 19:45-1.11(b).

31. WHEREAS during the prehearing discovery process Bally's has represented to the Division that their internal policy with regard to the acceptance of cash equivalents was, and presently is, to allow credit executives to approve the individual presenting the cash equivalents when the cash equivalents are being presented as a safekeeping deposit. Bally's has further represented to the Division that the credit executive's approval of the individual presenting the cash equivalent does not, nor is it intended to, abdicate the casino cage's responsibility to decide whether or not to accept a cash equivalent. Bally's acknowledges that, in the absence of a written policy statement, their internal policy as described above resulted in the situation where an inference could be drawn that credit executives were performing an incompatible function.

32. WHEREAS the Division of Gaming Enforcement requested and respondent, Bally's Park Place, Inc., agreed to prepare and

circulate to all credit executive and cage personnel a written memorandum advising cage personnel of their responsibilities in the acceptance of cash equivalents and advising credit executives of their role in providing input relating to the persons presenting cash equivalents. Attached hereto and incorporated herein and marked as Exhibit E is a true copy of said memorandum.

33. WHEREAS with respect to the issue of Bally's failure to perform the necessary verification to determine the validity of the cashier's checks presented by Tiensi Mao prior to their acceptance, the Division's position was that under the facts and circumstances of this case the "necessary verification" required examining the face of the instruments, checking the patron's identification credentials, and calling the issuing bank prior to acceptance.
34. WHEREAS respondent, Bally's Park Place, Inc. acknowledges that, under the facts and circumstances of this case, the actions performed on gaming date April 30, 1983, in the acceptance of the two (2) cashier's checks proffered by Tiensi Mao did not constitute the "necessary verification" of said cash equivalents prior to their acceptance as required by N.J.A.C. 19:45-1.25(e).
35. WHEREAS the parties recognize the need to comply with the Casino Control Act and regulations promulgated therefrom, and Bally's Park Place, Inc., James A. Paisley, and Frederick B. Zeller have 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:

- A. Respondent, Bally's Park Place, Inc., shall pay the sum of \$6,000 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5) for the aforementioned regulatory violations of N.J.A.C. 19:45-1.25(e) in full and final settlement of the allegations set forth in the Division of Gaming Enforcement's Complaint.
- B. The Complaint in this matter shall, upon approval by the Casino Control Commission of this settlement and payment of said fine by Bally's, be dismissed with prejudice against James A. Paisley and Frederick B. Zeller.

By Kevin F. O'Toole  
Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff  
State of New Jersey  
Department of Law & Public Safety  
Division of Gaming Enforcement

By Kenneth F. Oertle  
Kenneth F. Oertle  
Sills, Beck, Cummis, Zuckerman  
Radin, and Tischman  
Attorneys for Respondents  
Bally's Park Place, Inc., James A.  
Paisley, and Frederick B. Zeller

James A. Paisley  
James A. Paisley  
Respondent

Frederick B. Zeller  
Frederick B. Zeller  
Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 48047-22  
AGENCY DOCKET NO. 84-EA-45  
OAL DOCKET NO. CCC 3030-84

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IN THE MATTER OF THE APPLICATION  
OF DORIS L. BARNES  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 1, 1984, recommending that the application of Doris L. Barnes for a casino employee license be granted subject to the condition that such license shall not be issued until she has successfully completed the terms of her probation, including full restitution; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on October 16, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on November 14, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 16th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Doris L. Barnes for a casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof provided, however, that no license credential shall be issued until the Casino Control Commission receives documentation from the Atlantic County Probation Department establishing that Ms. Barnes has successfully completed the terms of her probation, including full restitution as required by order of the Superior Court dated April 29, 1983; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 3030-84**

**AGENCY DKT. NO. 84-EA-45**

**DORIS L. BARNES,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT, DEPARTMENT**

**OF LAW AND PUBLIC SAFETY,**

Respondent.

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**Doris L. Barnes, pro se**

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

Record Closed: August 16, 1984

Decided: October 1, 1984

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner's casino employee license expired, resulting in a reapplication for licensure. By letter report to the Casino Control Commission (Commission) dated February 17, 1984, the Division of Gaming Enforcement (DGE) objected to petitioner's licensure. When petitioner requested a hearing, the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing order entered on June 18, 1984, defined the following issues to be resolved at the hearing:

1. Whether petitioner should be denied licensure pursuant to section 86c(1) of the Casino Control Act, (Act) as a result of her guilty plea to the third count of an indictment charging her with a violation of N.J.S.A. 2C:20-4 (theft by deception), a crime of the third degree in that the theft involved money in excess of \$500.
2. Whether petitioner can demonstrate by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of section 89b(2) of the Act, as incorporated in section 90 of the Act, notwithstanding her guilty plea to a violation of N.J.S.A. 2C:20-4.
3. Whether petitioner can affirmatively demonstrate her rehabilitation pursuant to N.J.S.A. 5:12-90h.
4. Has petitioner made restitution as a result of her violation of N.J.S.A. 2C:20-4? What impact will petitioner's restitution (or failure to make restitution) have upon her reapplication for licensure?

A hearing was held at the Ventnor City Hall, Ventnor, New Jersey, on August 16, 1984.

#### FACTUAL FINDINGS

The relevant facts are undisputed. Ms. Barnes, age 25 years, is the mother of four children ranging in ages from 4 months to 12 years. She supports the children without the help of their father, although she does receive some financial assistance from her boyfriend.

Petitioner has had the following casino employment experience:

1. She worked at Bally's Park Place as a room attendant in 1979. She left that job because she did not like her work.
2. She then went to work for the Sands Hotel Casino for approximately six months during 1979 and 1980, as a public area attendant on the casino floor. She was terminated after being hospitalized due to an automobile accident because she allegedly did not call in to her employer during her absence from work.
3. In 1982 she went to work simultaneously for the Tropicana Hotel Casino and Playboy Hotel Casino, working different shifts for each employer. She was terminated from the Tropicana for talking on the floor. She was ultimately terminated from the Playboy Hotel Casino when she was arrested in 1982.

Approximately two months after she was terminated at Playboy, she went to work for a glass factory, where she continued to work until early 1984, at which time she assumed her present job cleaning rooms at the Madison House Hotel.

In May 1982, petitioner took six blank checks from E.L. Krippin (a good friend) by removing them from the dashboard of his car. She took the checks without Mr. Krippin's permission, made the checks payable to herself, endorsed Krippin's name on the checks, and proceeded to cash them at a bank. The total amount of the checks cashed was \$1,010. Petitioner was arrested by the Atlantic City Police on her job at the Playboy Hotel Casino.

She was indicted on August 17, 1982 by the Atlantic County Grand Jury for forgery in violation of N.J.S.A. 2C:21-1a(2), uttering a forged instrument in violation of N.J.S.A. 2C:21-1a(3), and theft by deception (in excess of \$500) in violation of N.J.S.A. 2C:20-4 (R-1). On August 30, 1982, petitioner entered a plea of not guilty to the three count indictment (R-1). On April 18, 1983, petitioner retracted the not guilty plea and entered a guilty plea. On April 29, 1983, she was sentenced on Count Three of the

indictment to probation for a period of 18 months with the special conditions that she (1) find and maintain employment, (2) serve eight days in the Atlantic County Jail, and (3) pay restitution in the amount of \$1,010 at the rate of \$40 per week. She was sentenced identically for counts one and two, with the three sentences to run concurrently. She received credit for eight days previously served in the Atlantic County Jail.

The sentence worksheet listed eight mitigating factors, and two aggravating factors, which were considered at the sentencing (R-1). The Honorable Robert Neustadter, J.S.C., gave the following reason for imposing the sentence (R-1):

This sentence, as recommended in the plea agreement (except for community service) is fair and reasonable and should be adequate for purposes of punishment, as a deterrent, for rehabilitation, and so as not to deprecate the seriousness of the offenses. If probation is violated defendant will be sentenced to the County Jail to from 90-180 days.

Petitioner has no criminal background, other than the April 1983 conviction.

Petitioner had been admitted to the Atlantic County Pretrial Intervention Program. She stopped attending the program due to lack of transportation to the program site. She was terminated from the program which resulted in her entry of the guilty plea.

Petitioner is still friendly with E.L. Krippin. She has been making restitution through her probation officer at the Atlantic County Probation Department. From September to December 1983 petitioner could not make the required \$40 per week payments, since she was only earning \$100 per week. Consequently, she paid amounts which varied from \$15 to \$25 per week. From December 1983 to July 1984, petitioner made minimal payments, since she was expecting a baby who was born in March 1984. In July 1984, petitioner commenced paying restitution at the rate of \$75 per month. Heather Delmar, petitioner's probation officer stated in a July 26, 1984 letter (R-2), that petitioner has made a sincere attempt to pay as much as possible toward restitution. Ms. Delmar further indicated in her letter, that petitioner has been very cooperative while on probation, she reports regularly, and has maintained employment. She has presented no problems to her probation officer. At the time of the hearing, petitioner owed approximately \$400 toward restitution.

When petitioner cashed the checks drawn upon E.L. Krippin's account, she utilized the money to gamble at the Golden Nugget Casino blackjack tables. Petitioner was aware of the fact that as a casino employee she should not be gambling. Petitioner has not gambled since she was arrested. Petitioner's credible testimony is that she realized when she was arrested that the gambling problem caused her to commit a crime. She explained that she went to the casino one day and discovered she liked gambling. When she started to win, she found herself gambling constantly. Ultimately she began to lose, and she realized that she had to stop because she had a problem. Petitioner admits that she made a mistake for which she is remorseful. She wishes that she had not indulged in the criminal behavior which resulted in her arrest and conviction. Petitioner credibly testified that she has no further desire to gamble, and that she is aware of the fact that if she receives her casino employee license, that she will be prohibited from gambling in the casinos.

At the hearing, petitioner was impressively open and honest about admitting her mistake and explaining the exact circumstances of the crime. It was apparent from the attitude conveyed through her credible testimony that she is unlikely to repeat the criminal behavior which resulted in her conviction.

#### DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86c(1) provides that the Commission shall deny a license to any applicant who has been convicted of certain enumerated offenses known as statutory disqualifying offenses. Included among those offenses is N.J.S.A. 2C:20-4 (if the offense is of the second or third degree). N.J.S.A. 2C:20-2b(2) defines theft in the amount of \$1000 as a crime of the third degree. I therefore **CONCLUDE** that petitioner's conviction for a violation of N.J.S.A. 2C:20-4 was a conviction of a third degree statutory disqualifying offense. Petitioner's convictions of N.J.S.A. 2C:21-1a(2) and (3), constituted crimes of the fourth degree (R-1), and therefore are not statutory disqualifying offenses.

N.J.S.A. 5:12-90h provides that an applicant shall not be denied a casino employee license on the basis of a conviction of any statutory disqualifying offense if the applicant can affirmatively demonstrate rehabilitation. The following factors are to be considered in making a determination of rehabilitation:

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

Petitioner's criminal offense occurred over two years ago when she was 23 years old. She has never been convicted of any other crime. She has openly admitted that she committed the crime. It is significant that her probation officer has found her to be extremely cooperative in making a good faith attempt at restitution. Also significant are certain of the mitigating factors which were set forth in petitioner's sentence worksheet (R-1) which indicated the following:

1. Her conduct neither caused nor threatened serious harm.

2. She did not contemplate that her conduct would cause or threaten serious harm.
3. She will make restitution.
4. There is no prior history of delinquency or criminal activity.
5. Her conduct was the result of circumstances unlikely to recur.
6. Her character and attitude indicate that she is unlikely to commit another crime or offense.

It is apparent that petitioner had a gambling problem which resulted in her engaging in criminal behavior. Fortunately, she recognized that she had a problem. She now has her priorities appropriately established. She realizes that forging checks and gambling with the proceeds is unacceptable behavior, is not in her best interest, and may jeopardize her casino license which is vital to her and the financial survival of her children. Having had the opportunity to observe petitioner's demeanor and attitude at the time of the hearing, having listened to her forthright and credible testimony, and considering (1) the circumstances surrounding the crime, (2) the reasons for sentencing, (3) petitioner's lack of prior criminal history and, (4) her post-offense behavior, I **CONCLUDE** that petitioner has affirmatively demonstrated her rehabilitation.

Prior to petitioner's criminal offense, she had received a casino employee license after presumably having met the licensure requirements of the Casino Control Act. In this application for renewal, the only evidence presented by the DGE as reason to deny the license, is the 1983 conviction. However, petitioner is required to establish by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of section 89b(2) of the Act. It has previously been determined that reputation and actual character are not necessarily one and the same. An applicant may possess an undeserved bad reputation, in which case the applicant must address the reputation he possesses, and he must convincingly demonstrate that the bad reputation does not reflect his true character. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979). In the present case there was no suggestion that petitioner possesses a

bad reputation. However, her actual character is in issue. The nature of the crime for which petitioner was convicted is one which specifically relates to the character traits of honesty and integrity. Since petitioner has only been convicted of the one offense which arose out of the May 1982 incident, a determination as to her post-offense good character, honesty and integrity requires an examination of her conduct, behavior and attitude since the date of the offense. I **CONCLUDE** that evidence which has led to the conclusion that petitioner has rehabilitated herself, specifically relates to the issue of her good character, honesty and integrity. She has had the personal strength to admit her mistake and she has avoided further criminal behavior. Thus far she has complied with the terms of her probationary period (with the exception of some minor deviations from the regular restitution payments, for which she has given an adequate explanation and which apparently did not present a problem for her probation officer). Her probation officer has given a very favorable report of petitioner's post-conviction behavior and attitude. I therefore **CONCLUDE** that petitioner has met the statutory requirement of good character, honesty and integrity by clear and convincing evidence.

It should be noted that petitioner's probationary period will be expiring imminently. A critical aspect of the sentence petitioner received was the requirement to make restitution. I **CONCLUDE** that satisfactory completion of petitioner's probation including full restitution are essential to petitioner's licensure renewal.

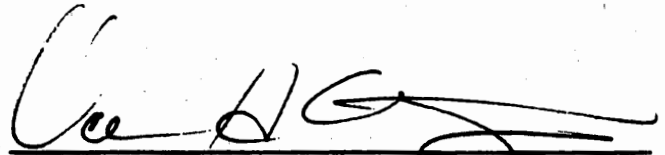
#### ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner shall be granted her casino employee license, upon successful completion of her probationary period as well as full restitution of the \$1,010. Petitioner shall not be issued a license until satisfactory documentation has been sent by the Atlantic County Probation Department to the Casino Control Commission evidencing that she has successfully completed probation, including full restitution.

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 1, 1984  
DATE

  
VALERIE H. ARMSTRONG, ALJ

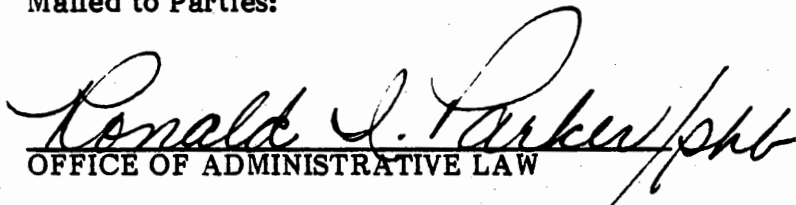
Receipt Acknowledged:

October 1, 1984  
DATE

  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

OCT 03 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

- R-1 Certified copy of Indictments in State of New Jersey v. Doris Barnes;  
Judgment of Conviction; Sentence Worksheet (9 pages)
- R-2 Letter from Atlantic County Probation Department re Doris Barnes, dated  
July 6, 1984

WITNESS LIST

FOR PETITIONER:

Doris L. Barnes

FOR RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-283  
OAL DOCKET NO. CCC 8593-83  
REGISTRATION NO. 38928-40

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

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 18, 1984, recommending that the respondent's casino hotel employee registration be revoked; and the respondent having filed exceptions thereto on September 28, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 28, 1984, to affirm and adopt the said Initial Decision and to revoke the respondent's casino hotel employee registration,

IT IS on this 3rd day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

OAL  
WORD PROCESSING  
TRENTON

SEP 18 4 09 PM '84

**INITIAL DECISION**

OAL DKT. NO. CCC 8593-83

AGENCY DKT. NO. 83-283

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**JOSE BONILLA,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey, attorney) for petitioner

**Julio L. Mendez, Esq.,** for respondent (Reuss & Cavagnaro, P.A., attorneys)

Record Closed: August 3, 1984

Decided: September 17, 1984

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On August 25, 1983, petitioner filed a complaint seeking to revoke respondent's casino hotel employee registration alleging that: (1) the circumstances surrounding respondent's illegal entry into the United States are inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4), and (2) respondent stated a fraudulent place of birth on his Personal History Disclosure Form-4 which warrants revocation of his registration pursuant to N.J.S.A. 5:12-86b.

After notice, a prehearing conference was held on December 13, 1983, with the matter being set down for a hearing for April 9 and 10, 1984. The matter was

abandoned on April 9, 1984, when respondent failed to appear. Pursuant to a letter from respondent's attorney, who explained his client's failure to appear, the matter was ultimately reinstated. After notice, a second prehearing telephone conference was held on May 29, 1984, at which time the parties agreed that the first prehearing order dated December 20, 1983 did not warrant revision. The following issues were identified pursuant to the first prehearing order:

1. Whether revocation of respondent's casino hotel employee registration is appropriate pursuant to N.J.S.A. 5:12-86b on the grounds that he allegedly submitted false information in his Personal History Disclosure Form by stating that he was born in Puerto Rico when in fact he was born in El Salvador; and
2. whether the facts and circumstances surrounding respondent's entry into the United States and his present status under the immigration laws make his continued registration inimical to the policies of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4).

A hearing was held on July 5, 1984, in Pleasantville, New Jersey. The record closed on August 3, 1984, permitting both parties the opportunity to submit post-hearing briefs. A brief was submitted by respondent. No brief was submitted by petitioner.

At the hearing, Henry Willett, an agent for the Immigration and Naturalization Service, was sworn in as interpreter for the Spanish-speaking respondent. Respondent's attorney, who is fluent in English and Spanish, advised respondent that Mr. Willett's employment position might be adversarial to respondent's interests in this matter. Nevertheless, respondent and his attorney agreed to have Mr. Willett translate for respondent. At the conclusion of the hearing respondent's attorney commended Mr. Willett for his excellent and fair job in serving as interpreter.

#### FACTUAL FINDINGS

I find the following relevant facts:

Respondent, age 28 years, holds a casino hotel employee registration and works as a kitchen porter at Caesar's Boardwalk Regency Hotel Casino. He was born and resided in El Salvador until July 1981 at which time he admittedly entered the United States (California) illegally.

Respondent came to the United States for personal security as a result of what he perceived to be a bad political situation in El Salvador. Respondent moved to Atlantic City approximately two weeks after coming to the United States because he had heard that there were substantial employment opportunities available. During the latter part of 1981 or early 1982 (after his entry into the United States), respondent met a woman named Sonia Noemi Corredor. He began living with her shortly thereafter. They were married in Atlantic City, New Jersey, on May 28, 1982 (R-1). They ultimately separated in June 1983.

After moving to Atlantic City respondent commenced working for Viking Yacht Company. On January 12, 1982, he executed a Personal History Disclosure Form-4 (PHDF) in order to seek employment as a casino hotel employee (P-2). In completing the PHDF respondent was assisted by a person who spoke English who actually wrote down the answers to the questions for respondent. A friend of respondent recommended that respondent state on the PHDF that he was born in Puerto Rico because he did not have legal status through the Immigration Service at the time the PHDF was completed. Respondent ultimately left his job at Viking Yacht Company to assume a better paying job (P-2) at the Playboy Hotel Casino.

In approximately April 1982, respondent was arrested by the Department of Immigration and Naturalization Service while he was on the job at Playboy Hotel Casino (his first casino job after completing the PHDF). When he was arrested, he deliberately gave to the arresting officer a false date of birth, but he did correctly state that he was born in El Salvador. His reason for giving a false date of birth was because he felt he was being insulted by the immigration officer.

Pursuant to Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien (P-1), respondent was ordered to appear for a deportation proceeding before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice on April 29, 1982, to show cause why he should not be deported from the United States for violation of Section 241(a)(2) of the Immigration and Nationality Act, in that he entered the United States without inspection in July 1977 (P-1). Respondent admitted that when he was arrested by the immigration officer, he also gave a false date of entry into the United States, again, because the respondent perceived that the immigration officer was insulting him. Respondent also stated that he would not tell the truth to any "policeman" unless his attorney was present. On

January 25, 1983, respondent was granted an extension of time until July 25, 1983, in which to depart from the United States (P-1). After the arrest, respondent's wife filed an I-130 application with the Immigration and Naturalization Service requesting that respondent be given permanent residency in the United States. That application is still pending.

On March 10, 1984, respondent filed a Form I-589 with the Immigration and Naturalization Service requesting political asylum in the United States (R-2). That application is also pending.

On June 16, 1982, respondent commenced employment as a kitchen porter at Caesar's Boardwalk Regency Hotel Casino (R-3). The executive steward for whom respondent works has found him to be a ". . . steady, dependable worker" (R-3).

Shortly after entering the United States, respondent purchased a Social Security number from a person to whom he paid a nominal amount of money. Respondent now admits that the Social Security number is false, but he did not realize at the time that he obtained the number that he was purchasing it illegally.

Respondent could not read English at the time that he completed the PHDF. At the hearing, respondent identified his signature, and his initials on the bottom of each page. However, respondent stated that the person who helped him complete the PHDF did not tell him that failure to truthfully answer any question on the form would result in the denial of his application. The PHDF was notarized but the notary public did not tell respondent that he was under a duty to tell the truth on the application form. I reject respondent's testimony that he was not aware that failure to answer any questions on the PHDF completely and truthfully would result in denial of his application. Respondent initialed each page of the PHDF, including the warning as to the ramifications of providing false information. Respondent was obviously capable of finding out how to make the application. I simply find his testimony incredible that he did not have advice about what he was signing. Further, I construe the respondent's initials and signature as an admission that he knew what he was signing. From the answers given to the questions, it is obvious that respondent had someone explain to him the nature of all of the questions. I simply FIND it inconceivable that that person did not also explain to respondent the significance of the bold face warning on pages one and three of the PHDF.

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner raised the following arguments in opening and closing statements in support of its revocation action:

1. Respondent submitted false information on his PHDF, he possesses a false Social Security number, and he entered into a fraudulent marriage solely for the purpose of remaining in the United States of America, all of which render his continued registration inimical to the policy of the Casino Control Act and to casino operations;
2. Because respondent entered the United States illegally, he had no right to employment; and
3. Respondent's English language limitation does not overcome the fact that he submitted false information on his PHDF, contrary to the warning on the PHDF that failure to answer any question truthfully would result in a denial of licensure. Possession of a casino hotel employee registration is a revocable privilege which respondent obtained through the submission of false information to the Casino Control Commission via the PHDF.

Respondent argued at the hearing as well as in his post-hearing brief that revocation is inappropriate for the following reasons:

1. Respondent's alien status in this country (with regard to residency and employment) is an issue over which this forum has no jurisdiction and which must be decided by the Department of Justice, Bureau of Immigration/Naturalization Service;
2. Respondent did not understand the ramifications of providing false information on his PHDF;
3. Respondent provided a false birthplace on his PHDF in order to not attract investigations into his background. He provided false informa-

tion because he had a substantial need to obtain his registration in order to commence employment;

4. The Casino Control Act does not specifically prohibit an applicant with questionable immigration status from obtaining a casino hotel employee registration. The primary legislative objective of the Casino Control Act with regard to employment and licensing is to prohibit criminal and organized crime elements from invading the casino industry;
5. Respondent meets the residency requirements of N.J.S.A. 5:12-42; and
6. Respondent has a good employment record in the casino industry and has not committed any statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c.
7. Respondent has provided a credible explanation as to why he provided incorrect information on his PHDF. Respondent, in order to survive had to leave his country and fend for himself in the United States. That has led him to commit acts that may be contrary to acceptable standards of behavior. N.J.S.A. 5:12-91(h) and (e) provide the Casino Control Commission with the discretion as to what course of action to follow in each particular case where a registrant has failed to meet certain qualification criteria. The Casino Control Commission has the authority to enter a more lenient penalty than revocation of respondent's registration.

The Casino Control Commission (Commission) has ruled that in determining whether an offense is "inimical," the unique circumstances of each case must be considered and an examination should be made of 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. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979). In that decision, the Commission stated the following, at page 15:

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.

N.J.S.A. 5:12-1 states the declaration of policy and legislative findings for the Casino Control Act. The policy statement is very clear that the casino gaming industry is a highly regulated one which requires strict adherence to the regulatory process. Subsection b(8) specifically provides that participation in casino operations as a registrant

...under this Act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual ... registrant and upon the discharge of the affirmative responsibility of each such...registrant to provide to the regulatory and investigatory authority as established by this Act any assistance and information necessary to assure that the policies declared by this Act are achieved. Consistent with this policy, it is the intent of this Act to preclude the creation of any property right in any ... registration ... permitted by this Act, the accrual of any value to the privilege of participation in gaming operations ... and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Respondent's arrest by the Immigration and Naturalization Service resulted in the institution of a deportation proceeding. The United States Supreme Court recently held at pages 5-6, In the Matter of Immigration and Naturalization Service v. Lopez-Mendoza, No. 83-491, argued April 18, 1984, decided July 5, 1984, that a deportation proceeding is a civil action in which a determination is made as to a person's eligibility to remain in the United States and that the purpose of a deportation proceeding is not to punish past transgressions but to end continuing violations of the immigration laws. Respondent is presently residing within the United States pending a determination on his I-130 application and his application for political asylum. I **CONCLUDE** that I have no jurisdiction to make a determination that respondent's current presence in the United States is illegal. Rather, that is a matter to be determined by appropriate proceedings instituted through the Immigration and Naturalization Service.

I further **CONCLUDE** that I cannot make a determination that the words stamped upon the United States Department of Justice Order to Show Cause (P-1) stating "bond-employment not authorized" is adequate in and of itself to determine that respondent has violated any provision of the Casino Control Act by illegally pursuing employment in the United States. Absent proofs introduced through an expert in immigration and naturalization law I am unwilling to accord those words any weight whatsoever.

With regard to respondent's illegal entry into the United States and his present status as an alien, I **CONCLUDE** that petitioner has not demonstrated that respondent has committed an offense which is inimical to the policy of the Casino Control Act and casino operations. Respondent has not committed any criminal or quasi-criminal offenses. There is no evidence which suggests that respondent's continued participation as a casino hotel employee registrant would in any way undermine public confidence in the integrity of the regulatory process or of gaming operations. There was no proof presented that respondent's illegal entry into the United States and his alien status would in any way impact upon the methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. There was no evidence presented that respondent is in violation of a deportation order. Respondent cannot personally change the fact that he entered this county illegally. He has, however, attempted to attain legal status through his I-130 application and his application for political asylum, both of which are presently pending. Pursuant to the Commission's explanation, in Resorts, supra, of the factors to be considered in making a determination whether an offense is inimical I **CONCLUDE** that the particular circumstances of this case with regard to respondent's illegal alien status do not warrant a finding of inimicality.

If respondent is employed in violation of the Immigration Nationality Act or if he is in violation of any deportation order, then the burden was upon petitioner to provide those proofs. I cannot conclude that respondent's illegal entry into this country, in an attempt to escape a political situation which he perceived was personally threatening to him, is in any way in and of itself inimical to the Casino Control Act. By way of note, the Casino Control Act does not require a registration applicant to be a citizen of the United States, nor does the Casino Control Act specifically prohibit issuance of a registration to an applicant who admittedly entered this country illegally. Further, there were no proofs presented which even remotely suggested that respondent's marriage was fraudulent. The

undisputed facts are that respondent and his wife lived together for a period of time prior to their marriage, they married in May 1982, lived together thereafter for approximately one year, and divorce proceedings are now pending.

N.J.S.A. 5:12-86b, provides that the Commission may deny a license or registration to an applicant who has failed to supply information which is untrue or misleading as to a material fact pertaining to the qualification criteria. The Commission has stated "... not every failure to provide material information should be deemed a disqualifying event. 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." Resorts, supra, at page 13.

Respondent admittedly and deliberately stated a false place of birth on his PHDF. Further, the answers to questions 2 (which deals with the applicant's residences) and 6 (applicant's employment history) gave the impression that respondent has been in this country since at least 1976. I therefore **CONCLUDE** that respondent knowingly provided false information on his PHDF. I further **CONCLUDE** that questions 2 and 6 as well as the birth place require disclosure of facts which are material to the application process. Obviously an applicant's employment history is pertinent to a licensing procedure involving a request for employment. Pursuant to N.J.S.A. 5:12-91c the Commission has the right to consider the length of an applicant's residence in the state of New Jersey. The applicant's place of birth may be material to conducting further investigation of the applicant. Clearly, respondent considered the birth place to be material since he felt that listing his correct birth place might jeopardize his application.

Respondent credibly testified that he left El Salvador due to a dangerous political situation, which he felt was threatening the security of his personal life. Because he admittedly entered the country illegally and did not have legal residence established through the Immigration and Naturalization Service, he accepted the advice of a friend to falsify the information on the PHDF in an attempt to seek and maintain employment.

While respondent's apparent motivation in providing the false information on his PHDF was for economic survival by seeking better employment, that does not condone in any way the providing of false information in an application process in an extremely highly regulated industry. Respondent has argued that the primary legislative objective of

the Casino Control Act with regard to employment and licensing is to prohibit criminal and organized crime elements from invading the casino industry. However, N.J.S.A. 5:12-86b provides that a casino registration may be denied to any applicant who has provided untrue information pertaining to a material fact, and does not in any way distinguish between false information which may be related to criminal versus noncriminal material facts. Respondent's desire to improve his employment status does not excuse the untruthful statements he made on his PHDF. The fact that respondent left his native country under adverse circumstances, when considered with his desire to seek a better job (having left Viking Yacht Company to earn more money) does not serve to mitigate against his violation of 5:12-86b. Notwithstanding that respondent entered this country in a desire to survive both personally and economically, he should not be held to any lesser standard than an applicant who is a citizen of the United States and who applies for a casino registration in order to improve his employment position.

I, therefore, **CONCLUDE** that respondent's willful and deliberate providing of false information on his PHDF as to material facts, is so contrary to the regulatory process, that the only appropriate penalty is revocation of his casino hotel employee registration.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that respondent's registration be revoked pursuant to N.J.S.A. 5:12-86b and 512-129.

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 17, 1984  
DATE

17 SEP 1984  
DATE

SEP 20 1984  
DATE

ml/E

*Valerie H. Armstrong*  
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

*[Signature]*  
CASINO CONTROL COMMISSION  
Principal Legal Analyst

Mailed to Parties:

*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW *phb*

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

- P-1 Record of Deportable Alien, dated April 27, 1982; Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, dated April 27, 1982; Extension of Time in Which to Depart from the United States, United States Department of Justice, Immigration and Naturalization Service, dated January 25, 1983 (3 pages)
- P-2 Respondent's Personal History Disclosure Form-4
- R-1 Respondent's marriage certificate evidencing marriage to Sonia Noemi Corredor
- R-2 Respondent's request for political asylum (2 pages)
- R-3 Recommendation letter for respondent from John DiPierro, Executive Steward, dated November 29, 1983 (2 pages)

LIST OF WITNESSES

FOR PETITIONER:

None

FOR RESPONDENT:

Jose Bonilla

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-78  
OAL DOCKET NO. CCC 8660-83  
APPLICATION NO. 42037-21

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IN THE MATTER OF THE APPLICATION  
OF STEVEN M. BUCHER FOR A  
CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 11, 1984, recommending that the application of Steven M. Bucher for a casino employee license be granted; and neither party having filed exceptions or objections thereto; and it appearing that no certification verifying completion of requisite training in the game of blackjack has been provided to the Commission by reason of the applicant's failure to satisfy his financial obligation to Casino Career Institute; and the Commission after considering the entire record of these proceedings having resolved at its public meeting on July 25, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this <sup>9<sup>th</sup></sup> day of AUGUST 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the application of Steven M. Bucher for a casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof, provided, however, that no license credential shall be issued until Mr. Bucher receives certification from Casino Career Institute verifying successful completion of a course of study in the game of blackjack; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALE  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 8660-83

AGENCY DKT. NO. 83-EA-78

**STEVEN M. BUCHER,**

Petitioner,

v.

**THE STATE DIVISION**

**OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Steven M. Bucher, petitioner, pro se**

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

Record Closed: April 27, 1984

Decided: June 8, 1984

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

This matter concerns petitioner's application for licensure by the Casino Control Commission as a casino employee and objections filed thereto by respondent, pursuant to the Casino Control Act (the Act), N.J.S.A. 5:12-1 et seq. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Petitioner is obliged under the Act to establish by clear and convincing evidence that he is a person of good character, honesty and integrity. N.J.S.A. 5:12-90. Respondent believes that he withheld material information when filing his Personal History Disclosure Form (PHDF), and as such is specifically barred from licensure by N.J.S.A. 5:12-86(b), and additionally cannot meet his affirmative burden.

The basic facts are undisputed. Petitioner filed a PHDF in June 1982. In response to a question concerning prior arrests, he placed an "x" in a box marked "yes" and disclosed that he had been charged with cutting firewood on private property sometime in 1980 and that the charge had been dismissed. He did not disclose an arrest of April 3, 1981, in the State of California for possession of LSD, a controlled dangerous substance, with intent to distribute, and with possession of hypodermic needles. No formal charges were brought in the case.

Detective James Barber of the New Jersey State Police investigated the matter on behalf of respondent. He spoke to the arresting officer in California who informed him that the state did not proceed because California law requires that single ownership of drugs be established and the prosecutor did not believe that this could be done.

Petitioner testified that he was arrested while living temporarily at a friend's house. The police entered the house and found drugs and drug paraphernalia. He was handcuffed and taken to headquarters, where he was detained for six days. He testified that the drugs were not his. Upon his release, he was informed by officers present that they did not intend to pursue the matter and that whatever file had been opened would probably be thrown out. They told him that as he had no prior record, they did not want to see him get into trouble. He treated the entire matter as if it had never occurred.

Petitioner also testified that since 1980, he has been employed as a maintenance man in a kennel in Vincentown, New Jersey, as a housekeeper in a hospital in Santa Clara, California, as a maintenance man in a condominium in Sarasota, Florida, and as a worker in a plumbing supply house in Loveland, Ohio. He provided respondent with the names and addresses of these businesses.

This is the substance of the record.

The question on the PHDF is as follows:

For the purpose of this question, the word "arrest" includes any detaining, holding, or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other state or foreign county [sic]; the word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign

country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offense and juvenile violations.

Have you ever been arrested or charged, even if not convicted with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?

N.J.S.A. 5:12-86 provides:

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

b. . . failure of the applicant to reveal any fact material to qualification. . . .

Barring unusual circumstances, the statute appears to require denial of a license for any failure to disclose a material fact. The explanation given in the PHDF fairly covers the matter and petitioner's own testimony that he was arrested and actually spent six days in jail makes it clear that he knowingly omitted this information. His defense, however, is that he was under the impression that the matter had been treated by the police as if it had never occurred. If his testimony is to be credited, the situation in his mind was not unlike an expungement, in which an individual knows of an incident but is not required to disclose it. The question then is purely one of credibility. I accept petitioner's testimony. He was 20 years old at the time of the incident. When he was released from custody and told by the police that no record would be retained, he accepted this at face value. There is no indication that he has any prior experience in legal matters and there was no reason for him to question these representations.

I believe, therefore, that these somewhat unusual circumstances present an exception to the disqualification criteria of N.J.S.A. 5:12-81.b, supra. Further, petitioner's affirmative proofs of good character have not been undermined. He provided respondent with his prior employment history, and there is no negative information in the record about his service in these jobs.

Based on the foregoing, it is my conclusion that petitioner has established his good character, honesty and integrity by clear and convincing evidence, and it is **ORDERED** that he be awarded a casino employee license.

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

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

DATE 6/8/84

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE June 11, 1984

*Bernadette T. Frison*  
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE June 13, 1984  
bc

*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-444  
OAL DOCKET NO. CCC 338-84  
REGISTRATION NO. 46086-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
RONALD E. CONKLIN, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on August 7, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of September 19, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,


IT IS on this 20th day of SEPTEMBER, 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 338-84

AGENCY DKT. NO. 83-444

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**RONALD E. CONKLIN,**

Respondent.

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**APPEARANCES:**

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

**George H. Emmer, Esq.**, for respondent

Record Closed: June 21, 1984

Decided: August 6, 1984

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

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on December 22, 1983, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to his 1975 conviction for obtaining money by false pretenses, contrary to N.J.S.A. 2A:111-1, and his 1982 conviction for possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1), has been convicted of an enumerated disqualifying offense under section

86c of the Casino Control Act, thereby requiring revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the act.

2. Whether the respondent, with specific reference to his record of arrests and convictions, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 86b and 91b of the act.
3. Whether the respondent, notwithstanding a conviction which constitutes a per se disqualifying offense under section 86c of the act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

On January 11, 1984, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On January 17, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on April 12, 1984, and the hearing was held on June 21, 1984.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 37-year-old resident of Tuckerton, New Jersey. He is currently registered as a casino hotel employee, No. 46086-40, and he has been employed by the Tropicana Casino Hotel since March 31, 1983, as a parking attendant. No objection has been raised concerning the respondent's business ability or performance in his present position.

It is undisputed that the respondent was convicted on August 20, 1975, on two counts of obtaining money by false pretenses, contrary to N.J.S.A. 2A:111-1. This offense involved defrauding the Township of Long Beach by giving false receipts for gasoline deliveries. On November 14, 1975, the respondent was sentenced to a two-year probationary term.

On October 21, 1981, the respondent was indicted on one count of possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-20a(4), and one count of possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). On February 2, 1982, the respondent pled guilty to possession of a controlled dangerous substance with intent to distribute and was sentenced on May 7, 1982, to a three-year probationary term and was fined \$500.

The respondent's arrest for obtaining money by false pretenses was his first arrest. He testified that this offense followed a serious roller coaster accident that had involved himself and his daughter. His daughter had been seriously injured and needed medical treatment which was very expensive. Although he knew it was wrong, the respondent's situation led to his criminal conduct. According to the respondent, his life went downhill from that point and he became involved with drug use. In August of 1981, the respondent was heavily involved in methamphetamine and marijuana use. He obtained money for these drugs by selling them, which led to his arrest in August 1981 and indictment in October 1981.

A few months after his arrest, the respondent voluntarily sought professional help at the Toms River Outreach Center. For approximately two and one-half years, the respondent received weekly counseling in the drug rehabilitation program. On April 27, 1984, the respondent completed the rehabilitation program and was conferred graduate status (Exhibit R-4). During his attendance in the rehabilitation program, the respondent participated in a urine monitoring program which never revealed any further drug use (Exhibit R-3). It was the sincere testimony of the respondent that he no longer has any desire to use drugs. He believed that the Toms River Outreach Center Program has changed his life. As soon as he was able to, he obtained employment in the casino industry and he has worked without incident since March 1983. The respondent was released early from his three-year probation because he had cooperated in complying with all conditions, including paying his fine and completing the drug rehabilitation program (Exhibits R-1 and R-2).

In response to question No. 8 on the respondent's Personal History Disclosure Form (Exhibit P-4), which requires disclosure of the respondent's record of criminal and disorderly persons convictions, the respondent revealed his conviction for obtaining money by false pretenses, and his conviction for possession of a controlled dangerous substance with intent to distribute, although he incorrectly listed the dates of these convictions as 1973 and 1980, rather than 1975 and 1982. It is undisputed that the respondent also was convicted of the disorderly persons offenses of possession of a controlled dangerous substance and growing marijuana, on August 2, 1979. The respondent was also convicted of offensive language and possession of a controlled dangerous substance on March 16, 1981. These disorderly persons convictions were not disclosed on the respondent's personal history disclosure form.

In his testimony at the hearing, the respondent acknowledged that he had not disclosed his less serious convictions. According to the respondent, he thought that the question required disclosure of his major convictions, and he disclosed the two convictions which were most serious. It should be noted that the two convictions which were disclosed by the respondent are for offenses which are enumerated in the Casino Control Act as disqualifiers from licensure, absent a demonstration of rehabilitation.

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

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revokable 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 91(b) and 86(b) of the Casino Control Act, the Commission may revoke the registration of a casino hotel employee registrant on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the

qualification criteria. It is undisputed that the petitioner failed to reveal his complete record of criminal and disorderly persons convictions on his personal history disclosure form. However, as set forth in the undisputed findings of fact, the respondent disclosed the convictions which he believed were required to be disclosed, and these convictions were for his two most serious offenses. In fact, these convictions were for two offenses which are specifically enumerated in the Casino Control Act as disqualifiers. Thus, the respondent's failure to disclose resulted from his misunderstanding of the disclosure requirement, rather than from a conscious disregard of the request for such information. Therefore, I **CONCLUDE** that the respondent has not intentionally failed to disclose facts material to his qualifications for registration, within the meaning of N.J.S.A. 5:12-91b and N.J.S.A. 5:12-86b.

Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant automatically disqualified on the basis of his conviction of an offense enumerated as a disqualifier under the act. It is undisputed that the respondent was convicted of obtaining money by false pretenses, contrary to N.J.S.A. 2A:111-1, on August 20, 1975. It is also undisputed that the respondent was convicted of possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1), on February 22, 1982. As previously indicated, these convictions are for offenses which are specifically enumerated in the Casino Control Act as disqualifiers, pursuant to section 86c. Therefore, I **CONCLUDE** that the respondent's convictions for obtaining money by false pretenses and for possession of a controlled dangerous substance with intent to distribute permit the revocation, suspension or limitation of his registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, absent rehabilitation, pursuant to section 91d of the act, or waiver, pursuant to section 91e of the act, the appropriate sanction is revocation of the credential. See, State v. Wynette Harris, Dkt. No. 81-19, Commission decision 1983. Pursuant to section 91d of the act, no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in the 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.

The respondent has been employed for over a year by a licensed casino hotel as a parking attendant. It is his current wish to remain in this position, although he hopes eventually to obtain a casino employee license. His first arrest occurred in 1974, when he committed the offense of obtaining money under false pretenses. This conduct followed a serious accident involving himself and his daughter, which resulted in large medical expenses. At the time, the respondent was 28 years old.

The respondent became involved in drug use following his first arrest. This usage worsened until the respondent began selling drugs to support his drug dependence. Following his arrest for possession of a controlled dangerous substance with intent to distribute in August 1981, the respondent voluntarily enrolled in a drug rehabilitation program. For approximately two and one-half years, the respondent received counseling on a weekly basis, and successfully completed the rehabilitation program in April 1984. The respondent also satisfactorily complied with the terms of his probation following his conviction, and he obtained an early release from his three-year terms of probation. It is the recommendation of his probation officer that the respondent be given whatever assistance is possible to help him move ahead in his career.

Three years have passed since the respondent's last arrest. During that time, he has freed himself from his drug dependence and he has obtained gainful employment in the legalized gaming industry.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, notwithstanding two convictions for otherwise disqualifying offenses under section 86c of the act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or any other sanction, pursuant to sections 91b and 129 of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Ronald E. Conklin be and hereby is **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the 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 6, 1984  
DATE

07 AUG 1984  
DATE

AUG 10 1984  
DATE

ks

Joseph F. Fidler  
JOSEPH F. FIDDER, ALJ

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parker/sk  
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

P-1 Arrest report, dated January 18, 1974

P-2 Arrest report, dated March 22, 1978

P-3 Report, dated August 9, 1981

P-4 Personal History Disclosure Form

**FOR THE RESPONDENT:**

R-1 Letter, dated May 24, 1984

R-2 Order granting termination of probation, dated June 18, 1984

R-3 Letter, dated March 2, 1984

R-4 Certification, dated April 27, 1984

WITNESSES

**FOR THE PETITIONER:**

Ronald E. Conklin

**FOR THE RESPONDENT:**

Ronald E. Conklin

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-301  
OAL DOCKET NO. CCC 9396-83  
REGISTRATION NO. 19649-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
DAWN D. COOPER, :  
Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 26, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on October 15, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of October 31, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 7th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 9396-83

AGENCY DKT. NO. 83-301

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

Petitioner,

v.

**DAWN D. COOPER,**

Respondent.

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**William Mountford**, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Ronald J. Sharper, Esq.**, on behalf of respondent

Record Closed: August 16, 1984

Decided: September 25, 1984

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

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

Petitioner's complaint alleges that respondent knowingly provided false information to a law enforcement officer by maintaining that her payroll check from Bally's Park Place Hotel Casino had been stolen, forged and cashed when in fact she actually obtained and cashed it. Respondent was arrested and charged with filing false reports in violation of N.J.S.A. 2C:28-4, but the case was never adjudicated and the

charge was dismissed. Petitioner is here seeking to establish the underlying conduct pursuant to N.J.S.A. 5:12-86(g), which, if established, would in its view render respondent's continued employment in the casinos inimical to the policies of the Act, N.J.S.A. 5:12-86(c).

Officer Kay Smolenski of the New Jersey State Police, gaming section, testified on petitioner's behalf. She interviewed respondent on February 11, 1982 after receiving an incident report from Bally's. Respondent stated to her that she went to pick up her January 8, 1982 check from payroll on Monday, January 11, 1982. She was told that it had already been issued. She then requested that the check be stopped. Respondent had worked on Sunday, January 10, 1982, but was not feeling well and did not leave her work station in the housekeeping department. When the check was presented to First National Bank of South Jersey by a Mr. Herman Soloff of Kings Liquor Store, payment was rejected in accordance with Bally's directive. The check is endorsed twice with respondent's name and contains a series of numbers which purport to be a casino license identification number. Officer Smolenski testified that when respondent was shown these endorsements she stated that they were not her signatures and that she had misplaced her casino identification card.

Subsequently, respondent agreed to submit to a polygraph test and she provided writing samples so that handwriting comparisons could be made. It was stipulated that these tests were conducted though the results were not entered into evidence. Thereafter, on June 15, 1982, Officer Smolenski again met with respondent. During that interview, she testified that respondent acknowledged that she had picked up her check from Bally's and that the second endorsement was hers. She believed, however, that a third person staying at her home by the name of Linda had actually taken the check and cashed it. Linda has since moved to California.

Officer Smolenski testified that her investigation did not determine the date on which the check was cashed. She was shown a date stamp on the check, which she believed indicated January 11, 1982.

Ethyl Cooper is respondent's mother. She testified that during this period, her daughter was pregnant and very ill. There was concern that she would not be able to carry the baby to term and sometime in late February 1982 she did have a miscarriage.

Ms. Cooper testified that her daughter was under heavy medication at the time and was emotionally depressed. She was listless and had difficulty remembering. When her daughter told her that she could not locate her check, it was she who instructed her to report it missing.

Respondent also testified. She is 24 years old. In January 1982, she was under medication and feeling poorly. She did pick up her paycheck from Bally's but then could not locate it for a time. She had company in her home and feared that it had been taken. She then reported it missing. After a time, she found and cashed it. Respondent testified that she had no intention of defrauding Bally's and never asked that another check be issued. She testified that she just assumed that Bally's would know after she cashed the check that she had located it and that would be the end of it.

It appears from the record that eventually Bally's authorized the bank to pay Kings Liquor Store.

This is the substance of the record.

Petitioner must show that the statement which respondent gave to Officer Smolenski, on February 11, 1982, was knowingly false. N.J.S.A. 2C:28-4. Officer Smolenski was a credible witness and I fully accept that respondent told her two different stories. Nevertheless, I do not believe that these inconsistencies were an attempt to lie or cover up any prior plan of fraud. The first problem for petitioner's case is that it must reconstruct some scheme in which respondent was involved to make a false statement necessary. Though such a scheme is not clear from this record presumably, this would have involved an effort to obtain a second check from Bally's, though she had received the proceeds of the first check. Yet, a month passed from the time the check was stopped until respondent was contacted by the police. During this period, she did not request a second check. This is consistent with her testimony to the effect that she located the check after a time and cashed it. Thus, there is no motive for a false statement. Additionally, respondent was a generally credible witness. While she had difficulty answering questions both on direct and cross-examination I do not believe that this was an attempt to be evasive. She is either an actress of extraordinary talent, or a person who was confused and anxious over the proceeding. On balance I lean toward the latter conclusion. Finally, and importantly, both respondent and her mother testified that during

this period, she was under heavy medication as a result of her pregnancy. There are no proofs to the contrary. The inconsistencies and lapses of memory are better explained in this way than they are by a conscious effort to provide false information.

Based on the foregoing, it is my **CONCLUSION** that respondent did not willfully provide a false report and it is **ORDERED** that she be permitted to retain her casino hotel employee registration.

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

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

9/25/84  
DATE

  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

Sept 26, 1984  
DATE

  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

September 28, 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

ml

EXHIBIT LIST

P-1 Police Report

P-3 Check, 1/8/82

P-6 Check, 1/15/82

P-2 Results of polygraph examination - not admitted

P-4 Results of handwriting examination - not admitted

P-5 Results of handwriting examination - not admitted

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-230  
OAL DOCKET NO. CCC 6948-83  
LICENSE NO. 01943-21

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

Complainant, :

FINAL ORDER

v. :

CHARLES J. DELLARIA, III, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative law on July 9, 1984, recommending that the respondent's casino employee license be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record in this matter, having resolved at its public meeting of August 22, 1984, to affirm and adopt the findings of fact, but reject certain conclusions of law in the Initial Decision, and to revoke the respondent's casino employee license,

IT IS on this 18th day of OCTOBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted except as hereafter modified:

That portion of the Initial Decision [at 2] which describes the respondent's criminal record as including convictions for possession of a Controlled Dangerous Substance (CDS), cocaine, and for possession of a CDS, methamphetamines, both contrary to N.J.S.A. 24:21-20(a)(1), which the ALJ found to be inimical to the Act, thus requiring disqualification pursuant to N.J.S.A. 5:12-86(c)(4) is rejected as inaccurate. The Commission finds that the above-mentioned charges resulted in a conditional discharge, not convictions. Nevertheless, by reason of the respondent's admission that he had invited two casino employees to join him in using cocaine on the premises of Resorts International Hotel & Casino on November 11, 1982, a crime for which he was not prosecuted, the Commission concludes that respondent's conduct constituted an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6948-83

AGENCY DKT. NO. 83-230

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**CHARLES J. DELLARIA,**

Respondent.

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**APPEARANCES:**

**William Mountford**, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Mark Roddy, Esq.**, for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: May 24, 1984

Decided: July 9, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement seeks to revoke the casino employee license held by Charles J. Dellaria because of events that occurred on November 11, 1982, and subsequent criminal prosecution resulting from those events. Mr. Dellaria requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

Mr. Dellaria was employed as a floor supervisor at Harrah's. During the early morning hours of November 11, 1982, he joined a party of Resorts International employees at Resorts International Hotel. Resorts had closed to the public at 4:00 a.m. At approximately 6:30 a.m., Mr. Dellaria invited two resorts employees into a storage closet adjacent to the Rendezvous Lounge. The employees were Anita Monczynski and Robert

Mathes, both dealers. The purpose of the invitation was to cut a line of cocaine for Ms. Monczynski in honor of her birthday. The door was slightly ajar and a security guard for Resorts observed Mr. Dellaria with a razor blade pushing white powder around on a piece of paper. A straw lay next to the white powder.

All three were placed under arrest. Mr. Dellaria also had in his possession on his person a small amount of marijuana and a few methamphetamine pills. On December 13, 1982, an Atlantic County Grand Jury handed up an accusation charging Mr. Dellaria with possession of a controlled dangerous substance, to wit, cocaine, contrary to the provisions of N.J.S.A. 24:21-20A(1) and possession of a controlled dangerous substance, to wit, methamphetamines, contrary to the aforesaid statute. Both counts resulted in a conditional discharge provided that Mr. Dellaria remain arrest-and-conviction-free for one year, which he did.

Pusuant to N.J.S.A. 5:12-129, the Commission has the power to revoke any license where the licensee has been convicted of a criminal offense under the Casino Control Act or has committed any other offense or violation of the Act which would disqualify such person holding a license or registration. The Division of Gaming Enforcement contends that the convictions described above render licensure of Mr. Dellaria inimical to the policies of the Casino Control Act and casino operations, in violation of N.J.S.A. 5:12-86C(4). The Division further contends that Mr. Dellaria does not possess the requisite good character, honesty and integrity described in N.J.S.A. 5:12-89, as incorporated into N.J.S.A. 5:12-90. I agree with both contentions of the Division.

N.J.S.A. 5:12-86C(4) is a catch-all section which may include offenses not specifically set forth in subsections 1, 2 and 3. I **CONCLUDE** that the possession of controlled dangerous substances within the casino itself is inimical to the policy and the act of the casino operation.

Further, not only did Mr. Dellaria use drugs himself, and possessed them within the casino, but he invited other casino licensees to join him with the use of the drugs in the casino itself. His conduct clearly establishes a lack of good character, honesty and integrity.

The real issue in the case is whether Mr. Dellaria has affirmatively established rehabilitation which is his right to do under N.J.S.A. 5:12-90. I CONCLUDE that he has not.

In order to establish rehabilitation, Mr. Dellaria makes the following points about his life subsequent to November 11, 1982:

1. He has remained arrest-free since that date.
2. He has been rehired by Harrah's in a supervisory position, and, as far as this record discloses, has probably performed satisfactorily in that position.
3. He has remained drug-free since November 11, 1982.
4. He voluntarily submitted to therapy to treat depression, and further, he took courses on substance abuse.
5. He developed an ulcer subsequent to November 11, 1982, and is unable to use drugs because of that medical condition, even if he wanted to. He now has a concern for his own physical health and has no present intention of using drugs in the future.

There is no magic formula for the establishment of rehabilitation, however, the burden of affirmatively establishing rehabilitation rests with the respondent. The mere passage of time without arrest is not, in and of itself, proof of rehabilitation, but is one criterion to be taken into consideration with others in order to determine if rehabilitation has taken place. Mr. Dellaria is 37 years old. At the time of his arrest, he was an adult working in a supervisory capacity and licensed in a sensitive industry. He not only chose to blatantly violate the trust of his license and the criminal laws of this State, but induced other licensees to join him in those violations.

Since the public has a vital interest in casino operations in Atlantic City, and has established an exception to the general policy of the State concerning gaming for private gain, participation in casino operations as a licensee or registrant under this Act shall be deemed a revokable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant....  
[N.J.S.A. 5:12-1b(8).]

The use and dissemination of controlled dangerous substances within the casino itself can only serve to destroy the public confidence and trust in the integrity of casino gaming in New Jersey, a result sepcifically forewarned in N.J.S.A. 5:12-1b(7).

In short, the conduct of Mr. Dellaria was extremely damaging to the policy of the Casino Control Act and the casino industry, and occurred less than two years ago. I cannot find from this record that Mr. Dellaria has affirmatively established his rehabilitation and his good character, honesty and integrity. I **CONCLUDE** that he has not.

For the foregoing reasons, it is **ORDERED** that the casino employee license of Charles Dellaria 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.

7/9/84  
DATE

*Norman D. Smith*  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

July 9, 1984  
DATE

*Norman D. Smith*  
CASINO CONTROL COMMISSION  
*ASV Stuart L. ...*

Mailed to Parties:

July 11, 1984  
DATE

*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 42845-21  
AGENCY DOCKET NO. 84-EA-93  
OAL DOCKET NO. CCC 4460-84

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IN THE MATTER OF THE APPLICATION  
OF JOHN J. DESIMONE, JR.,  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 1, 1984, recommending that the application of John J. DeSimone, Jr., for a casino employee license be denied; and neither party having filed exceptions thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of December 12, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 27th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4460-84

AGENCY DKT. NO. 84-EA-93

**JOHN J. DE SIMONE, JR.,**

Petitioner,

v.

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

Respondent.

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John J. DeSimone, Jr., pro se

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

Record Closed: September 17, 1984

Decided: October 31, 1984

BEFORE JEFF S. MASIN, ALJ:

John J. DeSimone, Jr. applied to the Casino Control Commission for licensure as a casino employee with a position designation as security employee. The Division of Gaming Enforcement objected to his licensure in a letter dated May 10, 1984.

The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on August 17, 1984. A hearing was held before Judge Masin at the Brigantine Municipal Court on September 17, 1984.

The Prehearing Order identifies the issue for consideration as being whether Mr. DeSimone possesses the requisite good character required for licensure, pursuant to N.J.S.A. 5:12-90(b). Specifically, the Division objects to licensure because it believes that Mr. DeSimone's record of arrests in 1982 and 83 and his purported drinking problem indicates that he cannot establish the necessary good character.

While the burden of establishing qualification for licensure is upon Mr. DeSimone, it appears appropriate to first discuss the evidence presented by the Division which established Mr. DeSimone's prior history and which forms the basis of the Division's concerns about the appropriateness of issuing a license to him.

The initial incident relied upon by the Division occurred on June 19, 1982 when the applicant was exactly 18 years old. On that date, he was arrested for disorderly conduct when he attempted to leave a Wawa Food Market in Ventnor with an Italian hogie concealed in his pants. According to the police report presented by the Division and prepared originally by Patrolman Charles Stern of the Ventnor Police Department, DeSimone was threatening and his behavior after his arrest was "tumultuous." Because of the nature of DeSimone's conduct and the officer's belief that he presented a probable danger to himself and others if released immediately, the Ventnor Municipal Court Judge issued a warrant on the disorderly conduct offense and set bail. No information was presented by the Division as to the outcome of the charges.

On July 9, 1982, DeSimone was arrested for causing a disturbance on the boardwalk in Ventnor and for refusing to leave the scene. He was one of several males involved in the incident, which included the use of foul language and resulted in the disturbance of others using the boardwalk. DeSimone was described in the police report as acting in a threatening manner and making a direct threat to "get you" directed specifically to one of the police officers involved. Again, no information concerning the outcome of this incident was presented by the Division.

DeSimone was arrested by the Ventnor police for drinking on the boardwalk on July 16, 1982. On August 6, 1982, he was involved in an incident in which he became "very combative and began to exhibit violent and threatening behavior towards" police officers at the scene of a disturbance on the boardwalk in Ventnor. The police were at the time attempting to aid an injured person. The police report further describes the

applicant as "yelling and loudly throwing his arms in the air in a fit of frenzy and then stated he wanted to be arrested and stuck his arms out as the officers cuffed him."

On August 8, 1982, two days after the above described incident, DeSimone was charged with possession of alcoholic beverages by an underaged individual, in violation of N.J.S.A. 2C:33-15.

In November of 1982, DeSimone was again charged with disorderly conduct by the Margate Police Department. In this case, he made threatening and obscene statements to police officers and refused to follow their directions.

On February 28, 1983, DeSimone entered the Margate Police Station seeking his girlfriend who had been arrested as a juvenile offender. When he was told that the girl could not be released to him but would have to be released to her parents, DeSimone became "enraged and started to enter an area for police personnel only." DeSimone exited the police station after several minutes and "sat in the middle of the roadway and eventually stood across the street from the police department." Thereafter, he again entered the police department "very enraged, demanding to see his girlfriend." He was instructed to leave, "became even more enraged, started punching the door, yelling and demanding the release of his girlfriend." He was arrested at that time for violation of a municipal ordinances for failing to disperse.

On March 26, 1983, DeSimone was involved in another incident in which he made threats towards a Atlantic City police officer and eventually punched the officer in the eye.

John J. DeSimone, Jr. testified that his arrests generally occurred after he had been out drinking with the "guys," a habit which he was into "all the time." He was also involved in using drugs such as marijuana, methamphetamines and valium. He began drinking and using valium in the 8th or 9th grade.

Following the March 26, 1983 incident in Atlantic City, DeSimone attended Fair Oaks South, a rehabilitation center located in Lakehurst. This was done following the suggestion of the Ventnor Municipal Court Judge. The program consisted of a 28 day in-patient treatment, which involved group therapy and some psychiatric counselling. According to DeSimone, while he was told that he had a drinking problem he never really

believed it. Although he had some thoughts that he might have a problem, he really thought that the reason why he got in trouble was that he would stay out drinking with his friends and just keep doing so until he couldn't handle it. According to the applicant, since his treatment he has continued to drink on occasion. He now drinks in bars rather than "on the street." He has had no trouble whatsoever with the police since September of 1983, when he was charged with driving while under the influence of alcohol. With respect to that incident, he advised that he was arrested somewhere between 2:00 and 3:00 a.m. while going home from the Oasis Bar, which was located across from his place of work. He was stopped for speeding. He failed the various alcohol tests. Since he was driving on the revoked list, he was sentenced to ten days in jail and six months additional loss of license. According to DeSimone, he had six or seven beers that night. He does not use drugs any more and was not using them on the night of this incident.

DeSimone advised that has 51 points against his driver's license, most of these having been accumulated during the first nine months or so of his holding a license.

Following his treatment at Fair Oaks South, DeSimone attended approximately five or six meetings of Alcoholics Anonymous. He has not gone to any meetings since then because he does not feel he needs to attend them.

DeSimone is employed by U.S. Air. He is presently a ticket agent, having been promoted up from the line crew. He expects to be promoted shortly to a passenger service representative and has begun to study for the weather observation license required for that position.

According to a letter received in support of Mr. DeSimone's licensure from Barbara C. Gallagher, Assistant Director of Operations of Community Reality Management, Inc., Mr. DeSimone had been employed in various capacities at the Bader Air Field in Atlantic City since he was 14 years old. He has been a very good employee of U.S. Air and his superiors "think so highly of him that they not only guaranteed to hold his job open for him while he served his ten-day obligation at the Atlantic County Correction Center in Mays Landing recently (the 1983 driving on the revoked list matter), but personally provided transportation to and from work for John during that time."

As noted by Mr. DeSimone but more particularly by Ms. Gallagher and also by Joseph A. Clements, Director of Athletics, Pleasantville High School, who also provided a

letter in support of Mr. DeSimone's character, Mr. DeSimone had a rather tragic childhood. His mother was killed in an auto accident when he was two years old and shortly thereafter his father remarried. The father then divorced his second wife and shortly again remarried for a third time. At approximately the age of 10, Mr. DeSimone was again struck by the tragic death of his father who was killed in an automobile accident. John J. DeSimone, Sr. was a sergeant in the Sheriff's Department in Atlantic County.

Following the death of Mr. DeSimone's father his stepmother raised John, Jr. She became involved in a live-in relationship with a man who she has recently married. As noted by Mr. Clements, this history has provided Mr. DeSimone with an ever changing cast of parental figures.

#### DISCUSSION

This case presents certain difficulties. The history of Mr. DeSimone's conduct indicates that since he became an adult, he has had a very difficult time conforming to the norms of society. Whether his problems stem from emotional disturbances caused by the tragedy of his childhood or not, it is fairly clear that until at least March of 1983, DeSimone was an extremely unstable individual, at least when he was not at work. His drinking and drug use seems to have led him into situations where he would be involved in confrontations with the police. His conduct during these incidents indicated a very strong reaction to authority. As DeSimone himself admitted, "I didn't like police officers for some reason, I don't know." DeSimone had some psychological or psychiatric counselling at Fair Oaks South and said he felt that it helped him a little.

With the exception of the arrest in September of 1983 for driving while under the influence of alcohol, DeSimone has managed to avoid any further problems with the police. The September 1983 incident was apparently not accompanied by any violent confrontation with the officers. However, DeSimone has continued to drink. He has managed to avoid any legal problems from his drinking since September of 1983, a period of approximately one year. However, there is little indication that DeSimone has any intention of attempting to avoid alcohol all together and in fact he admitted he had had something to drink on the night before the hearing.

My general reaction to this situation is that perhaps Mr. DeSimone has begun to mature and will in the future maintain the stability expected of an adult. However, it is only one year since the last incident in which he let himself become the victim of the influence of alcohol. While that incident was not accompanied by difficulties with the police, the mere fact that he was on the road in a drunken condition reflects that he had not as of that time learned his lesson completely.

The Casino Control Act, N.J.S.A. 5:12-90(b) requires that one seeking licensure as a casino employee establish good character, honesty and integrity by clear and convincing evidence. This is a high standard of proof which requires something more than the normal level of proof in a civil case. With respect to Mr. DeSimone's character, I am forced to conclude that it is far too early to make a determination that he has the necessary good character. Although there are certainly indications that he may be on the right path, his continued use of alcohol, in circumstances which may again lead to overindulgence, would seem to be a cloud hovering over him. While there is certainly no requirement that one with his history necessarily give up alcohol all together, I believe that some further period of time must pass before it can be reasonably concluded that he has changed his life style and has established his good character to the degree required by this statute. Continued maturation may allow Mr. DeSimone to once and for all prove that he has kicked his old habits and is no longer the rather confused, emotional, unstable and difficult person that he was just a short time ago. However, at the present time I do not believe that given the totality of the circumstances one can reasonably conclude that he now has established the necessary good character to the degree of clear and convincing evidence.

With some reluctance, I **CONCLUDE** that to license Mr. DeSimone at this time would be precipitous. I would strongly suggest that if he manages to maintain himself in a law abiding fashion and continues to maintain his good record of employment, that he may reapply at a later time. However, as of this date, I must conclude that his license should 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 31, 1984  
DATE

Jeff S. Masin  
**JEFF S. MASIN, ALJ**

Receipt Acknowledged:

01  
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 5, 1984  
DATE

Charles J. [Signature]  
OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of petitioner:

- P-1 Letter from Joseph A. Clements, Director of Athletics, Pleasantville High School
- P-2 Letter from Barbara C. Gallagher, Assistant Director of Operations, Community Realty Management, Inc.

On behalf of respondent:

- R-1 Police reports for June 19, 1982 incident
- R-2 Police reports for July 9, 1982 incident
- R-3 Police reports for July 16, 1982 incident
- R-4 Police reports for August 6, 1982 incident
- R-5 Police report for August 8, 1982 incident
- R-6 Police report for November 16, 1982 incident
- R-7 Summons for January 30, 1983 incident
- R-8 Police report for March 26, 1983 incident
- R-9 Police report for February 28, 1983 incident

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IN THE MATTER OF THE QUALIFICATION :  
OF EDWARD M. DOUMANI; :  
AND :  
IN THE MATTER OF THE PETITION OF :  
GNAC CORP. FOR A DECLARATORY RULING :  
THAT EDWARD M. AND FRED DOUMANI ARE :  
NOT PERSONS REQUIRED TO QUALIFY AND :  
FOR A WAIVER OF QUALIFICATION OF :  
LAWRENCE, ELEONORE, CINDY AND :  
FRED DOUMANI, JR. :

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OPINION

New Jersey Casino Control Commission

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

Appearances:

For GNAC, CORP.:

Alfred J. Luciani, Esq.  
Latha A. Gilliam, Esq.

For the Division of Gaming Enforcement:

Anthony J. Parrillo, Deputy Director  
Richard Morrissey, Deputy Attorney General  
John Sheehy, Deputy Attorney General

For the Casino Control Commission:

John R. Zimmerman, Senior Assistant Counsel

Since December 1980 GNOC Corp. (GNOC) and its predecessor in interest, GNAC Corp. (GNAC), have been authorized to own and operate the Golden Nugget Casino Hotel. When GNAC was issued its temporary casino permit in December 1980, Edward M. Doumani (Doumani), as a stockholder of GNAC's parent company, Golden Nugget, Inc. (GNI), was identified as an individual who might be required to qualify in connection with GNAC's application for a plenary casino license. See N.J.S.A. 5:12-85(c) and (d), see also Resolution No. 80-500, ¶23. When the plenary license was granted to GNAC on October 13, 1981, this Commission, with the concurrence of the Director of the Division of Gaming Enforcement (Division), temporarily waived the requirement that Doumani be qualified, see N.J.S.A. 5:12-85(d)(1), until such time as the Division completed its investigation of him. The waiver was conditioned upon GNI's Chairman, Stephen A. Wynn, and its Board of Directors having no business contact with Doumani. See, Resolution No. 81-747, ¶¶29 to 33.

On January 27, 1982, the Division filed its report (R-1)<sup>1</sup> on Doumani with the Commission. The Division raised serious issues concerning Doumani's qualification, and stated that those issues could only be resolved at a hearing.

On October 7, 1982, the Commission voted to renew GNAC's casino license and again conditionally waived the requirement

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1. R refers to the Division's exhibits at the hearing held before this Commission on February 21, 1984.

that Doumani qualify, this time for 30 days. See Resolution N 82-364 at ¶¶41 to 45. This waiver was conditioned on, inter alia, the continued effectiveness of a voting proxy dated February 4, 1982, executed by Doumani and the other members of his family who owned GNI stock in favor of Stephen Wynn. The other family members involved were Doumani's wife, Eleonore, their son, Lawrence, Doumani's brother, Fred, Fred's wife, Cindy, and their son, Fred Jr.

The Commission advised Doumani and GNAC on October 13, 1982, that each had a right to a hearing on the matters raised in the Division's report (R-1). Both GNAC and Doumani requested a hearing. Thereafter the Commission referred the issue of Doumani's qualifications to the Office of Administrative Law (OAL).

On August 1, 1983, while the matter was pending before the OAL, the Division filed a supplemental report, raising additional issues relevant to Doumani's qualifications (R-2). While the proceedings before the OAL remained open, the Division, Doumani and GNAC reached an agreement which essentially tightened the protections contained in the February 4, 1982, proxy. Soon thereafter Doumani notified the OAL that he wished to withdraw his request for a hearing and to present the agreement to the Commission. The OAL dismissed the proceedings before it, and Doumani petitioned the Commission to approve the settlement agreement and to grant a plenary waiver of the requirement that

he be qualified. See Petition No. 258303. At the September 26, 1983, GNAC casino license renewal hearing, the Commission denied the relief requested in the petition, but again granted Doumani a temporary and conditional waiver of the qualification requirement. See Resolution No. 83-597, ¶58. The Commission also determined to hear directly the issue of Doumani's qualification, and scheduled a prehearing conference for December 6, 1983.

At the prehearing conference, and subsequently by petition, Doumani asserted that the Commission lacked personal jurisdiction over him. See Petition No. 350304. On January 17, 1984, the Commission rejected this assertion, and set February 21, 1984, as the date for the hearing on Doumani's qualifications. During the January 17, 1984, proceedings, counsel for Doumani announced to the Commission that neither he nor his client would participate in the hearing on his client's qualifications.

The qualification hearing proceeded as scheduled on February 21, 1984. The issues addressed at the hearing were (1) whether Doumani is qualified, and (2) whether Doumani controls or has the ability to control the GNI stock owned by other members of his family. As previously announced, Doumani was not present or represented at the hearing. The other family members who own GNI stock were also notified that the hearing might affect their interests, but they also made no appearance at the hearing. The

only parties who did participate in the hearing were the Division and GNAC

On March 9, 1984, after the evidential portion of the hearing was closed, GNAC submitted a petition see Petition No. 072401. in which it requested:

1. approval of a stock disposition agreement;
2. a determination that, upon execution of the agreement, Edward and Fred Doumani would not be persons required to qualify within the meaning of N.J.S.A. 5:12-85(c) and (d); and
3. a waiver of the qualification of Eleonore, Lawrence, Cindy and Fred Doumani, Jr. pursuant to N.J.S.A. 5:12-85(d)(1).

At the time the petition was filed, the GNI holdings of the Doumani family were:

<u>OWNERSHIP</u>	<u>NUMBER OF SHARES</u>
Edward Doumani and Eleonore Doumani, as joint tenants	839,700
Edward Doumani	281,250
Eleonore Doumani	225,000
Fred Doumani	839,700
Fred Doumani as Custodian for Fred Doumani, Jr., Uniform Gifts to Minors Act	225,000
Fred Doumani c/o El Morocco Hotel	292,500
Edward Doumani as Custodian of Lawrence Doumani, Uniform Gifts to Minors Act	<u>225,000</u>
TOTAL	2,928,150

This total represented approximately 8.285% of GNI's outstanding common stock as of March 30, 1984. See Resolution 84-274, ¶17.

Under the proposed stock disposition agreement, 50% of the stock held by Doumani and his wife Eleonore as joint tenants would be sold by Doumani to GNI and the remainder would be held by Eleonore Doumani individually. Of the stock held by Doumani individually, 50% would be sold by him to GNI and 50% would be held by Eleonore Doumani individually. Of the stock held by Fred Doumani individually, 50% would be sold by him to GNI and 50% would be held by Cindy Doumani individually. The stock held by Fred Doumani in custody for Fred Doumani, Jr. would be held 100% by Fred, Jr., individually. Of the stock held by Fred Doumani c/o the El Morocco, 50% would be sold by him to GNI and 50% would be held by Cindy Doumani individually. The stock held by Doumani in custody for Lawrence Doumani would be held 100% by Lawrence individually. Doumani and his brother Fred would renounce their marital rights, under the Nevada community property statutes, in the stock to be held by their wives.

As a result of these transactions, the Doumani family holdings would be reduced to slightly more than 5% of GNI's outstanding stock. In addition, on March 30, 1984, Eleonore and Cindy Doumani entered into an agreement under which each would sell 17,500 shares of their stock to GNI. The apparent intention of this agreement was to reduce the holdings of the Doumani family to under 5%, and thus to avoid the presumption in N.J.S.A. 5:12-105(d) that the holder of 5% or more of the securities of a publicly-traded corporation has the ability to control the corporation or elect one or more of its directors.

Implementation of the stock disposition agreement and the ancillary agreement between Eleonore and Cindy Doumani would

result in the following Doumani family holdings:

<u>OWNERSHIP</u>	<u>NUMBER OF SHARES</u>
Eleonore Doumani	767,975
Cindy Doumani	548,600
Lawrence Doumani	225,000
Fred Doumani, Jr.	<u>225,000</u>

TOTAL 1,766,575

Despite the apparent attempt to reduce the family's holdings to under 5%, based on the number of outstanding GNI shares as of May 31, 1984, this total amounts to 5.169% of GNI's common stock. At any rate, the stock disposition agreement and ancillary agreement between the Doumani wives represented a plan to reduce Doumani family holdings and to eliminate Doumani and his brother Fred as record holders. The plan also included a warranty of Doumani and his brother Fred that they would not acquire any GNI stock in the future. They also warranted that they would not influence or control their wives and children with respect to their stock. In this connection, we were provided with affidavits of Eleonore, Cindy, Lawrence and Fred Doumani, Jr., all of whom stated that they had substantial assets, and had "historically made independent investment judgments and substantial investments," (R-59) and all of whom warranted that they would "exercise independent judgment" (R-59) concerning their GNI stock and would not be controlled or influenced by Edward or Fred Doumani with respect to that stock.

In its response to the petition, the Division recommended that the stock disposition agreement be approved, and that

resolution of the remaining portions of the petition be deferred until it could conduct an investigation into the independence vel non of the Doumani wives and children. On April 18, 1984, the Commission approved the stock disposition agreement and deferred decision on the remaining portions of the petition. Resolution No. 84-271. On April 18, 1984, the stock disposition agreement was effectuated

On June 18 1984, the Division submitted a report on the issue of the independence of the Doumani wives and children. On June 21, 1984, the Commission advised GNAC and each of the Doumanis that they would be afforded an opportunity to respond to the matters raised in the Division's June 18, 1984, report, and afforded them two weeks in which to request a hearing on those matters. No request for a hearing was received. On July 11, 1984, the Commission advised the Division, GNAC and each of the Doumanis that the hearing on Doumani's qualifications would be consolidated with the unresolved portions of the petition, and that the Division's June 18, 1984, report would be received in evidence with respect to the consolidated proceeding. All the parties were again given an opportunity to respond and to express any objection they had to these procedures. No response was received.

This opinion is intended to resolve all issues in the consolidated proceeding. To reiterate, those issues are: (1) whether Doumani is qualified; (2) whether Doumani controls or has the ability to control the GNI stock held by the other members of his family; (3) whether effectuation of the stock disposition agreement obviates the need for Doumani and his brother Fred to qualify; and (4) whether the qualification requirement should be waived as to Eleonore, Cindy, Lawrence and Fred Doumani, Jr.

The record of the February 21, 1984, hearing makes it abundantly clear that Doumani is in fact disqualified. The Division's June 18, 1984, report, as well as the entire history of the Doumanis' dealings with the Commission, make it equally clear that Doumani has the ability to control and does control all of the GNI stock held by the other members of his family. Thus, Doumani remains a person required to qualify under N.J.S.A. 5:12-85(c) and (d), despite the fact that he is no longer the record holder of any GNI stock. We are not presented with a request for a plenary waiver of qualification of Doumani, but it is obvious that a disqualified person with a controlling interest in such a large block of GNI stock is not suitable for waiver under N.J.S.A. 5:12-85(d)(1).

In light of our conclusions that Doumani is disqualified, and that he has the ability to control and does control all of the Doumani family stock, the only appropriate remedy is to require divestiture of all of the family's GNI holdings. Imposition of this remedy renders moot the issues of whether Fred Doumani is a person required to qualify and whether Eleonore, Cindy, Lawrence and Fred Doumani, Jr. are suitable for waiver of qualification.

We will now discuss the evidential and statutory basis for our conclusions concerning Doumani's disqualification and his control of the other family members' stock, as well as for the imposition of the divestiture remedy.

#### I. DISQUALIFICATION OF EDWARD DOUMANI

The statutory standards for individual qualification are contained in N.J.S.A. 5:12- 84, 86 and 89. Sections 84 and 89(b)

set forth the criteria which casino license applicants and individuals required to be qualified as a condition of such licensure must affirmatively satisfy by clear and convincing evidence.

A first affirmative qualification criterion, which appears in section 89(b)(1), is "financial stability, integrity and responsibility." By its terms, this standard encompasses all financial aspects of an individual's life, including honesty and forthrightness in business dealings.

A second affirmative qualification criterion appears in both Section 84(c) and in Section 89(b). Section 84(c) requires such proof of "good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and integrity." Section 89(b)(2) requires such proof as is necessary "to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity." As the Commission explained in In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Commission Docket No. 79-CL-1, at p. 8, although the wording of these sections varies slightly, the difference is without consequence, and both are posited on the commonly understood concepts of good character, honesty and integrity. Both sections do speak in terms of reputation, but reputation is relevant only as it might raise questions which the applicant is obliged to answer. "[T]he real issue is the applicant's actual character, with special attention being given to the subject

matter of the reputation." Resorts, supra; In re Application of Boardwalk Regency Corporation for a Casino License, 180 N.J.Super. 324, 344-345 (App. Div. 1981), mod., 90 N.J. 361, appeal dismissed, 459 U.S. 1081 (1982).

In the Resorts opinion at pp.9-10, the Commission further explained:

In setting forth good character, honesty and integrity as a qualification standard, the Act recites several types of information which should be considered in determining whether that standard is met. Business, professional and personal associates are included in this recitation. Such associations are not themselves a standard of qualification. In this context, associations are relevant because they may reflect upon actual character and present fitness....

Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of its associates, termination of the association and the reasons for termination. Only after all the significant circumstances are taken into account can it be determined whether an association casts an unfavorable light upon the applicant or person to be qualified. The mere fact that some innocent relationship may have existed with persons of unsuitable character would not alone indicate a failure to meet the standard of good character, honesty and integrity. Of course, it is incumbent on the applicant to demonstrate either that it had no involvement with notorious or unsavory persons or that such involvement indicates no lack of good character, honesty and integrity.

To this point, only those qualification standards which a person required to be qualified must affirmatively demonstrate by clear and convincing evidence have been addressed. There is also a series of disqualification criteria in section 86 of the Act. Among these criteria is the "[f]ailure of the applicant to prove by clear and convincing evidence that the applicant is qualified...." N.J.S.A. 5:12-86(a). As previously noted, Doumani did not participate in the hearing before the Commission, and thus he did not prove by clear and convincing evidence that he is qualified, and on this basis alone he is disqualified. However, the Division also presented substantial evidence of Doumani's lack of good character, honesty and integrity, and we will now turn to the consideration of that evidence. We will begin with a brief description of Doumani's personal background.

Edward Doumani was born in Hollywood, California in 1936. He now resides in Nevada. By education he is a lawyer, and he briefly practiced law in California (R-3, p.2).

During the latter part of the 1950's, the Doumani family, headed at the time by Doumani's father, made its first entry into Las Vegas through a loan of approximately \$200,000 to an option-holder on Las Vegas real estate (R-3, p.4). By 1961, Doumani, with his father's blessing, had acquired and utilized that property to build the La Concha Motel (R-3, p.5). Still focusing exclusively on motel as opposed to gambling development by late 1964 Doumani, then guiding the family operation, opened the El Morocco Motel (R-3, p.5).

Through his prior Air Force Reserve association with Melvin B. Wolzinger, Doumani, in the late 1960's and early 1970's, developed a slot machine operation at the El Morocco,

resulting in Doumani's first licensure by the Nevada gaming authorities (R-3, p.6). The slot casino was operated by Wolzinger and his associate, Earl Wilson, and Doumani, through the El Morocco Motel Corporation, acted as landlord for the operation, receiving a fixed rental plus 50% of the slot casino profits (R-3, pp. 6-7).

As a result of an approximately \$200,000 Doumani family investment in the Frontier Hotel, Doumani was present at an organizational meeting to discuss the sale of that hotel (R-3, pp. 9-10). It was at that meeting that Doumani first met Stephen Wynn (Ibid.; R-7, p. 4, L.13). Through the association and friendship that developed, Wynn approached Doumani with the idea of taking over the Golden Nugget in Las Vegas (R-3, p.10). Doumani approved the idea, and in 1972 he had Wynn, on his behalf, purchase stock in GNI (R-3, pp. 10-11). However, because additional funding for the takeover was required, Doumani caused Wolzinger and Wilson to invest in GNI as a part of the Wynn takeover group. Wynn eventually acquired control of GNI and appointed Doumani and Wolzinger to the GNI board of directors (R-3, pp. 6-7, 11-12; R-8, p.10). Wolzinger remains on the GNI board, and is also a director of GNOC and GNAC, as well as a security holder in Golden Nugget Finance Corporation. Doumani has not served as a director of GNI or any of its subsidiaries since 1978.

In 1973, while acting as a director of GNI, Doumani was approached by Deil Gustafson concerning their possible joint

purchase of the Tropicana Hotel and Casino in Las Vegas (R-3, p. 20). Doumani rejected Gustafson's overtures, and Gustafson obtained his interest in the Tropicana without Doumani family participation (R-3, pp. 20-22).

After Gustafson assumed control of the Tropicana, Doumani heard rumors that that casino was experiencing financial difficulties (R-3, p.20). During this time, Gustafson's associate, Allen Lee, routinely contacted Doumani's brother, Fred, with the suggestion that the Doumani brothers make an investment in the Tropicana (R-3, p. 21; R-5, p 12, L.18). Because Gustafson had an outstanding option to purchase the land underlying the Tropicana for \$16,500,000, Doumani's interest in the facility was piqued (R-3, p. 22).

Sensing that the financial situation required an immediate investment, in September 1974 Doumani and his brother Fred acquired a leasehold interest in the Tropicana for \$1,500,000, obtaining an emergency license from the Nevada gaming authorities (R-3, p. 25; R-3, p. 27; R-5, p. 12, L.18). Doumani wanted to move with the deal despite the absence of any other financial backing because the option to purchase the underlying land could only be exercised by the tenant of the property (R-3, pp. 26-27).

After investing in the Tropicana, Doumani and his brother assumed the offices of president and vice-president, respectively (R-3, p.27). The Doumanis sold their interest in the Tropicana in 1979 for approximately \$34,000,000 (R-3, p.43); In the Matter

of Adamar of New Jersey, Inc. for a Casino License, Casino Control Commission, Docket No. 82-CL-2, at 24.

During his career in Las Vegas, Doumani cultivated associations with a number of unsavory individuals. One such association, with Irving "Ash" Resnick, occurred during Doumani's management of the Tropicana. Doumani was introduced to "Ash" Resnick by Dave Victorson, an associate of Resnick from the Thunderbird Hotel (R-5, p.28, L.13). Doumani became friendly with Resnick (R-3, pp.22-23), and leased the restaurant at the El Morocco Motel to him (R-3, pp.22-23; R-5, p.28, L.5).

When the restaurant at the El Morocco proved to be unsuccessful, Resnick left for Caesars Palace (R-5, p. 29, L. 17). However, Doumani and his brother Fred, along with several Doumani cousins, maintained an ongoing relationship with Resnick through an oil field operation known as Doumani and Associates, in which the Doumanis made an initial investment of \$500,000 (R-5, p. 31, L.12).

After Resnick left the El Morocco for Caesars Palace, allegations began to arise concerning questionable marker collection practices utilized by Resnick at Caesars. Although Doumani was aware of those allegations, he hired Resnick to run the casino at the Tropicana (R-5, p. 36, L.10; R-5, p.38, L.12; R-5, p.45, L.3). In Doumani's view, "Mr. Resnick was going to be the pivotal person in running the Tropicana Hotel" (R-5, p.38, L.15; R-5, p.36, L.16). Doumani admitted:

I was a little leery if there was something going wrong because I would hear the same thing everybody else was hearing and 'How can you trust Ash Resnick? You should know better. Look what he did at Caesars. There is no question he was doing this and no question doing that' (R-5, p.37, L.19).

The situation at the Tropicana eventually reached the point where Doumani felt that he did not know half of the things that were happening around him (R-5, p.44, L.4).

This Commission is concerned that Doumani was willing to place Resnick in a position where the conduct, rumored or otherwise, in which Resnick engaged at Caesars Palace could be duplicated at the Tropicana. For Doumani not to investigate those rumors thoroughly before hiring Resnick is problematic. For Doumani to hire Resnick at the Tropicana and assign him the same responsibilities as he had, and arguably abused, at Caesars Palace is totally without justification.

Equally troubling is Doumani's involvement, at the Tropicana, with Joseph Agosto. Soon after they took over the Tropicana, the Doumani brothers initial investment was depleted, and they attempted to obtain additional outside funding (R-3, pp. 27-28). One of the investors they attracted was Paul Lowden, who contributed \$500,000 (R-3, p. 28). Lowden was associated with the Stouffer Chemical heiress, Mitzi Briggs, who had maintained an alliance with Joseph Agosto (R-3, pp. 28-29). As a result of Briggs' \$11.4 million investment in the Tropicana, Doumani was forced to obtain her consent for projects he wished to undertake at the hotel (R-3, pp.30-33). Those consents were eventually

obtained after Agosto exercised his influence with Briggs (R-3, p. 33; R-5, p. 17, L. 10). Additionally, throughout the Tropicana renovation project that followed, Doumani would have to deal with and obtain consents from Agosto, as Briggs' agent, and Doumani developed a "very friendly" relationship with Agosto (R-3, pp. 38-39; R-3, p. 42).

Doumani determined, as part of the Tropicana "upgrade," to bring in a follies show (R-3, p. 29). The venture selected, the Follies Bergere, was owned and produced by Agosto (R-3, pp. 29-30). According to Doumani, Agosto was "most influential in assisting" the Doumani brothers during this period of time (R-3, p. 39).

Joseph Agosto has been identified by agents of the Federal Bureau of Investigation as "an associate of Kansas City organized crime," having a long history of FBI surveillance (T35-23<sup>2</sup>; R-11; R-12). Agosto was convicted on May 3, 1983, of bank fraud for incidents which occurred between April 4, 1977, and May 30, 1978, and he attempted to obtain leniency by becoming a federal informer (T36-9; T46-4; R-14; R-15). On April 2, 1983, Agosto also pleaded guilty to two counts of an indictment concerning charges that, from January 1974 to April 1979, he conspired to conduct a "skimming" operation at the Tropicana Hotel in Las Vegas (R-13; R-16). Of course, Doumani was involved with the Tropicana during most of this period of time (R-3, p. 30; R-5, p. 24, L.8).

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2. "T" refers to the transcript of the February 21, 1984, hearing before the Commission.

Although Doumani denies that he knew that Agosto was a member of organized crime, he was aware of rumors to that effect (R-5, p. 23, l. 15). Despite being asked by others about his knowledge of Agosto's background, Doumani was not overly curious about such inquiries because, according to Doumani, such intimations are not uncommon in Las Vegas (R-5, p.14, L.14). Nor did Doumani conduct any in depth investigation into Agosto's background (R-5, p. 14, L. 21). At best, Doumani's attitude toward Agosto, and the concerns raised about him, was cavalier.

To Doumani, the Tropicana "was always skimming in reverse, because there was never enough money to keep it going" (R-5, p. 24, L. 13). Despite this constant need for capital, Doumani took minimal steps to determine if Agosto, who at the time was running the Follies Bergere at the Tropicana, was involved in any improprieties (R-5, p.14, L. 21). For that matter, Doumani felt that "the deal we negotiated with Agosto was an excellent business deal for the Tropicana Hotel," in addition to which Doumani considered his relationship with Agosto to be a "very friendly one" (R-5, p. 14, L. 3; R-5, p. 15, L. 14). As part of this bond, on several occasions when the Follies Bergere show needed money to make its payroll, the Doumanis advanced the funds (R-5, p. 19, L. 4). On the other hand, whenever Doumani needed Mitzi Briggs' consent or approval for a project at the Tropicana, Agosto "was probably the most influential in assisting us, my brother and myself as landlords" (R-3, p. 39).

Additional involvement between Doumani and Agosto arose out of a 1983 scandal concerning a check-kiting scheme at the

Mineral Bank in Las Vegas (R-38; R-39; R-40; R-41; R-42; R-43; R-44; R-45; R-46). As reported in various accounts of the episode, the Crocker National Bank of California, which acted as Mineral Bank's clearinghouse bank, severed that relationship because Mineral Bank accepted checks totalling several million dollars and gave immediate credit on them despite the fact that the checks had not cleared through Crocker (R-38; R-39; R-40; R-41). Some of the checks handled in this manner had been processed in connection with accounts maintained at Mineral Bank by at least three companies controlled by Agosto (R-42; R-43). At the time of the incident, Agosto, who was the second largest shareholder in the Mineral Bank, was on trial in Minnesota for a bank fraud scheme of which he was eventually convicted (R-42; R-43; R-14; R-15).

In order to make good on overdrafts by his companies, Agosto deposited approximately \$1.8 million in Mineral Bank (R-45; R-46). A substantial portion of these funds Agosto obtained from Edward and Fred Doumani (R-32; R-37). The Doumanis were urged to aid in this infusion of capital by several businessmen, including Melvin Wolzinger, who served as a director of Mineral Bank (R-32). Wolzinger has a continuing relationship with Doumani, being the lessee of the slot casino at the El Morocco.

Doumani's entire relationship with Agosto, including his willingness to provide financial aid to Agosto at a time when Agosto was under indictment, is of great concern to this Commission. Equally troubling is the spectre of Doumani

continuing to wield influence over GNI, in view of the fact that GNI director Wolzinger has a continuing relationship with him, and felt the need to obtain his assistance with respect to the Mineral Bank situation.

We now turn to Doumani's activities while he was a GNI director, during which time he was instrumental in hiring Joseph Cusumano to work in the casino's baccarat operation (R-5, p. 71, L.7; R-5, p. 72, L.1). Cusumano has been associated with reputed Chicago organized crime leader Anthony Spilotro (R-24), and has been described as Spilotro's chosen replacement (R-24). He is also reputed to be a representative of a New York organized crime "family" in Las Vegas (T77-7).

Doumani knows that Cusumano is alleged to be friendly with Spilotro (R-4, p.20). Nevertheless, over the years a very cordial, social relationship developed between Cusumano and the Doumani brothers (R-4, p. 19; R-5, p. 70, L.11). Doumani considers Cusumano "a man you can trust" (R-4, p. 20). Cusumano is welcomed at the El Morocco Motel and apparently has free reign throughout the facility (T54-17; T71-19). In addition, Doumani sent Cusumano to oversee the New York filming of the movie "Cotton Club," in order to insure that there would be no more budget overruns so that the movie would be completed on time and thus protect the \$20,000,000 Doumani family investment (T75-8). Apparently, the Doumanis were satisfied with Cusumano's performance in this regard (T81-7).

Perhaps most significantly, Doumani was the prime mover in having Cusumano hired to work at the baccarat table at the

Golden Nugget in Las Vegas (R-5, p. 72, L.1). It was Doumani's understanding that Cusumano may have been indirectly involved in organized crime, but that did not deter him from hiring Cusumano (R-5, p. 71, L.1; T41-9). Moreover, Doumani knew that the Nevada gaming authorities wanted Cusumano out of the operation at the Golden Nugget (R-5, p. 71, L. 7; T40-16). Stephen Wynn also wanted Cusumano out of the Golden Nugget in Nevada, and resorted to the closing of the baccarat game in order to accomplish that result (R-5, p.72, L.15; R-5, p.80, L.18). However, so strong was the friendship between the Doumanis and Cusumano, that Doumani hired Cusumano to run the baccarat game at the Tropicana after Cusumano left the Las Vegas Golden Nugget (R-5, p.73, L.12).

The extent of the trust that existed between Cusumano and the Doumanis is evidenced by the fact that Fred Doumani lent \$40,000 to Cusumano (R-53), and Doumani permitted Cusumano to negotiate his personal checks (R-54).

Doumani's close personal and business ties to Cusumano demonstrate the lack of care with which he chooses his social and business acquaintances. Even after being made aware of New Jersey's regulatory concerns regarding their association with Cusumano, both Edward and Fred Doumani on several occasions during the course of the Division's investigation still met with Cusumano and allowed him access to the El Moracco (T41-2; T65-8; T71-16). Doumani's long-standing and continuing association with Cusumano shows his lack of sensitivity to the nature of the casino industry, and the concerns of those who regulate it, and

reflects negatively on his qualification as a major security holder of GNI.

That negative impression is exacerbated by the evidence concerning Doumani's association with Allen Glick.

As a result of Allen Glick's activities as a principal of the Stardust Hotel, Marina Casino, Las Vegas Hacienda and the Argent Corporation, an order was issued by the Nevada Gaming Commission on August 23, 1979, revoking the nonrestricted gaming license issued to Glick, and fining him individually \$125,000 (R-17; R-18; R-19). The charges arose out of skimming operations at the Stardust, Marina and Hacienda (Id.; T37-23; R-7, p.29, L. 2). There had also been allegations that Glick was "fronting" at Argent on behalf of organized crime figures (R-7, p.28, L.2; R-7, p.29, L.13).

Doumani, despite his knowledge that there were problems at the Stardust, decided that he wanted to acquire an interest in that facility (R-5, p.22, L.21; R-3, p.19; R-20; R-21). Although the deal was never consummated, it proved to be a concern at the time that GNI attempted to obtain additional financing on the public securities markets (R-7, p.24, L.24). Doumani was made aware of this concern and eventually resigned as a GNI director in October 1978 (R-6, p. 185, L.2). In addition, Edward and Fred Doumani made a loan of \$500,000 to Glick through a trust account (R-22).

Edward Doumani's willingness to deal with Glick in spite of the suspicions surrounding him is obviously troublesome to this Commission. Although Doumani resigned as a GNI director

due in part to his negotiations with the Stardust, he was still interested in the Stardust deal and was not concerned about what people thought (R-5, p.23, L.3). Although the deal did not close, it raises the spectre that Doumani would seemingly choose profits over propriety without regard to or consideration of the nature and quality of the association which might aid him in achieving those profits.

Finally, we turn to Doumani's association with Sorkis Webbe. Webbe was general counsel for the Aladdin Hotel in Las Vegas and reputedly acted as an agent of organized crime at that facility (R-29). He has been convicted of making and filing a false and fraudulent income tax return (R-25; R-26; R-29). Webbe has also been indicted for, among other things, mail fraud and conspiring to defraud the United States (R-26; R-49; R-50). Doumani was aware of Webbe's difficulties with the federal authorities (R-5, p.84, L.6). Despite this, Doumani considers Webbe to be a very close friend (R-5, p.83, L.1). As a result of this friendship, Doumani and Webbe became involved in a business known as Snap 'N Pops, and, when the investment did not go well, Doumani lent Webbe as much as \$860,000 in order to cover Webbe's portion of the investment (R-4 at p.7; R-27; R-28).

To lend a close friend a substantial amount of money when a mutual business deal is unsuccessful may, under some circumstances, be admirable. However, Doumani's persistent close personal and business relationship with Webbe, in light of Webbe's background and intense scrutiny by federal authorities, is highly disturbing. Doumani's failure to appreciate the regulatory concerns engendered by his association with Webbe weighs heavily on this Commission.

In addition to the evidence concerning Doumani's association with unsavory individuals, the Division presented evidence of a variety of questionable business practices by Doumani. We now turn to this evidence.

On September 8, 1976, the Nevada Gaming Control Board filed with the Nevada Gaming Commission a twelve-count complaint against Doumani and the Hotel Conquistador, Inc., d/b/a Tropicana Hotel and Casino (R-30). The complaint primarily concerned allegations that Doumani and his related business entities improperly managed funds from investors in the Tropicana.

Although Doumani acknowledges that the Nevada Gaming Commission fined him \$50,000 in connection with the allegations in the complaint, he describes the charges as "technical violations" (R-5, p.58, L.6). However, in the complaint's sixth count, the Nevada Gaming Control Board alleged that in July 1975 Cedric Janien, without first being licensed in Nevada, received \$300,000 credit for an investment in the Las Vegas Tropicana in violation of Nevada gaming regulations. Although the Nevada Gaming Commission's Order did not specifically find Doumani guilty of any improper conduct, in settlement of the complaint the Nevada Gaming Commission required the Las Vegas Tropicana to pay \$300,000 to Cedric Janien in addition to fining Doumani \$50,000 (R-30; R-31).

It should be noted that the order settling the complaint against Doumani (R-31) was entered at his request so as to avoid further protracted proceedings on the matter. However, it was

almost a month and one half after the date of the order that Doumani finally paid the \$50,000 fine (R-31).

Again, Doumani's unwillingness to cooperate with, and failure to recognize the concerns of, regulatory authorities generates an unfavorable picture for this Commission.

Doumani's apparent misuse of funds obtained from Ash Resnick raises similar concerns. In a sworn statement of September 22, 1980, Doumani denied that Resnick ever made a \$500,000 investment in the Tropicana (R-5, p.45 et seq.). According to Doumani, Resnick was a 30% investor in Doumani and Associates and Doumani used funds from that enterprise to make loans to himself. Ibid. However, there was no formal authority for Doumani to make such loans. Specifically, Doumani never obtained Resnick's permission to do so (R-5, p. 50, L.2).

As a result of these loans, Resnick claimed to be an investor in the Tropicana. Resnick took this position on the theory that the money Doumani borrowed from Doumani and Associates was used for the Tropicana, having been diverted from the distribution payments that otherwise would have gone to the principals in Doumani and Associates (R-5, pp.45 to 50). It was in connection with these transactions that Doumani submitted to, and failed, two polygraph tests (R-5, p.53, L.21).

In Doumani's view, the use of the Doumani and Associates funds was just a "trade off as you need it. It's instead of borrowing money from the bank, you take it if it is there in the

bank account" (R-5, p. 50, L.14). However, this Commission cannot accept such an irresponsible attitude toward the use of the money of others by someone with Doumani's background and legal training.

Among other questionable business practices, Doumani, while in charge of the Tropicana in Las Vegas, permitted his mother to draw funds out of the change booth to play slot machines at the casino (R-5, p.67, L.15). According to Doumani, he believed that the practice was proper, and that his conduct would be viewed only as a form of therapy for his ailing mother (R-5, p.69, L.19).

While this violation, standing alone, may not be sufficient to result in an adverse decision as to Doumani, it is clearly further evidence of his disregard for the proprieties of casino operations.

Viewing the evidence concerning Edward Doumani as a whole, we are compelled to conclude that he is disqualified.

As stated earlier, the burden is on Doumani to demonstrate his qualifications by clear and convincing evidence. He has totally disregarded this obligation, and, on that ground alone, is found to be disqualified. N.J.S.A. 5:12-86(a). Moreover, the evidence presented by the Division makes it clear that he lacks the good character, honesty and integrity demanded by the Casino Control Act of one in his position. This determination flows primarily from three considerations:

1. Doumani's associations with Joseph Cusumano, Allen Glick, Sorkis Webbe, Joseph Agosto and Irving "Ash" Resnick;

2. Doumani's attitude with regard to the regulatory process; and

3. Doumani's handling of casino and non-casino business matters.

Doumani has repeatedly and consistently associated himself with organized crime figures and other unsavory or notorious persons. He has ignored numerous suggestions from regulatory and law enforcement authorities to disassociate himself from such individuals. He has shown disdain for the concerns of casino regulators and for the public image of the casino industry. His business practices are questionable at best. In short, he lacks the qualities of good character, honesty and integrity required by the Casino Control Act.

II. EDWARD DOUMANI'S CONTROL OF THE GNI STOCK HELD BY OTHER FAMILY MEMBERS

The next issue before us is whether Doumani controls or has the ability to control the GNI stock held of record by Eleonore, Cindy, Lawrence and Fred Doumani, Jr.

In an August 5, 1980, deposition Doumani described himself as the "second largest stockholder" of GNI<sup>3</sup>, despite the fact that at the time the stock which he held individually was less than 1% of the outstanding stock (R-3, p.18). Doumani

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3. Only Stephen Wynn's holdings are larger than the Doumani family's holdings. Wynn's stock, together with options and warrants, amounts to about 13.8% of the outstanding GNI stock.

also stated that he controls the daily business operations of the Doumani brothers (R-4, p.5), and that "there is rarely an instance that all the children don't participate together" in business operations which he initiates (R-4, p.6). Detective Gallo of the New Jersey State Police testified before the Commission that Doumani told him that "he makes all the decisions as far as the business and their [the family's] stock" (T52-7). Detective Gallo also testified, based on his personal observations while in Las Vegas, that Doumani appeared to make all the decisions concerning the family business and that Fred Doumani is not really involved in its operations and spent very little time in their office (T52).

From Doumani's perspective, "regarding my brother's stock investment in the Golden Nugget, as well as mine, we've always treated them as one. In all our business dealings with [sic] do everything together" (R-8, p. 5). It was Doumani's decision to invest in GNI which prompted Fred Doumani to invest in GNI (R-8, pp.5-6).

After acquiring the GNI stock, the same pattern of dominance and control persisted, with the stock held by the Doumani family being voted as one block, with the decisions on how to vote that block being made by Doumani (R-8, p. 6).

GNI, in its April 11, 1983, proxy statement detailing the outstanding shares held by major shareholders, stated that "Edward M. Doumani and Fred M. Doumani are brothers, participate jointly in various business activities and, accordingly, may be

deemed to share investment power" (R-57, p.2). Moreover, that same proxy statement noted that the shares of stock beneficially owned by Doumani should be deemed to include 45,000 shares owned by Eleonore Doumani (Ibid).

During the course of negotiations conducted to resolve this matter, GNI and its legal counsel proposed solutions and dealt with the stock of the Doumani family as one integral block (R-55; R-58). There is no indication that the wives and children were in any way consulted concerning the decision which lead to the petition filed by GNAC on March 9, 1984. Likewise, in all prior dealings with the Commission, including subjecting the stock to various proxies, the Doumanis have always acted as a group.

When assessing Doumani's promise, made in support of the March 9, 1984, petition, not to influence or control the wives and children with respect to their GNI stock, the Commission must also consider Doumani's long and intimate association with GNI. He was part of the original takeover group headed by Stephen Wynn. He served as a director of GNI from August 1, 1973, through October 19, 1978 (R-57, p.2). However, in August 1980, he told the Division that "generally, the resignation from the Golden Nugget really didn't make much difference, because I still know everything they do. They contact me in terms of major decisions affecting the company" (R-3, p.19; R-8, p.36, 39; R-5, pp. 87-109).

Edward Doumani's past involvement with GNI and continuing relationship with GNI board member Melvin Wolzinger cast further

doubt on the reliability of his promise not to influence other family members with regard to their GNI stock. Moreover, in evaluating Doumani's promise, the Commission must also take into account the evidence before it relating to his lack of good character, honesty and integrity. In short, we cannot accept Doumani's representation that he will not influence or control the other family members with respect to their GNI stock.

The claims by the Doumani wives and children that they have historically acted independently and will control their GNI stock independently in the future are equally unpersuasive. As noted previously, in the mid to late 1960s, the Doumani brothers, under Doumani's leadership, developed two Las Vegas motels, the LaConcha and the El Morocco (R-59, p.2). The brothers, along with two of their cousins and Irving Resnick, formed Doumani and Associates in 1972 as a tax shelter partnership designed to invest in oil and gas ventures (Ibid).

In connection with the management of Doumani and Associates, Doumani has stated: "Whatever I handle, I handle for everybody" (R-5, p.50). Doumani feels that he has the right to borrow funds from Doumani and Associates without first obtaining the permission of the other principals who have advanced money to the organization (Ibid). The El Morocco Motel in Las Vegas is subject to the same pattern of participation, i.e., it is controlled by Doumani (T52 to T53), but the other family members, including the children, have ownership interests (R-8, p. 10).

Doumani and his brother established, on behalf of their sons, Uniform Gifts to Minors Accounts. Funds from these accounts were used to purchase the GNI stock acquired by the Lawrence Doumani Trust and the Fred Doumani, Jr., Trust in May 1973 (R-59, p.2).

In 1974 when the Doumani brothers acquired their leasehold interest in the Las Vegas Tropicana, the Valley Bank of Nevada lent them \$2,500,000 for that investment. Although that loan was unsecured, revenues from the LaConcha and the El Morocco provided the essential support for the loan transaction (R-59, p.3). The brothers obtained the remaining portion of their Tropicana investment from Doumani and Associates and a separate Doumani Brothers checking account (Ibid).

In 1977 the brothers established the Doumani Family Partnership, acquired a 50% ownership interest in the Las Vegas Tropicana and relinquished their managerial responsibility in that facility. The partners of the Doumani Family Partnership were Edward and Fred Doumani, their wives, and five trusts, one for each of the children of Edward and Fred Doumani, with each brother acting as trustee for the trusts on behalf of his nieces or nephews. Each trust was initially funded with, among other things, a percentage interest in Tiger Investment Company (R-59 p.3).

At the time that the Doumani brothers acquired their ownership interest in the Las Vegas Tropicana, they mortgaged that facility for \$15,000,000 and mortgaged the LaConcha and E

Morocco for \$7,000,000. The \$22,000,000 was used to fund the construction of a high-rise tower of the Las Vegas Tropicana (R-59, p.3).

In 1979 the Doumani Family Partnership sold its interest in the Tropicana to Adamar of Nevada, Inc. for \$34,000,000. The proceeds of sale were deposited in the partnership account and distributed among the partners (R-59, p.3).

In their affidavits the Doumani wives and children state that they have historically made investment judgments independent of Edward and Fred Doumani and that they have acquired substantial independent assets. Their claim is contradicted not only by the evidence supplied by the Division, but also by their own financial statements submitted in support of the March 9, 1984, petition.

According to her financial statement, Eleonore Doumani has assets of approximately \$11,000,000. As of March 30, 1984, she owned 785,475 shares of GNI common stock, which accounts for almost 80% of her total assets (R-59, p.4). Of her 785,475 shares, 225,000 shares can be traced, through stock splits, to her purchase of 10,000 shares in 1973. She acquired the rest of her GNI holdings through Doumani, primarily by his renunciation under Nevada community property laws, of his interest in that stock (Ibid).

As for the remaining 20% of her assets, Eleonore Doumani lists a bank account with a balance of \$200,000. Her parents originally funded this account with \$250,000. Although she controls this account, the principal and interest belong to her

parents (Ibid). Eleonore Doumani has used this account to loan funds to Edward and Fred Doumani in connection with their financing of the movie, "The Cotton Club" (R-59, p.5). In addition, she pledged her GNI stock with E.F. Hutton in order to secure additional funds for the financing of "The Cotton Club" (R-59, p.6).

Eleonore Doumani's financial statements also reflect three accounts receivable totalling over \$1,000,000. Seventy-five percent of this amount is attributable to the interest in the Adamar note which she acquired as one of the partners in the Doumani Family Partnership (R-59, p.5). The other receivables of \$200,000 and \$52,000 are from loans to Doumani Brothers and the El Morocco Motel, Inc., respectively (Ibid).

Eleonore Doumani failed to disclose to the Commission that her husband and brother-in-law lent her money to meet mortgage payments on her home in Beverly Hills, California. Although she reports her equity interest in this home to be in excess of \$1,000,000, half of that amount came from the bank account she manages for her parents (Ibid).

Despite her asserted independence, Eleonore Doumani has failed to provide any information which establishes her ability or desire to handle her financial affairs without the guidance and influence of her husband and brother-in-law. Indeed, nothing in the record refutes the compelling conclusion that Eleonore Doumani has never made a major independent business decision. Rather, all her major business involvement has been orchestrated and controlled by her husband.

On her financial statement, Cindy Doumani reports approximately \$8,400,000 in assets, 78% of which is attributable to her GNI stock (R-59, p.6). She acquired all her GNI stock through her husband (Ibid). Her remaining assets consist primarily of her interest in the Adamar note, a Beverly Hills condominium and a home in Santa Barbara, California. Cindy Doumani acquired her portion of the purchase price for the Beverly Hills condominium which she jointly owns with her children, from disbursements to her from the Doumani Brothers account (R-59, p.7). As for the Santa Barbara home, she used her share of the Adamar note receipts for 25% of the purchase price and she is attempting to arrange financing for the remainder (Ibid).

From the foregoing it is clear that whatever assets Cindy Doumani has acquired are traceable, almost exclusively, to the interests of her husband and brother-in-law.

In addition, it seems highly doubtful that Eleonore and Cindy Doumani made the decision to each sell 17,500 shares of GNI stock, in an attempt to bring the family's remaining holdings under 5%, independently of each other or of their husbands.

Turning to Lawrence Doumani, he also owns GNI stock, but these holdings are only approximately 32% of his assets (R-59, p.7). His original 10,000 shares of GNI stock, which, through stock splits, grew to 225,000, were purchased in 1973 with funds from the Uniform Gifts to Minors Account established on his behalf by his father. In November 1983 Lawrence Doumani became

21 years old and acquired title to this stock outright. In January 1984 he purchased another 2,000 shares of GNI. Subsequently, he pledged his GNI holdings with Valley Bank of Nevada and turned the proceeds of that loan over to Doumani Brothers for use in the financing of "The Cotton Club" (R-59, p.8).

Lawrence Doumani also owns stock in another publicly traded company, Resorts International, Inc. His father used his Uniform Gifts to Minors Account to purchase this stock Ibid. His father also used that same account to purchase a 10% interest in Peppermill, Inc., worth \$50,000, and a 5% interest in Tiger Investment Company worth \$3,000,000 (Ibid).

As previously described, Lawrence Doumani's father established a trust account for him and designated Fred Doumani as trustee. This account was partially funded from a North Dakota oil and gas well interest acquired by Doumani. Funds from the account were used to purchase an interest in two Louisiana-based oil wells which Lawrence Doumani values in his financial statement at \$280,000 (Ibid).

For several years Lawrence Doumani has received as a gift a percentage interest in the El Morocco Motel. His accumulated interest equals 14.02%, with an estimated market value of \$983,590 (R-59, p.9).

Lawrence Doumani's Uniform Gifts to Minors Account and his trust account have been used to lend money to individuals and entities with Doumani family connections. For instance,

his Uniform Gifts to Minors Account was used to loan money to the family-owned Delex Drilling Company and to his aunt, Cindy Doumani. Through his trust account Lawrence Doumani lent money to Briggs Investment Company, which is controlled by Mitzi Briggs, and to the Dahlia Doumani Trust and the Dominique Doumani Trust, each of which are trusts established for his two sisters (R-59, pp. 2,9). Accordingly, Lawrence Doumani's financial statements reflect receivables totalling \$1,137,477 from these sources (Ibid).

Lawrence Doumani discloses two other major receivables on his financial statements. One is his interest, acquired through his trust account, in the Adamar note. The other is a loan of \$4,265,000 due from Doumani Brothers. Of this amount, \$2,000,000 was lent to his father and uncle in connection with the pledge of his GNI stock in order to help finance "The Cotton Club." The remaining amount of this receivable represents loans made over the years to his father and uncle from his Uniform Gifts to Minors Account and his trust account (Ibid).

Lawrence Doumani reached the age of 21 in 1983. Although he purchased 2,000 shares of GNI stock in January 1984, we are not persuaded that there has been any conduct on his part which would allow us to conclude that he is independent of his father and uncle. Rather, it is abundantly clear that his financial position is intimately connected with, and still dictated by, his father.

A review of Fred Doumani, Jr.'s financial statement reveals that he and Lawrence Doumani own identical interests in

the same properties, except for Fred Doumani, Jr.'s participation in the ownership of two family-related real estate properties and Lawrence Doumani's purchase of an additional 2,000 shares of GNI stock (R-59, p.20). Other variations are in kind, rather than substance. For instance, Fred Doumani, Jr.'s total accumulated interest in the El Morocco is 3.4% more than Lawrence Doumani's interest (R-59, p.10). Similarly, Fred Doumani, Jr.'s receivable from Delex Drilling is \$50,000 more than what his cousin Lawrence has, whereas Doumani Brothers owes Fred Doumani, Jr. \$114,000 less than it owes Lawrence Doumani (R-59, p.11).

Fred Doumani, Jr. also owns a 1/3 interest in the same Beverly Hills condominium in which his mother has an interest.

Since Fred Doumani, Jr. acquired his assets in an almost identical fashion to that of his cousin Lawrence, our conclusion is that he, like his cousin, has not demonstrated any financial independence.

For confirmation of our conclusion with respect to Lawrence and Fred Doumani, Jr., we need look no further than the identical \$2,000,000 loans which they made to their fathers in February 1984, in connection with the elder Doumanis' financing of "The Cotton Club." In October 1983 Edward and Fred Doumani originally obtained a \$4,000,000 loan from Valley Bank for which each pledged, as trustee, the GNI stock held in trust for his minor nephew. The elder Doumanis exclusively handled the negotiations for that loan to finance "The Cotton Club" and personally guaranteed 75% of the amount.

When that loan was due to be renegotiated in February 1984, Lawrence and Fred Doumani, Jr. were over 21, and both pledged their GNI shares with Valley Bank as continued collateral for the original \$4,000,000 loan to their fathers. The sons agreed to repay the \$4,000,000 to Valley Bank, but failed to report that debt on their financial statements.

The elder Doumanis, in connection with the February 1984 renegotiation of the loan, personally guaranteed the entire amount of that loan, executed deeds of trust on the LaConcha and El Morocco properties and obligated themselves to repay their sons who had become primarily liable to the Valley Bank for \$4,000,000 (R-59, pp. 8-10). The February loans to Lawrence and Fred Doumani, Jr. were clearly to aid their fathers' continued financing of "The Cotton Club" and are further evidence that the two sons exercise little, if any, independence at this point in their lives.

In short, the record before us demonstrates that the assets of Eleonore, Cindy, Lawrence and Fred Doumani, Jr. result from family investments, and that all family investments are controlled and directed by Edward Doumani. The financial statements cannot be taken as evidence that the wives and children have acted independently of each other or independently of Edward Doumani. In fact, they, along with the Division's Jun 18, 1984, report, evidence exactly the opposite.

The influence which one person has over another is never an easy matter to prove. However, the totality of the evidence

before the Commission provides no basis for believing that the Doumani wives and children will independently control the 5% of GNI which they retain, but rather compels the conclusion that Edward Doumani has the ability to control and will control their GNI holdings.

### III. REMEDY

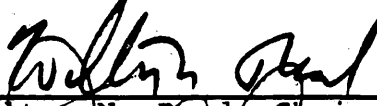
We have found that Edward Doumani is disqualified, and that all of the GNI stock held by the Doumani family can be and is controlled by him. In view of this control, Edward Doumani continues to hold a beneficial interest in the stock held of record by the other family members, within the meaning of N.J.S.A. 5:12-85(c) and (d), and his disqualification taints the stock held of record by the other family members.


In accordance with N.J.S.A. 5:12-82(d)(7), GNI has adopted bylaw provisions requiring that any holder of its stock who is found to be disqualified must dispose of his stock within 60 days of the receipt of notice of such finding. We therefore order the Doumanis to dispose of their GNI stock within 60 days. We further order, in accordance with N.J.S.A. 5:12-105(e), that GNI not pay any dividends or interest to the Doumanis; not permit the Doumanis to exercise, either directly or through a proxy, any voting or other rights conferred by their stock; and not pay or permit GNOC to pay remuneration in any form to the Doumanis for services rendered or otherwise.

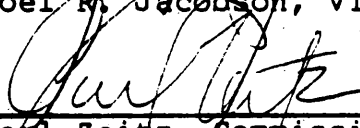
If our order of divestiture is not complied with, we can, under N.J.S.A. 5:12-105(d), take any necessary action to protect the public interest, including revocation or suspension of GNOC's casino license, except that we cannot act against GNOC or GNI if we find that (1) GNI has adopted bylaws in accordance with N.J.S.A. 5:12-82(d)(7); (2) GNI has made a good faith effort, including the prosecution of all legal remedies, to comply with the order of divestiture; and (3) Doumani does not have the ability to control or elect a director of GNI.

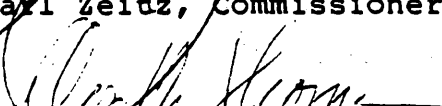
As noted above, the first of these criteria has been satisfied. The second and third criteria can be addressed if, at the end of 60 days, divestiture has not been accomplished.

NEW JERSEY CASINO CONTROL COMMISSION

  
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Walter N. Read, Chairman

  
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Joel R. Jacobson, Vice-Chairman

  
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Carl Zeitz, Commissioner

  
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Don M. Thomas, Commissioner

  
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E. Kenneth Burdge, Commissioner

DATED: December 12, 1984.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 83-EA-77 AND  
83-194 (CONSOLIDATED)  
OAL DOCKET NOS. CCC 4292-83 AND  
CCC 5314-83 (CONSOLIDATED)  
APPLICATION NO. 42116-22  
REGISTRATION NO. 35101-40

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IN THE MATTER OF THE APPLICATION  
OF BEVERLY DUNN FOR A  
CASINO EMPLOYEE LICENSE

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

FINAL ORDER

Complainant,

v.

BEVERLY DUNN,

Respondent.

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These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 23, 1983, recommending that the application of Beverly Dunn for a casino employee license be denied and that her casino hotel employee registration be suspended until July 1, 1984, conditioned upon the satisfactory performance of the requirements of her probation; and Ms. Dunn having filed exceptions to the Initial Decision on December 12, 1983; and the Commission, after considering the entire record of these

proceedings, having resolved at its public meeting of January 25, 1984, to affirm the findings of fact, but to reject certain conclusions of law contained in the Initial Decision and to deny the casino employee license application and find her disqualified from holding a casino hotel employee registration; and the Commission having further resolved to waive said disqualification in the interests of justice pursuant to N.J.S.A. 5:12-91(e) and to permit Ms. Dunn to retain her casino hotel employee registration,

IT IS ON THIS 31<sup>ST</sup> day of JULY 1984, ORDERED that the following conclusions of law contained in the Initial Decision be and hereby are rejected:

1. Dunn's conviction on December 14, 1979, for uttering a forged instrument contrary to N.J.S.A. 2A:109-1 (comparable to N.J.S.A. 2C:20-4) is a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). [Initial Decision at 7]. To constitute a statutory disqualifying offense, the Act requires that such offenses be crimes of at least the third degree. The record does not support a finding that the forgery is a third degree offense and therefore, it is not a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).
2. The registration of Ms. Dunn be suspended until July 1, 1984, and be conditioned upon the satisfactory performance of the requirements of her probation. [Initial Decision at 11].

IT IS FURTHER ORDERED that the application of Beverly Dunn for a casino employee license be denied based

the reasons set forth in the Initial Decision as hereby modified which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, in recognition of the efforts towards rehabilitation to date, the disqualification of Ms. Dunn be and hereby is waived pursuant to N.J.S.A. 5:12-91(e), and that she be and hereby is permitted to retain her casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NOS. CCC 4292-83  
and CCC 5314-83 (CONSOLIDATED)  
AGENCY DKT. NOS. 83-EA-77  
and 83-194 (CONSOLIDATED)

**BEVERLY DUNN,**

Petitioner

v.

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

Respondent.

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

Petitioner

v.

**BEVERLY DUNN, A/K/A ARNELL BRYANT,  
A/K/A CHRISTINE JONES, A/K/A  
CONNIE BROOKS,**

Respondent.

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**APPEARANCES:**

**Nathan W. Davis, Jr., Esq.,** for Beverly Dunn

**Patricia M. Wild,** Deputy Attorney General, for the Division of Gaming Enforcement  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 7, 1983

Decided: November 21, 1983

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BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. First, is the application of Beverly Dunn, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (alcoholic 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 licensure on the basis that the applicant had been convicted of a statutory disqualifying offense and lacked the requisite good character, honesty and integrity. Second, is the complaint of the Division against Ms. Dunn which alleged that she had committed a disqualifying offense, for which the Division sought revocation of her casino hotel employee registration, under sections 129 and 130 of the Casino Control Act (Act). Ms. Dunn opposed this action.

PROCEDURAL HISTORY

Ms. Dunn filed her Personal History Disclosure Form-2A (PHDF-2A) with the Commission on June 7, 1982 (C-1). The Commission advised Ms. Dunn that, based upon information received in a report from the Division, dated May 2, 1983, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. By letter dated May 28, 1983, Ms. Dunn requested a hearing. On June 7, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The Division filed its complaint with the Commission on June 13, 1983. By letter, dated June 27, 1983, Ms. Dunn requested a hearing. On July 6, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case.

A prehearing conference was held on July 20, 1983, and the consolidated matters were scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Dunn is 23 years of age (C-1). She has lived in New Jersey since May 1982. She is the mother of a three-year-old child. She obtained a graduate equivalency degree in 1974.

From March 1977 to August 1979, Ms. Dunn was employed by J & R Cleaners and Tailors in New York as a cashier/clerk.

On December 1, 1978, Ms. Dunn was involved in an incident which led to her arrest on that day by the Hammonton Police Department (R-5). Ms. Dunn was arrested under the alias of Arnell Bryant. She was charged with a violation of N.J.S.A. 2A:109-1, forgery (comparable to N.J.S.A. 2C:21-1); N.J.S.A. 2A:85-5, attempting to cash a forged check; and N.J.S.A. 24:21-20a4, possession of marijuana under 25 grams. She was arrested with Charles Biggins and Dean Carlton. Subsequent to her arrest, Ms. Dunn gave a voluntary statement to the police. Other police investigations implicated Ms. Dunn in similar offenses in Brigantine (R-3 and R-4), Somers Point (R-6) and Egg Harbor (R-7). On April 26, 1979, Ms. Dunn was indicted by an Atlantic County Grand Jury with 15 counts each of violations of N.J.S.A. 2A:109-1 forgery (comparable to N.J.S.A. 2C:21-1); N.J.S.A. 2A:109-1, uttering a forged instrument (comparable to N.J.S.A. 2C:21-1); and N.J.S.A. 2A:111-1, obtaining money by false pretenses (comparable to N.J.S.A. 2C:20-4) (R-1). These charges concerned seven incidents which occurred on November 25, 26, 28 and 29, 1978, in Brigantine, four incidents which occurred on November 29 and December 1, 1978, in Hammonton, one incident which occurred in Linwood on December 1, 1978, two incidents which occurred on December 1, 1978, in Somers Point and one incident which occurred on December 20, 1978, in Egg Harbor. Ms. Dunn pled not guilty to the charges.

On October 26, 1979, Ms. Dunn retracted her plea of not guilty and entered a plea of guilty to seven counts of the indictment for violations of N.J.S.A. 2A:109-1, uttering a forged instrument, and N.J.S.A. 2A:111-1, obtaining money by false pretenses (R-2). On December 14, 1979, Ms. Dunn was sentenced to imprisonment for 364 days, which was commuted to 19 days already served, five years' probation and was ordered to make restitution in the amount of \$1,338.30.

On December 14, 1979, Ms. Dunn was assigned to Probation Officer Mary Szczepanski. She last reported to Ms. Szczepanski on February 27, 1980.

From September 1979 to July 1980, Ms. Dunn was unemployed. In July 1980, she relocated to New York City. As a condition of her probation, Ms. Dunn was not to leave the state without permission. She neither applied for permission nor sought a transfer of her probation to another state at the time she relocated to New York.

From August 1980 to January 1981, Ms. Dunn was employed as a clerk by Saks Fifth Avenue in New York City. From February 1981 to September 1981, Ms. Dunn was unemployed and lived in New York City.

On July 21, 1981, Ms. Dunn submitted an application for licensure as a casino hotel employee. Subsequently she was registered (registration number 35101-40).

From October 1981 to April 1982, Ms. Dunn was employed as a home health aid by Cabs Home Attendant Service. In May 1982, the applicant relocated to New Jersey. From May to June 1982, she was unemployed.

On June 7, 1982, the applicant submitted her PHDF-2A form to the Commission. She disclosed her criminal record history on the application form.

Commencing in July 1982 and for a short period of time, the applicant was employed as a maid by the Tropicana Hotel and Casino. Also during the summer of 1982, the applicant was employed as a cocktail waitress for a period of two months by Resorts International Hotel, Inc. She was fired because of lateness.

On April 13, 1983, Detective James Barber, of the New Jersey State Police assigned to the Division, contacted Ms. Betty Lou Sochocky, principal probation officer with the Atlantic County Probation Office, regarding Ms. Dunn. Probation office records indicated that the office had been unable to contact Ms. Dunn since 1981, that she was then listed as absconded and that a bench warrant had been issued for her arrest.

Also on April 13, 1983, Detective Barber contacted Ms. Dunn and questioned her regarding her probationary status. She acknowledged that she had not reported, but claimed that her probation officer had died and that she had not been reassigned prior to her move to New York. The detective advised her to contact the probation office.

On April 13, 1983, Ms. Dunn contacted the probation office. Upon her appearance, the warrant was rescinded and the charges of a violation of probation were withdrawn. Ms. Dunn is currently serving out the balance of her probationa period of three years and three months. She has reported 15 times (office visits and telephone calls) to Probation Officer Heather Delmar. Ms. Dunn reports twice per month. She has also paid \$250 of the \$1,338.30 restitution, although she missed the September 1983 payment.

Ms. Dunn is unemployed at the present time, but she is looking for work. She has plans to return to school.

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

**(B) DISPUTED FACTS**

In dispute were the circumstances surrounding Ms. Dunn's failure to conform to the requirements of her probation from 1980 to 1983, and her good character, honesty and integrity.

Ms. Dunn testified that following the resignation of Probation Officer Szczepanski, she was reasigned to Probation Officer Richard Fowler, whom she saw four times. After Mr. Fowler died, Ms. Dunn was advised that she would get notice of a new probation officer. She did not. Neither did she inquire as to the identity of a new probation officer. Ms. Dunn contended that she was three-to four-months pregnant at that time and relocated to New York City in order to live with her mother because of financial difficulties; however, at the hearing Ms. Dunn testified that her child is now three years of age. This testimony appeared to be inconsistent.

Ms. Sochocky testified that Mr. Fowler was a probation officer with the County and that he died. However, Ms. Sochocky testified that Ms. Dunn's probation file does not indicate that she was assigned to Mr. Fowler. Further, Mr. Fowler was assigned to the Presentence Unit and did not have any responsibilities for reporting cases.

The resolution of this dispute appears to turn upon the persuasiveness of Ms. Dunn's testimony. Ms. Sochocky's testimony appeared to be credible in every respect and

was based upon her review of Ms. Dunn's file. In order to evaluate Ms. Dunn's testimony, her position in these matters must be recognized. She is the applicant for licensure as well as the respondent in the action seeking to revoke her registration and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record, from my observations of Ms. Dunn's demeanor, and from my examination of documentary evidence, that Ms. Dunn testified truthfully. Ms. Dunn's testimony was consistent for the most part and appeared to be sincere. Further, the fact that Ms. Dunn was aware of Mr. Fowler's position with the probation office and of his death was persuasive. In addition, the testimonies of Ms. Dunn and Ms. Sochocky are not mutually exclusive, as Mr. Fowler's death could have impaired full and accurate records being placed into Ms. Dunn's file. In any event, I am persuaded to accept Ms. Dunn's testimony in this regard.

Ms. Dunn further testified regarding the charges filed against her. Although she admitted involvement in the incidents in Hammonton and Egg Harbor, she denied involvement in the incidents in Brigantine and Somers Point. The Division did not oppose this testimony; therefore, it appears to be persuasive.

Ms. Dunn also testified that she was remorseful regarding her misconduct and had no intent of repeating her misconduct in the future. She wants to improve the quality of her life. Ms. Dunn believes that she is a changed person because of the birth of her child.

Ms. Dunn called Heather Delmar, her probation officer, to testify on her behalf. In addition to stating that Ms. Dunn was completing satisfactorily the requirements of her probation, Ms. Delmar testified that Ms. Dunn has been truthful in her dealings with the probation office since April 13, 1983.

Ms. Dunn also produced two letters in support of her application. Ethel Hicks, a friend and neighbor for the past six years, stated that Ms. Dunn has matured since her misconduct and is a good friend and parent (P-1). Leila Cummings, the grandparent of Ms. Dunn's child, stated that Ms. Dunn has tried very hard to improve her future (P-2).

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

1. Subsequent to the resignation of Ms. Szczepanski, Ms. Dunn was reassigned to Probation Officer Richard Fowler.

2. Ms. Dunn reported to Mr. Fowler on four occasions.
3. Following Mr. Fowler's death, Ms. Dunn did not receive notification of reassignment to another probation officer.
4. Ms. Dunn did not inquire at the probation office as to the identity of her new probation officer.
5. Ms. Dunn enjoys a favorable reputation for good character, honesty and integrity among close friends and associates.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-129(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Ms. Dunn pled guilty to violations of N.J.S.A. 2A:109-1 (comparable to N.J.S.A. 2C:21-1), and N.J.S.A. 2A:111-1 (comparable to N.J.S.A. 2C:20-4), which are enumerated disqualifying offenses.

I CONCLUDE that Ms. Dunn's conviction for violations of N.J.S.A. 2A:109-1 and N.J.S.A. 2A:111-1 mandate that she be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1). I further CONCLUDE that Ms. Dunn's conviction subjects her casino hotel employee registration to revocation, suspension or limitation, pursuant to section 91b of the Act.

(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 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. Dunn is registered as a hotel employee and has applied for licensure to be employed as an alcoholic beverage employee. In these capacities she would have no responsibilities for actual gaming activities, but could have substantial contact with patrons of the casino.

Second, Ms. Dunn was convicted of uttering a forged instrument and obtaining money by false pretenses. The individual incidents as well as the totality of the misconduct were moderately serious.

Third, it appears that Ms. Dunn knew the extent of her misconduct prior to her involvement. Nevertheless, she has accepted full responsibility for her actions.

Fourth, the incidents of misconduct occurred in November and December 1978, five years ago.

Fifth, at the time of the offense, Ms. Dunn was 18 years of age. It is likely that her misconduct was, in part, due to immaturity.

Sixth, the applicant's misconduct involved several incidents within a short period of time approximately five years ago. There is no other indication of other wrongdoing of any kind.

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

Eighth, Ms. Dunn has demonstrated some rehabilitation. She admitted her misconduct and pled guilty to the charges emanating from those incidents in which she was involved. Further, she has not repeated her misconduct. Although she is currently completing the requirements of her probation satisfactorily and is making restitution, she did not do so from 1980 to April 13, 1983, when she was contacted by a Division investigator regarding her failure to comply. Further, even though Ms. Dunn has returned to probation and has made all of her reporting appointments, she missed one payment toward restitution. In addition, Ms. Dunn has not established a positive work record.

I am not persuaded that Ms. Dunn has met her statutory burden to establish her rehabilitation. Although she acknowledged her misconduct and it has been five years since the incidents took place, she has not performed satisfactorily the requirements of her probation, and four years after sentencing still has more than half of her probation to complete and the majority of the restitution to make. Basically, an insufficient period of time has passed in which the applicant has performed the requirements of her probation satisfactorily in order to evaluate reasonably her purported rehabilitation.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h or N.J.S.A. 5:12-91d.

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

Under section 89b(2) of the Act, Ms. Dunn was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of the Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the

existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, *supra*, at 2. Here the Division has raised issue regarding the applicant's convictions.

Although there has been no repetition of the misconduct, Ms. Dunn has returned to the probationary program and there is no reason to believe that she will again commit any criminal violations, her failure to establish her rehabilitation cannot be separated from her affirmative burden to establish her qualifications for licensure under section 89b(2).

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

(D) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct is purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activities;
- e. To prevent future misconduct of a like nature from recurring;

Although Ms. Dunn cannot establish her rehabilitation from her misconduct, the basis for this was her failure to complete satisfactorily the requirements of her probation. It was undisputed that she has not committed any violations of the criminal laws since 1978. Hence, there is every reason to believe that she will not return to criminal mischief. Consequently, there appears to be little, if any, risk to the public and very little risk to the integrity of gaming operations if she were to continue to hold her hotel employee registration. Therefore, her registration should not be revoked. However, the Commission should be assured that Ms. Dunn's conduct since April 13, 1983, is an accurate reflection of her current character. Therefore, Ms. Dunn's registration should be suspended until July 1, 1984. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the application of Beverly Dunn for licensure as a casino employee be **DENIED**. It is further **ORDERED** that the petition of the Division against the casino hotel employee registration of Beverly Dunn be **GRANTED**; and it is further **ORDERED** that the registration of Ms. Dunn (registration number 35101-40) be **SUSPENDED** until July 1, 1984, and be conditioned upon the satisfactory performance of the requirements of her probation.

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

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

November 21, 1983  
DATE

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

November 23, 1983  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov 28, 1983  
DATE

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- C-1 Personal History Disclosure Form - 2A, Beverly Dunn, filed July 7, 1982 (25 pages)
- P-1 Letter from Ethel Hicks, October 6, 1983
- P-2 Letter from Leila Cummings, October 6, 1983
- R-1 The State of New Jersey v. Arnell Bryant, a/k/a Christine Jones, a/k/a Connie Brooks, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment Number 657-78-J, April 26, 1979 (47 pages)
- R-2 The State of New Jersey v. Arnell Bryant, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Judgment of Conviction, December 14, 1979 (3 pages)
- R-3 Brigantine Police Department - Investigation Report, December 7, 1978, John J. O'Connor; Supplementary Investigation Report, January 15, 1979, Carmen A. DiBenedetto, with attachments (9 pages)
- R-4 Brigantine Police Department - Investigation Report, Carmen A. DiBenedetto, January 11, 1979, together with attachments (8 pages)
- R-5 Hammonton Police Department - Investigation Report, Detective Sergeant Robert Frederico, December 4, 1978; Arrest Report, December 1, 1978, with attachments (18 pages)
- R-6 Somers Point Police Department - Investigation Report, Dale Laudenslager, January 24, 1979, with attachments (8 pages)
- R-7 Egg Harbor Township Police Department - Investigation Report, December 20, 1978, with attachments (5 pages)

WITNESS LIST

FOR MS. DUNN:

Heather Delmar

Beverly Dunn

FOR THE DIVISION:

James Barber

Betty Lou Sochocky

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 02595-11  
AGENCY DOCKET NO. 84-EA-7  
OAL DOCKET NO. CCC 1013-84

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IN THE MATTER OF THE APPLICATION  
OF SIDNEY M. FELD  
FOR A CASINO KEY EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 27, 1984, recommending that the application of Sidney M. Feld for a casino key employee license be denied; and neither party having filed exceptions thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 28, 1984, to modify the said Initial Decision and to deny the application,

IT IS on this *14<sup>th</sup>* day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

The Commission rejects as unnecessary the ALJ's conclusion at 9 of the Initial Decision regarding Mr. Feld's experience for licensure as either a credit manager or security supervisor. By letter dated December 14, 1983, Mr. Feld amended his application to seek licensure as a credit executive, a position which had no specific educational or experiential requirements at that time.

IT IS FURTHER ORDERED that the application of Sidney M. Feld for a casino key employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1013-84

AGENCY DKT. NO. 84-EA-7

**SIDNEY M. FELD,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCE-  
MENT, DEPARTMENT OF LAW AND  
PUBLIC SAFETY,**

Respondent.

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**Millard A. Blake, Esq.,** for the petitioner (Harold Lipsky, attorney)

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

Record Closed: August 13, 1984

Decided: September 26, 1984

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

This matter concerns the objections of the Division of Gaming Enforcement, Department of Law and Public Safety (hereinafter referred to as the "Division") to the licensure of Sidney M. Feld as a casino key employee. Mr. Feld requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on March 16, 1984, and at that time, the parties agreed that the issues in this matter are:

- (a) Whether the petitioner has the necessary financial integrity for licensure.
- (b) Whether the petitioner can show that he is a person of good character, honesty and integrity.
- (c) Whether the petitioner can satisfy the experience requirements for licensure as a security supervisor and/or credit manager.

At the hearing held on August 13, 1984, Mr. Feld testified that he has been a permanent resident of New Jersey since 1966 and that he is the president of Garden State Canvas Company, Inc., which is in the marine canvas business. As the president of this company, Mr. Feld is involved with all elements of the company business including purchase, sale, payroll, credit checks, etc.

Prior to his current position, Mr. Feld worked for Woodruff Company as a boat supplies salesman and prior to that time, he worked for a milk distribution company.

Mr. Feld took business courses in college for approximately two years. Although Mr. Feld is not familiar with casino cage or credit operations, he believes that the casino credit procedure is similar to any other business. Mr. Feld is a member of a volunteer fire company and has attended fire prevention courses, however, he has had no law enforcement or security training.

In the latter part of 1979, Mr. Feld saw a house for sale in Toms River and decided that he wanted to purchase it. Mr. Feld called John Soldivieri, a real estate agent, and asked him to handle the purchase of the house for him. According to Mr. Feld, he had known Mr. Soldivieri for some time and Mr. Soldivieri had handled a prior real estate transaction for the Garden State Canvas Company, Inc.

Mr. Soldivieri contacted the legal owner of the house and informed Mr. Feld that there was an assumable mortgage on the property held by the Jersey Shore Savings and Loan Association. Mr. Feld went to the savings and loan association and obtained the mortgage application form.

Mr. Soldivieri advised Mr. Feld that if he wanted the savings and loan association to approve his mortgage application, he would have to show an income of approximately \$20,000 a year. According to Mr. Feld, he filled out the mortgage

application form with the assistance of Mr. Soldivieri and at Mr. Soldivieri's suggestion, he indicated that he had an income of \$2,000 a month (R-3). After he completed the form, Mr. Feld stated that he gave it to Mr. Soldivieri and also gave Mr. Soldivieri federal wage and tax statement forms (W-2 forms) for the years 1977 and 1978. Mr. Feld stated that he could not recall whether he gave Mr. Soldivieri blank W-2 forms or whether the forms had been filled out by his company's bookkeeper. Mr. Feld could not recall who filled out the request for employment verification which shows that he has a a monthly salary of \$2,000 but indicated that the form was signed by John A. Scopelitis, who is the secretary-treasurer of the Garden State Canvas Company (R-5). Mr. Feld stated that Mr. Soldivieri took the mortgage application form and other documents to the savings and loan association.

Mr. Feld admitted that the salary information on the mortgage application form (R-3), on the W-2 form for 1977 and 1978 (R-4) and on the verification of employment form (R-5) which was given to the savings and loan association was incorrect and that the income information shown in his federal tax forms (J-1) is correct. Mr. Feld's income was less than \$8,000 a year for 1977 and 1978, and during that time, his company supplied him with a car and paid the repair, insurance and gas bills for the vehicle.

Although Mr. Feld recognized that he had given incorrect information to the savings and loan association, he did not think of it as a lie and his only concern was to acquire the house. Mr. Feld did not intend to defraud and he has made regular mortgage payments.

The purchase price for the house was \$50,000 and Mr. Feld made a down payment of \$18,480.15, which is the money he realized from the sale of his parent's home in Long Island. Mr. Feld agreed to a mortgage for \$32,190.23, and the monthly payments are \$310, which includes the mortgage and real estate tax. Mr. Feld stated that there was never a question regarding his ability to make his mortgage payments since his sister was going to live with him and would contribute to the maintenance of the house. Mr. Feld's sister is retired and has a income of approximately \$600 a month.

According to Mr. Feld, Mr. Soldivieri made all the arrangements for the purchase of the house and also arranged for an attorney to be present at the closing to

represent Mr. Feld. Mr. Feld did not meet with this attorney prior to the date of the closing.

The petitioner called John Soldivieri as a witness. Mr. Soldivieri stated that he has been a licensed real estate salesman for over 20 years and that at the time Mr. Feld purchased his house, he was employed as a salesman by the Berg Agency. According to Mr. Soldivieri, he knew Mr. Feld for approximately ten years before the real estate transaction in issue and had met him while he was handling another real estate transaction. Mr. Soldivieri stated that he has known Mr. Scopelitis for even a longer period of time.

After Mr. Feld asked him to handle the transaction relating to the purchase of the house, Mr. Soldivieri informed Mr. Feld of the income range that would be required for a \$30,000 mortgage. According to Mr. Soldivieri, this is his normal procedure; however, he did not tell Mr. Feld what amount to put on his mortgage application and he did not suggest that Mr. Feld submit incorrect income information, nor did he arrange to have incorrect information submitted to the savings and loan association. Further, Mr. Soldivieri denied that he asked Mr. Scopelitis to sign a verification of employment form which contained incorrect information.

Mr. Soldivieri admitted that he did fill out part of the mortgage application form, including the name of the attorney who would be handling the matter for Mr. Feld, the purchase price and the amount of the mortgage. Mr. Soldivieri did not recall if he recommended the attorney to Mr. Feld. According to Mr. Soldivieri, he never saw the W-2 forms submitted to the savings and loan association prior to the initiation of this matter. According to Mr. Soldivieri, a verification of employment form would not be accepted unless it came directly from the employer.

Mr. Soldivieri stated that prior to the initiation of the case, it was his position that Mr. Feld had an impeccable character; however, since the deposition and specifically after hearing Mr. Feld testify, Mr. Soldivieri no longer considers Mr. Feld to have an impeccable character.

Douglas Knowlan, a State Police detective assigned to the Division, testified that he was requested to investigate the application submitted by Mr. Feld. According to Mr. Knowlan, he contacted the Jersey Shore Savings and Loan Association and was told by

its representative that Mr. Feld's mortgage had been approved based on his statements regarding his income, the W-2 Form submitted for 1977 and 1978, his employment verification and his credit report (R-3, R-4, R-5). Mr. Knowlan obtained copies of these documents.

Thereafter, Mr. Knowlan spoke to Mr. Feld and the petitioner initially stated that he obtained the mortgage because of his substantial down payment and good credit history, and he denied that he represented a higher income than that shown on his federal tax forms. When presented with the copies of his mortgage application (R-3), the W-2 forms (R-4), and the employment verification form (R-5), Mr. Feld stated that Mr. Soldivieri had submitted this information to the savings and loan association without Mr. Feld's knowledge. Mr. Feld stated that Mr. Soldivieri was a personal friend and that he gave Mr. Soldivieri blank W-2 forms and a signed blank employment verification form. On the next day, Mr. Knowlan spoke to Mr. Soldivieri and Mr. Soldivieri denied that he filled out the loan application, the W-2 forms or the verification of employment form.

In support of his position that Mr. Feld does not have the experience for licensure as either a credit manager or security supervisor, Mr. D'Elia placed in evidence the job specifications for these positions prepared by the Sands Hotel and Casino (R-1, R-2). The job specification for credit manager of the Sands Hotel and Casino sets forth the duties as: "Implements policy, sets procedures, and develops personnel in keeping with corporate objectives; specifically, determines customer credit line limits by reference to bank credit reports and other sources and credit worthiness of selected customers. Promotes outstanding customer relations. Must be knowledgeable of the Casino Control Act and its attendant regulations" (R-1). The job specification for Security Supervisor of the Sands Hotel and Casino sets forth the duties as: "Carries out procedures, trains, schedules and evaluates personnel in keeping with corporate objectives; specifically, supervises the activities of officers in the assigned Casino floor and Hotel complex zone. Supervises the initial issuance of bankrolls from vault tables and the periodic box changes. Directs and delegates responsibilities to senior officers to provide physical security for all guests, employees, and company property. Attempts to resolve and/or report any conflicts or incidents. Promotes outstanding customer relations. Must be knowledgeable with Casino Control Act and attendant regulations" (R-2).

As to the issue of his good character, honesty and integrity, Mr. Feld submitted the following letters which were admitted into evidence (J-1):

Letter from Ocean County Sheriff Arthur F. Brown, dated February 17, 1984, stating that he has been personally acquainted with Mr. Feld for ten years and that he considers Mr. Feld to be a good, hardworking, enterprising businessman who is active in fostering assistance for the volunteer fire company and is an associated member of the Fraternal Order of Police, Lodge 10, of Toms River.

Letter from Eugene Jume, Esq., dated February 23, 1984, stating that he has known Mr. Feld for approximately 15 years and that he considers him to be a man of integrity and honesty who is dedicated to his work and his community. Mr. Jume wrote that he was aware of the questions raised regarding the mortgage and felt that Mr. Feld's statements were made in his zeal to gain mortgage financing and that greater consideration should be given to the fact that he is making his mortgage payments.

Letter from Franklin V. Fischer of Franklin V. Fischer Associates, dated February 16, 1984, indicating that Mr. Feld is a person of good character and integrity who has devoted time to emergency service with the fire department and with other community volunteer organizations.

Letter from Albert DeCarlo, committeeman of Dover Township, dated February 21, 1984, stating that he has known Mr. Feld for over 14 years as a personal friend and fellow volunteer fireman and that Mr. Feld is sincere, honest and trustworthy and has given his free time to serve his community as a volunteer fireman, a fire police officer and officer of his fire company.

Letter from Stephen B. Teller, certified public accountant, dated February 18, 1984, stating that he has been associated with Mr. Feld as the certified public accountant for Garden State Canvas Corporation for approximately ten years and that Mr. Feld is a person of good character and integrity who would be a valuable asset to any organization or business.

Letter from William Kennedy, chief, Toms River Fire Company No. 2, dated February 15, 1984, stating that he has known Mr. Feld for more than 15 years, that Mr. Feld is a dedicated volunteer fireman who has served as an officer of the company, has served as a fire police officer appointed by the Dover Township Committee, and that Mr. Feld is a person of honesty and integrity and good character.

Letter from Raymond F. Roncin, lieutenant, Dover Township Police, dated February 24, 1984, stating that he has known Mr. Feld for 15 years and that Mr. Feld is an honest and sincere person.

Letter from Kenneth J. Reck, a former fire commissioner, dated February 20, 1984, stating that Mr. Feld is a dedicated volunteer fireman and is a sincere, forthright and honorable person.

Letter from Forrest A. Hummel, Sr., dated March 12, 1984, stating that he has known Mr. Feld for over ten years and that Mr. Feld is a dependable, honest, and upright member of the community.

Letter from David S. Johnson, dated February 22, 1984, stating that he has known Mr. Feld for seven years and considers him to be an honest and forthright person.

Letter from Ernest Napolitano, dated March 8, 1984, stating that he has known Mr. Feld as a business associate for ten years and that he considers Mr. Feld to be a trustworthy individual and a good businessman.

In closing, Mr. D'Elia argued that the petitioner's application should be denied since Mr. Feld has not shown that he has the qualifications for either the position of credit manager or security supervisor and that the petitioner has not shown that he has the necessary good character, honesty and integrity needed for licensure as a key casino employee. Mr. D'Elia argued that Mr. Feld had submitted fraudulent information and documents in order to get a home mortgage, denied that he had submitted such information until confronted with the exhibits by Detective Knowlan, and then tried to excuse himself on the basis that he was misled by Mr. Soldivieri. Mr. D'Elia noted that Mr. Feld is a 66-year-old businessman who knew what he was doing, and not an innocent, naive youth who could have been misguided by an older and aggressive salesman.

Mr. Blake argued that Mr. Feld is qualified for both casino key employee positions and argued that the job descriptions presented by the Division, if taken literally, would mean that very few people could qualify for the positions unless they had previous casino experience.

In addition, Mr. Blake noted that the petitioner had submitted 11 letters clearly establishing the fact that he has a reputation for good character, honesty, and integrity and that the only adverse fact presented was the information related to his mortgage. As to this incident, Mr. Blake argued that Mr. Feld allowed Mr. Soldivieri to handle the entire transaction and followed Mr. Soldivieri's advice. According to Mr. Blake, Mr. Soldivieri's testimony was not credible because he was concerned that his action could place his license in jeopardy.

Except for the factual dispute as to the actions of Mr. Feld and Mr. Soldivieri regarding mortgage loan transactions, I **FIND** that the facts as stated above are not in dispute.

Having had the opportunity to hear the witnesses and observe their demeanor, I **FIND** Mr. Feld's testimony as to the mortgage incident to be in part contradictory and not credible and Mr. Soldivieri's testimony regarding the mortgage transaction to be basically consistent and credible. Although Mr. Soldivieri was obviously concerned at the hearing about the allegations made by Mr. Feld, and it is possible that the allegations, if true, could affect his license, no acceptable reason was given why Mr. Soldivieri would place pressure on Mr. Feld to lie in order to acquire a house. I **FIND** that Mr. Feld wanted to acquire a certain house in Toms River and that he intentionally misrepresented his income in order to qualify for a mortgage, including the false statements on the mortgage application as well as arranging for the preparation of the W-2 forms and the employment verification form which contained false information. Also, I **FIND** that Mr. Feld's estimation of his sister's income, namely \$600 a month, given at the hearing appears to be substantially higher than the statements he made relating to her income in his 1982, 1980 and 1979 federal tax reports (J-1).

Although I do not doubt that Mr. Soldivieri advised Mr. Feld as to the amount of income he would need in order to qualify for a \$30,000 mortgage, I **FIND** that Mr. Soldivieri did not mislead or put any pressure on Mr. Feld to misrepresent his income and that Mr. Soldivieri's role as to the mortgage transaction was ministerial and that the decision to misrepresent his income was made solely by Mr. Feld.

As to the issues of the petitioner's financial integrity and his good character, honesty and integrity, the question is whether Mr. Feld's action regarding the real estate transaction in issue is sufficient grounds to deny him a license in view of his history of

exemplary conduct and public service to the community. In making this decision it is necessary to recognize that Mr. Feld has applied for a casino key employee license in order to obtain a position having a high degree of responsibility and that such a license application warrants a close scrutiny as to the qualifications of the person and his character, honesty, and integrity.

Based on the evidence, I **CONCLUDE** that Mr. Feld gave fraudulent information to a bank in order to qualify for a mortgage loan and then attempted to cover his action by placing the blame on the realtor, and that his action, notwithstanding all other indications of his good character, honesty, and responsibility, is sufficiently grievous to warrant the denial of a key employee license.

The last issue is whether Mr. Feld has the necessary qualifications for the position of credit manager and/or security supervisor. Based on the petitioner's testimony, I **CONCLUDE** that Mr. Feld does not have the necessary experience for the position of security supervisor since he has had limited or no experience in either law enforcement or security. As to the position of credit manager, I **CONCLUDE** that Mr. Feld has the necessary experience based on his 20 years of business experience and two years of college notwithstanding the fact that he has had no direct experience with the casino industry.

Therefore, I **CONCLUDE** that the recommendation of the Division to deny the application for licensure submitted by Sidney M. Feld be **AFFIRMED** and 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.

September 26, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

September 27, 1984  
DATE

Henry O. Hill  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

OCT 02 1984  
DATE

Ronald J. Paske  
OFFICE OF ADMINISTRATIVE LAW

ml/E

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE

Joint Exhibit:

- J-1 Interrogatories submitted by Deputy Attorney General D'Elia and answered by Mr. Feld and the attachments submitted by Mr. Feld

For Respondent:

- R-1 Job Specification for the position of credit manager at the Sands Hotel and Casino
- R-2 Job Specification for the position of security supervisor at the Sands Hotel and Casino
- R-3 Residential Loan Application in the name of Sidney M. Feld submitted to the Jersey Shore Saving and Loan Association
- R-4 Federal Wage and Tax Statement forms (Form W-2) for Sidney M. Feld for 1977 and 1978
- R-5 Jersey Shore Saving and Loan Association request for verification of employment of Sidney M. Feld, dated December 3, 1979
- R-6 Application of Sidney M. Feld for licensure as a casino key employee submitted to the Casino Control Commission on March 7, 1983

WITNESSES

For petitioner:

Sidney M. Feld  
John A. Soldivieri

For respondent:

Douglas Knowlan

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 84-EA-111  
and 83-195  
APPLICATION NO. 46474-21  
REGISTRATION NO. 44248-40  
OAL DOCKET NOS. CCC 1682-82 and  
CCC 5220-84 (CONSOLIDATED)

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

Complainant, :

FINAL ORDER

v. :

MICHAEL D. FOWLKES, :

Respondent. :

AND

IN THE MATTER OF THE APPLICATION :  
OF MICHAEL D. FOWLKES FOR A CASINO :  
EMPLOYEE LICENSE :

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These matters having been opened to the New Jersey  
Casin Control Commission upon the filing of an Initial  
Decision by the Office of Administrative Law on September 17,  
1984, recommending that the application of Michael D. Fowlkes  
for a casino employee license be denied but that he be  
permitted to retain his casino hotel employee registration;  
and neither party having filed exceptions or objections  
thereto; and the Commission, after considering the entire  
record of these proceedings, having resolved at its public

meeting on October 24, 1984, to affirm and adopt the said Initial Decision and to deny the application for a casino employee license, but permit Michael D. Fowlkes to retain his casino hotel employee registration,

IT IS on this 20th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

IT IS FURTHER ORDERED that, Michael D. Fowlkes 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 Michael D. Fowlkes is permitted to retain his casino hotel employee registration pursuant to N.J.S.A. 5:12-91(e); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Michael D. Fowlkes, the Division of

Gaming Enforcement and the authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



OAL  
WORD PROCESSING  
SERV. DIV.

State of New Jersey 10 59 AM '84

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 5220-84

and CCC 1682-84

AGENCY DKT. NOS. 84-EA-111

and 83-195

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

Petitioner,

v.

**MICHAEL D. FOWLKES,**

Respondent.

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

**Howard Kleinman, Esq., on behalf of the respondent**

Record Closed: August 13, 1984

Decided: September 14, 1984

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

This consolidated matter concerns two complaints filed by petitioner with the Casino Control Commission seeking revocation of respondent's casino hotel employee registration and opposing his application for licensure as a casino employee, pursuant to N.J.S.A. 5:12-1 et seq. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Certain basic facts are undisputed. Respondent was arrested on March 18, 1980, and charged with theft by unlawful taking in violation of N.J.S.A. 2C:20-3. He was

indicted and eventually pled guilty to that crime. He was sentenced to a term of 30 days in the county jail and placed on one-year probation. A police report in evidence described the crime. At 10:00 a.m. on the morning in question, respondent entered a vehicle with the keys in the ignition, which was parked in front of a store. He drove off and eventually was chased by police until he crashed into a house. He fled on foot and was apprehended. On March 27, 1980, he was charged with theft of movable property, in violation of N.J.S.A. 2C:20-3(a)7, to which he eventually pled guilty. He was given a four-month suspended sentence and one-year probation. A police report in evidence described this incident. While in the Pleasantville Municipal Court, respondent reached his hand into the pocket of one Ed Bennett from whom he took 25 dollars and ran out of the building. On November 6, 1981, respondent and another individual were arrested and charged with conspiracy, N.J.S.A. 2C:5-2 and theft of movable property from the person, N.J.S.A. 2C:20-3. He was indicted and eventually pled guilty to the charge of theft. He was sentenced on February 19, 1982, to 120 days in the county jail and one-year probation. The arrest report describes a purse snatching.

A Personal History Disclosure Form (PHDF) seeking approval as a registrant was signed by respondent on September 24, 1982, and disclosed only the first conviction. The PHDF that he signed on April 19, 1983, seeking licensure as a casino hotel employee did disclose each offense. Detective John Hooven of the New Jersey State Police, Gaming Section, interviewed respondent on March 18, 1983, concerning the nondisclosures on his first PHDF. Respondent indicated to him that he had simply forgotten.

Petitioner believes that respondent, having pled guilty to two crimes which are statutory disqualifiers pursuant to N.J.S.A. 5:12-86c, to a third crime in the Pleasantville Municipal Court, and his failure to disclose fully the existence of these offenses on his first PHDF, requires the revocation of his registration and undermines his efforts to establish that he is a person of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90 for purposes of receiving a casino hotel employee license.

Respondent is 22 years old. He acknowledged the offenses and indicated that these resulted from peer pressure. He is now civically oriented, attends church regularly, and donates time to various basketball clinics in the area. He testified that he was employed by the Tropicana as a cafeteria attendant for some seven months between December 1983 and June 1984 without incident. He is now employed as a cook at the

Smithville Inn. He lives at home with his mother. He testified that he was raised in Atlantic City and has every expectation of remaining in the area.

This is the substance of the record.

The burden of establishing rehabilitation and thus good character rests with respondent, N.J.S.A. 5:12-90 and 5:12-91. The record presents an inconsistent picture. Respondent was an articulate and sympathetic witness. It is entirely plausible that his crimes were the rash acts of youth. Certainly, stealing a car in broad daylight from in front of a store and pickpocketing \$25 inside a municipal court room gives credence to this testimony. Yet, he was involved in a purse snatching one year and one-half after he first got into trouble. He also failed to disclose his latter crimes on his first PHDF. The fact that he disclosed them in his second application does not aid him as Detective Hooven's interview intervened. He learned then that petitioner was aware of his prior record. Respondent was employed at a casino from December 1983 to June 1984 without incident. For the last two months he has been employed at the Smithville Inn. The testimony concerning his community work is unsupported.

Considering the purse snatching incident and the disclosure failure as late as September 1982, I do not believe that he has fully established his rehabilitation and thus is not entitled to a casino employee license. Nevertheless, his testimony at the hearing, his age, and to some extent his work record argue for him. N.J.S.A. 5:12-91(e), authorizes a waiver of disqualification criteria with respect to registrants consistent with the policies of the Act and the interests of justice. I believe that there is sufficient reason to believe that respondent can work successfully in the casinos at this level.

Based on the foregoing, it is **ORDERED** that respondent's application for a casino hotel employee license be **DENIED** but that he be permitted to retain his casino hotel employee registration.

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

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

9/14/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

17 SEP 1984  
DATE

Receipt Acknowledged:  
*[Signature]*  
CASINO CONTROL COMMISSION

SEP 19 1984  
DATE

Mailed to Parties:  
*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW

ml/E

ol!

EXHIBITS ADMITTED INTO EVIDENCE:

- P-1 Arrest Report, dated March 18, 1980
- P-2 Indictment and guilty plea
- P-3 Arrest Report, dated March 27, 1980
- P-4 Arrest Report, dated November 6, 1981
- P-5 Indictment and guilty plea
- P-6 Personal History Disclosure Form No. 4
- P-7 Personal History Disclosure Form No. 2A

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-212  
OAL DOCKET NO. CCC 2571-84  
REGISTRATION NO. 37858-40

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

Complainant, :

FINAL ORDER

v. :

ALBERT K. GEISLER, JR., :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 19, 1984, recommending that the complaint of the Division of Gaming Enforcement seeking revocation of the respondent's casino hotel employee registration be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of August 22, 1984, to modify the said Initial Decision and find the respondent disqualified from holding a casino hotel employee registration, but to waive said disqualification in the interests of justice pursuant to N.J.S.A. 5:12-91(e).

It is on this 23rd day of October 1984, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

- (1) That portion of the Initial Decision which addresses the respondent's conviction for an attempt to commit the crime of third degree theft in terms of inimical offenses pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. Respondent's conviction for an attempt to commit the crime of third degree theft contrary to N.J.S.A. 2C:18-2 requires disqualification pursuant to N.J.S.A. 5:12-86(c)(1).
- (2) That portion of the Initial Decision which finds that Mr. Geisler has demonstrated his rehabilitation from the enumerated disqualifier is rejected. By reason of the respondent's continued probationary status, the Commission finds that Mr. Geisler is precluded from demonstrating his rehabilitation from this offense by clear and convincing evidence as required by N.J.S.A. 5:12-91(d).
- (3) That portion of the Initial Decision that finds that Mr. Geisler's convictions for burglary would not render his continued registration inimical to the policies of the Casino Control Act and to casino operations within the meaning of Section 86(c)(4) is rejected as unnecessary in light of the enumerated disqualifier noted in (1) above.

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

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

By: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2571-84

AGENCY DKT. NO. 83-212

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

Petitioner,

v.

ALBERT K. GEISLER, JR.,

Respondent.

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APPEARANCES:

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

Albert K. Geisler, Jr., pro se

Record Closed: July 2, 1984

Decided: July 18, 1984

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking 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. A prehearing conference was held on May 25, 1984 and a Prehearing Order was issued on June 11, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor City Hall on July 2, 1984.

The Division initially filed a complaint with the Casino Control Commission on June 30, 1983. The Prehearing Order establishes the specific issues for consideration. These are:

- A. Is the continued registration of the respondent as a casino hotel employee inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the operations of the casino industry, N.J.S.A. 5:12-86d?
1. ...
  2. Has the respondent rehabilitated himself from the adverse affects of ... criminal convictions? N.J.S.A. 5:12-91(h).

Evidence received at the hearing from the Division was in the form of police reports concerning various criminal activities of Mr. Geisler, as well as indictments and records of conviction with respect to these matters. In its complaint filed with the Commission on June 30, 1983, the Division had indicated that it rested its application for revocation upon Geisler's conviction for burglary, a violation of N.J.S.A. 2C:18-2, and his further conviction for third degree burglary and criminal attempt, as well as third degree theft, a conviction which occurred on March 4, 1983. The initial burglary conviction arose out of indictment 10-39882-B returned by the Atlantic County Grand Jury on October 5, 1982. According to the police reports, Geisler and another man took a purse from the cabin of the vessel "Sea Cloud" docked at the Atlantic City Marina. The indictment charged Geisler and the other gentleman with conspiracy, burglary, theft by unlawful taking and theft by receiving stolen property. Geisler pled guilty to the burglary charge on November 29, 1982, and on December 22, 1982 he was sentenced to a two year period of probation with a stipulation that he serve 23 days in the county jail and be given credit for 23 days already served. In addition, Geisler was required to complete a program at a halfway house known as "Endeavor House" and was also required to pay a \$25 penalty to the Violent Crimes Compensation Board. The remaining counts of the indictment were dismissed.

Geisler's conviction on the third degree burglary, criminal attempt and third degree theft charges arose from indictment 144-82 returned by the Camden County Grand Jury (identified incorrectly in paragraph 7 of the complaint as the Atlantic County Grand Jury) on October 12, 1982. That indictment charged Geisler with third degree burglary and an attempt to commit the crime of third degree theft. Geisler entered a plea of guilty to the charges on January 24, 1983, and on March 4, 1983 he was sentenced to a three year probation on each count to run concurrently with the probation received in Atlantic County previously noted above. In addition, the Camden County sentence required Geisler to remain in and satisfactorily complete a drug evaluation program and treatment if needed.

A police report from the Gloucester Township Police Department, presented as evidence by the Division, indicated that the incident which led to the Camden County indictment involved Geisler and another man being seen to enter a truck and remove a tool box.

In addition to the evidence noted above, the Division also offered evidence concerning Geisler's 1975 arrest for possession of narcotics paraphernalia in Paulsboro and a 1977 Woodbury arrest in which Geisler was charged with driving under the influence of alcohol and being in possession of a stolen motor vehicle. This evidence was submitted in order to indicate the ongoing problems which Mr. Geisler had had with narcotics and alcohol.

The respondent testified that between the ages of 19 and 30 he had spent his life "drinking and drugging." Mr. Geisler testified that his whole world had revolved around these activities and that he spent his time doing the wrong things with the wrong crowd. By the time he was arrested in connection with the Gloucester Township incident, he was sufficiently strung out that he did not even recall the incident. He reached a point where he did not feel that he would ever come out of his involvement with drugs and alcohol. He described himself as having been digging a large hole for himself. After he was convicted of the Atlantic and Camden offenses, he began to receive rehabilitative treatment. He initially entered Fair Oaks South in Toms River for a period of 42 days. He described himself as in a fog during that whole period of time. He then went into a halfway house for a three to six month program. He started drinking around Christmas of 1982 while still in the halfway house and until January 16, 1983 he continued with his

drinking. Beginning January 16, 1983, Geisler stopped drinking and began to become involved with Alcoholics Anonymous. He stayed in the halfway house for another eight or nine months, getting out in September of 1983. While in the house, he became active with the program and began to understand himself and open up and become more honest with himself. He attended meetings on a regular basis and eventually obtained a job as a security guard at Convention Hall. He then went to work at the Trump Hotel Complex, working in room service. He now works at the Holiday Beach Hotel, where he sells timeshares. He attends two or three AA meetings a week, his attendance being limited somewhat by his obligations at work. He now feels "good" and lives at home and has had no involvement with alcohol since January of 1983. He last attended an AA meeting on the Thursday morning before the hearing.

Mr. Geisler is now attending real estate school. He receives tremendous support from his fellow participants in the AA program and from people in his neighborhood.

According to Geisler at the time of the Atlantic City Marina incident on September 5, 1982, he had been drinking and using drugs. Although he was present and knew what was going on, he was not directly involved in the theft. He was extremely drunk and in a hazy state, having taken LSD.

The witness presented statements from Paul McIntyre, an evaluator for the TASC program in Atlantic County. The first of these was dated December 15, 1982, just prior to Mr. Geisler's sentence in connection with the marina theft. The second, dated May 23, 1984, was obtained from Mr. McIntyre in preparation for this hearing. It indicates that Geisler "did successfully complete a plan of substance abuse treatment through the Atlantic County TASC Program . . . He was successfully discharged with a good prognosis for remaining alcohol and drug-free."

In addition to the letters from Mr. McIntyre, the respondent supplied a letter from a fellow participant in AA. This letter indicates her belief that Geisler "is honest and trustworthy and has worked hard to turn his life around."

DISCUSSION

The evidence presented during this hearing indicates that Mr. Geisler had a long history of problems with alcohol and drugs which led him to engage in thievery and also involved him in other incidents frequently connected to such substance abuse. The incidents were neither substantial nor violent in nature, but of course they were symptomatic of Geisler's then existing problems.

Based on what has been presented in this hearing, it appears that Mr. Geisler has taken steps to turn his life around. He has, according to his own testimony, not had a drink since January 1983. Those who have been connected with him in the TASC program believe that he has done very well. He is actively involved in AA and seems to sincerely desire to avoid any further involvement with illicit drugs or with alcohol. Should Mr. Geisler succeed in avoiding difficulties with these substances, I strongly suspect he will not have any further difficulties with the law.

In view of Mr. Geisler's having given every indication that he is on the road to a better life and that his problems were related to substance abuse which is now not part of his pattern of existence, and giving due regard to the nature of his employment in the casino field as a casino hotel employee, I FIND that Mr. Geisler's continued registration will not be inimical to the policies of the Casino Control Act nor to the interests of casino operations. Further, I FIND that whatever ill effects may have arisen from his previous criminal conduct and life style have been significantly reduced or overcome by his rehabilitative efforts.

For the reasons expressed, it is ORDERED that the complaint be dismissed and that Mr. Geisler's registration be continued.

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

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

July 18, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 19, 1984  
DATE

Bernadette T. Fry  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 23 1984  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Paulsboro police reports, dated September 7, 1975, 2 pages
- P-2 Woodbury Police Department reports with attached criminal complaint and dispositions and lab request and report, 11 pages
- P-3 Withdrawn
- P-4 Gloucester Township police reports, dated July 10, 1982, 3 pages
- P-5 Atlantic City Police Department reports, dated September 5, 1982, September 6, 1982, September 7, 1982, September 10, 11, 13, 1982, 10 pages
- P-6 Indictment 10-398-82-B with attached Judgment of Conviction and certification, 8 pages
- P-7 Indictment 144-82 with attached certification and Judgment of Conviction and statement of reasons for sentencing, 7 pages

On behalf of respondent:

- R-1 TASC Progress Report, dated December 15, 1982
- R-2 Letter of May 23, 1984 from Paul McIntyre
- P-3 Letter from M.C.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-103  
OAL DOCKET NO. CCC 10064-83  
LICENSE NO.02365-21

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

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 22, 1984, recommending that the respondent's casino employee license be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after having considered the entire record of these proceedings, resolved at its public meeting of August 1, 1984, to affirm and adopt the said Initial Decision and to revoke the respondent's casino employee license,

IT IS on this 2<sup>nd</sup> day of AUGUST, 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 10064-83

AGENCY DKT. NO. 83-103

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**FRANK J. GLEBA, JR.,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Frank J. Gleba, Jr.,** respondent, pro se

Record Closed: May 8, 1984

Decided: June 22, 1984

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 13, 1983, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 86c, 90e and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's 1982 conviction upon a plea of guilty on a charge of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. On May 19, 1983, the Casino Control Commission suspended the respondent's casino employee license pending the final disposition of this matter. The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to his 1982 conviction for theft by unlawful taking, has been convicted of or has committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act, within the meaning of section 86c(4), thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the act.
2. Whether the respondent, with specific reference to his 1982 conviction for theft by unlawful taking, and his subsequent arrests in 1983 and 1984, has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a, 89b(2) and 90 of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.
3. Whether the respondent is entitled to any relief as a result of the suspension of his casino employee license only two weeks after his payment of the \$225 renewal fee, pursuant to N.J.A.C. 19:41-9.14 and 9.19.

#### PROCEDURAL HISTORY

The complaint of the Division of Gaming Enforcement was filed with the Casino Control Commission on April 13, 1983. On May 19, 1983, the Commission ordered that the respondent's casino employee license be suspended pending the final disposition of this matter. On December 1, 1983, the Commission received the respondent's request for a hearing on the complaint of the Division of Gaming Enforcement.

On December 27, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 15, 1984, and the hearing was held on May 8, 1984.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 29-year-old resident of Atlantic City, New Jersey. He holds casino employee license No. 02365-21, issued by the Casino Control Commission on March 21, 1979, and renewed on May 4, 1982. Absent the suspension order of the Casino Control Commission, entered May 19, 1983, the respondent's license would permit him employment in a licensed casino as a blackjack dealer. His last employment as a dealer ended in December 1983, when he was released by the Sands Casino. In total, the respondent has worked approximately five years in the legalized gaming industry. The respondent has been unemployed since his termination from the Sands Casino.

The incident involving the respondent which gave rise to the complaint of the Division of Gaming Enforcement occurred at the Playboy Casino on July 10, 1982. On that day, the respondent was a licensed casino employee of the Sands Casino. Nevertheless, and in violation of section 100n of the Casino Control Act, the respondent was wagering at blackjack in the Playboy Casino. According to the respondent he had been involved in drug and alcohol abuse since the age of 14, and he was under the influence of alcohol and drugs on July 10, 1982.

The respondent lost his entire paycheck wagering at blackjack. In his state of intoxication, he decided to take a blackjack dealer's token box from a blackjack table located in pit D in the Playboy Casino. He was arrested before leaving the casino and was charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3 (Exhibit P-1). The respondent explained that he was "out of it," and did not know what he was doing. The respondent pled guilty to this offense on August 11, 1982, and was ordered to pay a fine of \$75 and costs of \$25 (Exhibit P-2).

In October 1982, the respondent entered a methadone program to attempt to end his drug dependence. Meanwhile, his work performance at the Sands Casino suffered as a result of his methadone use and an enlarged liver. His physician told him that it would be necessary to stop drinking and to rest. However, before being able to obtain a leave of absence from the Sands, he was terminated, in December 1982. The respondent has been recuperating from his ailments and has not worked since his termination.

On May 18, 1983, the respondent was arrested by the Egg Harbor Township Police Department and charged with shoplifting a fishing rod reel from a Sears Department Store, contrary to N.J.S.A. 2C:20-11. The respondent explained that he had been with another person who had actually left the store with the stolen merchandise. Nevertheless, upon the advice of counsel, the respondent pled guilty to the offense on August 1, 1983, and was ordered to pay a fine of \$125 and costs of \$25 (Exhibits P-3 and P-4).

The respondent's latest arrest occurred on January 5, 1984, when he was charged with possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). According to the respondent, he had continued in the methadone program, but was attempting to withdraw from his use of that drug. Thus, he saved his methadone allotment from one day to use the next, to assist him in coping with his withdrawal symptoms. A search incident to a stop of his motor vehicle by the police revealed that he had the methadone in an unlabeled bottle, contrary to N.J.S.A. 24:21-20a(1). The respondent pled guilty to this offense and was ordered to pay a fine of \$200 and costs of \$25. His one-year reporting probation term began in March 1984. In addition to reporting to his probation officer on a monthly basis, the respondent must also seek treatment from TASK, a drug rehabilitation program, and he must also submit to regular urinalysis monitoring. According to the respondent, his last use of methadone occurred in February 1984, and he has more recently ended his use of alcohol. The respondent testified that it is his desire to straighten out his life, and he wishes to be able to continue to use his skills in the casino industry.

Finally, it is undisputed that the respondent's casino employee license was suspended by the Casino Control Commission by order dated May 19, 1983, pending the final disposition of this matter. Within only a few weeks before the entry of the order of suspension, the respondent paid a three-year license renewal fee of \$225. The respondent testified that he seeks the return of his license renewal fee.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the act authorizes the revocation of licensure of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license.

Pursuant to sections 90e, 86c(4) and 129 of the Casino Control Act, the Casino Control Commission may revoke the license of any licensee disqualified on the basis of his conviction of an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations. In order to determine whether the offense in question indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Dkt. No. 79-CL-1 (1979).

It is undisputed that the respondent, while a licensed casino employee of the Sands Casino, wagered at blackjack at the Playboy Casino on July 10, 1982, in violation of section 100n of the Casino Control Act, which prohibits such wagering by a casino employee. It is also undisputed that the respondent was under the influence of drugs and alcohol while he wagered and he lost his entire paycheck. The respondent then unlawfully took a blackjack table token box containing \$158.50 in Playboy gaming cheques and was arrested and charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3.

On August 11, 1982, the respondent pled guilty to the charge of theft by unlawful taking. This offense resulted in large part from the alcohol and drug dependence of the respondent, a dependence of many years duration. The respondent's problems did not end with this conviction. On May 18, 1983, the respondent was arrested and charged with shoplifting, contrary to N.J.S.A. 2C:20-11. On the advice of counsel, the respondent pled guilty to this offense on August 1, 1983. Most recently, the respondent was arrested on January 5, 1984, for possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). The drug which the respondent possessed was methadone, which he

had obtained and saved while participating in a drug rehabilitation program. The respondent pled guilty to this offense and his one-year reporting probation began in March 1984.

The respondent testified credibly that he has been free of drug use since February 1984 and that his last drink of an alcoholic beverage was taken approximately one and one-half months prior to the hearing. This progress is commendable. However, less than two years have passed since his theft from a licensed casino. The respondent also had two subsequent convictions and he remains on probation. In light of all of the circumstances, the respondent's conviction for theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, an offense occurring on the premises of a licensed casino, indicates that his participation in the legalized gaming industry at the present 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 been convicted of an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4).

Based on the credible evidence in the record, and the foregoing discussion, I also **CONCLUDE** that the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a and 89b(2) of the act, as incorporated in section 90 of the act. Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino employee license, pursuant to sections 86c, 90e and 129 of the Casino Control Act.

Although the respondent was arrested for theft by unlawful taking on July 10, 1982, the complaint of the Division of Gaming Enforcement was not filed with the Casino Control Commission until April 13, 1983. At some time in November 1982, the respondent was photographed for the purpose of applying for the renewal of his casino employee license. In April 1983, the respondent paid his entire renewal fee of \$225. The respondent seeks return of his renewal fee since the Casino Control Commission entered an order suspending his casino employee license on May 19, 1983, which was just shortly after the respondent's payment of the fee.

Pursuant to N.J.A.C. 19:41-9.14, the renewal fee for a three-year casino employee license for a person whose position is directly related to gaming activity is \$225. The three-year renewal fee for a person whose position is not directly related to gaming activity is \$180. N.J.A.C. 19:41-9.14(a) explains that the two different fees established for casino employees recognizes the distinction between casino employees whose functions are directly related to gaming activity and those whose functions are not so related, and further recognizes the difference in effort generally required to investigate, consider and monitor the two classes of employees. Pursuant to N.J.A.C. 19:41-9.19(b), any amount paid toward a license issuance fee or license renewal fee shall not be refundable by the Casino Control Commission. As a consequence of this regulation, I must **CONCLUDE** that the respondent is not entitled to any relief as a result of the suspension of his casino employee license shortly after his payment of the \$225 renewal fee.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of the respondent 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 22, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

JUN 22, 1984  
DATE

Paul M.  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 26 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Arrest and investigation report
- P-2 Complaint
- P-3 Arrest report
- P-4 Complaint
- P-5 Record of arrest

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

Joseph Imgemi

FOR THE RESPONDENT:

Frank J. Gleba, Jr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-6

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

Complainant,

FINAL ORDER

v.

GNOC CORP., t/a GOLDEN NUGGET,  
KYONG KIM (6573-21), JOYCE  
CAPARELE (11235-21), MAXWELL  
SPINKS (787-11), AND ROBERT  
BARNUM (1027-11)

Respondents.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of a stipulation of facts and partial settlement concerning the three-count complaint filed by the Division of Gaming Enforcement on January 5, 1984, which alleged that, at a game of blackjack played at the Golden Nugget Hotel and Casino on December 1, 1983, at which Frank and Barbara Sinatra and Dean Martin were patrons, the respondents had violated various sections of the Casino Control Act, Commission regulations and GNOC's rules of the game submission required by N.J.S.A. 5:12-99(a)(16) (hereafter Rules Submission); and it appearing that all respondents have admitted liability for dealing cards from a hand-held deck in violation of, inter alia, N.J.A.C. 19:47-2.6(a) and (b) (Count I); and it further appearing that

respondents GNOC, Spinks, Caparele and Kim have admitted liability for dealing a card to a patron face down in violation of, inter alia, N.J.A.C. 19:47-2.6(g) (Count III); and it further appearing that respondents GNOC and Kim have admitted liability for permitting a patron to cut the cards by hand in violation of, inter alia, N.J.A.C. 19:47-2.5(c), (d) and -2.6(m) (Count II); and it further appearing that the parties have stipulated that, in response to said complaint, respondents Kim, Caparele, Spinks and Barnum were previously suspended without pay by respondent Golden Nugget for 3, 7, 10 and 14 days, respectively; and it further appearing that the parties have stipulated that respondents Kim, Caparele, Spinks and Barnum should receive formal letters of reprimand as further sanction for said violations; and it further appearing that the parties have stipulated to leave the determination of an appropriate sanction against respondent GNOC to the Commission; and the Commission, after considering the entire record, including, but not limited to the depositions of the respondents, the summaries of the interviews with Messrs. Sinatra and Martin, and the videotape of the incident in question, having resolved at its public meeting of August 1, 1984, (1) to accept the stipulation and partial settlement, (2) to impose 3, 7, 10 and 14-day suspensions of the license credentials held by respondents

Kim, Caparele, Spinks and Barnum, respectively, with credit given for the suspensions without pay previously imposed by respondent GNOC, (3) to impose civil penalties totalling \$25,000 against respondent GNOC and (4) to direct respondent GNOC to notify its casino personnel of their obligations to know and comply with the Casino Control Act, Commission regulations and GNOC's Rules Submission;

IT IS on this 2nd day of OCTOBER 1984, ORDERED that the stipulation of facts and partial settlement be and hereby is accepted by the Commission and incorporated herein by reference; and

IT IS FURTHER ORDERED that the licenses of respondents Kim, Caparele, Spinks and Barnum be and hereby are suspended for 3, 7, 10 and 14 days respectively, with credit given for the suspensions without pay previously imposed by GNOC; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), respondents Kim, Caparele, Spinks and Barnum be and hereby are formally reprimanded for their conduct in violation of the Casino Control Act and Commission regulations on December 1, 1983; and

IT IS FURTHER ORDERED that a civil penalty of \$25,000 be and hereby is assessed against respondent GNOC, \$15,000 on Count I, \$5,000 on Count II and \$5,000 on Count III, which

penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent GNOC be and hereby is directed to notify all casino supervisory personnel of their obligation to know and comply with the Casino Control Act, Commission Regulations and GNOC's Rules Submission concerning the operation of the casino and gaming procedures, and that under no circumstances will deviations from the regulatory requirements be tolerated; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

SEPARATE STATEMENT OF JOEL R. JACOBSON, VICE CHAIRMAN

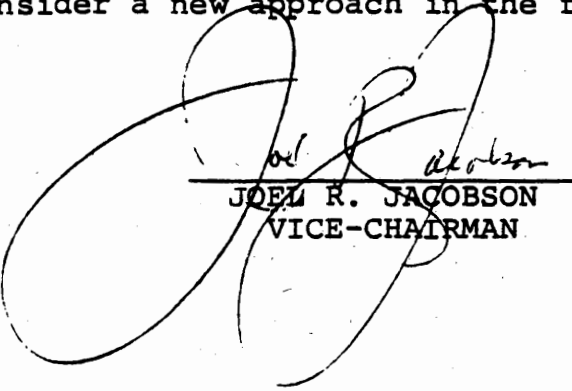
Although I agree with the disposition of this case, I feel it necessary to file a separate statement repeating in summary fashion comments I made on the record when the Commission considered this matter on August 1, 1984.

According to the sworn depositions submitted into evidence as part of the stipulation of facts and partial settlement, respondents Kim, Caparele, Spinks, and Barnum all testified that they were abused and intimidated by Frank Sinatra, and that their violations of Casino Control Commission regulations were precipitated by their fear of losing their jobs if they did not accede to his demands.

In contrast to these sworn depositions, the denials of intimidation by both Frank Sinatra and Dean Martin were contained within unsworn summaries of interviews--not verbatim depositions, as in the case of the respondents--conducted by the Division of Gaming Enforcement. In my view, these unsworn summaries of the Sinatra and Martin interviews, when balanced against the sworn, verbatim testimony of the four licensed casino employees, are neither credible nor persuasive, but totally worthless.

In addition, I find it quite paradoxical that while GNOC and its employees have admitted their transgressions and are willing to accept the penalties imposed upon them by this Commission, we lack the jurisdiction to impose any sanctions on Frank Sinatra and Dean Martin, the two individuals whose actions precipitated

the violations. Although I have previously had my doubts about the wisdom of licensing entertainers, the frustrating situation illustrated by this case suggests that perhaps this Commission should consider a new approach in the future.



JOEL R. JACOBSON  
VICE-CHAIRMAN

IRVIN I. KIMMELMAN  
ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF GAMING ENFORCEMENT  
Hughes Justice Complex  
CN-047  
Trenton, NJ 08625

FILED

JUL-2 1984

CASINO CONTROL COMMISSION  
LEGAL DIVISION

LATHA GILLIAM  
CORPORATE COUNSEL  
1025 Boardwalk  
P.O. Box 1737  
Atlantic City, NJ 08401

_____	:	STATE OF NEW JERSEY
STATE OF NEW JERSEY,	:	CASINO CONTROL COMMISSION
DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	DOCKET NO. 84-6
	:	
Charging Party	:	CIVIL ACTION
vs.	:	
	:	STIPULATION OF FACTS
G.N.A.C. CORP. T/A GOLDEN NUGGET, et al.	:	AND PARTIAL SETTLEMENT
	:	
Respondent.	:	

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Charging Party, by Fredric E. Gushin, Deputy Attorney General, representing the Charging Party, State of New Jersey, Division of Gaming Enforcement and Latha Gilliam, Esq. representing Respondent, GNAC Corp. T/A Golden Nugget; Nicholas Casiello, Jr. representing Respondent, Robert Barnum; Robert J. Melillo representing Respondent, Maxwell Spinks; Thomas C. Brown representing Respondent, Joyce Caparele; and Michael L. Rosenberg representing Respondent, Kyong Kim; and the parties agree to the following Stipulation of Facts and Partial Settlement:

1. Pursuant to N.J.S.A. 5:12-99(a)(16), the Commission approved specific rules of the game in blackjack to be utilized by Golden Nugget. A copy of the

approved rules of the game in blackjack dated October 4, 1980, are attached hereto as Exhibit "A".

2. Said rules of the game were in effect at times referenced herein.

3. On or about 1 a.m. December 1, 1983, blackjack table 12 in pit three (hereinafter 3 BJ 12) at the Golden Nugget Casino Hotel was open for patron play.

4. The dealer assigned to 3 BJ 12 was Kyong Kim, Commission License #06573-21; the Floorperson assigned to directly supervise gaming at 3 BJ 12 was Joyce Caparele, Commission License #11235-21; the Pit Boss assigned to Pit 3 was Maxwell Spinks, Commission License #00787-11; and the Shift Manager on duty at the time was Robert Barnum, Commission License #01027-11.

5. The Floorperson is responsible for the operation of not more than four blackjack tables consistent with the Act, regulations promulgated thereunder and Golden Nugget's internal controls.

6. The Pit Boss is responsible for the overall operation of not more than 12 blackjack tables consistent with the Act, regulations promulgated thereunder, and Golden Nugget's internal controls.

7. The Casino Shift Manager is responsible for the direction of table games in accord with the Act, regulations promulgated thereunder, and Golden Nugget's internal controls.

8. Frank Sinatra and Dean Martin were scheduled to appear at the Golden Nugget Casino Hotel for several days in early December 1983.

9. At approximately, 12:55 a.m. on December 1, 1983, Dean Martin walked past 3 BJ 12 and touched the cards spread on the table.

10. Dealer Kim told Martin not to touch the cards after he initially did so but to no avail.

11. At approximately 1:00 a.m. on December 1, 1983, Mr. & Mrs. Frank Sinatra and Dean Martin sat down at 3 BJ 12 to play blackjack.

12. Frank Sinatra requested from Dealer Kim, Floorperson Caparele and/or Pit Boss Spinks that the game be dealt with a single deck of cards as opposed to the normal six to eight decks of cards.

13. Pit Boss Spinks went to Shift Manager Barnum with the request to utilize a single deck of cards in the blackjack game in 3 BJ 12.

14. Shift Manager Barnum authorized the use of a single deck game at 3 BJ 12 and, in a telephone conversation, verified his decision with Commission Inspector Richard Faison who approved the request.

15. At no time did Commission Inspector Faison authorize the dealing of the cards at 3 BJ 12 by hand.

16. Frank Sinatra engaged in discussions with Dealer Kim and Floorperson Caparele about when the game would begin.

17. Neither Floorperson Caparele, Pit Boss Spinks, nor Shift Manager Barnum heard Sinatra ask for a hand held game at 3 BJ 12.

18. The authorization to utilize a single deck game was communicated to Dealer Kim through Pit Boss Spinks and Floorperson Caparele.

19. According to their sworn depositions, Neither Pit Boss Spinks nor Floorperson Caparele was aware of whether a single deck game was permissible under Commission regulations.

20. Dealer Kim began the blackjack game by hand holding the single deck and dealing the cards from her hands.

21. Floorperson Caparele witnessed the start of the game but did not intervene when Dealer Kim dealt the game from her hands.

22. Pit boss Spinks also observed the use of the hand held game at 3 BJ 12 but did not intervene with either Caparele or Kim.

23. Shift Manager Barnum observed the use of a hand held deck at 3 BJ 12 but did not intervene in the game.

24. During the time in which Sinatra and Martin played blackjack at 3 BJ 12, the game continued with the use of a hand held deck.

25. After the blackjack game at 3 BJ 12 commenced, Dealer Kim initially dealt the third card to the players face down during a double down situation.

26. Floorperson Caparele observed the cards being dealt face down to the players at 3 BJ 12 but did not intervene or correct the dealer. Pit Boss Spinks was in the general area of 3 BJ 12 when the cards were dealt face down and observed, or should have observed this activity but did not intervene or correct the dealer.

27. After the initial deal, Dealer Kim thereafter dealt all of the cards face up.

28. During times in which cards were being reshuffled at 3 BJ 12, Dealer Kim allowed the players to cut the cards by hand instead of by placing the cutting card in the stack of cards.

29. Dealer Kim did not ask the players to use a cutting card to cut the cards.

30. Neither Floorperson Caparele, Pit Boss Spinks, nor Shift Manager Barnum specifically observed the cut of the cards at 3 BJ 12 during the times in question.

31. At no time did any cheating and swindling take place at 3 BJ 12 during the time in which the incidents discussed above occurred.

32. Golden Nugget did not issue any specific instructions or warnings to its gaming staff relative to Sinatra's and Martin's gaming activity at the casino hotel.

33. Golden Nugget notified the Commission of the incidents at or about 11:00 a.m. on the morning of December 1, 1983, and thereafter notified the Division on December 5, 1983.

34. Because of the card dealing incident, Golden Nugget suspended Dealer Kyong Kim for three days, Floorperson Caparele for seven days, Pit Boss Spinks for 10 days and Shift Manager Barnum for 14 days. The aforementioned suspensions were without pay.

It is therefore agreed and stipulated by and between the parties hereto that:

a) Respondent Kim admits to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e) and (m), N.J.A.C. 19:47-2.6(a) and (b) and Golden Nugget's internal rules of the game submission in blackjack as it relates to dealing from a hand held deck; to a violation of N.J.S.A. 5:12-99(a)16; N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.5(c) and (d), N.J.A.C. 19:47-2.6(m) and Golden Nugget's internal rules of the game in blackjack as it relates to the cutting of cards; and to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.6(g) and Golden Nugget's internal rules of the game submission in blackjack as it relates to dealing the second card face down.

b) Respondent Caparele admits to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e) and (m), N.J.A.C. 19:47-2.6(a) and (b) and Golden Nugget's rules of the game submission in blackjack as it relates to dealing from a hand held deck; and to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.6(g) and Golden Nugget's rules of the game submission in blackjack as it relates to dealing the second card face down.

c) Respondent Spinks admits to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e) and (m), N.J.A.C. 19:47-2.6(a) and (b) and Golden Nugget's internal rules of the game submission in

blackjack as it relates to dealing from a hand held deck; and to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.6(g) and Golden Nugget's rules of the game submission in blackjack as it relates to dealing the second card face down.

d) Respondent Barnum admits to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e) and (m), N.J.A.C. 19:47-2.6(a) and (b) and Golden Nugget's internal rules of the game submission in blackjack as it relates to dealing from a hand held deck.

e) Respondent Golden Nugget admits to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e) and (m), N.J.A.C. 19:47-2.6(a) and (b) and Golden Nugget's internal rules of the game in blackjack as it relates to dealing from a hand held deck; to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.5(c) and (d) N.J.A.C. 19:47-2.6(m) and Golden Nugget's internal rules of the game in blackjack as it relates to the cutting of cards; and to a violation of N.J.S.A. 5:12-99(a)16, N.J.S.A. 5:12-100(e), N.J.A.C. 19:47-2.6(g) and Golden Nugget's internal rules of the games submission in blackjack as it relates to dealing the second card face down.

f) Respondents acknowledge and admit the aforementioned statutory and regulatory violations and all parties represent that in the future they will strictly adhere to the rules of the game in blackjack.

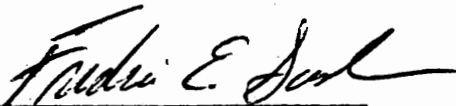
g) Respondents Kim, Caparele, Spinks and Barnum agree to receive a formal letter of reprimand for the aforementioned statutory and regulatory violations.

h) This settlement as it relates to Respondents Kim, Caparele, Spinks and Barnum shall be in full and final settlement for the aforementioned violations.

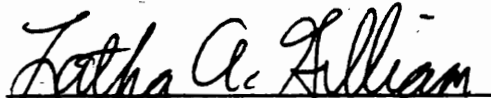
i) This settlement as to Respondents Kim, Caparele, Spinks and Barnum in just and equitable in light of the statutory guidelines as set forth in N.J.S.A. 5:12-130 and in light of the suspensions previously imposed by Golden Nugget.

j) The settlement as to Respondents Kim, Caparele, Spinks, and Barnum must be accepted by the full Commission before it becomes effective.

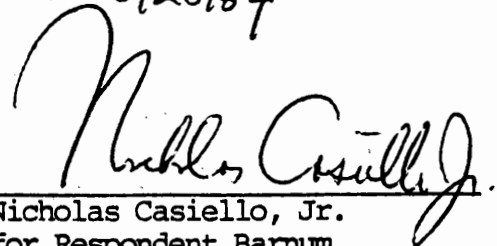
k) As to Respondent Golden Nugget, the parties agree to leave to the Hearing Examiner the determination as to the appropriate penalty.



Fredric E. Gushin  
Deputy Attorney General  
DATED: 6/29/84



Latha Gilliam, General Counsel  
Golden Nugget Hotel Casino  
DATED: 6/28/84



Nicholas Casiello, Jr.  
for Respondent Barnum  
DATED: June 18, 1984

*Robert J. Melillo*

Robert J. Melillo  
for Respondent Spinks  
DATED: 6-22-84

*Thomas C. Brown*

Thomas C. Brown  
for Respondent Caparele  
DATED: 6-22-84

*Michael L. Rosenberg*

Michael L. Rosenberg  
for Respondent Kim  
DATED: 6/21/84

5C3

EXHIBIT LIST

- J-1 - CCTV Tape of Frank Sinatra and Dean Martin playing blackjack at 3 BJ 12
- J-2 - Sworn statement of Joyce Caporale.
- J-3 - Sworn statements of Kyong Kim, Maxwell Spinks and Robert Barnum.
- J-4 - Job description for Casino Shift Manager, Pit Manager and Floorperson from Golden Nugget's approved job description.
- J-5 - Golden Nugget's Games Rules on Pit Procedures - Blackjack dated October 4, 1980.
- J-6 - Golden Nugget's Rules of the Game - Blackjack dated January 20, 1983.
- J-7 - Memo to Bill Carey from Al Luciani dated December 9, 1983.
- J-8 - Golden Nugget's official notice of unsatisfactory performance notice of Robert Barnum, Maxwell Spinks, Joyce Caporale and Kyong Kim.
- J-9 - Summary of the Division Interview of Frank Sinatra
- J-10 - Summary of the Division Interview of Dean Martin

(7C3)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 83-EA-173 83-367  
OAL DOCKET NOS. CCC 8186-83 AND  
CCC 9210-83 (CONSOLIDATED)  
APPLICATION NO. 43365-22  
REGISTRATION NO. 18283-40

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IN THE MATTER OF THE APPLICATION  
OF TEODORO GONZALEZ FOR A  
CASINO EMPLOYEE LICENSE

AND

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

FINAL ORDER

Complainant,

v.

TEODORO GONZALEZ,

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 1, 1984, recommending that the casino employee license application of Teodoro Gonzalez be denied and further that his casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on June 27, 1984, to modify the said Initial Decision and to deny the application for a casino employee license and revoke the respondent's

IT IS on this 18th day of OCTOBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is affirmed and adopted as hereafter modified:

The ALJ concluded that the conduct underlying Mr. Gonzalez's April 15, 1982, indictment charging two counts of possession of a controlled dangerous substance (CDS) contrary to N.J.S.A. 24:21-20(a)(4) and two counts of possession of CDS with intent to distribute contrary to N.J.S.A. 24:21-20(a)(1) disqualified him from licensure as a casino employee, pursuant to N.J.S.A. 5:12-86(c)(3) and (g). [Initial Decision at 8]. Two modifications to this conclusion are required: (1) possession of CDS is not a disqualifying offense listed in N.J.S.A. 5:12-86(c)(3), thus, insofar as the April 15, 1982, indictment is concerned, only the conduct underlying the charges of possession with intent to distribute are disqualifying offenses; and (2) the disqualification from casino employee licensure by reason of such conduct applies with equal force to Mr. Gonzalez's casino hotel employee registration.

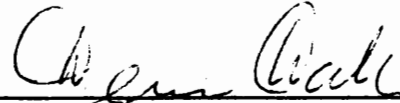
IT IS FURTHER ORDERED that the casino employee license application of Teodoro Gonzalez be and hereby is denied and that the casino hotel employee registration issued to Teodoro Gonzalez be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 8186-83  
& CCC 9210-83 (CONSOLIDATED)  
AGENCY DKT. NOS. 83-EA-173 &  
83-367 (CONSOLIDATED)

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

Petitioner,

v.

**TEODORO GONZALEZ,**

Respondent.

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**TEODORO GONZALEZ,**

Petitioner,

v.

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

Respondent.

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**APPEARANCES:**

**Patricia M. Wild, Deputy Attorney General, for the Division of Gaming Enforcement  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Teodoro Gonzalez, pro se**

Record Closed: March 15, 1984

Decided: April 30, 1984

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BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. The first concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, against Teodoro Gonzalez. The Division alleged that Mr. Gonzalez had been convicted of a statutory disqualifying offense, for which the Division sought revocation of his casino hotel employee registration, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. Mr. Gonzalez opposed the action. The second matter concerns the application of Mr. Gonzalez for licensure by the Casino Control Commission (Commission) as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division opposed licensure on the basis that Mr. Gonzalez had failed to disclose information material to licensure, had committed disqualifying criminal conduct and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Gonzalez filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on November 3, 1982 (P-1). The Commission advised Mr. Gonzalez that, based upon information received in a report from the Division, dated August 30, 1983, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter dated October 4, 1983, Mr. Gonzalez requested a hearing with regard to his application for licensure. On October 14, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On October 14, 1983, the Division filed its complaint with the Commission. By letter dated October 27, 1983, the Commission notified Mr. Gonzalez that he had a right to a hearing on the complaint. By letter dated November 3, 1983, Mr. Gonzalez requested a hearing. On November 18, 1983, the Commission transmitted the matter to the Office of Administrative Law.

The matters were consolidated at the prehearing conference which was held on November 21, 1983, and the matter was scheduled for hearing. The record closed on March 15, 1983, upon receipt of the Division's brief.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Gonzalez was born in Puerto Rico and is currently 31 years of age (P-1). He left school in 1970 after having completed the ninth grade.

From March 1972 to November 1979, Mr. Gonzalez was employed as a laborer by Services General in Guyana, Puerto Rico. He was laid off from his position.

In November 1979, Mr. Gonzalez relocated to the United States. He has resided in Atlantic City from November 1979 until the present.

From 1979 to 1982, Mr. Gonzalez was employed by Resorts International Hotel, Inc., in a kitchen utility position. He was terminated from this position for cause. Nevertheless, the circumstances underlying his termination were in dispute and will be discussed, infra.

On August 8, 1980, Mr. Gonzalez secured his casino hotel employee registration number 18283-40 from the Commission (P-1).

Since November 1, 1982, Mr. Gonzalez has been employed by Bally's Park Place Casino Hotel (Park Place) in a maintenance and cleaning capacity in the Public Areas Department (R-1). His employment record at Park Place was in dispute and will be discussed, infra.

On June 10, 1981, Mr. Gonzalez was arrested by the Atlantic City Police Department and charged with a violation of N.J.S.A. 2C:39-5, possession of a weapon, a gun (P-2 and P-3). On June 30, 1981, Mr. Gonzalez was indicted by an Atlantic County Grand Jury for violations of N.J.S.A. 2C:39-5(b), possession of a handgun without a permit, and of N.J.S.A. 2C:39-3(d), possession of a prohibited weapon (P-4). He was admitted into the Atlantic County Pre-Trial Intervention Program. On March 25, 1982, and upon successful completion of the program, the indictment was dismissed (P-5). The weapon was a .22 caliber six-shot pistol. Mr. Gonzalez was 28 years of age at the time of the incident.

On March 30, 1982, and as a result of a motor vehicle stop, Mr. Gonzalez was arrested by the Atlantic City Police Department and was charged with possession of marijuana over 25 grams with intent to distribute (P-7). On April 15, 1982, he was indicted by an Atlantic County Grand Jury for violations of N.J.S.A. 24:21-20a(4), two counts of possession of marijuana, and N.J.S.A. 24:21-19a(1), two counts of possession of marijuana with intent to distribute (P-8). The two counts emanated from searches conducted of the respondent's automobile and his home. On June 17, 1982, a motion to suppress the evidence obtained as a result of the searches was granted (P-9). Accordingly, and on June 25, 1982, the prosecutor's motion to dismiss the indictment was granted (P-9).

Although the evidence obtained during the searches of Mr. Gonzalez' automobile and home was suppressed during the criminal proceedings, it was presented in this matter. After hearing the testimonies of Detective Dennis Munoz of the Atlantic City Police Department and Mr. Gonzalez, it is understandable why the searches were deemed unlawful. Nevertheless, Mr. Gonzalez admitted that manila bags containing marijuana were found in the trunk of his vehicle. Further, he admitted that plastic bags containing marijuana were found in his home. The total weight of the marijuana seized was approximately five pounds. Mr. Gonzalez testified that the marijuana was his and that he had been selling it for approximately five months; however, he has not sold marijuana since his arrest.

On November 3, 1982, Mr. Gonzalez filed his PHDF-2A with the Commission (P-1). Mr. Gonzalez responded in the negative to question number 16, which inquired of the applicant's criminal record history including arrests. Similarly, Mr. Gonzalez did not disclose his employment at Resorts in response to question number 14, which inquired of his employment history (P-1). Mr. Gonzalez testified that he was assisted by Benjamin Torres in the completion of the PHDF-2A by reason of Mr. Gonzalez' difficulty with the English language, and that Mr. Torres advised Mr. Gonzalez not to disclose his criminal record history in response to question number 16. Nevertheless, Mr. Gonzalez testified that he did not disclose his employment at Resorts in response to question number 14 and did not disclose his criminal record history in response to question number 16 because he feared that disclosure of these facts would result in the denial of his application for licensure.

Subsequent to the filing of his PHDF-2A, Mr. Gonzalez participated in a telephonic interview, which was conducted by Division Agent Alexander Love with the

assistance of Agent Agustin Garcia, who interpreted for Mr. Gonzalez. Mr. Gonzalez did not disclose his employment at Resorts nor his criminal record history until confronted with the details thereof. Further, Mr. Gonzalez stated that he had not disclosed these facts either on his PHDF-2A or during the interview because he feared that his application for licensure would be unsuccessful.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying Mr. Gonzalez' termination from employment at Resorts, his work record at Park Place and the circumstances underlying his arrest on June 10, 1981.

Although Mr. Gonzalez conceded that he was discharged from Resorts for cause, he contended that his termination was unwarranted. Mr. Gonzalez testified that while on vacation he visited Resorts to speak with his wife. Upon being informed of a schedule change in favor of a new employee, Mr. Gonzalez attempted to speak with his supervisor, who responded in a loud and abusive manner. Later, Mr. Gonzalez met his supervisor in a bank parking lot, whereupon an argument and fight ensued. When he returned to work, Mr. Gonzalez was informed of his dismissal.

In the absence of any evidence to the contrary, I am persuaded to accept Mr. Gonzalez' version of the incident which led to his dismissal. Nevertheless, the description of the incident indicates clearly that there was just cause for the disciplinary action and that it was employment related.

Mr. Gonzalez' work record at Park Place was also in dispute. Agent Love testified that he had determined from interviews with the personnel clerk at Park Place that Mr. Gonzalez had a record of poor attendance. However, Mr. Gonzalez produced a letter from Donald Ostrander, Manager Public Areas, for Park Place, which stated that Mr. Gonzalez "has maintained an excellent attendance and work record" (R-1). Given the fact that Mr. Gonzalez remains employed by Park Place, I am persuaded to accept the representations set forth in Mr. Ostrander's letter.

With regard to the incident of June 10, 1981, Mr. Gonaelez contended that the weapon found in his car belonged, in fact, to a friend who was a passenger in the vehicle. Further, Mr. Gonzalez agreed to accept responsibility for the incident because it was his vehicle. Given the fact that the indictment was dismissed upon the successful completion of PTI, no inference can be drawn against Mr. Gonzalez.

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

1. Mr. Gonzalez' employment at Resorts was terminated by reason of his misconduct emanating from his employment.
2. Mr. Gonzalez has an excellent attendance and work record at Park Place.
3. No negative inference can be drawn against Mr. Gonzalez by reason of his involvement in the incident of June 10, 1981.

#### 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." In addition to opposing licensure as a casino employee, the Division contends that Mr. Gonzalez' conduct constitutes a violation of section 86c(3) of the Act per section 86g, and, accordingly, establishes that his registration should be revoked. Although Mr. Gonzalez acknowledged his misconduct, he contended that he had rehabilitated himself pursuant to section 91d of the Act.

(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. 5:12-78(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(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

Although Mr. Gonzalez attempted to explain away the nondisclosure on his PHDF-2A of his employment and termination at Resorts as well as his criminal record history, there was no dispute that his failure to disclose was deliberate and that it was based upon a conscious fear that inclusion of the information would have a negative effect upon his application. Further, it is equally evident that Mr. Gonzalez consciously failed to disclose the information during his telephonic interview. Clearly, these omissions were intentional and demand disqualification.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Gonzalez is disqualified from licensure as a casino employee by operation of N.J.S.A. 5:12-86b.

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

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(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. The Division alleged under section 86c(3) that Mr. Gonzalez' conduct underlying his arrest on March 30, 1982, constitutes a violation of N.J.S.A. 24:21-20a(4), two counts of possession of a controlled dangerous substance, marijuana, and of N.J.S.A. 24:21-19a(1), two counts of possession of a controlled dangerous substance, marijuana, with intent to distribute, which are disqualifying offenses under section 86c(3) of the Act.

Mr. Gonzalez admitted the alleged misconduct, which establishes that, although the indictment was dismissed, he committed the requisite elements of each of the cited offenses. Further, it was established that the offenses are disqualifying offenses, pursuant to section 86c(3).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Gonzalez is disqualified from licensure as a casino employee by operation of N.J.S.A. 5:12-86g.

(C) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

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

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

Mr. Gonzalez established some of the criteria by which to demonstrate his rehabilitation. More specifically, he has not repeated his criminal misconduct and has been employed successfully at Park Place since November 1, 1982. However, under section 90h an applicant cannot rehabilitate himself from a section 86b disqualifier. Similarly, a section 86b disqualifier should preclude rehabilitation under section 91d, as a person's willingness to disclose fully his criminal record history is essential to a determination in favor of rehabilitation.

I **CONCLUDE** that Mr. Gonzalez has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h and/or to N.J.S.A. 5:12-91d.

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

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

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

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

(E) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct is purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activities;
- e. To prevent future misconduct of a like nature from recurring.

Although Mr. Gonzalez could not establish his rehabilitation, there is some reason to believe that he will not return to criminal mischief by virtue of the absence of such misconduct during the past two years. Nevertheless, it must be noted that his misconduct was extremely serious in nature as it involved the sale of drugs to other persons, who must be classified as victims of the crime. Further, this misconduct occurred over a substantial period of time, during which Mr. Gonzalez held a casino hotel employee registration and was employed in the gaming industry in New Jersey. This conduct reflects a serious disregard and lack of appreciation of his attendant responsibilities. The period in which he has been free of misconduct is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Teodoro Gonzalez be **GRANTED** and that the registration be **REVOKED**; it is further **ORDERED** that the application of Mr. Gonzalez 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.

April 30, 1984  
DATE

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

01 MAY  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

MAY 3 1984  
DATE

Mailed to Parties:  
Ronald J. Parker/phb  
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Personal History Disclosure Form - 2A, Teodoro Gonzalez, filed November 3, 1982 (23 pages)
- P-2 Atlantic City Police Department - Investigation Report, case number 81-9375, June 10, 1981
- P-3 Atlantic City Police Department - Arrest Report, case number 81-9375, June 10, 1981
- P-4 The State of New Jersey v. Teodoro Gonzalez and John Doe a/k/a Jose Rivera, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment Number 1290-80-M-3, June 30, 1981 (4 pages)
- P-5 The State of New Jersey v. Teodoro Gonzalez, Superior Court of New Jersey, Law Division, Atlantic County, Order of Dismissal under Rule 3:28, March 25, 1981 (2 pages)
- P-6 Atlantic City Police Department - Investigation Report, Case Number 82-5145, March 30, 1982; Investigation Report continuation page, March 31, 1982 (3 pages)
- P-7 Atlantic City Police Department - Arrest Report, case number 82-5145, March 30, 1982
- P-8 The State of New Jersey v. Teodoro [sic] Gonzalez, Superior Court of New Jersey, Law Division Criminal, Atlantic County, Indictment Number 102881-J-B, April 15, 1982 (5 pages)
- P-9 The State of New Jersey v. Theodore Gonzalez, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Motion and Order to Dismiss, June 25, 1982
- R-1 Letter from Donald Ostrander, February 13, 1984

WITNESS LIST

FOR THE PETITIONER:

Agustin Garcia

Alexander Love

Dennis Munoz

FOR THE RESPONDENT:

Teodoro Gonzalez

INTERPRETOR FOR TEODORO GONZALEZ:

Myriam Cartagena

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-161  
OAL DOCKET NO. CCC 4210-82;  
CCC 3108-81 (ON REMAND)  
APP. NO. 08883-21

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IN THE MATTER OF THE APPLICATION  
OF LEONARD GRABEL FOR A  
CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on August 11, 1983, recommending that the application of Leonard Grabel for a casino employee license be denied; and Leonard Grabel having filed written exceptions to the Initial Decision on August 20, 1983; and the Commission after considering the entire record of these proceedings having resolved at its public meeting of September 21, 1983, to reject certain conclusions of law contained in the said Initial Decision and to grant the application,

IT IS on this 2nd day of AUGUST 1984, ORDERED that the following conclusions contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected:

1. Mr. Grabel has not established by clear and convincing evidence his financial stability and responsibility. [Initial Decision at 3].
2. The application of Leonard Grabel for a casino employee license be denied. [Initial Decision at 3].

IT IS FURTHER ORDERED that the application of Leonard Grabel be and hereby is granted 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 further upon the following finding:

1. Mr. Grabel has demonstrated his financial stability, integrity and responsibility pursuant to N.J.S.A. 5:12-89(b)(1) and 90(b) considering: (a) the events which precipitated his financial difficulties in the late 1970's; and (b) the current status of his outstanding financial obligations.

IT IS FURTHER ORDERED that, as a result of amendments to N.J.A.C. 19:41-9.14, Mr. Grabel pay an additional \$150 in application fees, which sum is due and payable prior to the issuance of a casino employee license.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC <sup>4210-82</sup>~~3108-81~~

AGENCY DKT. NO. 81-EA-161

**LEONARD GRABEL,**

Petitioner

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Leonard Grabel, petitioner, Pro Se**

**William E. Mountford, Jr., Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: June 27, 1983

Decided: August 11, 1983

**BEFORE NORMAN D. SMITH, ALJ:**

The Division of Gaming Enforcement objected to Leonard Grabel's application to the Casino Control Commission for licensure as a blackjack dealer. Mr. Grabel requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

The Division contends that Mr. Grabel cannot affirmatively establish his financial stability, integrity and responsibility. This is a licensing requirement set forth in N.J.S.A. 5:12-89(b)1, incorporated by reference in N.J.S.A. 5:12-97(b). The Division further contends that Mr. Grabel failed to disclose material information in violation of N.J.S.A.

5:12-86(b). This would automatically disqualify Mr. Grabel from licensure. Finally, the Division contends that, by reason of the lack of financial stability and the refusal to disclose material information, Mr. Grabel cannot establish his good character, honesty and integrity. This is a licensing requirement set forth in N.J.S.A. 5:12-89(b)2.

The issue of failure to disclose material information can be dealt with easily. Mr. Grabel, for reasons that are not clear, refused, initially, to turn over certain federal tax returns to the Division. It appears that Mr. Grabel made an effort to locate the requested tax returns. However, when he could not find them, in a moment of pique or irritation, he told the Division that it had no right to demand the returns. This unfortunate incident was cured, in my opinion, when the returns were ultimately supplied as requested. By the time the hearing commenced, the returns had been in the possession of the Division and the Division's investigation was not impaired. I **CONCLUDE** from these facts that Mr. Grabel did not fail to disclose material information to the Division.

The remaining question concerns Mr. Grabel's financial stability, integrity and responsibility; his good character, honesty and integrity are also affected by the same issue. Mr. Grabel presented four witnesses who were impressive by their positions (one possessed a casino license), as well as their obvious honesty and credibility. They testified to Mr. Grabel's reputation for good character, honesty and integrity in his work community, his educational community (he has been taking college courses), and his social community. There was no evidence that contradicted the testimony of those witnesses. Evidence concerning a possible conviction of driving while on the revoked list in 1966 is simply inconclusive. I am not even certain that such a conviction ever occurred. However, even if it did occur, Mr. Grabel subsequently was licensed to drive a school bus and did so. He was also licensed to operate a driver education school, and he did so. There is no indication of any driving problems with regard to these activities. Therefore, the incident in 1966 is remote and immaterial. Except for the question of financial integrity, I **CONCLUDE** that Mr. Grabel does have a good reputation for good character, honesty and integrity.

The real issue in this case is Mr. Grabel's financial stability, integrity and responsibility. R-1 in evidence is a credit profile with a long list of Mr. Grabel's debts. It shows at least ten accounts that were charged off by the creditor. Others were delinquent. By Mr. Grabel's own words, he was unable to earn sufficient money to pay his current bills, especially at the time of his divorce in 1975. In the following four years, he

was courting his second wife "... and I was spending a lot of money running back and forth that I didn't have. Consequently, also charging and things just got from bad to worse, and I got into this trouble" (T-79, lines 1-4). Mr. Grabel never declared bankruptcy. He has no savings of any kind. His current budget is insufficient to pay his current expenses. He testified to current monthly expenses of approximately \$1,068. This is more than \$500 over his monthly income. The difference between his income and his expenses is made up in two ways: By using charge accounts he still has to the maximum level (some creditors have issued him two different accounts under two different identification numbers and all have been used to their maximum), and by supplementing his income from funds received from a trust. Mr. Grabel is a guardian for an incompetent relative. In this capacity, he receives approximately \$8,000 per year for the purpose of caring for his ward. That money is used by Mr. Grabel to defray expenses as they occur.

I **CONCLUDE** that Mr. Grabel has failed to establish by clear and convincing evidence that he is financially stable. In fact, the opposite is true. He has also failed to establish by clear and convincing evidence that he is a person of financial responsibility. Having failed to meet those two statutory criteria, his license must be **DENIED**.

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

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

8/11/83  
DATE

*NDS*  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

8/11/83  
DATE

*Wendell D. Smith*  
CASINO CONTROL COMMISSION  
*Assistant Counsel*

Mailed to Parties:

Aug. 15, 1983  
DATE

*Elizabeth J. Lippman*  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS

As set forth in transcript

WITNESSES

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-105  
OAL DOCKET NO. CCC 1754-84  
APPLICATION NO. 42289-21

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IN THE MATTER OF THE APPLICATION  
OF ROBERT J. GRACCO  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on August 6, 1984, recommending that the application of Robert J. Gracco for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on September 19, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 21<sup>st</sup> day of SEPTEMBER 1984,  
ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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


IT IS FURTHER ORDERED that, Robert J. Gracco 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 application for a casino employee license shall not prevent Robert J. Gracco from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW  
INITIAL DECISION

OAL DKT. NO. CCC 1754-84

AGENCY DKT. NO. 83-EA-105

**ROBERT J. GRACCO,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**STATE DEPARTMENT OF**

**LAW AND PUBLIC SAFETY,**

Respondent.

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**APPEARANCES:**

**Robert J. Gracco, pro se**

**Joanne Cocchiola, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: June 19, 1984

Decided: August 3, 1984

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner seeks a casino employee license permitting him to work as a craps dealer. By letter report to the Casino Control Commission, dated June 27, 1983, the Division of Gaming Enforcement objected to his licensure. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing order was entered after a May 16, 1984 prehearing conference, which defined the issue to be addressed at the hearing as follows: Can petitioner establish by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Section 89(b)2 of the Casino Control Act, as incorporated in Section 90 of the act?

A hearing was held at Pleasantville City Hall, Pleasantville, New Jersey, on June 19, 1984. Petitioner was the only witness who testified. Respondent's case rested solely upon exhibits R-1 through R-12 which were introduced into evidence.

### THE FACTS

#### A. Undisputed Facts

Petitioner is 33 years old, has been married for five years and has one dependent child. In 1981 he separated from his wife with whom he subsequently reconciled. In 1982 his father died after a battle with cancer, and six weeks later his 33-year-old brother who was an Atlantic City Police officer was killed in an automobile accident. Petitioner has been a life-long resident of Atlantic City.

Petitioner's post-secondary educational and vocational training consists of the following:

- a. Satisfactory completion of the fire fighter's exam (P-4);
- b. Satisfactory completion of computer school;
- c. Satisfactory completion of a craps dealer course; and
- d. One and a half years of college attendance.

Petitioner is presently the manager of Petinga's Saltwater Taffy store where he has worked for approximately the past ten years. He also worked for the Tropicana Hotel and Casino as a licensed bartender from approximately March 1982 to August 1982.

He left his employment at Tropicana due to a "no show — no call", for which he received a written warning. Petitioner signed for the warning, and thereafter resigned due to the fact that the work available was only part-time.

Petitioner was extremely shaken by the death of his father and brother and has admitted to using drugs in the past, particularly during the time that these two family tragedies occurred.

Petitioner has the following arrest record and convictions:

1. On April 5, 1973, he was arrested by the Atlantic City Police Department for possession of stolen property. The case was dismissed (R-1).
2. On June 12, 1973, he was arrested by the Ventnor Police Department and charged with breaking and entering, possession of burglary tools, larceny and possession of under 25 grams of marijuana, resulting in an indictment by the Atlantic County Grand Jury for the first three charges. On August 7, 1983, he entered a guilty plea to breaking and entering, and the other charges were dismissed. He was sentenced to three months in the Atlantic County Jail (R-2).
3. On August 29, 1973, he was arrested by the Atlantic City Police Department and charged with assault and battery and terroristic threats. The complaint which had been signed by a private citizen was withdrawn (R-3).
4. On September 25, 1983, he was arrested by the Atlantic City Police Department and charged with breaking and entering and larceny. The arrest warrant was issued after receipt by a detective of a supplementary investigation report stating that fingerprints lifted from the complainant's home were identified as petitioner's. The case was dismissed (R-4).

5. On November 23, 1973, petitioner and a female companion were arrested by the Atlantic City Police Department and charged with possession of a controlled dangerous substance (heroin). Charges against petitioner were dismissed because the heroin belonged to petitioner's female companion (R-5).
6. On January 15, 1974, he was arrested by the Atlantic City Police Department and charged with breaking and entering, larceny, possession of stolen property and attempt to utter a forged instrument. The case was dismissed when it was determined that petitioner was confined to the Atlantic County Jail on the date that the crime occurred (R-6).
7. On February 27, 1975, he was arrested on a warrant resulting from a complaint signed by his mother stating that she had found narcotics paraphernalia in petitioner's bedroom. He was charged with possession of narcotics paraphernalia to which he pled guilty and was fined \$100 (R-7).
8. On December 18, 1977, he was arrested by the Atlantic City Police Department and charged with breaking and entering and larceny. The case was dismissed. (On December 19, 1977, the complainant signed a statement claiming that petitioner and a companion who was also charged told him he was going to be "sorry" that they were arrested, that his "business will be sorry", that he and the other person charged with the same incident were not "done with him yet", and that they threatened to do bodily harm) (R-8).
9. On August 28, 1979, petitioner was arrested by the Atlantic City Police Department and subsequently indicted on two counts of possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1). Petitioner pled guilty to both counts and on March 17, 1980 he was granted a conditional discharge, which was revoked on March 6, 1981, due to his failure to obtain periodic doctor's notes required as a condition for the discharge. On October 16, 1981, petitioner received a six-month suspended sentence and was fined \$25 (R-9).

10. On May 25, 1981, petitioner was arrested by the Atlantic City Police Department after having been involved in an automobile accident. A subsequent search of his person revealed possession of four tablets which tested positive for quaaludes. Petitioner admitted to the police officer that the substance was quaaludes and he was charged with a violation of N.J.S.A. 24:21-20a, possession of a controlled dangerous substance. Petitioner pled guilty and was fined \$75 (R-10).
11. On July 11, 1981, petitioner was arrested by the Atlantic City Police Department and charged with burglary and theft under \$200. The complainant dropped the charges on July 14, 1981 after petitioner made restitution (R-11).
12. On November 16, 1982, petitioner was charged with a violation of N.J.S.A. 2C:21-1, uttering a forged instrument and N.J.S.A. 2C:20-4, theft by deception. The matter was dismissed after he made restitution (R-12). Respondent's attorney stated that petitioner failed to appear for certain court proceedings in connection with these charges and that he was arrested for contempt of court in April 1983. No documents were introduced to support that contention, hence, I make no factual finding as to that representation.

In September 1982, petitioner was written up in Tropics, Volume II, No. 4, a publication of the Tropicana Hotel and Casino, placing him in the Tropicana's "Hero's Hall of Fame" for saving the lives of two men who were apparently drowning in the Atlantic City Ocean (P-1, P-2).

The following persons did not appear at the hearing but provided written statements favorable to petitioner:

1. Angelo J. Mancuso, Jr., states that he finds petitioner to be a ". . . hard working person and quite trustworthy . . . he will be quite qualified to fill whatever position he is given" (P-7).

2. Alfred A. Rongione, retired executive chef, has known petitioner for 30 years. Mr. Rongione wrote that he would ". . . highly recommend him for the position he is applying for. He is hard working and dependable. He has shown very strong character and conviction in any of his endeavors, even at a time of great personal difficulty and tragedies" (P-8).
3. Joseph Pasquale, Chief of the Atlantic City Police Department has known petitioner for 30 years, and finds him to be ". . . honest, trustworthy and reliable." Chief Pasquale's statement said he would not hesitate to recommend petitioner for any employment he might undertake (P-9).
4. Charles A. Ritzel who has known petitioner for 25 years, wrote that he would highly recommend petitioner for whatever job he is seeking, based upon his opinion that petitioner is a hard worker and would be a credit to any employment position he would undertake (P-10).

#### B. Disputed Facts

The facts which were clearly in dispute involved the issue of whether petitioner actually committed the acts for which he was criminally charged but which were ultimately dismissed or withdrawn. Respondent's position is that the evidence contained in the arrest reports and investigation reports clearly demonstrates that petitioner did commit the acts. Petitioner argues that he did not commit any of the offenses for which the complaints were dismissed or withdrawn, i.e., a dismissal automatically implies that he is not guilty. The evidence presented by both parties was insufficient to make a finding as to whether or not petitioner actually committed these offenses.

#### DISCUSSION AND CONCLUSIONS OF LAW

The issue in this matter arises pursuant to N.J.S.A. 5:12-89(b)2 (as incorporated in Section 90(b) of the Casino Control Act), which states that each applicant for a casino 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."

An applicant's burden to demonstrate his qualifications by clear and convincing evidence requires him to demonstrate to the trier of fact a "... firm belief or conviction as to the truth of the matters sought to be established." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979).

To support his position that he has met the statutory qualifications required for licensure, petitioner raised the following arguments:

1. The only phase of his life which was questioned by respondent during the application process was his arrest record, which he alleges is misleading in that most of the criminal complaints filed against him from the years 1973 to May 1981 were dismissed. The dismissals imply he did not commit the offenses. The last two charges of July 11, 1981 (burglary and theft) and November 16, 1982 (uttering a forged instrument and theft by deception) were dismissed because petitioner made restitution.
2. He does not currently have a drug problem. He attributed his prior drug problem substantially to personal problems, particularly the deaths of his father and brother. He has learned to cope with those personal tragedies and has reconciled with his wife. He is keeping his personal life intact.
3. The crimes for which petitioner has been convicted have been minimal offenses. Further, those charges involving his use or possession of drugs do not reflect on his good character, honesty and integrity. He stated that many casinos have programs to help their employees who have drug problems. Petitioner argues that his ability to free himself from the use of drugs reflects positively on his reputation for good character, honesty and integrity.

4. Petitioner has satisfied his debt for being in trouble by going to jail and paying restitution. He states that a person's character cannot be judged merely by what is on paper.
5. His employment history, educational and vocational training, and his reference letters render him qualified for licensure. Petitioner stated that he could bring in between 20 and 50 witnesses to verify that he comes from a distinguished family.
6. He demonstrated satisfactory casino employment when he worked as a bartender for Tropicana.

Respondent argued that petitioner lacks the necessary good character, honesty and integrity for the following reasons:

1. Petitioner has a ten year arrest record.
2. While many of the criminal charges against petitioner were dismissed, the actual disposition of the charge is not the issue. What is important is that the documentary evidence introduced by respondent demonstrates that petitioner did commit the offenses for which he was charged.
3. Petitioner admitted that he illegally used drugs.

The Casino Control Act clearly provides that public confidence and trust in the credibility and integrity of the regulatory process in the casino operation requires strict regulation of ". . . all persons, locations, practices and associations related to the operation of licensed casino enterprises . . ." N.J.S.A. 5:12-1(b)(6). Pursuant to the strong public interest in regulating casino operations, the legislature made participation in casino operations as a licensee a revocable privilege. N.J.S.A. 5:12-1(b)(8). To enjoy that privilege, the applicant for a casino employee license must demonstrate the requisite Section 89(b)2 reputation for good character, honesty and integrity. While the statutory language utilizes the word "reputation", it has been established that ". . . the real issue is the applicant's actual character, with special attention being given to the subject matter of the reputation." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra at 90; In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 345 (App. Div. 1981).

The only evidence presented by respondent at the hearing were exhibits R-1 through R-12 in evidence. With regard to those exhibits, petitioner readily admits that from June 12, 1983 through November 16, 1982 he (1) committed one breaking and entering offense, (2) he was guilty of three drug related offenses, and (3) he made restitution for the last two offenses of July 11, 1981 and November 16, 1982. While I **CONCLUDE** that petitioner has not been convicted of any statutory disqualifying offenses, pursuant to N.J.S.A. 5:12-86c, the nature of the offenses which he admits he committed, clearly and unequivocally relate to the issue of his good character, honesty and integrity.

However, regarding the complaints which were dismissed, I reject respondent's arguments that arrest and investigation reports upon which those complaints were issued, prove that petitioner did actually commit the acts for which he was charged. While hearsay evidence may be admissible in an administrative proceeding, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.8. The Casino Control Act also addresses the admission of hearsay evidence at administrative proceedings by permitting the introduction of any relevant evidence which shall be sufficient by 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 . . ." N.J.A.C. 5:12-107(a)6. I **CONCLUDE** that absent the introduction of some legally competent evidence to substantiate and corroborate the acts alleged in the arrest and investigation reports that no responsible person would rely solely on those reports in the conduct of their serious affairs to conclude absolutely that the offenses were committed, particularly when the basis of our criminal justice system is the presumption of innocence until guilt has been proven beyond a reasonable doubt.

By the same token, I reject petitioner's argument that the mere fact that six complaints against him were dismissed and one complaint was withdrawn, requires a finding that he did not actually commit the acts with which he was charged. I need not here enumerate the variety of reasons as to why a criminal complaint may be dismissed,

however, the dismissal or withdrawal of a criminal complaint does not automatically warrant a finding that the acts were not actually committed. This conclusion is borne out by petitioner's own life experience. On July 11, 1981 he was arrested for burglary and theft, but because he made restitution, the victim withdrew the charges against him, notwithstanding that petitioner actually committed a criminal act. In rejecting the arguments of petitioner and respondent as to the significance of dismissed and withdrawn complaints, I do **CONCLUDE** that the charges which were dismissed relate to the issue of petitioner's reputation. A responsible person conducting serious affairs would clearly be justified in relying upon the arrest and investigation reports in questioning and assessing the reputation of an individual with such a lengthy arrest record. N.J.S.A. 5:12-107(a)(6).

Examining petitioner's testimony, and having had the opportunity to observe his demeanor, I **CONCLUDE** that petitioner has demonstrated by clear and convincing evidence that he has overcome his drug problem. Petitioner's arrest record also reveals that he has not had any drug-related offenses for approximately three years. Petitioner's intensity in testifying as to his commitment to his wife and child, his desire to pursue a new career as a craps dealer, and his recent employment history and vocational training substantiate this conclusion. Notwithstanding that petitioner may have a reputation as a person with a drug problem, he has adequately demonstrated that despite that prior reputation, it is presently undeserved.

Regrettably I cannot draw the same conclusion regarding petitioner's conviction and arrest record concerning the other offenses with which he was charged from 1973 through 1982 which include charges of breaking and entering, possession of stolen property, possession of burglary tools, larceny, attempt to utter a forged instrument, theft by deception, assault and battery, and terroristic threats. The nature of those charges goes to the very substance of what "good character, honesty and integrity" is all about. Petitioner had the burden of establishing his good character, honesty and integrity by introducing evidence "so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts and issue." Aiello v. Knoll Gulf Club, 64 N.J. Super. 156, 162 (App. Div. 1960); In re Boardwalk Regency Casino License Application, supra, at 339. Petitioner has failed to meet that burden. The offenses cited directly above fall into two categories, namely those for which petitioner admitted guilt or was adjudicated guilty, and those for which he was charged but which were dismissed or withdrawn. With regard to the

complaints which were withdrawn or dismissed, I found that while I cannot conclude that petitioner is guilty of those offenses, the arrest and investigation reports for those offenses cannot be ignored or overlooked in the context of the strict state regulation required of all persons seeking to be licensed in the casino industry. Petitioner's cursory treatment of those charges which were ultimately dismissed, by stating that the dismissal and withdrawal of the complaints means that he did not commit the criminal acts, is inadequate to meet his affirmative burden and avoids the issue. While he did offer plausible explanation for the dismissal of the charges of January 15, 1984 (he was in jail at the time the offense occurred) and the charge of possession of heroin on November 23, 1973 was dismissed because the heroin belonged to his female companion, he has failed to offer any reasonable evidence to mitigate or explain the other charges of April 5, 1983, August 29, 1983, January 15, 1974, December 18, 1977, as they relate to his reputation for good character, honesty and integrity.

The four letters of recommendation (P-7 through P-10) also do not sustain petitioner's burden of proof. All four documents appear to be recommendations for employment positions. Since none of the authors of these letters testified at the hearing, it is not known to what extent any of these persons are aware of petitioner's arrest record and criminal background or whether knowledge of that background would in any way alter the opinion each of them expressed in their recommendation letters. The logical inference to be drawn from the recommendation letters is that each was prepared in the context of petitioner applying for a job, and not necessarily for the purposes of an administrative hearing in which petitioner was attempting to prove his good character, honesty and integrity based upon a ten-year arrest record. Without the opportunity for live testimony and cross-examination, it is impossible to know how much these individuals really know about petitioner's life. I note that three of the letters state that the author has known petitioner for 25 to 30 years. However, I cannot conclude that the length of a relationship is necessarily dispositive of the issue of how well or intimately one person knows another. Petitioner did not call any witnesses to testify on his behalf as to his reputation for good character, honesty and integrity. Had he done so, and had he then also introduced recommendation letters from additional persons, the letters might have been accorded fairly substantial weight. While the letters are more than complimentary, the context in which they were written and precise purpose for which they were written is unknown. The evidence is insufficient to meet petitioner's affirmative burden of establishing his proofs by clear and convincing evidence.

Petitioner argued that he has the good character, honesty and integrity necessary to work in any job, that he is fighting for the future of his family, and that he has paid his debt for being in trouble by going to jail and making restitution. As previously noted, the Casino Control Act clearly establishes that the legislation does not create a property right to a casino employee license and that the granting of the license is a revocable privilege conditioned solely upon the individual qualification of the applicant. N.J.S.A. 5:12-1(a)8. The license applied for by petitioner to work as a craps dealer by its very nature requires exposure to and continual contact with the public. It is a position which requires the licensee to be honest and trustworthy. Less than two years ago, respondent admitted to an act of theft by deception. In the preceding year he admitted that he had committed acts which were tantamount to burglary and theft. The nature of those acts as they relate to petitioner's potential employment as a craps dealer, would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations if he was granted a license. While petitioner made restitution for both of those offenses, that does not serve to mitigate against the fact that he actually committed the offenses.

While it is commendable that respondent has completed several avenues of vocational education and training (P-3, P-4, P-5 and P-6), the nature of those endeavors do not particularly relate to the issue of good character, honesty and integrity. Petitioner also produced evidence of a heroic effort on his part in saving two drowning victims. However, it should be noted that that event occurred prior to the last complaint filed against him for theft by deception and forgery and does not in and of itself negate his criminal and arrest record.

I therefore **CONCLUDE** that petitioner has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that petitioner's application for a casino employee license be **DENIED**.



LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

On behalf of petitioner:

- P-1 & P-2 September 1982, Edition of "Tropics"
- P-3 New Jersey Civil Service, Notification of Eligibility for position of firefighter, dated February 8, 1984
- P-4 New Jersey Civil Service, Notification of Eligibility for position of fire fighter, dated February 22, 1984
- P-5 Brochure of computer program completed by petitioner at Associated Business Careers
- P-6 Brochure of computer program completed by petitioner at Associated Business Careers
- P-7 Recommendation letter, dated June 18, 1984, from Angelo J. Mancuso, Jr.
- P-8 Recommendation letter, dated June 18, 1984, from Alfred A. Rongione
- P-9 Recommendation letter, dated June 19, 1984, from Joseph Pasquale
- P-10 Recommendation letter, undated, from Charles A. Ritzel

On behalf of respondent:

- R-1 Investigation Report, Arrest Report, Property and Evidence Report of Atlantic City Police Department, dated April 5, 1973; Investigation Report of Atlantic City Police Department, dated March 29, 1973 (6 pages)
- R-2 Arrest Report of Ventnor City Police Department, dated June 12, 1973; Four criminal complaints from Ventnor City Municipal Court, dated June 12, 1983; consent to search petitioner's apartment, dated June 12, 1973; subpoena to testify in the State of New Jersey v. Robert Gracco, served upon Ptl. Horner (undated); Laboratory Report, New Jersey State Police, dated June 22, 1973; Arrest Report from Ventnor City Police Department, dated June 27, 1973; Request for Examination of Evidence; statement of Biagio Louis Dascenzo, dated June 12, 1973; statement of Albert P. Agostini, dated June 12, 1973; three count indictment for petitioner, dated June 12, 1973; Judgment of Conviction, dated February 11, 1974 (28 pages)
- R-3 Investigation and Arrest Report of Atlantic City Police Department, dated August 29, 1973 (2 pages)

- R-4 Investigation Report of Atlantic City Police Department with statement of Lee Anderson attached, dated July 13, 1973; two Supplementary Investigation Reports of Atlantic City Police Department, dated September 22, 1973; Arrest Report of Atlantic City Police Department, dated September 25, 1973 (5 pages)
- R-5 Investigation and Arrest Report of the Atlantic City Police Department, dated November 23, 1973; statement by defendant and plea bargain agreement, dated May 14, 1974; Request for Examination of Evidence, from New Jersey State Police (undated) relating to incident on November 23, 1973; Laboratory Report, New Jersey State Police, dated January 16, 1974; plea bargain agreement and statement by defendant, dated January 4, 1974 (10 pages)
- R-6 Investigation Report of Atlantic City Police Department, dated December 5, 1973; Supplementary Investigation Report of Atlantic City Police Department, dated January 17, 1974; statement of Denise Pettit, dated January 30, 1974; statement of Margaret Costello, dated January 30, 1984; Supplementary Investigation Report of the Atlantic City Police Department, dated January 30, 1974; Arrest Report of Atlantic City Police Department, dated January 15, 1974; Supplementary Investigation Report of Atlantic City Police Department, dated January 23, 1974; statement of Joseph M. Sylvania dated January 4, 1974; illegible statement (date illegible) (11 pages)
- R-7 Investigation Report and Arrest Report of Atlantic City Police Department, dated February 25, 1975 (2 pages)
- R-8 Investigation Report and Arrest Report of Atlantic City Police Department, dated December 18, 1977; statement of Frank McGlynn, dated December 1977; statement of Guy Mason, dated December 18, 1977 (5 pages)
- R-9 Investigation Report and Arrest Report of Atlantic City Police Department, dated August 28, 1979; Request for Examination of Evidence from New Jersey State Police (undated); Investigation of Atlantic County Prosecutor, dated October 2, 1979; Laboratory Report of New Jersey State Police, dated February 11, 1980; statement by defendant, dated February 28, 1980; Confidential Information Request, dated February 28, 1980; complaint from Atlantic City Municipal Court, dated August 28, 1979; Judgment of Conviction and Order for Commitment, dated October 16, 1981 (12 pages)
- R-10 Investigation Report and Arrest Report of Atlantic City Police Department, dated May 25, 1981; Request for Examination of Evidence from New Jersey State Police

(undated) relating to incident on May 25, 1981; New Jersey State Police Laboratory Report, dated July 9, 1981; complaint from Atlantic City Municipal Court, dated May 25, 1981 (8 pages)

R-11 Investigation Report of Atlantic City Police Department, dated July 11, 1981; Atlantic County Prosecutor's Office, Detective Division, Supplemental Report, dated July 31, 1981 (5 pages)

R-12 Investigation Report, New Jersey State Police, dated October 28, 1982; Supplementary Investigation Report of New Jersey State Police, dated October 29, 1982; Supplementary Investigation Report of New Jersey State Police, dated November 3, 1982; Supplementary Investigation Report of New Jersey State Police, dated November 5, 1982; Supplementary Investigation Report of New Jersey State Police, dated January 13, 1983; summons and complaint, dated November 16, 1982 (8 pages)

WITNESSES

For petitioner:

Robert J. Gracco

For respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-229  
OAL DOCKET NO. CCC 766-84  
LICENSE NO. 27679-21

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

Complainant, :

FINAL ORDER

v. :

PAUL E. GUSTY, JR. :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 4, 1984, recommending that the respondent's casino employee license be revoked; and the respondent having filed exceptions to the Initial Decision on June 18, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of July 11, 1984, by a vote of 3-1 (Chairman Read dissenting and Commissioner Zeitz not participating) to reject certain conclusions of law contained in the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement,

IT IS on this 2nd day of AUGUST 1984, ORDERED that the following conclusions contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected:

1. Mr. Gusty has not established by clear and convincing evidence rehabilitation pursuant to N.J.S.A. 5:12-90(h) from his disqualification under N.J.S.A. 5:12-86(c)(1) and (g). [Initial Decision at 12].
2. Mr. Gusty has failed to establish by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b). [Initial Decision at 12].
3. The casino employee license of Paul E. Gusty, Jr., be revoked. [Initial Decision at 12].

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby 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 further upon the following findings:

1. Mr. Gusty has adequately demonstrated rehabilitation from his disqualification considering: (a) the passage of nearly three years since the disqualifying conduct occurred; (b) his entry into and successful completion of a pre-trial intervention program which required that he make restitution in the amount of \$2,500 to the crime victim; (c) his employment record which includes a position he has held since April 9, 1983, with the Tropicana Hotel/Casino; (d) his pursuit of additional education and successful completion of a course of study in the game of blackjack at Casino Schools, Inc.

2. There being no other bases for disqualification, and in consideration of the entire record, Mr. Gusty has demonstrated his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 766-84

AGENCY DKT. NO. 83-229

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

Petitioner,

v.

**PAUL E. GUSTY, JR.,**

Respondent.

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**APPEARANCES:**

**William E. Mountford**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Jonathan Williams, Esq., and Luther G. Anderson, Esq.,** on behalf of the respondent

Record Closed: May 1, 1984

Decided: June 1, 1984

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

This matter concerns the complaint of the Division of Gaming Enforcement (hereinafter referred to as "Division"), filed with the Casino Control Commission on July 15, 1983, seeking the revocation of the respondent's casino employee license, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Gusty filed a motion to dismiss this complaint with the Casino Control Commission and by Order, dated January 31, 1984, the Casino Control Commission denied the motion except that it deleted the allegation that the respondent's criminal activities would make his

continued licensure inimicable to the policies of the Casino Control Act (para. B on pp. 4 and 5 of the complaint).

The matter was then transmitted to the Office of Administrative Law for a determination as a contesed case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference by way of a telephone conference call, was held on March 9, 1984, and at that time, the parties agreed that the issues in this matter are:

- (a) Whether the respondent is disqualified from licensure as a result of certain alleged criminal activities, pursuant to N.J.S.A. 5:12-86g.
- (b) Whether the respondent can establish his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).
- (c) Whether the respondent can establish that he has been rehabilitated as provided by N.J.S.A. 5:12-90h.

The hearing took place on April 24, 1984. Since the respondent submitted legal memoranda during the hearing, I gave Mr. Mountford until May 1, 1984, to submit a response. Mr. Mountford did not elect to submit a response and the record in the matter closed on May 1, 1984.

I FIND that there is no dispute as to certain facts in this matter. On the evening of August 2, 1981, the home of Eugene and Sylvia Leimberg was burglarized and some money and jewelry were taken (P-1). About one year later, Charles Duppel told Mrs. Leimberg that the respondent was involved in the incident and Patricia Tisdale, the girl friend of Mr. Duppel, returned to Mrs. Leimberg two rings which were part of the jewelry that had been stolen. Mrs. Leimberg reported the matter to the Cape May Prosecutor's Office and, after an investigation, both the respondent and Mr. Duppel were arrested on November 29, 1982 (P-2). In the complaint filed against the respondent, he was charged with the unlawful entry of the residency of Mr. and Mrs. Leimberg, a violation of N.J.S.A. 2C:18-2, the theft of property with a value in excess of \$500, belonging to Mr. and Mrs. Leimberg, a violation of N.J.S.A. 2C:20-3, and theft by knowingly receiving property, having a value in excess of \$500, stolen from Lou Morey, a violation of N.J.S.A. 2C:20-7 (P-2). Mr. Gusty was indicted on these charges on

January 5, 1983 and in April 1983, he was admitted into the Pre-Trial Intervention program (hereinafter referred to as "PTI program"). On October 19, 1983, after his successful completion of the six month PTI program, the indictment against the respondent was dismissed (R-1, R-9).

Since there was no determination as to the criminal charges brought against Mr. Gusty, it was recognized by the parties that the burden of proof was on the Division to show that Mr. Gusty was guilty of a statutory disqualifier, pursuant to N.J.S.A. 5:12-86g.

Mr. Mountford requested that I order the sequestration of Mr. Gusty's character witnesses who were present in the hearing room. Mr. Williams objected, and I denied the request because I was not persuaded by Mr. Mountford's argument that there was a need to sequester these witnesses.

Mr. Mountford offered into evidence P-2, which consists of the Cape May investigation reports regarding the Leimberg and Morey incidents, the arrest reports for the respondent and Mr. Duppel, and the complaint filed against Mr. Gusty. Mr. Williams objected since the Cape May investigation reports contained hearsay, namely summarization of statements made by Mr. Duppel, Ms. Tisdale and Mrs. Leimberg as to the Leimberg incident, as well as statements made by Mr. Duppel, Ms. Tisdale, Eugenia Marie Reinhart, a resident of the Morey house, and Patricia Johnson, as to the Morey incident. Mr. Mountford noted that, pursuant to N.J.S.A. 5:12-107a(6), hearsay is admissible in this matter.

Mr. Williams argued that the hearsay statements in P-2 should not be relied on because the persons who gave the statements, except for Mrs. Leimberg, would not be testifying and consequently the respondent would be denied the right of cross-examination. In support of his argument, Mr. Williams cited Administrative Law Judge Opsenson's initial decision in In the Matter of the Application of Raymond I. Molenaar, OAL Dkt. CCC 2343-79 (April 9, 1980). It should be noted that the Casino Control Commission adopted Judge Opsenson's conclusion that the applicant should not be licensed but specifically rejected his conclusion that N.J.S.A. 5:12-107(a) and (b) is not applicable to administrative hearings (Order dated May 29, 1980).

I admitted P-2 into evidence and recognized that the weight to be given to the summarized statements in P-2 is mitigated by the fact that the persons who gave these statements, except for Mrs. Leimberg, would not be testifying at the hearing.

As his first witness, Deputy Attorney General Mountford called Paul E. Gusty, Jr. Mr. Williams objected on the basis that the respondent had not been subpoenaed, nor had he been notified that he would be called as a witness for the Division. Mr. Mountford indicated that in his letter of March 9, 1984, he stated that he reserved the right to call as a witness any person mentioned in the documents which were being provided to the respondent; the documents clearly mentioned Mr. Gusty. Mr. Mountford stated that it was not necessary for the Division to subpoena the respondent and that pursuant to N.J.S.A. 5:12-80, Mr. Gusty is required to cooperate with the Division and the Casino Control Commission. I agreed with Mr. Mountford and I allowed the Division to call Mr. Gusty as a witness.

Paul E. Gusty, Jr. testified that he is currently 21 years old and that he has lived with his parents for all of his life in North Wildwood. During that period, Mr. and Mrs. Leimberg have lived across the street. Both Mr. Gusty and his father have been employed by Mr. and Mrs. Leimberg to take care of their lawn.

Mr. Gusty admitted that during the summer in 1981, he and Charles Duppel entered the Leimberg home by using a key and that he and Mr. Duppel took an envelope and some jewelry which they found in a bedroom.

According to Mr. Gusty, the Leimbergs had given his father a key to their house when they went away on a vacation, and he had made a copy of this key before his father returned the original key to the Leimbergs.

Mr. Gusty knew Mr. Duppel for several months prior to the time they burglarized the Leimberg home. Mr. Duppel had rented an apartment from Lou Morey, where he resided with Patricia Tisdale, and later Mr. Duppel moved into an apartment in the Gusty home. At the time, Mr. Gusty was 18 years old and Mr. Duppel and Ms. Tisdale were both around 21 years old.

After the burglary, Mr. Gusty and Mr. Duppel went to Mr. Duppel's apartment in the Gusty home. They found money in the envelope they had taken from the Leimberg home, but Mr. Gusty could not recall the amount of the money. Mr. Duppel kept the money. Mr. Gusty, who alleged he had some knowledge about jewelry, sorted the jewelry taken from the Leimberg home, and they decided to get rid of the costume jewelry. According to Mr. Gusty, there were several pieces of 14-karat gold jewelry but he did not think that they were worth much money.

Mr. Gusty and Mr. Duppel then left the apartment, and they and Ms. Tisdale went to Atlantic City to eat and visit nightclubs. Mr. Duppel paid all the bills while they were in Atlantic City. While they were there, they left the costume jewelry in a telephone booth. Mr. Gusty did not know what Mr. Duppel did with the rest of the money that was taken; however, he was aware that Mr. Duppel was in debt. As to the jewelry that Mr. Gusty considered to be valuable, he and Mr. Duppel kept it for a period of time and then they took the jewelry to John Christopherson, a jeweler in Cape May. Mr. Christopherson kept the jewelry and later told Mr. Gusty that he would buy the jewelry for approximately \$120. Mr. Gusty agreed to sell it; however, he did not immediately go to get the money and forgot about it. Later, Mr. Gusty went to Mr. Christopherson to buy a ring and he was given a \$100 credit for the jewelry.

Sometime thereafter, Mr. Gusty stated that Mr. Duppel gave him a 14-karat gold cocktail ring and asked him to find out how much it was worth. Mr. Duppel told Mr. Gusty that Patricia Tisdale had found the ring in a telephone booth. According to Mr. Gusty, he did not question that she had found it because he had found a piece of jewelry in a bar and another piece of jewelry on the beach, which Mrs. Leimberg claimed belonged to her. Mr. Gusty took the ring to Patricia Johnson for an appraisal. Later, he sold the ring to Ms. Johnson for approximately \$300 and he gave the full amount to Mr. Duppel. Mr. Gusty's friendship with Charles Duppel ended sometime thereafter.

As part of his participation in the PTI program, Mr. Gusty paid Mr. and Mrs. Leimberg \$2,500 through the probation department. This amount was determined to be the respondent's share of the amount to be restored to the Leimbergs.

Sylvia Leimberg testified that she had known Mr. Gusty for his entire life and had considered the Gustys to be good neighbors. Mrs. Leimberg no longer has a cordial relationship with the Gusty family.

After their home was burglarized, the Leimbergs reported it to the North Wildwood Police Department. Mrs. Leimberg heard nothing further about the incident until Charles Duppel came into her store on the Wildwood boardwalk during the Memorial Day weekend in 1982. Mr. Duppel told her that the respondent had taken the money and jewelry and offered to show her proof. Later, he came back with Ms. Tisdale, who gave her two rings which were part of the costume jewelry that had been taken during the burglary. Mrs. Leimberg then went to the Ocean County Prosecutor's office since she had not been satisfied with the investigation that had been conducted by the North Wildwood Police Department.

On cross-examination, Mrs. Leimberg stated that she had received \$2,500 from Mr. Gusty as restitution. Mrs. Leimberg stated that the list of stolen items that she had initially given to the North Wildwood Police Department (P-1) was not completely accurate, and that the amount of money was \$800 and not \$1,000 and that additional jewelry had been taken. Mrs. Leimberg prepared a complete list for her insurance company after she had the opportunity to go through her personal possessions.

After she went to the prosecutor's office, Mrs. Leimberg stated that she confronted Mr. Gusty and accused him of "ripping her off," and Mr. Gusty looked her straight in the eyes and said "Aunt Sylvia, I don't know what you mean."

At the end of the Division's case, Mr. Williams moved to dismiss the matter on the basis that the Division had failed to establish a prima facie case, and I denied the motion.

In his own defense, Mr. Gusty testified that after he graduated from high school in 1981 he became good friends with Charles Duppel and Patricia Tisdale. The respondent was aware that Mr. Duppel was in debt and needed money. Mr. Gusty stated that on several occasions Mr. Duppel approached him with the idea of burglarizing the Leimberg home and, initially, Mr. Gusty refused to do so.

Sometime after the burglary of the Leimberg home, the respondent and Mr. Duppel went to New York City where Mr. Duppel was robbed and the respondent realized what it was like to lose his personal possessions. The respondent then felt remorse for what he had done to the Leimbergs.

The respondent's friendship with Charles Duppel and Patricia Tisdale ended in the fall of 1982. This occurred after Mr. Gusty had invited Mr. Duppel to stay overnight with him and he awoke during the night and found Mr. Duppel going through his drawers. At that point, Mr. Gusty realized that Mr. Duppel had been using him. According to Mr. Gusty, he had never been involved in any criminal activities prior to his friendship with Charles Duppel, nor was he so involved after their friendship ended.

Mr. Gusty stated that he entered the PTI program in April 1983 and that he was required to give up alcohol and drugs, to make restitution and to report to a probation officer for counseling. Mr. Gusty complied with the terms of the program and he made restitution by earning the money from various jobs.

Olive S. Barry, a probation officer and counselor for the PTI program in Cape May County, submitted a certification in which she stated that Mr. Gusty reported on a semi-monthly basis for six months and that the respondent successfully completed the PTI program (R-1). Based on her observations, it is Ms. Barry's opinion that Mr. Gusty was well-motivated for rehabilitation, that he admitted his wrongdoing and that he has learned his lesson, and that it is unlikely that he will get into criminal trouble again (R-1).

In June 1981, Mr. Gusty received his casino employee license and he was initially employed by the Playboy Hotel and Casino as a food and beverage cashier. In April 1983, the respondent started to work for the Tropicana Hotel and Casino as a change person, was promoted to work in the carousel and now works as a slot booth cashier. With each promotion, Mr. Gusty had more responsibility and had to handle larger amounts of money.

In a letter dated April 10, 1984, S.J. Bennett, a slot booth cashier at the Tropicana Hotel and Casino, stated that he has been working with the respondent for over a year and that Mr. Gusty is a reliable, trustworthy and dependable person (R-2). Linda G. Rucker, a slot change shift supervisor at the Tropicana Hotel and Casino, in her letter dated April 9, 1984, stated that Mr. Gusty has worked for her and that she had no problems with his work and that he is willing to help his co-worker (R-5). In addition, Kevin Flanagan, a slot change manager at the Tropicana Hotel and Casino, in his letter dated April 14, 1984, stated that Mr. Gusty had done a good job, that he cooperates with his supervisors and is helpful to his co-workers (R-6).

Two performance appraisal summaries for the respondent by Tropicana Hotel and Casino were admitted into evidence and both show that Mr. Gusty was evaluated as an overall superior employee.

Mr. Gusty has recently attended blackjack dealer school, which required him to go to school four days a week for four hours each day, and he has successfully completed this course (R-3, R-4), and has had his casino employee license endorsed for blackjack. Mr. Gusty hopes to get a position as a blackjack dealer and eventually become a floor person.

On cross-examination, Mr. Gusty admitted that he was confronted by Mrs. Leimberg but stated that she told him she found out something about him and told him not to call her Aunt Sylvia. Mr. Gusty stated he was upset by her action.

Also on cross-examination, Mr. Gusty admitted that he was terminated by Playboy Casino and Hotel for unsatisfactory performance after he received three warnings. One warning was for allowing the incorrect imprinting of a credit card, which resulted in a loss of \$5; another warning was for the cashing of a \$200 Canadian Traveler Check, and the third warning was after someone had taken \$200 from his register. As to this third incident, Mr. Gusty stated that no one questioned his honesty and that two other people were fired because of the incident.

Francis Tomlinson, Assistant Chief Investigator of the Public Defender's Office, used to work with the respondent's father as a police officer and the respondent worked for him for approximately five years, from 1975 to 1980. Mr. Gusty was in charge of the day shift at Mr. Tomlinson's stand on the boardwalk, and the respondent would take care of the money and bring it to Mr. Tomlinson at the end of his shift. Depending on the type of weather, in the daytime Mr. Tomlinson's stand grossed \$60 or \$70 each weekday and \$300 on the weekend. Mr. Tomlinson never had a problem with the respondent and he considered Mr. Gusty to be a person of good character, honesty and integrity, and he was surprised when he heard about the Leimberg incident. On cross-examination, Mr. Tomlinson admitted that since 1981 he has not seen the respondent on a regular basis and that prior to the day of the hearing, he had not seen the respondent for about six months.

William J. Wizst, the Chief of the North Wildwood Police Department, testified that the respondent's father is a member of his police department and that he has known the respondent since his birth. Mr. Wizst said he was shocked and surprised when he heard that the respondent had been indicted and he that is not aware of any other criminal activities by the respondent. Mr. Wizst stated that he considers Mr. Gusty to be a person of good character, honesty and integrity.

On cross-examination, Mr. Wizst stated that he is not a social friend of the Gusty family but that he frequently sees Mr. Gusty and his father.

Paul E. Gusty, Sr., testified that he has been a member of the North Wildwood Police Department for 25 years and that he was not close to his son until after the criminal charges were brought against his son. Mr. Gusty, Sr., now has a better relationship with his son and they are able to talk and do things together, and he feels that his son would now come to him if he had a problem.

According to Mr. Gusty, Sr., he met Charles Duppel through his son and rented Mr. Duppel an apartment for the summer. Mr. Duppel paid his rent for a while and then he lost his job. Mr. Gusty, Sr., allowed Mr. Duppel to stay in the apartment even though he was not paying rent but in mid-August 1982, he had the apartment padlocked when he heard Mr. Duppel was planning to move out without paying the \$800 in overdue rent. Mr. Duppel obtained the services of a legal aid lawyer and the matter was settled. The agreement was that Mr. Duppel was to get his personal possessions back after he gave \$200 to Mr. Gusty, Sr., and afterward Mr. Duppel was to make monthly payments until he paid the entire \$800. Mr. Duppel made several payments and then Mr. Gusty, Sr., could not locate Mr. Duppel.

Mr. Gusty, Sr., stated that his son was under Mr. Duppel's influence and he did what Mr. Duppel told him to do. The respondent did not have many friends and Charles Duppel had the ability to make people feel sorry for him and to try to help him. Mr. Gusty felt that Mr. Duppel went to see Mr. Leimberg because he was mad about the fact that Mr. Gusty, Sr., had locked him out of his apartment.

In closing, Mr. Williams stated that Mr. Gusty admitted the burglary and theft at the Leimberg home, and that at the time of these offenses, Mr. Gusty was young and under the influence of Mr. Duppel. Mr. Williams stated that the respondent has shown

that he successfully participated in the PTI program, that he is a person of good character, honesty and integrity, and that he has been rehabilitated.

In closing, Mr. Mountford argued that the Casino Control Act requires greater scrutiny of persons seeking a casino employee license than for a casino hotel employee registration because of the responsibilities of the positions involved. In this matter, Mr. Gusty currently has a responsible position and plans to seek a position of even greater responsibility, namely a blackjack dealer.

As to the Leimberg incident, Mr. Mountford noted that this involved burglary and stealing from a neighbor, and that even though Mr. Gusty alleged he felt remorse, he did not say anything or try to make restitution until after he was accused of the crime. Mr. Mountford questioned Mr. Gusty's statement that he did know that the ring given to him by Mr. Duppel was stolen in view of the prior incident involving the Leimbergs.

Mr. Mountford noted that the important factor in this matter is time and argued that not enough time has passed for Mr. Gusty to show by clear and convincing proof that he has been rehabilitated, as set forth in N.J.S.A. 5:12-90h, and that he is now a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

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

- (1) Mr. Gusty admitted that he had illegally entered the Leimberg home with Charles Duppel and had taken an envelope containing money and jewelry. The value of the property taken was well in excess of \$500.
- (2) Mr. Gusty did not know that the envelope contained money and Mr. Duppel kept the money. Mr. Gusty received a limited financial gain from the burglary and theft at the Leimberg home.
- (3) Mr. Duppel asked Mr. Gusty to sell a ring for him and told Mr. Gusty that Patricia Tisdale had found this ring. Mr. Gusty sold the ring and gave all of the money to Mr. Duppel.
- (4) Mr. Duppel had a strong influence on Mr. Gusty and Mr. Duppel convinced Mr. Gusty to participate in the burglary and theft at the

Leimberg home. This influence ended with the termination of their friendship before the end of 1982.

- (5) Mr. Duppel felt remorse about what he had done to the Leimbergs but he did not make any restitution until after he was accused of the crimes.
- (6) No explanation was given as to why Mr. Duppel told Mrs. Leimberg at the end of May 1982 about the respondent's involvement in the burglary and theft.
- (7) After Mr. Gusty was indicted, he successfully participated in a six-month PTI program and the indictment against him was dismissed in October 1983.
- (8) Mr. Gusty received his Casino employee license in June 1981.
- (9) Mr. Gusty was dismissed by Playboy Hotel and Casino after three warnings. Mr. Gusty has been employed by Tropicana Hotel and Casino since April 1983, and he has a good employment record.
- (10) Mr. Gusty has successfully completed a blackjack course, has had his license endorsed for blackjack, and wants to get a position as a blackjack dealer.

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Gusty was guilty of a statutory disqualifier, namely the theft of property with a value in excess of \$500 belonging to the Leimbergs, N.J.S.A. 5:12-86C(1), 5:12-86g, 2C:20-3. This was established by Mr. Gusty's own admission, which was generally consistent with the hearsay statements contained in P-2. The burglary of the Leimberg home was not a burglary of the second degree, and therefore not a statutory disqualifier, N.J.S.A. 5:12-86C(1), 2C:18-2. The Division has not proved, however, that Mr. Gusty knowingly accepted and sold a stolen ring for Mr. Duppel. Although Mr. Duppel admitted to the police he stole the ring from Mr. Morey, there is nothing in the police report to show that Mr. Duppel or Ms. Tindale told Mr. Gusty that the ring was stolen (P-2). Although there was ample reason for Mr. Gusty to question Mr. Duppel's statement that the ring was found, it is clear from the testimony of the witnesses that Mr. Duppel had a strong influence over the respondent and under the circumstances, I believe the respondent's statement that he accepted what Mr. Duppel told him about the ring.

Also, I **CONCLUDE** that Mr. Gusty has not established by clear and convincing evidence his rehabilitation, pursuant to N.J.S.A. 5:12-90h or that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2). Mr. Gusty has made an affirmative showing of rehabilitation; however, I **CONCLUDE** that not enough time has passed for him to demonstrate that he has in fact been rehabilitated and that there will be no repetition of his prior illegal actions. Therefore, I **ORDER** that the casino employee license of Paul E. Gusty, Jr., 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 June 1, 1984

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

DATE \_\_\_\_\_

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

DATE JUN 06 1984

Mailed to Parties:  
Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW / sub

ml/E

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 North Wildwood Police Department Investigation Report regarding the burglary and theft at the Leimberg home
- P-2 Cape May County Uniform Supplementary Investigation Reports, Uniform Arrest Reports and the complaint filed against Paul E. Gusty, Jr.

FOR THE RESPONDENT:

- R-1 Certification signed by Olive S. Barry, dated April 23, 1984
- R-2 Letter signed by S.J. Bennett, dated April 10, 1984
- R-3 Letter to Walter N. Read from Peter G. Demos, Jr., dated December 22, 1983
- R-4 Certification of successful completion of a blackjack course by Paul E. Gusty, dated December 22, 1983
- R-5 Letter from Linda G. Rucker, dated April 9, 1984
- R-6 Letter from Kevin Flanagan, dated April 14, 1984
- R-7 Tropicana Non-management Performance Appraisal Summary for Paul Gusty, dated July 9, 1983
- R-8 Tropicana Non-management Performance Appraisal Summary for Paul Gusty, dated August 16, 1983
- R-9 Order dismissing indictment filed against Paul E. Gusty, Jr., dated October 19, 1983

WITNESSES

FOR THE PETITIONER:

Paul E. Gusty, Jr.  
Sylvia Leimberg

FOR THE RESPONDENT:

Paul E. Gusty, Jr.  
Francis Tomlinson  
William J. Wizst  
Paul E. Gusty, Sr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-63  
OAL DOCKET NO. CCC 7431-83

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
V. : FINAL ORDER  
GREATE BAY HOTEL & CASINO, INC., :  
t/a SANDS HOTEL & CASINO OF :  
ATLANTIC CITY, :  
Respondent. :

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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 on October 22, 1984, finding that the parties have voluntarily agreed to a settlement, and that the settlement fully disposes of all issues in controversy; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of December 5, 1984, to affirm and adopt the said Initial Decision-Settlement,

IT IS on this *20<sup>th</sup>* day of DECEMBER, 1984, ORDERED that the Initial Decision Settlement of the Office of Administrative Law in this matter be and hereby is affirmed and adopted and incorporated herewith by reference; and

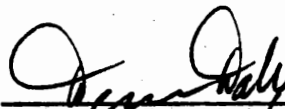
IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$50,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that those portions of the complaint which seek penalties for alleged violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. be and hereby are dismissed with prejudice; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Greate Bay Hotel & Casino, Inc. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

OCT 13 1984

**CASINO CONTROL COMMISSION  
LEGAL DIVISION**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 7431-83

AGENCY DKT. NO. 83-63

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

Petitioner,

v.

**GREATE BAY HOTEL AND CASINO, INC.,  
T/A SANDS,**

Respondent.

---

**Fredric E. Gushin**, Deputy Attorney General, for the petitioner (Stephen D. Schrier, Deputy Attorney General, at the prehearing conference) (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Nicholas Casiello, Jr., Esq.**, for the respondent (Horn, Kaplan, Goldberg, Gorny & Daniels, P.C., attorneys)

Record Closed: October 4, 1984

Decided: October 17, 1984

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Greate Bay Hotel and Casino, Inc., t/a Sands (Sands), respondent. The Division alleged that the respondent had

committed a violation of N.J.S.A. 5:12-70o and N.J.A.C. 19:51-1.2(e), by engaging in false, deceptive or misleading advertising regarding a "million dollar money machine" contest, and sought disciplinary action, pursuant to N.J.S.A. 5:12-129 and 130. The respondent denied the charges.

#### PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 14, 1983. The Commission notified the respondent of the pending action and advised it of its right to a hearing. On April 18, 1983, the respondent filed a notice of defense and request for a hearing with the Commission. On September 23, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 9, 1983, and the matter was scheduled for hearing. Scheduled hearing dates were adjourned on several occasions by reason of continuing settlement negotiations.

#### FINDINGS OF FACT AND CONCLUSION

The parties have agreed to a settlement, which has been set forth in a Stipulation of Facts and Settlement, and which 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 fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.



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Attorneys for Respondent Greate  
Bay Hotel and Casino, Inc.

	STATE OF NEW JERSEY
	: CASINO CONTROL COMMISSION
STATE OF NEW JERSEY, DEPARTMENT	:
OF LAW AND PUBLIC SAFETY,	:
DIVISION OF GAMING ENFORCEMENT	:
	: OAL DKT. NO. CCC 7431-83
Plaintiff,	: AGENCY DKT. NO. 83-63
	:
vs.	:
	:
GREATE BAY HOTEL & CASINO, INC.	:
t/a SANDS HOTEL & CASINO OF	:
ATLANTIC CITY,	:
Respondent.	: CIVIL ACTION
	:
	: STIPULATION OF FACTS
	: AND SETTLEMENT

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 Frederic E. Gushin, Deputy Attorney General, and Horn, Kaplan, Goldberg, Gorny and Daniels, P.C., by Nicholas Casiello, Jr., Esquire, attorneys for respondent,

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Greate Bay Hotel and Casino, Inc., the following facts have been agreed upon and stipulated to as Findings of Fact.

1. Respondent, Greate Bay Hotel and Casino, Inc. (hereinafter "Greate Bay"), t/a the Sands Hotel & Casino of Atlantic City (hereinafter the "Sands"), is a holder of a Certificate of Operation effective August 13, 1980, at which time Greate Bay was the holder of a temporary casino permit. Greate Bay has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. On May 7, 1982, the Casino Control Commission (hereinafter the "Commission") issued Greate Bay a plenary casino license, which was renewed May 7, 1983 and again on May 7, 1984.

2. In April of 1982, William Weidner, then President of the Sands, contacted the Sand's promotional agency in Philadelphia, Kalish and Rice (hereinafter "K&R"), and requested that K&R consider developing a promotional program offering a prize or prizes of \$1,000,000.00. He expressed to K&R that he would like this promotion to generate traffic for the casino hotel during the fall season of 1982. Mr. Weidner went to the offices of K&R in approximately April of 1982 and met with Steve Levine, Vice-President, and Ben Erichsen, Account Executive, both of K&R, to discuss Weidner's ideas for the promotion. Weidner explained that he wanted to make the Sands a more "exciting" atmosphere and bring patrons to the

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casino hotel by offering a large prize or prizes as well as smaller prizes that could be won by patrons. Weidner stated that he wanted K&R to develop a strong promotional campaign for the fall to increase foot traffic through the casino. See Exhibit 1.

3. According to the sworn statement of Mr. Weidner, during Mr. Weidner's communication with K&R, he expressed a desire that the promotion comply with all applicable laws regarding contests. He also expressed his desire that the game promotion be such that all participating members of the public enjoy an equal chance of winning and that the game would in fact pay a large prize or prizes. See Exhibit 1.

4. K&R proposed the Million Dollar Money Machine promotion, which offered patrons a chance to win \$1,000,000.00, as well as \$100.00 prizes. The proposal called for an oversized slot machine to be placed in the lobby of the Sands, with its reels continually operating. The Money Machine game would be advertised in local and regional media, i.e., newspapers, radio and by physical distribution of fliers at the Sands, in Philadelphia, and in New York. The game offered prospective patrons of the Sands the opportunity to present a game ticket which displayed a reel character combination which coincided with that of the Million Dollar Money Machine. Patrons would obtain these game tickets through advertising inserts in local Sunday newspapers. The proposal from K&R, see

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Exhibit 2, called for the machine to be stopped from spinning six (6) times a day, seven days a week (subject to being stopped at other times for conditions as set forth in the rules of the game attached hereto as Exhibit 4). After it was stopped, a patron who presented a winning game ticket with the same reel display as the machine within 15 minutes would win \$1,000,000.00. The \$1,000,000.00 was payable as an annuity, \$50,000.00 a year for 20 years. In order to win smaller prizes, a "memory board" was erected at the Sands which posted all of the winning combinations reflected after each stop of the Money Machine. If a patron presented a game ticket which matched the winning combination on the memory board within one week of the date the combination appeared on the machine, the patron would win \$100.00.

5. The rules of the game provided in pertinent part that in those instances when the machine has been stopped weekends, overnight or for maintenance, the symbols showing would be considered Million Dollar Winners for the first 15 minutes that the machine was without power. Thereafter, the symbols showing would be considered \$100.00 winners for exactly one week from the time the machine stopped. In addition, the rules provided that "any person found to have more than one ticket in his or her possession **WILL BE DISQUALIFIED.**" (emphasis in original).

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6. K&R subsequently commissioned DCA Inc. to manufacture the Million Dollar Money Machine. K&R also commissioned a company known as Webcraft to print game tickets containing the six reel characters that could be the winning combination matching the Money Machine display. Webcraft, a licensed casino service industry, provides coupons and tickets for promotions, games, sweepstakes, etc.

7. As part of the conduct of the Million Dollar Money Machine game, a set of security precautions to insure that all of the public enjoyed an equal opportunity to win a \$1,000,000.00 prize or prizes was instituted. Concern for the integrity of the game centered on three areas: (1) that the machine itself not be susceptible to tampering; (2) that the tickets not be susceptible to being altered; (3) that "inside" persons not have either the ability or apparent ability to influence the outcome of the contest. To this end, the back of the machine was sealed and alarmed and a log was to be kept of all entries into the machine. Two security persons were required to be present whenever the machine was operated. The Sands did not use its own mechanics to service the machine, but rather retained outside mechanics who were bonded, investigated and prohibited from participating in the game. The tickets were security coded by number and lacquered over to prevent forgery or alteration. Three computer tapes were produced by the printer of the tickets which could be used to verify the

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validity of any particular ticket, one tape to be held by Johnson and Higgins (Sands insurance broker), one by the Sands, and one by Webcraft, the printer of the tickets. The game tickets were also coded with a special material so that any tampering would be visible under an ultra-violet light. In addition, numbers were placed above the reel display on the tickets which were sequenced in such a fashion so as to be verified by Webcraft as original game tickets. In this manner, Webcraft sought to avoid any forgery or alteration of game tickets. In order to prevent even the appearance of collusion, the rules of the game provided that employees of the Sands, its holding companies, their affiliates or subsidiaries, employees of advertising and production agencies, Atlantic City casino employees holding No. 1 or No. 2 gaming related licenses, employees of Webcraft Corp., and employees of any newspapers advertising the game and their families were not eligible to participate in the game. In addition, a private investigator was retained by the insurer to supplement the Sands' own security in keeping surveillance over and in assuring the integrity of the game and the machine. See Exhibits 1, 3, 4 and 5.

8. In order to provide for the payment of the million dollar prizes, the Sands contacted its insurance broker, Johnson and Higgins of Dallas, Texas, and arranged for a policy underwritten by Lloyds of London, under which, for a

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premium of \$95,040.00, Lloyds bound itself to purchase at a cost of up to \$440,000.00 a one million dollar annuity payable over 20 years. The policy provided that the Sands could cover a second winner for an additional premium and notice within 24 hours after the first win. Coverage of million dollar winners was conditioned upon compliance with contest rules as devised by K&R and reviewed by Lloyds. See Exhibit 3.

9. The Sands had never before contracted with an insurer to indemnify it for prizes won in such a prize promotion. William Weidner, then President of Greate Bay, the officer who had ultimate responsibility for the contest assumed that there would be a single winner and possibly a second based upon the policy offered to the Sands by its insurance broker and Lloyds. Lloyds had initiated the offer of coverage for a second winner for an additional premium and Mr. Weidner accepted. See Exhibit 1.

10. It was then Mr. Weidner's intention, however, that should there be more than two million dollar winners during the course of the contest, that the Sands would pay these additional winners from its own corporate treasury so long as such wins were based upon the rules of the game. See Exhibits 1 and 4.

11. According to his sworn statement, Mr. Weidner originally requested that K&R formulate a contest which could be terminated upon a win or specified numbers of wins. It was

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represented to him, however, by K&R that Federal Trade Commission regulations required that contests of this sort have a scheduled termination date, although it was also represented that the game could be terminated beforehand. Neither Weidner nor the Sands marketing employees verified or confirmed these representations. See Exhibit 1.

12. Prior to the commencement of the contest, K&R engaged radio stations and newspapers in the southern New Jersey, New York City, New York, and Philadelphia, Pennsylvania, areas to advertise the Million Dollar Money Machine Game. Advertisements consisted of short radio spots and newspaper inserts. Beginning on September 5, 1982, radio advertising and newspaper advertisements were run by the Sands which advertised the Million Dollar Money Machine Game and the fact that it would be beginning on the following Tuesday, September 7, 1982. Radio spots were placed with the following radio stations:

KYW-AM; WABC-AM; WAYV-FM; WCAU-AM; WCBS-AM;  
WEAZ-FM; WEIL-AM; WUSL-FM; WEPG-FM; WGRF-AM;  
WHLI-AM; WHWH-AM; WIIN-AM; WINS-AM; WIP-AM;  
WMGK-FM; WPEN-AM; WMGM-FM; WMID-AM; WMMR-FM;  
WNBC-AM; WNEW-AM; WOND-AM; WRDR-FM; WSLT-FM;  
WSNI-FM; WWDB-FM; WWOL-FM; WWSH-FM; and  
WYSP-FM.

Three separate radio advertisements were run advertising the Million Dollar Money Machine Game, one of which stated that the game would be held open until January 3, 1983. See Exhibit 6.

13. The Sands also placed newspaper advertisements in the following newspapers: Atlantic City Press; Bergen County

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Record; Camden Courier Post; Long Island News Day; Philadelphia Daily News; Philadelphia Inquirer; Trenton Times. Tickets were first distributed to the public as inserts in Sunday newspapers on September 5, 1982, and for a second time on Sunday, November 21, 1982. In addition, these game tickets were physically handed out on flyers in the lobby of the Sands. These flyers were also handed out on the street by employees of the Sands in Philadelphia, New York City, and Atlantic City. The game tickets and accompanying advertisements contained the notation that the game would continue from September 7, 1982, until January 3, 1983. See Exhibits 4, 6 and 7.

14. All of the newspaper advertisements and one of the radio announcements informed prospective patrons that the "contest ends January 3, 1983."

15. The game tickets stated "this ticket valid-10:00 a.m. September 7, 1982, through 12:01 p.m. January 3, 1983."

16. On October 26, 1982, one Michael Sherry presented a winning ticket to Sands personnel, his ticket symbols matching those shown on the face of the Million Dollar Money Machine after it had been stopped as scheduled. Upon presenting his winning ticket he stated to Sands personnel that he had "beaten" the Million Dollar Money Machine Game. Thereafter it came to the attention of Mr. Weidner and Donna Laurelli, Sands employee with immediate responsibility for the contest, that Mr. Sherry may have hoarded thousands of game

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tickets, and may have arranged the tickets for instant recall on a home computer so that he could stand in the lobby, monitor the sequence of symbols showing on the machine when stopped, and then search his reservoir of tickets for the winning ticket. This information came to the attention of the Sands through several sources including anonymous phone calls and Sands security personnel with whom Mr. Sherry had conversed. In addition, the Sands security had observed Sherry searching through the trash in the lobby apparently to obtain multiple tickets. See Exhibit 1.

17. Thereafter, the game was stopped for a period of approximately 4 to 5 days in order for the insurance company to verify the validity of the win, and the game was thereafter resumed. Despite the suspicion of Mr. Weidner that Sherry had had in his possession numerous game tickets, which may have been a violation of game rules, the Sands did not object to payment of the prize because the insurance company verified the win and because it was feared that such a refusal to pay on the first win would have been misperceived by the public as an effort by the Sands to avoid its responsibilities under the contest rules. See Exhibit 1.

18. On Saturday, November 20, 1982, at approximately 9:00 p.m., one Joseph Ryan came forward with a second million dollar winner's ticket. The machine was thereafter turned off until the validity of Ryan's win could be verified with Lloyds

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of London. A cloth cover was placed over the machine and an "out-of-order" sign was affixed to it even though it was not out-of-order so as to avoid an incident in which someone could claim that the symbols showing on the stopped machine matched his or her ticket. The rules of the game also permitted the machine to be turned off on weekends. See Exhibit 4.

19. On Monday, November 22, 1982, Sands Vice-President Garry Saunders contacted Johnson and Higgins regarding Ryan's win and awaited their inquiry as to the validity of the win. At this point, the reels on the machine were spinning, the cloth cover was removed as it was an eyesore, and the "out-of-order" sign remained on the machine. Upon turning the machine on again, it was discovered that the machine was not in working order, being in need of a replacement part. The game was not resumed thereafter. See Exhibit 1.

20. Immediately after Ryan's win, information came to the attention of Donna Laurelli and Mr. Weidner concerning the circumstances of the win. A taxi cab driver who declined to identify himself approached Donna Laurelli and stated with reference to the Million Dollar Money Machine Game that "a scam was going on". He related that Ryan's brother-in-law was a taxi cab driver who had hoarded thousands of tickets. He also stated that the same taxi cab driver had sold Million Dollar Money Machine Game tickets to Sherry, the first winner. Ms.

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Laurelli also received an anonymous phone call to the effect that the caller had seen Ryan in a local diner with "hundreds or thousands" of tickets in his possession. On November 24, 1982, an article appeared in the Philadelphia Daily News regarding the Ryan win and reporting that Mr. Sherry had increased his chances of winning by accumulating multiple tickets. The Sands, however, did not investigate further. See Exhibits 1, 8 and 9.

21. According to his sworn statement, Mr. Weidner had assumed from the inception that companies such as Lloyds, K&R and Johnson and Higgins, which had participated in hundreds of similar promotions in the past, could be relied upon to construct a promotion that was immune to being broken by such schemes. He also realized, however, that the Sands was ultimately responsible to ensure a fair and legitimate game promotion. See Exhibit 1.

22. Mr. Weidner, being apprised of the information that had come to light subsequent to the two wins, and in particular the connection between the two winners, theorized that if it had taken approximately 2 months for the contest to produce the first winner and three weeks thereafter to produce a second winner, it was not inconceivable that the conspiracy consisted of the "passing on" of game tickets and techniques from winner to winner, producing a geometric progression of wins until the end of the contest, which had yet another six

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weeks to run. All of the winners under that scenario would be, in Mr. Weidner's estimation, persons who gained an unfair advantage over members of the general public. As set forth in his sworn statement, Mr. Weidner at that point felt that it was necessary to cancel the game because it may have been unfair to members of the general public to continue the game and might have subjected the Sands to legal charges that the game was being operated unfairly. See Exhibit 1.

23. On Monday, November 22, 1982, Mr. Weidner sought and received the advice of outside counsel that the game could be legally terminated under the Consumer Fraud Act, Contract Law and Federal Trade Commission regulations. Said opinion was confirmed in writing on November 24, 1982. Outside counsel was not requested to render an opinion on the Casino Control Act or regulations promulgated thereunder. Mr. Weidner contacted K&R and informed them of the situation with respect to the game's having been broken and instructed them to prepare advertisements for the termination of the game. That day, K&R began to contact radio stations by telephone instructing that ads for the game be cancelled for that week. See Exhibit 1.

24. Mr. Weidner at some time on Wednesday, November 24, 1982, made the final decision to cancel the game. Mr. Weidner immediately instructed K&R to prepare whatever needed to be prepared to notify the public of the cancellation as quickly as possible. In addition, Sands personnel contacted

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The Press, an Atlantic City based newspaper, to order a cancellation of game advertisements. Further, there had been substantial publicity regarding the stopping of the game after the second winner. The publicity centered around the fact that persons were arriving at the Sands after November 20, 1982, with apparently valid game tickets and finding the game inoperable.

25. Although K&R was notified to begin preparing cancellation advertisements on Wednesday, November 24, 1982, immediately upon Mr. Weidner's decision to cancel, its offices were closed for the two day Thanksgiving Day holiday, November 25, and 26, and the following weekend, November 27, and 28. Its offices did not reopen until November 29. K & R did not effect any advertisements during this period. The Sands did not take any other action to notify the public until November 26, 1982. See Exhibit 8.

26. On Friday, November 26, the Sands issued a press release to the news media announcing the termination of the game. See Exhibit 8.

27. On November 30 and December 1, 1982, cancellation advertisements were run in the same media as had carried the original advertisements. See Exhibits 7, 10 and 11. These advertisements stated in pertinent part that the Sands Million Dollar Money Machine Game had ended and that tickets were no longer valid.

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28. The machine remained in the lobby of the Sands with an out-of-order sign on it until December 1, 1983. No notice of termination of the game was posted in the lobby. After the stopping of the game, a number of members of the general public arrived at the Sands with Million Dollar Money Machine Game tickets, expecting to play the game. If they inquired about the game, they were advised that it had been terminated.

29. After the game was cancelled, nine complaints were lodged with the Casino Control Commission and other complaints were made to the Atlantic County Division of Consumer Affairs. The thrust of these complaints was that patrons travelled to the Sands after November 20, 1982, spending time and money to visit the Sands expecting to play the Million Dollar Money Machine Game. Their game coupons stated that they would be valid until January 3, 1983, yet upon arrival these persons found that the game had been stopped. For ten (10) days after November 20, 1982, there was no notice posted in the lobby of the Sands except for an out-of-order sign.

30. The Division of Gaming Enforcement conducted a sworn interview of William Weidner concerning the above facts on February 14, 1983. The Division also contacted personnel at the Sands as well as representatives of K&R, newspapers, the Division of Consumer Affairs, the insurance company, and an

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inspector hired by the insurance company to oversee operation of the game. As a result of the Division's review of this matter, a Complaint was filed with the Commission on March 14, 1983.

WHEREFORE, based upon the above Stipulation of Facts, the Sands hereby admits that it committed a violation of N.J.A.C. 19:51-1.2(e), promulgated pursuant to N.J.S.A. 5:12-70(o) by reason of the fact that it terminated the Million Dollar Money Machine Game offered to the public prior to the closing date stated on the game coupons and the Sands agrees to pay a fine of \$50,000.00 in full and final settlement of the aforesaid violation; the parties agree that this fine is just and equitable in light of the statutory guidelines set forth at N.J.S.A. 5:12-129 and 130, the parties agree to the dismissal with prejudice of the aspects of the Complaint which allege and seek penalties for alleged violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and this Stipulation shall be of no force or effect unless accepted by the Commission.

Attorney for Plaintiff  
State of New Jersey,  
Department of Law and Public Safety,  
Division of Enforcement

By:   
Frederic E. Gushin, Esq.  
Deputy Attorney General

Horn, Kaplan, Goldberg, Gorny & Daniels  
Attorneys for Respondent  
Greate Bay Hotel and Casino, Inc.

By:   
Nicholas Casiello, Jr., Esq.

342 Date: September 29, 1984

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EXHIBITS

<u>Number</u>	<u>Description</u>
Exhibit 1	Sworn statement of William Weidner
Exhibit 2	Proposed Kalish and Rice Million Dollar Money Machine Game
Exhibit 3	Lloyds of London insurance policy (with separate endorsements)
Exhibit 4	Rules of the game
Exhibit 5	DGE report on interview of Thomas Buttle
Exhibit 6	Radio spot scripts
Exhibit 7	Schedule of newspaper and radio advertising
Exhibit 8	DGE report on interview of Donna Laurelli with attached memorandum by Donna Laurelli
Exhibit 9	Philadelphia Daily News article, November 24, 1982
Exhibit 10	Retraction advertisement (radio)
Exhibit 11	Retraction advertisements (newspaper)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-231

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

Complainant, :

FINAL ORDER

v.

GREATE BAY HOTEL AND CASINO, INC., :  
t/a THE SANDS, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement on July 21, 1983, alleging that the respondent had violated N.J.S.A. 5:12-92(c) and N.J.A.C. 19:41-11.1(c) and -11.3(g); and the parties having submitted a proposed stipulation of settlement on March 29, 1984, wherein the respondent admitted that it wrongfully failed to file a vendor registration form on behalf of Levin Computer Corporation from May 16, 1982, until April 20, 1983, in violation of N.J.S.A. 5:12-92(c) and N.J.A.C. 19:41-11.1(c) and -11.3(g); and it appearing that the parties have agreed that the respondent would pay a civil penalty in the sum of \$2,000 in full settlement of the complaint; and the Commission, after considering the entire record in this matter, having resolved at its public meeting of October 24, 1984, for good cause shown, to approve the proposed

Irwin I. Kimmelman  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
25 Market Street  
CN-047  
Trenton, New Jersey 08625

FILED

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Cas. COMMISSION  
LEGAL DIVISION

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

Plaintiff

vs.

GREATE BAY HOTEL AND  
CASINO, INC. T/A  
THE SANDS

Respondent

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-231

CIVIL ACTION

STIPULATION OF SETTLEMENT

Greate Bay Hotel and Casino, Inc. t/a the Sands and the Division of Gaming Enforcement stipulate and agree that for the purposes of the above-referenced complaint there is no dispute as to the truth of the following statements:

1. Plaintiff, by and through its Division of Gaming Enforcement (hereinafter referred to as "the Division") is responsible pursuant to the provisions of the Casino Control Act (hereinafter referred to as "the Act"), P.L. 1977, c.110, N.J.S.A. 5:12-1, et seq., for the enforcement of said Act and the regulations promulgated thereunder and for the

stipulation of settlement and assess a civil penalty upon respondent in the amount of \$2,000,

IT IS on this 7th day of NOVEMBER 1984, ORDERED that the proposed stipulation of settlement in this matter be and hereby is approved; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$2,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

prosecutions before the Casino Control Commission (hereinafter referred to as "the Commission") of all proceedings for violations of the Act and the regulations promulgated thereunder.

2. Respondent, Greate Bay Hotel and Casino, Inc. t/a the Sands (hereinafter referred to as "the Sands") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and now and at all times referenced herein has had its principal place of business located at Indiana Avenue and Brighton Park in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. The Sands is the holder of a plenary casino license issued by the Commission which authorizes the Sands to operate a casino hotel facility in accordance with the Act and the regulations promulgated thereunder. That license was issued to the Sands effective on or about May 7, 1982, and it was renewed on or about May 7, 1983. From on or about August 7, 1980 until May 7, 1982, the Sands operated a casino hotel facility at the above-stated location pursuant to temporary casino permits. The Sands has been conducting its casino hotel operations pursuant to said permits and license continually to date since on or about August 7, 1980 including all times referenced herein.

4. The Sands is the holder of, and operates its casino hotel facility pursuant to, a certificate of operation effective on or about August 7, 1980 at which time the Sands

was the holder of a temporary casino permit. Said certificate of operation entitles the Sands to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

5. By agreement dated May 6, 1982, the Sands, as lessor, and Levin Computer Corporation (hereinafter referred to as "Levin"), as lessee, entered a lease pertinent to certain gaming equipment owned by the Sands which was no longer suitable and was replaced by video and electronic slot machines. The Sands executed the agreement to realize income from otherwise non-productive assets no longer utilized in its casino operation.

6. The commencement date of the lease relates to the date upon which any schedule which lists items of lease equipment is executed. The initial schedule was executed on May 6, 1982, and the lease, as to the equipment listed on the initial schedule, commenced on that date. The lease terms relate to the slot machine equipment set forth in the schedules.

7. The lease agreement is for a 48 month term. The contract remains in effect, however, unless it is terminated by Levin three (3) months prior to the end of the 48 month period. The agreement continues thereafter until it is terminated by three (3) months prior written notice from Levin to the Sands. Levin has the option to acquire the lease property at its fair market value upon the termination of the contract.

8. The lease provides for the payment of a basic rental amount per machine and a contingent rental amount of 60% of the net income received by Levin as a result of the lease. Net income is defined as amounts received from the use of the equipment less any taxes. Payments of basic and contingent rental amounts are due thirty (30) days following the end of each calendar quarter.

9. The Sands agreed to pay a lease placement fee of \$500 per unit of equipment. One-half of that amount is payable to Levin on the commencement date of the lease, and the second one-half of the lease placement fee is payable ninety (90) days thereafter.

10. Levin filed a business entity disclosure form with the Commission on June 14, 1982 as part of its wholly-owned subsidiary's application for a gaming-related casino service industry license.

11. By letter dated June 16, 1982, the Sands notified the Commission and Division of its intention to ship slot machines from New Jersey to Nevada pursuant to the Levin agreement. Following receipt of that notification, the Commission staff requested a copy of the underlying contract. By letter dated June 18, 1982, the Sands submitted the Levin lease to the Commission.

12. By letter dated July 2, 1982 to Esther Sylvester who served as corporate counsel for the Sands, Richard Franz of the Commission staff stated that the Commission was in receipt of a copy of an agreement between the Sands and Levin.

which concerns the leasing of slot machines from the Sands to Levin. Franz related that the agreement evidenced that the Sands was transacting at least non-gaming related business with Levin.

13. Richard Franz further noted in the letter dated July 2, 1982 that even though the agreement was entered on May 6, 1982 Levin did not appear on the master vendor list of the Commission as of July 2, 1982. Further, Franz stated in the letter that as of July 2, 1982 the Commission had not received a vendor registration form from the Sands pertinent to its business relationship with Levin. Franz noted that the above-stated situation indicated that the Sands may have begun transacting business with Levin in violation of the requirements of N.J.S.A. 5:12-92(c), which pertains to the licensure of casino service industries, and N.J.A.C. 19:41-11.3(g), which relates to the filing of vendor registration forms by casino licensees.

14. On July 12, 1982, Martin L. Blatt, Esq., attorney for Levin, filed a petition to have Levin approved as a financial source of the Sands in light of the lease agreement. By letter dated July 23, 1982, Blatt withdrew that petition and stated that Levin would be "considered as a filed CSI doing non-gaming business with the Sands."

15. By letter dated August 5, 1982, Franz advised Martin Blatt, Esq. that the Commission had not received a vendor registration form from the Sands on behalf of Levin or a completed casino service industry license application on behalf of Levin. Franz also stated therein that he was

unsure what Blatt meant by his comment that Levin would "...be considered as a filed CSI doing non-gaming business with the Sands.'" Franz concluded that Blatt should contact him immediately if Blatt was unclear about any issue raised in Franz's previous correspondence and that otherwise the Commission staff would expect that a vendor registration form be filed immediately in compliance with Commission regulations.

16. As of March 21, 1983, neither a vendor registration form nor a casino service industry license application form had been filed on behalf of Levin.

17. During the course of a sworn interview conducted on March 22, 1983, the Division questioned Esther Sylvester regarding the above-stated matter. At that time, Sylvester stated that it was her belief that the matter had been handled and that she would obtain additional information for the Division with respect thereto. By letter dated April 8, 1983, Sylvester forwarded to the Division certain documentation relevant to the Sands' business transactions with Levin. That letter did not set forth an explanation regarding the lack of a vendor registration filing.

18. By report dated April 8, 1983 submitted to the Commission, the Division set forth matters pertinent to the applications of the Sands and Americas-New Jersey Management, Inc. for renewal of their casino licenses.

19. On April 20, 1983, the Sands filed a vendor registration form with respect to its business with Levin.

20. The relationship between the Sands and Levin is contractual in nature, and it is, therefore, governed by the provisions of N.J.S.A. 5:12-104. In the event that the relationship between the Sands and Levin is deemed to be on a regular and continuing basis, Levin would then be required to file for a casino service industry license under the provisions of N.J.S.A. 5:12-92.

21. The Sands and the Division agreed to the above-recited facts in a stipulation entered into evidence during the hearing held In the Matter of the Applications of Greate Bay Hotel and Casino, Inc. t/a the Sands and Americas-New Jersey Management, Inc. for the Renewal of their Casino Licenses on or about May 2, 1983.

22. N.J.S.A. 5:12-92(c) states:

All casino service industries not included in subsection a. of this section [pertaining to gaming-related companies] shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino licensee or its agents. Such casino service industries, whether or not directly related to gaming operations, shall include suppliers of alcoholic beverages, food and non-alcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotel; and limousine services contracting with casino licensees. The commission may exempt any person or field of commerce from the licensing requirements of this subsection if the person or field of commerce demonstrates (1) that it is regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities, and (2) that licensing is not

deemed necessary in order to protect the public interest or to accomplish the policies established by this act. Upon granting an exemption or at any time thereafter, the commission may limit or place such restrictions thereupon as it may deem necessary in the public interest, and shall require the exempted person to cooperate with the commission and the division and, upon request, to provide information in the same manner as required of a casino service industry licensed pursuant to this subsection provided, however, that no exemption shall be granted unless the casino service industry complies with the requirements of sections 134 and 135 of this act.

23. N.J.A.C. 19:41-11.3(g) provides:

The Commission may in its discretion permit an unlicensed casino service industry enterprise to provide for a reasonable time goods or services to or conduct business with a casino, a casino licensee, its employee or agents. No casino licensee, its employees or agents may engage in any business with an enterprise not holding a valid casino service industry license unless:

1. The casino licensee has generated a master purchasing and disbursement summary and an agreement filing system in a form approved by the Commission; and

2. A vendor registration form has been filed with the Commission by a casino licensee on behalf of the enterprise doing such business; and

3. Any required casino service industry license application has been properly filed by said enterprise with and is pending before the Commission; provided, however, that any enterprise directed to so file such application may in the discretion of the Commission be

permitted a reasonable time to prepare and file same.

24. N.J.A.C. 19:41-11.1(c) requires:

Each such casino licensee or applicant for a casino license shall file with the Commission no later than 10 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license.

25. The Sands violated the provisions of N.J.S.A. 5:12-92(c), N.J.A.C. 19:41-11.3(g) and N.J.A.C. 19:41-11.1(c) by failing to file a vendor registration form from May 16, 1982 until April 20, 1983 with respect to its contractual arrangement with Levin.

26. On July 21, 1983, the Division filed a complaint in the above-referenced matter with the Commission.

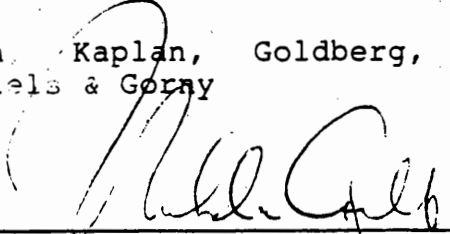
27. By letter dated August 25, 1983, the Sands filed its answer to the above-referenced complaint filed by the Division with the Commission.

28. By letter dated September 30, 1983, the Division filed a motion for summary decision, supported by a brief, in the above-referenced matter with the Commission.

29. During settlement negotiations and by letter dated January 30, 1984, counsel for the Sands offered \$2,000 as a fine in settlement of the above-referenced complaint filed by the Division with the Commission, and the Division is willing

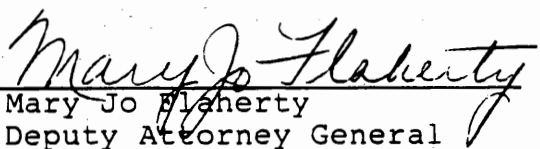
to accept that amount in settlement of the above-referenced complaint filed by the Division with the Commission.

Horn, Kaplan, Goldberg,  
Daniels & Gorny

by   
Nicholas Casiello, Jr., Esq.  
Attorneys for Greate Bay  
Hotel and Casino, Inc. t/a  
the Sands

and

Division of Gaming Enforcement  
Thomas R. O'Brien, Director

by   
Mary Jo Flaherty  
Deputy Attorney General

Date: March 22, 1954

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 83-17  
OAL DOCKET NO. CCC 5460-83

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STATE OF NEW JERSEY, DEPARTMENT OF :  
LAW & PUBLIC SAFETY, DIVISION OF :  
GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
GREATER BAY HOTEL AND CASINO, INC., :  
T/A SANDS HOTEL AND CASINO OF :  
ATLANTIC CITY AND PATRICIA JEAN :  
DIGIACOMO, CASINO CAGE MANAGER, :  
Respondents. :

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This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed on March 6, 1984, recommending that the respondents be found in violation of various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and Commission regulations, N.J.A.C. 19:45-1.1 et seq. and that specific civil penalties totalling \$162,000 be assessed against the respondents pursuant to N.J.S.A. 5:12-129; and no written exceptions or objections having been filed thereto; and the Commission, after carefully considering the entire record of the proceedings and the legal arguments of the parties, having resolved at its public meeting of July 25, 1984, to modify certain of the rulings concerning sanctions for reasons set forth in a final Commission decision dated July 25, 1984,

IT IS on this <sup>6th</sup> day of August 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted, except as modified in the final Commission decision in this matter dated July 25, 1984, which is incorporated herein by reference and made a part hereof;

IT IS FURTHER ORDERED that respondent Greate Bay Hotel and Casino pay a civil penalty in the amount of \$212,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Patricia DiGiacomo pay a civil penalty in the amount of \$500, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Patricia DiGiacomo's casino key employee license be and hereby is suspended without pay for a period of seven days, beginning 12:01 a.m. on August 26, 1984, and ending on 11:59 p.m. on September 1, 1984; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 83-17  
OAL DOCKET NO. CCC 5460-83

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STATE OF NEW JERSEY :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, : COMMISSION DECISION  
Complainant, :  
v. :  
GREATE BAY HOTEL AND CASINO, INC., :  
t/a SANDS HOTEL AND CASINO OF :  
ATLANTIC CITY AND PATRICIA JEAN :  
DIGIACOMO, CASINO CAGE MANAGER :

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APPEARANCES:

Leonard C. Horn, Esq., and John Walker Daniels, Esq.  
(Horn, Kaplan, Goldberg, Gorny & Daniels) for  
Respondent Greate Bay Hotel and Casino, Inc.

Nicholas F. Moles, Esq.  
(Wilson, Jacobson, Wilkerstein & Scerni) for  
Respondent Patricia Jean DiGiacomo

Kevin F. O'Toole, Deputy Attorney General  
for Division of Gaming Enforcement

Dennis Daly, Senior Assistant Counsel and  
Nancy Q. Shickler, Assistant Counsel  
for New Jersey Casino Control Commission

PROCEDURAL HISTORY

The Division of Gaming Enforcement (DGE) filed a  
complaint against respondents Greate Bay Hotel and Casino,

Inc. (Sands), Patricia Jean DiGiacomo and William Bagnell<sup>1</sup> with the Commission on January 18, 1983. That complaint alleges that the respondents committed a number of violations of the Casino Control Act and Commission regulations in connection with a group of gamblers from Hong Kong which visited the Sands during the period of August 15 to 18, 1982. A Notice of Defense and Request for a Hearing was filed on behalf of all respondents on February 22, 1983. A prehearing conference was held before Hearing Commissioner Joel R. Jacobson on May 12, 1983. Thereafter, on July 18, 1983, the Commission transferred the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

N.J.S.A. 5:12-107(a)(1)

At the OAL, respondents Sands and DiGiacomo and the DGE agreed to a stipulation of facts. At the request of respondent DiGiacomo, a short evidentiary hearing concerning her liability and the penalty to be imposed, if any, was held on January 3, 1984. On March 26, 1984, an initial decision from the OAL was filed with the Commission. In a comprehensive opinion, the Administrative Law Judge (ALJ) found the respondents in violation of various sections of the Casino Control Act and Commission regulations concerning internal controls, complimentaries and cash and cash equivalent deposits. The ALJ proposed the imposition of civil penalties totaling \$163,000

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1. William Bagnell, a respondent named in the original complaint, did not join in the stipulation of facts and his case was severed from this matter. The complaint as it relates to his possible individual liability is pending a hearing in the Office of Administrative Law.

against the casino licensee and a letter of reprimand against Respondent DiGiacomo. No exceptions or objections were filed by the parties.

For the reasons hereinafter expressed, we affirm and adopt each of the ALJ's findings of fact and conclusions of law except as specifically modified herein. The modifications consist essentially of (1) a rejection of the ALJ's analysis of the number of violations concerning the 28 disputed customer deposit receipts; (2) a rejection of the ALJ's analysis and conclusion that one violation resulted from the Sands' failure to file the necessary reports with the Commission and the DGE; and (3) modification of some of the recommended penalties. All counts of the complaint will be discussed in the order in which they appear in the initial decision.

#### FACTS

As indicated above, after reviewing all the testimony documents and the stipulation of facts, we adopt all of the ALJ's findings of facts in this case. A copy of the initial decision is appended hereto for convenient reference. Nevertheless, for purposes of completeness, a short recitation of the events pertinent to this complaint follows.

At approximately 4:30 p.m. on Sunday, August 15, 1982, a group of gamblers known as the "Hong Kong group" arrived at the Sands Hotel and Casino. The group consisted of approximately 80 persons, 32 of whom were players. Only one individual, a man identified only as Michael, appeared to speak English. A representative of the group had contacted the Sands earlier that day to express the group's interest in visiting the casino. The Sands provided a bus to transport the group from the Playboy Hotel and Casino. The group was escorted to

a fourth floor conference room with their luggage, where they were provided with food and beverages.

It was anticipated that the 32 players would place several million dollars on cash deposit with the casino. Paul Chandler, casino credit manager, advised respondent DiGiacomo, casino cage manager, of the arrival of the Hong Kong group and suggested<sup>2</sup> that transactions regarding the group not take place at the casino cage. His concern was that a group of that size might disturb casino operations if such transactions took place at the casino cage (Exhibit I; Stipulation, para. 14).

Respondent DiGiacomo, accompanied by three casino cage supervisors and three casino cage cashiers, proceeded to the fourth floor conference room. The cage personnel were escorted by two security officers. Respondent DiGiacomo, as cage manager, was the highest ranking casino cage representative in the fourth floor conference room and was charged with supervising the transactions between the casino licensee and the Hong Kong group.

In the words of respondent DiGiacomo, upon her arrival the room was "total, mass confusion." (T25-21).<sup>3</sup> The cage personnel were approached by Michael, who, as each patron was presented to the cage personnel, identified the patron and indicated the amount of safekeeping funds to be deposited by

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2. The ALJ found that respondent DiGiacomo was "instructed" to go to the fourth floor conference room. (I.D. at 21). We do not find that this characterization is consistent with stipulation of facts (Stipulation, para. 14) or respondent DiGiacomo's testimony.

3. "T" refers to the transcript of the hearing held in this matter before the ALJ on January 3, 1984.

that patron. To facilitate the allocation of funds, the cage personnel were presented with a list of names with amounts recorded adjacent to each name. (Exhibit D). The safekeeping deposits were to be distributed as indicated on the list and Michael indicated that the group members were in agreement with his allocation of the funds. (Exhibit D). A safekeeping file was created for each of the 32 patrons who were to gamble. (Exhibit E).

The Hong Kong group placed 48 checks and currency on deposit. The total value of the deposits presented by the group was \$2,950,000.

At the time the 48 checks were presented to cage personnel, none of the checks were inspected. Jean DiMartino, casino cage shift supervisor, confirmed the amount of funds represented by the checks but did not inspect or analyze the nature of those checks (Stipulation, para. 30; Exhibit M). Of the 48 checks received in the conference room, 21 were drawn on accounts of various casinos and 27 were drawn on accounts of various banking institutions. All were made payable to individuals and endorsed without restriction.<sup>4</sup> After taking possession of the cash and the 48 checks, cage personnel confirmed the total amount of the deposits, and reconciled that amount with the total amount of the safekeeping deposit funds, as reflected in safekeeping deposit forms. The cash, checks and supporting documents were packed into a suitcase. The suitcase was transported by security, accompanied by cage

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4. A number of the checks (Exhibit G) appeared to have restrictive or other endorsements made on them which had been crossed or marked out. There was no testimony as to who may have done this or when it occurred. No violation has been charged against the respondents for accepting checks with crossed off or prior endorsements and we make no finding as to the propriety of such a practice under the Act or Commission regulations.

personnel, through non-public areas of the facility to the casino floor and into the casino cage. The suitcase was then unpacked, the cash recounted and the checks restrictively endorsed.

At this time respondent DiGiacomo requested that Paul Chandler, credit manager, initial all the checks presented for safekeeping from the Hong Kong group. Mr. Chandler realized upon inspecting and initialing the checks that a number of the checks were nonconforming cash equivalents in that they were third party checks or casino checks, neither of which are cash equivalents under Commission regulations. N.J.A.C. 19:45-1.1. This is the first time that any Sands employee had inspected the checks received from the Hong Kong group (Stipulation, para. 39). Mr. Chandler and respondent DiGiacomo at this point decided to retain possession of the checks rather than return them. Respondent Sands states that these nonconforming checks were not returned because the money had been pooled and apportioned among members of the Hong Kong group and that "Sands employees could not determine which safekeeping deposit accounts had been established using the checks...." (Stipulation of Facts, para. 40). Cage personnel began calling the issuing casinos to determine the validity of the casino checks issued by those businesses. (Exhibits J and K). The banks upon whom the remaining checks were drawn were contacted on August 16, 1982. Three of the banks refused to give out information over the phone concerning these accounts. However, the 32 members of the Hong Kong group were permitted to draw on these safekeeping funds almost immediately (Exhibit L).

The Hong Kong group gambled from August 15 to August 18, 1982. At approximately 4:00 a.m. on August 18, 1982, the members of the group appeared at the casino cage to settle their safekeeping deposit accounts and to exchange gaming chips in their possession. Prior to this time, a representative of the Hong Kong group had requested reimbursement of the airfare expenses for the group. A requisition for expenditure totaling \$325,000 for reimbursement of the airfare expenses was prepared by Robert Goldstein, Sands' director of casino marketing on August 19, 1982. The requisition was approved by James Tuthill, executive vice-president, and William Weidner, president and chief operating officer. (Exhibit O). On that same day, the casino licensee issued a check payable to Michael Tso, junket representative of the Sands based in Hong Kong, for \$325,000. There is no notation on the check as to its purpose. (Exhibit P). The licensee acknowledges that it failed to report the \$325,000 complimentary travel expense in either its daily complimentary service report to the DGE for August 1982 or its quarterly complimentary service report dated September 30, 1982, which is filed with the Casino Control Commission (Stipulation, para. 54). The check was reported on the Sands' purchase and disbursement summary payee check register filed with the Commission for the period ending August 31, 1982. (Exhibit S).

Prior to arriving at the Sands, the Hong Kong group had stayed and gambled at Playboy.<sup>5</sup> While the Hong Kong group was at the Sands, Joanne Rogers, casino cage manager at Playboy, contacted the casino cage at the Sands and informed them that Playboy had requested a stop payment order to be issued on Playboy check no. 0352, made payable to Kam Yiu Lau, in the amount of \$85,500. This check had been presented by Mr. Lau to the Sands on August 15, 1982, as one of the cash equivalents at issue. It appears that Mr. Lau was overpaid \$10,000 when the Hong Kong group settled their accounts at Playboy on August 15, 1982. (Exhibit U). Mr. Lau was informed through an interpreter that the overpayment problem with Playboy had to be rectified before the Sands would release any safekeeping funds to him. Mr. Lau placed an additional \$85,500 on deposit with the Sands and received a receipt in return. He then traveled to Playboy where, in exchange for this receipt and an authorization for the return of the Playboy check to Playboy, he received \$75,500. It appears that the stop payment order was issued too late and was ineffective and the Sands was paid the full \$85,500 on the deposited check. On August 24,

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5. The activities of the Hong Kong group at Playboy were the subject of a separate violation matter, Docket No. 83-16 which is presently pending before the Commission.

1982, Joanne Rogers, casino cage manager at Playboy, appeared at the Sands casino cage and, in exchange for the Sands receipt issued to Mr. Lau and his letter authorizing release of the cancelled check to Playboy, she received a check made payable to Playboy Elsinore Associates in the amount of \$85,500.

The instant complaint does not charge that any violation of the Act or Commission regulations occurred as a result of this incident. Consequently, the ALJ made no findings or conclusions with respect to it; nor do we.

ACCEPTANCE OF CASH AND CASH EQUIVALENTS FOR CASH DEPOSIT OUTSIDE THE CASINO CAGE AREA

The ALJ found that in accepting 48 checks as cash equivalents and \$311,650 in U.S. currency in the fourth floor conference room to be placed on cash deposit, the casino licensee violated N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.15, -1.24(a) and -1.25(e). In his opinion, the ALJ rejected the contentions of Respondent Sands that: (1) it had merely received, but not accepted the checks proffered in the conference room; (2) it was not prohibited from accepting cash for safekeeping deposits in areas other than the casino cage; and (3) under the facts presented, it was impossible for these transactions to take place at the cage without disrupting casino activities and inconveniencing casino patrons.

After reviewing the record and the applicable law, we find ourselves in complete agreement with the ALJ's analysis.

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.

Neither Commission nor DGE personnel were advised of a potential hardship in processing these patron deposits in the ordinary, lawful manner. Neither agency was advised that transactions involving almost \$3 million dollars were occurring in a hotel conference room. As a result, no Commission inspectors or DGE agents were present in the conference room to observe and monitor these cashier activities that took place in an unsecured area, bereft of surveillance cameras and other security measures which are essential to effective regulation of the kind of transaction at issue. There is no evidence in this record that the respondents engaged in skimming or other criminal activity. However, under these unmonitored conditions, the risk that criminal activity could occur is enhanced. The public's confidence in the integrity of gaming operations is justifiably undermined by such laxity.

As noted earlier, we are in total agreement with the ALJ's rebuttal to the Sands' arguments as to the necessity of its actions:

There is nothing in the regulations or the statute which implies that the convenience of casino patrons or the accommodation of the casino's business interests is to supercede the statute or regulations governing the operation of the casinos and the functions required by law. (I.D. at 8).

The corporate respondent took it upon itself to place those business interests ahead of the regulatory constraints under which it is bound by law. It must bear the brunt of responsibility for that choice and suffer the consequences.

For purposes of assessing a penalty, we concur with the analysis of the ALJ that, under the facts of this case, a single violation resulted from the acceptance of checks and cash outside of the cage. We also agree with the ALJ's assessment that the corporate respondent's activities were an egregious breach of the statutory and regulatory controls and that this violation demands a severe penalty. We believe the penalty assessed, \$50,000, the maximum under the statute for a single violation, is appropriate. N.J.S.A. 5:12-129(5).

FAILURE TO RECORD CUSTOMER DEPOSIT FORMS PROPERLY

The casino licensee admits that its cage personnel failed to record the nature of deposits received (cash, chips, plaques or cash equivalents) on four Customer Deposit Forms. (Stipulation, para. 25) For these four incontroverted violations, the ALJ recommended a civil penalty of \$1,000 per violation. We agree.

Sands employees prepared 28 additional forms which indicated that only "cash" was received on deposit. The DGE charged that those 28 receipts were inaccurate in that they failed to note that checks were also placed on deposit for these patrons. The ALJ found that these inaccuracies disguis

the true nature of the transactions. In fact, the deposits received were, by necessity, varying combinations of cash and checks. Nowhere is the receipt of \$2,638,650 in checks noted. From our review of the evidence, we find that the DGE has demonstrated by a preponderance of the credible evidence and all reasonable inferences drawn from it, that the 28 forms failed to accurately reflect the deposits they represented.

We reject the ALJ's conclusion that only one violation occurred in the preparation of these 28 deposit forms. The casino licensee, through its general cashier, is responsible under N.J.A.C. 19:45-1.24(h) for recording specific information on each customer deposit form. Though these patrons may have presented themselves as a group, separate deposit accounts were established for each patron. Each had separate and distinct rights to those funds. We find sufficient evidence to conclude that not one but 28 additional violations of N.J.A.C. 19:45-1.24(h) resulted from the actions of the Sands employees. See State v. Boardwalk Regency Corporation, Docket No. 81-32 (Commission Decision 1983) at 16-17.

For the four violations resulting from the four uncontested, inaccurate patron safekeeping documents, the ALJ recommended imposing a civil penalty of \$1,000 per violation. Upon review, we conclude that the proposed penalty per violation is appropriate and reasonable and will impose the same amount on each of the 28 additional violations that we

have discerned. Therefore, we assess a civil penalty of \$1,000 per violation for 32 violations in the preparation of 32 inaccurate customer deposit forms. This total fine does not differ from the overall \$32,000 penalty recommended by the ALJ.

This disposition should not be interpreted as condoning or otherwise determining the propriety under the Act and regulations of the pooling practice of the Hong Kong group. We find it disturbing that the acceptance, pooling and redistribution of the Hong Kong group's safekeeping assets was achieved without any written authorization by the members who originally held the funds. Coupled with the failure to properly record the transaction, this pooling arrangement made any reconstruction of the transactions nigh to impossible. However, the DGE has not alleged in this complaint that the pooling procedure was unlawful, thus we need not reach that issue here.

#### FAILURE TO VERIFY CASH EQUIVALENTS

The ALJ found that 22 of the checks presented by the Hong Kong group were cash equivalents but were not verified prior to their acceptance as required by N.J.A.C. 19:45-1.25(e). He rejected the argument advanced by Sands that the regulation was vague and therefore unenforceable. He also found as a fact that no efforts were made by Sands cage personnel to examine the checks, let alone verify them prior to acceptance. As noted, despite the Sands' contention that the checks were not accepted until they were returned to the cage, the Hong Kong patrons were permitted to call upon these funds immediately.

While we adopt the ALJ's conclusions on this issue, we are constrained to note portions of his analysis which we do not accept as binding in any future proceeding. We may question, as the parties do not, whether the instant checks, issued by foreign banks but drawn on accounts in domestic banks, are cash equivalents within the definition in N.J.A.C. 19:45-1.1. We make no finding in this case that these instruments are cash equivalents; rather, we merely note that no allegation has been made by the DGE that these checks do not fall within that definition.

Further, while adopting the ALJ's finding that the verification requirement in N.J.A.C. 19:45-1.25(e) is not impermissibly vague, we neither accept nor reject his views on what verification steps were necessary prior to acceptance. We recognize that this issue is of importance in the industry<sup>6</sup> but its resolution is not required for the disposition of this case. The record amply supports the ALJ's finding that in this instance the casino licensee made no effort whatsoever to verify the checks prior to their acceptance.

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6. The DGE has filed several other complaints against various casino licensees alleging that cash equivalents were accepted prior to verification. In addition, there is a pending petition for a declaratory ruling on what constitutes verification of a cash equivalent.

The DGE does argue that 48 violations should result from the casino licensee's conduct, 22 for the cash equivalents which were accepted prior to verification, and 26 for the non-conforming checks that were accepted initially as cash equivalents and not verified. We agree with the ALJ that acceptance of these latter 26 checks should not be considered a violation of the requirement to verify cash equivalents since, by definition, they were not such cash equivalents. Verification of the 26 non-complying checks would not have altered the fact that, as executed, they could not be lawfully accepted by the casino licensee.

The recommended sanction for the failure to verify was a penalty of \$1,000 per violation. Upon review under the criteria of section 130, we find that the sanction recommended is appropriate.

#### ACCEPTANCE OF NON-CONFORMING INSTRUMENTS

The ALJ found that respondent Sands had accepted as cash equivalents 26 checks which did not conform to the requirements of N.J.A.C. 19:45-1.1. He found that such acceptance constituted 26 separate violations of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). The casino licensee admitted the violation, stipulating to the fact that the 26 checks were either casino checks or third party

checks.<sup>7</sup>

Since the checks did not fit within the definition of a cash equivalent, the casino licensee could not lawfully accept them unless they met with the criteria set forth in section 101(b); that is, that each was:

- (1) Made payable to the casino licensee;
- (2) dated, but not postdated;
- (3) presented to the cashier in exchange for a credit slip or slips totaling the amount drawn on the check; and
- (4) cashed in accordance with Commission regulations on check cashing.

None of the checks accepted met these requirements.

The cage personnel made no attempt to examine any of the checks until they returned to the cage. The discovery that non-conforming checks were accepted was made by the credit manager, in initialling the documents for his approval.<sup>8</sup> At this point, the group could have been called

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7. Five of the checks were stipulated by the parties to be third party checks. Four of these checks were made payable to Tony Lau, the tour escort. The fifth was made payable to Ms. Lee Kam Ying. Neither opened safekeeping deposit accounts, although they appeared to be with the Hong Kong group. Their checks were pooled with the assets of the gamblers. Since the parties have stipulated that these checks were their party instruments, we need not discuss whether the status of the payees as non-gamblers is significant to this issue.

8. There has been no allegation that such action constituted an incompatible function, although similar procedures have been challenged by the DGE in other violation matters which remain pending at this time. See, e.g., State v. Bally's Park Place, Inc., et al., Docket No. 83-415 (filed December 6, 1983).

to the cage, the deposits voided, the checks returned and the transactions redone correctly. The decision was made by casino management not to do so, although the group stayed at the casino-hotel for almost three days.

By its actions, the casino licensee essentially "loaned" the Hong Kong group \$1,348,650 without any of the safeguards attendant to the extension of credit under the Act and Commission regulations. The language of section 101 is unambiguous in its condemnation of such a practice. Moreover, the industry was advised, in the Commission's denial of Boardwalk Regency Corporation's request for a declaratory ruling in May 1982, that casino checks could not be accepted as cash equivalents. Under the circumstances there can be no question that the casino's actions here were purposeful, with knowledge and in total disregard of the regulatory requirements.

In light of these considerations and applying the required statutory criteria, we conclude that the fine of \$2,000 per violation is insufficient. Therefore, we assess a monetary penalty of \$3,000 per violation, totalling \$78,000.

FAILURE TO REPORT COMPLIMENTARY AIRFARE AND TO MAINTAIN  
PROPER ACCOUNTING RECORDS

The casino licensee admits that it failed to report the \$325,000 travel expense for the Hong Kong group to the DGE, as part of the daily complimentary service report required by N.J.A.C. 19:45-1.2(c)(3). (Stipulation, para. 54). Further it admits that it failed to include this expense in its quarterly

complimentary service report to the Commission as required by N.J.A.C. 19:45-1.9(c)(1). (Ibid.). The check was accounted for in the monthly Purchase and Disbursement Summary Payee Check Register for the month of August 1982. (Exhibit S). There is no indication on the printout that this expenditure was for complimentary services.

The ALJ found that there was no evidence of intent on the Sands' part to hide this expense, but acknowledged that the failure to file the required reports "did have the potential to make it much harder for the agencies to discover that the services had been provided." (I.D. at 16). The ALJ found this to be a serious violation. We agree. However, he merged the separate requirements for filing reports to the Commission and the DGE, found a single violation, and assessed a civil penalty of \$2,000.

His reason for the merger was that he discerned the legislative role of the two agencies in this area to be indistinguishable. On this point, we must respectfully disagree. Under the statute, the DGE and the Commission have very different functions. The requirement in N.J.A.C. 19:45-1.2(c)(3) for reports within 2 days recognizes the investigatory and enforcement role of the DGE. The requirement of a quarterly complimentary report to the Commission is more in keeping with its overall monitoring and regulatory functions. The requirements of the regulations are dissimilar and achieve separate aims. Therefore, we modify

the initial decision to find two separate violations under N.J.A.C. 19:45-1.2(c)(3) and -1.9(c)(1).

Moreover we perceive these violations to be an affront to the oversight functions of the DGE and the Commission. Failure to file these required reports hinders the Division in its duty to closely scrutinize the associations and practices of a casino from a law enforcement viewpoint and limits the Commission in its independent function to maintain strict accounting and internal controls. For each of these reporting violations, we believe a more stringent sanction is in order, primarily to retain the public's trust in the regulatory system and to deter future violations. Accordingly, we assess a penalty of \$10,000 against the Sands for violating N.J.A.C. 19:45-1.2(c)(3) and \$10,000 for violating N.J.A.C. 19:45-1.9(c)(1).

The failure to keep accurate accounting records on complimentary services strikes at the heart of all accounting controls. The ability of the DGE to monitor complimentary practices and the Commission to audit significant expenditures is largely dependent upon completeness and accuracy of the accounting records. What records were kept concerning the \$325,000 reimbursement at issue here were grossly inadequate. In our view, the proposed penalty of \$5,000 falls short of the regulatory and deterrent goals that we believe this violation merits. Therefore, we are increasing the amount of the sanction for this violation to \$10,000.

#### SUMMARY AS TO RESPONDENT SANDS

It is evident from the initial decision and our discussion of the violations charged against the corporate respondent that a serious breakdown in basic internal control

and accounting procedures as well as security and casino cage operations resulted from the actions of Sands personnel. These functions are integral to the maintenance of the public's confidence and trust in the integrity of casino operations. By its actions, the Sands demonstrated a disregard for the strict regulatory controls imposed by law and instead sought to accommodate the immediate needs of wealthy gaming patrons. We find it inconceivable that the Sands personnel involved, with even a rudimentary understanding of normal operating procedures in the casino and cage, could have believed that their actions were proper. These are intentional transgressions on the part of the casino licensee.

The facts in this case demonstrate an equally disturbing pattern of concealment of these activities from the regulatory authorities. Large safekeeping deposits were accepted outside of the knowledge and supervision of the Commission or Division. Documents prepared to reflect those transactions were inaccurate. Checks that were improperly accepted were not indicated on the deposit forms. The airfare for these patrons was reimbursed as a complimentary service, but none of the required reports were filed, nor were the accounting records properly prepared.

Finally, though given the time and opportunity to rectify many of their errors, casino management failed to do so. The Hong Kong group remained in the hotel-casino for several days. The original deposits could have been voided and

prepared properly; they were not. There was certainly time to properly prepare the reimbursement checks and documents, as well as prepare and submit the required complimentary reports. We do not go so far as to impute malfeasance. It is evident, however, that little if any judgment was used in reconciling the requirements of the law with the care and cultivation of the Hong Kong patrons.

We perceive these as extremely serious violations which warrant a severe sanction. Here, the casino licensee promoted its business concerns at the expense of its regulatory responsibilities. The effect was not only to undercut the integrity and security of casino operations, but to denigrate the regulatory scheme designed to achieve those public interest mandates. To punish this conduct and to deter all others from engaging in similar behavior in the future, we have increased the monetary penalties where indicated in this opinion to a total of \$212,000.

PATRICIA DIGIACOMO

The ALJ discussed respondent DiGiacomo's role and liability in these incidents on pages 20-23 of the initial decision. After reviewing her conduct, he found that she was "lax in performing the responsibilities of a supervisor...." (I.D. at 21). He concluded, however, that the bulk of responsibility lies with the casino licensee. The ALJ also considered the respondent's testimony that her family members had health difficulties which necessitated their reliance upon her income and that she was relatively inexperienced in her

position at the casino. For these reasons, the ALJ decided that neither revocation nor suspension of her casino key employee license is appropriate. Instead, he recommended a reprimand be imposed against the respondent and that any fine assessed be suspended.

Respondent DiGiacomo is a casino key employee licensed to the highest standard under the statute. She is subjected to the most searching scrutiny because of the crucial management and supervisory position she holds within the casino. As a casino cage manager, she is responsible for the control, accounting and reporting of all casino cage transactions. She supervises and trains all cage and slot personnel. The proper function of cage operations is crucial to the operation of the casino and the regulation and control of its gaming assets. The cage manager is required to have extensive casino industry experience and a thorough knowledge of the Casino Control Act and regulations that relate to casino operations and internal controls. As with all licensees under the Act, the respondent is expected to maintain compliance with the Act and regulations and monitor those within her authority in doing the same.

Contrary to her testimony, respondent DiGiacomo has extensive experience in the industry, beginning with her employment as a cage cashier at BRC. After six months, she was made an assistant shift supervisor at the Sands. She was promoted to day shift supervisor after one year and, after an additional year (three months prior to the arrival of the Hong Kong group), she was made casino cage manager. She was the

highest ranking member of casino management in the fourth floor conference room.

It is quite evident that the respondent failed to exercise sound judgment in handling the subject transaction. Apparently, she was persuaded, by business considerations or other factors, to abandon all the internal control requirements in order to accommodate this group of gamblers. Such disregard for the regulatory system is unacceptable in this highly controlled industry. Casino key employees have an obligation to abide by their responsibilities as licensees as well as achieving the monetary aims of their corporate employer. Where, as here, both aims could have been accommodated, she chose to disregard the regulatory mandates to facilitate the casino's business interest. That action warrants an appropriate sanction.

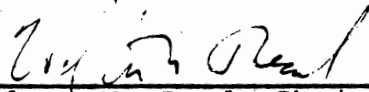
In light of our aforementioned concerns and upon consideration of the required statutory factors, we conclude that the ALJ's recommended sanction is not an appropriate response. We impose a seven day suspension of Ms. DiGiacomo's key employee license and a \$500 civil penalty for her violations.

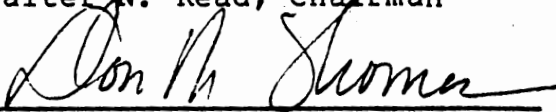
#### CONCLUSION

For the reasons set forth above, the initial decision of the Office of Administrative Law is modified in accordance with this decision. We order an additional \$49,000 in civil penalties against respondent Sands for violations outlined in

Count IV (acceptance of non-conforming cash equivalents), Count V, para. 9 (failure to keep accurate accounting records), Count V, para. 10 (failure to report complimentary travel expenses to the DGE), and Count V, para. 11 (failure to report complimentary travel expenses to the Casino Control Commission). A seven day suspension of the casino key employee license and a monetary penalty of \$500 is imposed against respondent Patricia DiGiacomo for violations outlined in Count VI. In all other particulars, the initial decision in this matter is affirmed.

NEW JERSEY CASINO CONTROL COMMISSION

  
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Walter N. Read, Chairman

  
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Don M. Thomas, Commissioner

  
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E. Kenneth Burdge, Commissioner

DATE: July 25, 1984

SEPARATE OPINION OF COMMISSIONERS JACOBSON AND ZEITZ

We join with our colleagues in their findings of facts and conclusions of law which are derived in large measure from the initial decision rendered by the administrative law judge. We are in total agreement with the majority's findings as to respondent DiGiacomo and the sanction to be imposed upon her. However, we are of the opinion that the penalties levied against the corporate respondent here are inadequate to punish Greate Bay for its misconduct and to deter future violations by it or any other casino licensee in Atlantic City. We therefore respectfully dissent.

We believe the majority was correct in finding that, in accepting \$2.9 million in checks and cash in a conference room, far from the security of the cage and the watchful eyes of the Commission and Division personnel, "the corporate respondent's activities were an egregious breach of the statutory and regulatory controls" and that such conduct "demands a severe penalty." (Commission Decision at 11). The majority finds that by improperly accepting nonconforming checks as cash equivalents:

the casino licensee essentially "loaned" the Hong Kong group \$1,348,650 without any of the safeguards attendant to the extension of credit under the Act and Commission regulations. The language of section 101 is unambiguous in its condemnation of such a

practice. Moreover, the industry was advised, in the Commission's denial of Boardwalk Regency Corporation's request for a declaratory ruling in May 1982, that casino checks could not be accepted as cash equivalents. Under the circumstances there can be no question that the casino's actions here were knowing and in total disregard of the regulatory requirements. [Commission Decision at 17].

Overall, the majority concludes that "a serious breakdown in basic internal control and accounting procedures as well as security and casino cage operations resulted from the actions of Sands personnel." (Id. at 19-20). We agree that "it [is] inconceivable that the Sands personnel involved, with even a rudimentary understanding of normal operating procedures in the casino and cage, could have believed their actions were proper." (Id. at 20). The motivation for the misconduct was clear - business concerns were placed above regulatory responsibilities. Id. at 21.

Consistent with these findings that the casino licensee engaged in serious calculated transgressions, we are convinced that severe sanctions are required under section 130 of the Act. we cannot concur with the judgment of the majority that monetary penalties alone are sufficient to penalize the casino licensee's conduct, or will deter future violations.

"[P]enalties must be of sufficient magnitude to eliminate the possibility that the penalty becomes simply a cost of doing business in this state." Second Interim Report, Staff

Policy Group on Casino Gaming, at 54-55 (February 17, 1977).

Here, the business interests of the casino licensee overrode the strict regulatory controls imposed by law. This "Las Vegas Syndrome" cannot be tolerated. In our judgment, the monetary sanctions imposed by the majority are in effect a business cost, not a meaningful penalty or a deterrent.

We propose that the proper penalty in this case would be a suspension of the certificate of operation held by Greate Bay Hotel and Casino, Inc. for a minimum of 24 hours. In addition, it is manifest that rudimentary casino and cage procedures were ignored by the Sands personnel. Therefore, we would also order that during the period of suspension all casino personnel would be required to report on their regular shifts for training sessions in their respective positions. This training would stress the application of and compliance with the Casino Control Act and Commission regulations concerning casino and cage activities.

This proposed sanction of suspension of the operating certificate would, in our view, promote the very aims which the majority proclaims, but fails to serve - just punishment and effective deterrence. It is an unfortunate but seemingly established fact of life in this industry that casino executives cast one eye upon the regulatory strictures and the other on their financial statements, then act according to their perceived best interests. We have come to this realization that

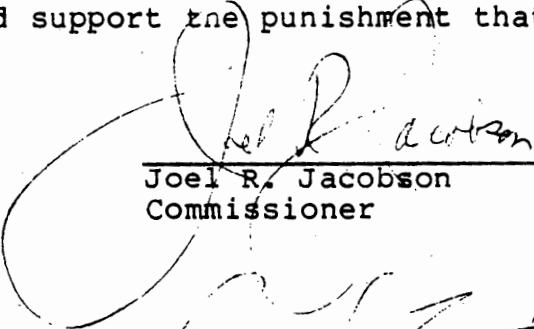
where compliance with the regulatory stricture is concerned, the only way to close their fiscally-focused eye is to close the casino's door.


Moreover, the sanctions imposed by the majority utterly fail to address the underlying problem which gave rise to the violations at issue here. Violations of statutory and regulatory provisions such as those redressed here will cease only when employees of the casinos are made aware of the overriding regulatory concerns. The training we would require would serve to apprise such employees of their individual responsibilities.

Financial penalties, easily computed by casino managers as a cost of doing business, do not serve as an effective deterrent to continued violations.

A closed casino will.

In this instance, and in all similar situations in the future, we would support the punishment that truly fits the crime.

  
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Joel R. Jacobson  
Commissioner

  
\_\_\_\_\_  
Carl Zeitz  
Commissioner

DATED: July 25, 1984

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5460-83

AGENCY DKT. NO. 83-17

**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 OF  
ATLANTIC CITY AND PATRICIAN JEAN  
DI GIACOMO; CASINO CAGE MANAGER,**

Respondents.

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**APPEARANCES:**

**Kevin F. O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Leonard C. Horn, Esq., for respondent Greate Bay Hotel and Casino, Inc. (Horn,  
Kaplan, Goldberg and Gorny, attorneys)**

**Nicholas F. Moles, Esq., for respondent DiGiacomo (Wilson, Jacobson, Winkelstein &  
Scerni, attorneys)**

**Record Closed: February 10, 1984**

**Decided: March 26, 1984**

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

This matter comes before the Office of Administrative Law following transmittal from the Casino Control Commission, pursuant to N.J.S.A. 52:14F-1 et seq.

The case involves allegations by the Division of Gaming Enforcement (Division) that the Greate Bay Hotel and Casino (Greate Bay), which trades in Atlantic City as the Sands Hotel and Casino, Inc., violated various statutory and regulatory provisions concerning the handling of transactions with a large group of gamblers from Hong Kong. In addition, the Division alleges that Patricia Jean DiGiacomo, Casino Cage Manager at Greate Bay, also violated similar statutory and regulatory provisions in connection with her responsibilities. Another respondent, William F. Bagnell, Casino Controller, was also named in the original complaint filed by the Division with the Casino Control Commission (Commission) on January 18, 1983. An amended complaint was subsequently filed in August 1983.

On August 5, 1983, a prehearing conference was held in this matter. A Prehearing Order was issued on August 10, 1983. Subsequently, on October 27, 1983, respondents Greate Bay and DiGiacomo agreed to enter into a stipulation of facts with the Division concerning the incident. Mr. Bagnell declined to enter into the stipulation and his case was severed from that of the other respondents.

The written stipulation of facts was submitted to the administrative law judge on December 12, 1983. Thereafter, at the request of respondent DiGiacomo, a short evidentiary hearing was held before Administrative Law Judge Jeff S. Masin on January 3, 1984. The parties then submitted briefs concerning the factual and legal issues and the record was closed upon receipt of the last such submission, on February 10, 1984.

As previously noted, the allegations in this case arise out of the involvement of the respondents with a large group of gamblers from Hong Kong who arrived at the Sands Hotel and Casino at approximately 4:30 p.m. on Sunday, August 15, 1982 (Stipulation of Facts, paragraph 10). This group consisted of approximately 80 persons, 32 of whom were players. The additional persons were wives, children and other relatives. Among this group, there was only one person who presented himself as speaking any English, a man named Michael, who identified himself as a nonplayer. No last name was obtained for this individual at the time.

It is not necessary to repeat in any particular detail the stipulated facts contained in the 65 paragraphs of the Stipulation of Facts entered into by the parties. It is sufficient here to note that upon arrival at the Sands, the entire group of Hong Kong citizens were ushered to a fourth floor conference room where the group presented, through Michael, a large amount of cash and numerous checks, which they requested be

held by the casino for safekeeping. It was intended that this money would be used for gambling. As noted in the stipulation, the 32 gamblers were each presented to the casino's cage personnel in the 4th floor conference room and they were identified by Michael, who then indicated the amount of safekeeping funds to be deposited by the patron. Information concerning names, birthdates, etc., were recorded and safekeeping file cards were signed. A suitcase containing \$311,350 was presented to the cage personnel in the 4th floor conference room and 48 checks, of varying types, were also presented. The total safekeeping deposits presented by the Hong Kong group was \$2,950,000.

The Division charges that Greate Bay violated statutory and regulatory provisions when it accepted the cash and checks from the Hong Kong group in the fourth floor conference room instead of conducting these transactions at the cashier's cage located on the casino floor. The Division also charges that the accounting records kept of the transaction were improper in that there was a failure to accurately record the type of deposit made by each individual depositor. Further, it is charged that the respondent casino failed to carry out proper verification procedures designed to determine the security of the cash equivalents presented. In addition, it is contended that the casino accepted checks which did not conform with the requirements with respect to what types of checks were lawfully accepted by the casino for safekeeping. It is also contended that the respondent failed to properly account for complimentary services provided to the group, most of which was for airfare. Finally, the respondent casino is charged with failing to report the complimentary services provided to the Hong Kong group on its daily report to the Division, in violation of N.J.A.C. 19:45-1.2(c)3, and its quarterly report to the Commission, required by N.J.A.C. 19:45-1.7(c).

As noted in the stipulation, Greate Bay agrees and stipulates that, in connection with the Hong Kong group, it did perform actions which, on their face, violate regulations. A more thorough review of the charges, stipulated facts and the law with respect to each of the allegations will follow. The entire Stipulation of Facts is incorporated herein as findings of the court as if repeated in full in this Initial Decision.

COUNT 1 - PARAGRAPH 13:

"ACCEPTANCE" OF PATRON SAFEKEEPING DEPOSITS

The Division contends that the respondent, Greate Bay, violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.15(b), N.J.A.C. 19:45-1.24(n) and N.J.A.C. 19:45-1.25(e) when it

accepted \$2,950,000 in cash and checks from the 32 players in the 4th floor conference room. There is no dispute that the cash and checks were indeed given to the casino's personnel in the conference room. The briefs center their attention on the legal issue of whether acceptance, in the legal sense, occurred in the conference room, or whether it occurred at a later time, after the cage personnel had returned to the cage on the casino floor and undertaken certain procedures with respect to recording and marking the checks. For the reasons set forth below, I **CONCLUDE** that the checks were indeed accepted by the respondent casino in the conference room and that such action did constitute a violation of applicable provisions of the statute and regulations.

N.J.S.A. 5:12-99 requires each casino licensee to submit to the Commission "a description of its system of internal procedures and administrative and accounting controls." This submission must contain, among other items

- (4) Procedures within the cashier's cage for the receipt, storage and dispersal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the paying-off of jackpots; and the recording of transactions pertaining to gaming operations.

N.J.A.C. 19:45-1.25(e) states:

Cash equivalents, as defined in section 19:45-1.1 of this regulation, shall only be accepted at the cashier's cage by general cashiers. Prior to acceptance of a cash equivalent from a person, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent.

N.J.A.C. 19:45-1.24 is entitled "Procedure for Acceptance, Accounting for and Redemption of Patrons' Cash Deposits." It reads, in pertinent part:

- (a) Whenever a patron requests that the casino hold his cash, cash equivalents, gaming chips or plaques for subsequent use he shall deposit the cash, cash equivalents, gaming chips or plaques with a general cashier.

N.J.A.C. 19:45-1.15, entitled "Accounting Controls Within the Cashiers' Cage" states in subparagraph (b):

The cashiers' 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;

Subparagraph (b)1v states:

Receive cash, cash equivalents and gaming chips and plaques from patrons in exchange for Customer Deposit Forms.

Finally, N.J.A.C. 19:45-1.14 establishes requirements for the physical layout of the cashiers' cage, as well as the security devices and precautions to be followed in connection with the cage.

The Division argues that when the Hong Kong gamblers gave their suitcase full of cash and their checks to the casino's cage cashiers in the fourth floor conference room, the cash and checks had been accepted. The respondent Greate Bay believes that mere handing over of possession of the physical documents, and/or the cash, to the cage personnel in the fourth floor conference room was not sufficient to allow a finding that acceptance had occurred in violation of the regulation. Greate Bay suggests that it would be absurd to think that the mere taking of physical possession of the instruments or cash constituted acceptance on the part of the casino when a number of other steps were required to be performed by either statute, regulation or internal control procedures. I cannot agree with the respondents' position.

It is clear that when the gamblers arrived at the Sands on August 15, 1982, it was their firm intention to gamble. At that point, they were taken to the conference room and were brought face to face, so to speak, with people from the casino cage who undertook to process deposit forms and take checks and cash. Subsequent to the forms being filled out, the money counted and the checks totaled, and after names, birthdates and other minimal pertinent information had been taken from the gamblers through their interpreter, they were apparently permitted to leave the conference room and make their way to the gaming floor. There is absolutely no indication that the cage personnel, or

their supervisory personnel, including Ms. DiGiacomo, ever attempted to restrict the ability of the gamblers to go about their business of gambling while the cage personnel returned to the cage, reviewed the checks, had them initialed by the proper personnel, and did whatever paper work was necessary.

Greate Bay suggests that there is a great deal of difference between receiving cash and cash equivalents (a function of a general cashier under 19:45-1.15(b)(1)5) and acceptance of the check under 19:45-1.25(e). I agree. It is not enough for a finding of a violation if the only action on the part of the personnel of the casino outside of the casino cage is taking physical receipt of money for checks. Mere receipt is not acceptance. Acceptance connotes that the party who has taken possession has not only taken physical hold of the offered instrument, but has agreed to the proposal of the offerer, that is, that the proffered funds or instrument will be held in safekeeping and the offerer will be permitted to use such funds for gambling purposes. If, upon taking receipt of an instrument, the casino personnel, acting outside the cage, were to advise the prospective gambler that he was not yet permitted to use the funds for gambling and that verification and other documentation and accounting procedures had to occur before the money was used for gaming, surely no one could argue that the casino had accepted the money or equivalents. However, where no conditions whatsoever are announced to one who has handed over physical possession of cash or checks or cash equivalents and the prospective gambler is permitted to go forth without restrictions, it is difficult to believe that such action does not constitute acceptance by the casino. As will be noted below, in the present case, as stipulated, this latter scenario is essentially what occurred in this case.

I FIND that the respondent, Greate Bay, accepted \$2,950,000 worth of cash and checks from the Hong Kong party in the fourth floor conference room. I FIND that once the cashiers took the checks and money and the general background information as to each individual better, they made no pretense of restricting the right of the prospective gamblers to move to the floors and use their deposited funds.

Respondent argues that acceptance of cash equivalents requires at least eight separate and distinct steps under the respondent's internal controls (exhibit J-3) and that these include such actions as issuance of receipts, and issuing of the cash equivalent by the credit manager, input to the computer safekeeping file and placement of restrictive endorsements, all actions which here did not occur, if at all, in the fourth floor conference room, but occurred instead in the cage on the casino floor. Thus, the

respondent contends, that although the money and checks were handed over and received in the conference room they were not accepted until all of the named procedures had occurred down in the casino cage. However, this argument overlooks the fact that no one made any attempt to advise the gamblers that they could not gamble with the money until the very procedures relied upon by respondent had occurred. There is no evidence that it would have been illegal, improper, unauthorized, or impossible for the gamblers to have run immediately from the fourth floor conference room down to the casino floor and to have begun to use their deposited funds while the casino cage personnel were in the process of transporting the funds to the cage and completing the necessary steps outlined by the internal controls.

The parties differ over whether it is lawful to accept cash at a location other than the cashier's cage through general cashiers. N.J.A.C. 19:45-1.25(e), quoted above, permits acceptance of cash equivalents only at the cage. It says nothing about the acceptance of cash. However, it is clear that N.J.A.C. 19:45-1.15 establishes that general cashiers operating from the cashiers' cage ought to receive cash. The direction that general cashiers shall receive cash occurs in the same regulation that establishes accounting controls for the general cashiers and requires segregation within the cashier's cage by personnel and function. This portion of the regulations, which follows 19:45-1.14 which establishes the specific requirements for the cage, when read together with the proceeding section, make it abundantly clear that it was the intention of the Commission that cash be collected in the secure highly regulated area of the cage by general cashiers.

The respondent suggests that the limitation of receipt of cash by cashiers to the cage is not mandated by 19:45-1.15 and that it is improper to view the title "Accounting Controls Within the Cashiers' Cage" as meaning anything. I disagree with this argument. The language "within the cashiers' cage" appears in the statute, in N.J.S.A. 5A:12-99a(4), a section which requires the controls to include "procedures within the cashiers' cage for the receipt of cash." A review of Section 99 indicates that there is no other listing requiring procedures for the receipt of cash at any other location. From this, it is obvious that the plain meaning of the statute is that cash be collected in a cashiers' cage in accordance with the procedures in the internal controls and that the title of 19:45-1.15 has a significant meaning. While titles of regulations are not necessarily binding in terms of the interpretation of the regulation itself, here, I FIND that the title is derived directly from the statute and that it was the intention of the Commission in issuing 19:45-1.15 to indicate that general cashiers shall operate in a cashiers' cage and

that among their duties they shall receive cash. There is no other provision which permits the receipt of cash anywhere else by casino personnel for gaming purposes.

It makes eminent sense that the statute and regulations require that cash, as well as cash equivalents, be received for safekeeping purposes in the secure circumstances of the mandated cage. The requirements of 19:45-1.14 are intended to provide an area, subject to the control and surveillance of both the casino's own security personnel as well as the Commission's, where certain financial transactions would occur which would provide money to depositors.

It has been argued by the respondent that because of the large influx, on a last minute basis, of non-English speaking gamblers, accompanied by a large number of additional non-English speaking persons, it would have been impossible to have conducted the necessary transactions at the casino cage windows on that busy summer Sunday afternoon of August 15. Such an argument, while it may point out the need for a change in facilities (these have occurred) does not answer the question of whether it was lawful for the casino to act as it did. There has been no showing that proper handling of this group could not have involved the placement of the non-gaming individuals in a location where they could have brought their luggage and had some food and the transport of the players to the cage area where they could have been dealt with through the interpreter. While no doubt there would have been a delay, perhaps of some substantial time, in reaching that point when the transactions of any individual prospective gambler would have been completed and the gambler would have been in a position to step on the floor and begin to gamble, the mere fact that there might have been some inconvenience to the patrons and an attendant delay in the beginning of their gambling is not a defense to a charge of a violation of the requirements concerning the location of such transactions. There is nothing in the regulations or the statute which implies that the convenience of casino patrons or the accommodation of the casino's business interests is to supercede the statute or regulations governing the operation of the casinos and the functions required by law.

It is at this point perhaps necessary to point that in the conduct of casino business, where situations present themselves which may perhaps be seemingly novel and not necessarily clearly covered by the regulations or where it appears that the regulation works a particular hardship upon the casino or upon those it serves, that it is entirely appropriate for casino personnel, through their own particular chain of command, to

request the Commission to consider the problem and advise on the proper, lawful way of handling the situation. On August 15, 1982, had the Greate Bay personnel sought advise from the Commission, it is not totally inconceivable that the Commission might have determined, in the course of its regulatory function, that circumstances were of such a nature as to require some relaxation of the strict regulations governing the location where transactions of this type would occur. However, no such request was made and the casino took it upon itself to permit the removal of these operations, involving millions of dollars, to an area which was not secured in the fashion of the cage and was not subject to the strict controls governing security. The transaction was taken to a location where the Commission had no eyes nor ears and all of this was done without advising the Commission of what was occurring. In essence, the entire transaction with the Hong Kong group took place without the knowledge of and away from the access of the Commission, and its own security personnel. Such actions cannot be permitted in the context of the casino industry, one which is highly regulated, and for very good reasons.

For the reasons expressed above, I **CONCLUDE** that the respondent violated the applicable regulations when it accepted cash and cash equivalents in the fourth floor conference room rather than at the casino cage. The fact that some of the operations necessary to complete all of the accounting and recording of the transactions occurred in the cage does not lessen the violation.

COUNT 2 - PARAGRAPHS 4 AND 5:  
SAFEKEEPING DEPOSIT RECEIPTS

In count 2, paragraphs 4 and 5 of the amended complaint, the Division charges that the respondent Greate Bay failed to properly account for the 2.95 million dollars in patron safekeeping deposits which it received from the Hong Kong group. Specifically, it is charged that the safekeeping deposit receipts prepared by Greate Bay's personnel were inaccurate and did not properly record the nature of the deposits, in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.24(h)(5). N.J.A.C. 19:45-1.24h specifies that:

On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information.

1. The name of the patron making the deposit;

2. The total amount being deposited (numerical, total and written amount);
3. The date of deposit;
4. The signature of the general cashier or, if computer prepared, the identification code of the general cashier; and
5. Nature of the amount received (cash, cash equivalents, chips or plaques.)

As the parties note in their briefs, there is no dispute that four of the safekeeping deposit receipts prepared by employees of the respondent did not record the nature of the amount received in any form. Obviously, there is a violation of the above-cited regulation as to these four documents. With respect to the other 28 safekeeping deposit receipts, the Division argues that since they all listed the nature of the amount received as cash (by checking the box for cash) when in reality part of the overall deposit was cash and a substantial portion was in the form of checks (over 2.6 million dollars), the 28 forms are inaccurate and each constitutes a document in violation of the regulations. The respondent contends that the Division has failed to prove by the necessary preponderance of the evidence that any of the 28 forms are incorrect. It takes this position because it contends that since over \$300,000 in cash was actually received and since the largest amount reflected as a deposit on any of the 38 safekeeping deposit receipts was \$200,000, any one of the receipts, or some combination of them, could in fact represent an actual deposit of cash only. This approach to the evidence leaves much to be desired, even though it may technically be correct. In fact, there is little question but that the total transaction, as recorded by the employees of the respondent, was inaccurately described. While conceivably one or more of the slips might represent a complete cash deposit, there is no way of telling which safekeeping forms cover total cash deposits, partial cash - partial check deposits or total check deposits. The entire transaction was recorded in such a way that anyone attempting to determine what actually happened would have no way of understanding what the forms represent. There is no evidence at all on the forms that any checks were received. While the evidence indicates that the initial recordation of the deposits as cash may have occurred inadvertently because of the appearance of a suitcase full of cash and the understanding on the part of the cashiers that only cash was being deposited, there was a considerable period of time both in the fourth floor conference and later in the cage where the proper notation could have been made to show that checks were part of the deposit. While there are further complications caused by the fact that the pooling procedure used by the Hong

Kong group made it quite difficult, if not impossible, to identify who, in fact, deposited what amount, the failure of the cashiers to even note the presence of checks in the deposits is an obvious violation. The only question that seems to exist is whether there are 32 violations or whether there may, of necessity, be only one violation for the 28 marked by the inaccurate documents. This subject will be discussed further below.

FAILURE TO VERIFY CASH EQUIVALENTS

The next series of charges brought by the Division deal with the acceptance of the 48 checks delivered by the Hong Kong group. Specifically, the Division contends that Greate Bay failed to determine the validity of the checks, which had been presented as cash equivalents, prior to their acceptance and also charges that 26 of the checks were non-conforming checks, in that they were not permissible cash equivalents and therefore should never have been accepted as such in the first place.

N.J.A.C. 19:45-1.25 requires that:

Prior to acceptance of a cash equivalent from a person, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent.

Greate Bay contends that since 26 of the checks presented were admittedly not in conformance with the requirements for cash equivalents and therefore did not constitute cash equivalents, the regulation requiring validation before the acceptance of cash equivalents is inapplicable. While not denying that the regulation on its face deals with the acceptance of cash equivalents, the Division contends that each of the 48 checks was presented as, and accepted as, a cash equivalent, albeit improperly, and that none of the checks was subjected to any validation before being accepted.

In addition to questioning whether the validation requirement applies to the non-conforming checks, Greate Bay argues that the verification requirement itself is vague in that the term "necessary verification" is not further defined and was not subject to any proof as to meaning by the Division.

With respect to the application of the validation requirement to the non-conforming checks, it is correct to state that when the cashier's accepted the 48 checks in the conference room, including the non-conforming ones, they did so with the apparent understanding that the checks were being presented as cash equivalents. No attempt was made by any of the cashiers in the conference room to refuse any of the checks on the grounds that they were not in conformance with the regulations as to what was a legitimate cash equivalent. At the time that each of the checks was accepted, no attempt at all had been made to validate them. The respondent does not contend otherwise. Whatever attempts were made to validate any of the checks by way of telephone calls or other contacts with the foreign banks, casinos, or other issuers, did not occur until after the checks had been removed to the cage and after the discovery that non-conforming instruments had been accepted.

The wording of N.J.A.C. 19:45-1.25 is quite specific in that it requires validation of a cash equivalent prior to acceptance. Nothing is said about checks which are not in conformance with the regulations for cash equivalents because it is, of course, presumed by the regulators that only conforming document would be accepted as cash equivalents. In this situation, where the casino personnel accepted non-conforming documents, it may well be that had an attempted verification occurred the non-conforming nature of the documents might have been discovered.

With respect to what type of verification is required, it is true that the regulations themselves speak only of "necessary verification for each type of cash equivalent." They do not further define what is necessary. However, it appears that what is necessary is what is reasonable under the circumstances involved. Where one is presented with a legitimate cash equivalent as defined by the regulations by persons who appear to be properly identified and where there is no indication of any impropriety in the document itself, it may be that the only verification necessary is proof of identification and a careful examination of the documents. Where a cash equivalent is presented by a known individual, one who has frequented the establishment before and for whom the casino has a history with respect to the prior presentation of cash equivalents or other credit records, the amount of verification necessary may be limited. On the other hand, in a situation such as this, where the documents were being presented by a group of non-English speaking foreigners who obviously were in the United States for a short period of time and who were presenting documents which in many cases were drawn on foreign banks and were third party checks, it is obvious that the amount of verification necessary

will be somewhat more involved than merely examining credentials and looking at the four corners of the documents presented.

The regulation is not vague. It merely calls upon the operator of the casino to use reasonable means of verifying the validity of cash equivalents commensurate with the circumstances of presentation. Where the record indicates that the actions of the licensee with regards to the verification of any cash equivalent fall short of reasonable actions under the specific circumstances presented, there is no impropriety in finding a violation of this regulation.

Given the nature of the entire transaction, I **CONCLUDE** that the cage personnel failed to attempt to verify in a reasonable manner any of the 48 checks presented to them. The fact that some of them were non-conforming with the regulations and could not be accepted as cash equivalents does not reduce the blame of the licensee for accepting as cash equivalents all of the 48 checks. Had the licensee rejected the non-conforming documents it would not had been permitting persons presenting such checks to go out on to the casino floor and enter into the gaming. When the licensee took the checks, failed to carefully review them, failed to make any attempt to verify them, and permitted persons to go out on the floor with the tacit understanding that the checks had been accepted as cash equivalents, the licensee certainly violated the spirit of the regulations.

Since the regulation involved here is penal in nature and therefore must be strictly construed, I believe that it would be improper to separately penalize the respondents for failing to verify the non-conforming checks. As to these, since as noted below, violations occurred in the mere acceptance of these checks, the failure to verify should properly be considered as a subordinate aspect of the improper acceptance, not as a separately punishable violation.

#### ACCEPTANCE OF NON-CONFORMING INSTRUMENTS

In addition to the above violation concerning the acceptance of the checks, the Division also argues that Greate Bay violated N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a), when it accepted checks as cash equivalents when said checks were not cash equivalents within the meaning of N.J.A.C. 19:45-1.1. (Stipulation No. 31).

While admitting that violations of the regulations occurred, Greate Bay argues that its guilt is mitigated by the fact that the cage personnel believed that the Hong Kong group was a junket and that the group had been informed by the casino's marketing department of the policy with the respect to acceptance of checks and what could lawfully be accepted as a cash equivalent. Of course, there is no evidence whatsoever that anyone gave information to any of the cage personnel, including Ms. DiGiacomo, that such information had been conveyed to the Hong Kong group. They merely acted upon an assumption and the underpinning for that assumption appears practically nonexistent. In addition, Greate Bay contends that its cage personnel mistakenly assumed that all of the checks were cashiers checks. In Stipulation 39 the respondent agrees that both she and Jean DeMartino, who was the casino cage shift supervisor in the fourth floor conference room, were surprised when they were told by Paul Chandler that some of the checks were third party and casino checks. In fact, in Stipulation 30 it is agreed that in the conference room

the member of the Hong Kong group who had presented the checks held onto the left side of each bundle of checks as Ms. DiMartino flipped through the checks entering the amounts into her calculator. Ms. DiMartino did not inspect nor did she analyze the nature of the checks presented for the reasons described in paragraph 29, supra (the above-noted belief that the group was a junket).

The method by which the casino's responsible personnel engaged in the review of the checks presented in the conference room left much to be desired. It is quite obvious that a careful review of the checks would have revealed to anyone reasonably versed in the credit and cash equivalent regulations that many of the checks were unacceptable. While one can characterize the actions of the cage personnel in the conference room as inadvertent, it is fair to say that they displayed a total disregard of the requirements for care and caution in connection with the acceptance of substantial amounts of money. This kind of action created a significant danger because once the alleged cash equivalents were accepted as such the gamblers were able to proceed directly to the casino floor and wager using the monies represented by the non-conforming checks. While it is true that eventually all of the checks were verified as good, that outcome represents solely a matter of good fortune for the casino. There was every possibility that one or more of the non-conforming checks might not have been valid. The improper actions of the cage personnel in reviewing these checks could have lead to serious problems. The after-the-fact realization that a recall of the gamblers in order to

reject the non-conforming instruments was unfeasible only highlights the seriousness of the actions of the respondents.

I **CONCLUDE** that the respondent improperly accepted 26 non-conforming checks as cash equivalents, in violation of applicable regulations.

**FAILURE TO MAINTAIN PROPER RECORDS**

Count 5, paragraphs 9, 10 and 11 charge Greate Bay with having failed to maintain properly detailed and subsidiary records supporting the cost and number of persons who were provided with complimentary services when Greate Bay issued a \$325,000 check in payment for the air fare for the Hong Kong group. In addition, it is contended that the respondent failed to report these complimentary services to the Division and Commission. Greate Bay admits in Stipulation 54 that it failed to report the \$325,000 complimentary travel expense in both the required daily Complimentary Service Reports for August 1982 and in the quarterly Complimentary Service Report, dated September 30, 1982. It is also agreed between the parties that the respondent did report the \$325,000 check as a dispersement on its Purchase and Dispersement Summary Payee Check Register filed with the Commission for the month ending August 31, 1982.

N.J.A.C. 19:45-1.2 requires each casino licensee to maintain complete, accurate and detailed supporting and subsidiary records concerning its operations. Subsection (c)3 states:

The detailed supporting and subsidiary records shall include, but not necessarily be limited to:

3. Records supporting the accumulation of the costs and numbers of persons, by category of service for regulated complimentary services. Such records shall include, on a daily basis, the name of each person providing with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such a person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary theatre tickets, parking or beverages served in bars and the casino.

As noted, Greate Bay admits that it did not file this report. It also did not maintain the type of records required. According to Exhibit T attached to the Stipulation of Facts, a document prepared by Robert Goldstein, Director of Casino Marketing for the respondent, the \$325,000 expenditure was determined by estimating \$4,000 for each first class airfare from Hong Kong to New York, round trip. In addition, since the total of air fares paid for (67) does not equal the \$325,000 which was paid, Goldstein assumes (apparently) that the difference is represented by "other players' guests and children."

The above document obviously is not a satisfactory supporting and subsidiary, detailed and accurate record concerning the complimentary services provided. Greate Bay does not contend that it is so. It admits that it failed to keep the proper records. In mitigation it indicates that it reported the complimentary travel expenditure in its monthly report of payables. As noted by the petitioner, this report hardly serves the function that is served by the daily report to the Division which enables the Division to keep tabs on who is receiving complimentary services, for what, when, in what amount, and other significant facts which may play a role in the Division's overall supervisory and law enforcement posture vis-a-vis the casinos. In addition, merely listing the complimentary service as a payable on a payables report does not even highlight the expenditure to those watching the provision of complimentary services, but serves to place the expenditure in and amongst many transactions which are either less significant or of a different character than the provision of free services to casino patrons. Greate Bay's submission of the expenditure in the payables report is hardly a mitigating factor in respect to the concerns identified by this regulation, although it is clear that Greate Bay did not attempt to hide the transaction. I FIND no basis for a conclusion that there was any attempt to prevent the Division or Commission from knowing about the expenditure, although the failure to file the reports certainly did have the potential to make it much harder for the agencies to discover that the services had been provided.

I FIND that the respondent violated N.J.S.A. 5:12-102, N.J.A.C. 19:45-1.2(c)3 and 1.9.

#### THE NUMBER OF VIOLATIONS

Having determined the nature of the violations proven against respondent Greate Bay, it is now necessary to analyze the number of violations which occurred and determine the penalty to be imposed for such violations. Initially, in connection with the

acceptance of \$2,950,000 in safekeeping deposits in the fourth floor conference room, the violation of statutory and regulatory controls involved demands a severe penalty. By removing this activity from the casino cage the respondent removed it from a secure observable area to a far less secure location where surveillance by the Division and Commission, as well as by the appropriate security personnel for the casino, was either limited or nonexistent. Such an action frustrates the goal of the Casino Control Act to provide for internal systems which are accountable and secure and which afford the greatest protection for the public interest. Such conduct is an egregious breach of internal controls and security. It must be punished accordingly.

N.J.A.C. 19:45-1.25(e) requires that "cash equivalents... shall only be accepted at the cashiers' cage by general cashiers." The regulation proceeds to indicate that the validity of "such cash equivalent" shall be determined "Prior to acceptance of a cash equivalent." It can be contended that the acceptance of each cash equivalent outside the casino cage constitutes a separate violation. However, be that as it may, I am convinced that the nature of the activity by the respondent, the seriousness thereof, including consideration of the amount of money involved, requires that a \$50,000 penalty be imposed. It is inconceivable that anyone reasonably familiar with the nature of casino operations and the security requirements attendant thereto could possibly assume that it was appropriate to accept almost 3 million dollars in safekeeping deposits in an area which was not secured in conformance with regulations. This type of activity cannot be repeated. It should be noted that during the testimony of Mrs. DiGiacomo there was an indication of some concern regarding the possibility of a robbery at the casino cage. If anything, in light of her allegedly increased sensitivity to the possibility of some impending criminal activity, one would suspect that the safest place to conduct a 3 million dollar transaction would not be in an area which was not subject to video surveillance, double door entry systems, and the like. The acceptance of this money in the fourth floor conference room seems to have heightened the possibility that the transaction might be vulnerable to criminal activity, rather than lessened that possibility.

It is ORDERED that in connection with the acceptance of the Hong Kong group's funds in the fourth floor conference room that the corporate respondent pay a fine of \$50,000.

With respect to the improperly completed patron safekeeping deposit receipts, as noted previously, four are agreed to have been totally inaccurate. Each of these

improperly drawn, unreliable deposits is in and of itself a separate violation. N.J.A.C. 19:45-1.24h addresses the requirements for the preparation of a customer deposit form. Since each form records a separate transaction, including the nature of the amount for each individual transaction, the improper preparation of each form constitutes a separate violation. While there is no indication that the improper preparation here caused any loss of funds or any specific difficulty, it is certainly clear that the action created unreliable documentation concerning substantial transactions between the casino and its patrons. Therefore a \$1,000 fine for each offense appears reasonable. Thus, for the four clearly inaccurate documents, a fine of \$4,000 is imposed.

With respect to the 28 other safekeeping deposit receipts on which the box signifying a deposit of "cash" was checked, the respondent argues that there is no way to tell whether each of the individual receipts was improperly completed. It may be that some of them genuinely reflect a deposit which in fact consisted solely of cash. There is no way to be sure. Therefore, while I believe that the improper preparation of each document could constitute a separate violation if the evidence were sufficient to prove that each specific document was inaccurate, I prefer to view the preparation of these 28 as a single violation. In essence, the preparation of them, albeit perhaps some accurately, constituted the drawing up of a highly inaccurate and unreliable record of the transactions with the Hong Kong group. Since it is impossible to identify specifically any individual one of the 28 documents as accurate or inaccurate, I believe a single overall penalty should be imposed. Because of the seriousness of the inaccuracies, a \$28,000 penalty is imposed.

The acceptance of 22 cash equivalents without having verified them before acceptance constitutes 22 separate violations of the regulations. As noted above, permitting these instruments to be accepted and allowing patrons to proceed to gamble with funds represented by these checks was, particularly in the circumstances of this case, a serious lapse. Since the incident involving these cash equivalents was only a part of a larger violation of regulations manifested in the haphazard manner in which these documents were reviewed, I believe that a penalty of \$1,000 for each of these checks is appropriate.

In connection with the acceptance of 26 non-conforming checks, the acceptance of each constitutes a separate violation of the regulations. Each check represented a separate transaction between the casino and an individual gambler. While

again because of the pooling arrangement entered into by the Hong Kong group it is difficult to identify whether in fact each check was indeed representative of the funds of any particular individual, it is clear that at least on its face the check represented the agreement between the casino and the individual presenting the check that that money, whether that individual's or someone else's, was to be held for safekeeping by the casino. Since the checks were not in conformity with the requirements for cash equivalents, the casino undertook to accept documents which did not have the security of recognized cash equivalents such as travelers checks, cashiers checks, etc. This is a serious violation. Rather than receiving funds which were in essence cash, the casino permitted itself to accept promises of payment which were unsecured and were not the same as cash. I believe that a \$2,000 penalty is appropriate for each violation. Since there are 26 non-conforming checks, the respondent shall pay a total fine of \$52,000 in connection with the acceptance of these non-conforming checks.

The failure to maintain proper accounting records concerning the furnishing of complimentary services constitutes a single violation demanding severe action. While it is true that the casino did not attempt to hide this transaction, there can be no doubt that the complimentary services area is one in which proper accounting must be insisted upon. The very fact that it is necessary to file special reports concerning the provision of complimentary services on a regular and prompt basis with the Division and Commission shows the concern that the legislature had for the possibility of abuses in the provision of complimentary services. Given this heightened concern, which I believe is largely related to the law enforcement roles of the Division and Commission, I believe that a penalty of \$5,000 is appropriate. Of course, had there been no record of any kind provided to the Commission concerning the expenditure, the penalty would be much more severe.

The failure to file the necessary reports with the Division and Commission, while violative of separate sections of the regulations, are in my view one violation. In essence, the legislature insisted first of all that the provider of complimentary services maintain accurate, reliable and detailed records of its own concerning the services provided and then also advise the supervisory and law enforcement agencies directly involved with the casinos, that is, the Commission and Division, that the services have been provided. Although there were two agencies involved, it does not seem that the legislative goal involved is any different and therefore I FIND that only one violation occurred. While the violation is serious, since the Division was advised of the expenditure, albeit in an improper fashion, I believe that a \$2,000 penalty is sufficient.

In connection with the violations and penalties noted above, I have considered the legislative goals which the statute and regulations seek to carry out, the nature of the conduct of the respondent, the amount of money involved and the mitigating factors. In addition, I have utilized the analysis of the multi versus single violation question set forth in State v. Boardwalk Regency Corporation, CCC 7452-82 (CCC 6325-81 on remand), Final Decision of the Casino Control Commission, decided January 12, 1983; and the legal principles set forth in State v. Davis, 68 N.J. 69, 77-78 (1975); State v. Wright, 154 N.J. Super. 177, 178 (App. Div. 1977) and Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981).

It is ORDERED that the respondent Greate Bay shall pay to the Casino Control Commission the sum of \$163,000 as the total penalty for the violations described above.

PATRICIA DI GIACOMO

The individual respondent, Patricia Jean DiGiacomo, was the casino cage manager and was present in the fourth floor conference room during the transactions which are the subject of this hearing. Her testimony indicates that at the time that this incident occurred, she had been on the job as the casino cage manager for approximately three months, having started on May 2, 1982. Prior thereto, she was a day shift supervisor for one year and before that, for one year, served as an assistant shift supervisor. Prior to that time, she was a cashier at Caesar's Boardwalk Regency Hotel for six months. Her supervisor at the Sands was William Bagnell, the casino controller. According to Ms. DiGiacomo, there had been rumors off and on that groups of Arabs or Orientals would be coming to the casino on junkets, but all of these proved false. She learned of the presence of the Hong Kong group on August 15 at about 4:30 p.m. She was at that time preparing to leave for the day when she received a phone call and was told that the group was in the fourth floor conference room. She assumed that the group was a junket, although she later learned that it was not. She also assumed that the marketing department had instructed its representatives to inform the group that only cashiers checks, travelers checks and the like, could be accepted as cash equivalents. Ms. DiGiacomo did not testify that she had any communication with the marketing department either before the day of the incident or on August 15 to confirm her understanding that these instructions were indeed given to the Hong Kong group or any

other group. Of course, since the group was not a junket, the marketing department's role in connection with the group may have been limited anyway.

Ms. DiGiacomo was instructed to go to the fourth floor conference room by Paul Chandler. She testified that she was aware that the regulations did not contain anything which permitted cage transactions to occur outside the cage. She had never been asked to accept money outside the cage before.

Ms. DiGiacomo confirmed the stipulated facts in her testimony, stating that the scene in the conference room was "total mass confusion." Six representatives of the security department were present, including a person who she described as the head of security. This reinforced her impression that the arrangements for the use of the conference room and approval thereof had been prearranged.

In further describing the situation in the conference room, Ms. DiGiacomo explained that people were eating and playing ball and that no one spoke English except for Michael. The respondent was questioned as to how she and the cage personnel reacted when they saw the large group of non-English speaking people with whom they would have to deal. Her answer was that

I think we were shocked and kind of panicky that we had entered a room and found this — there was no interpreter there. We kept trying to communicate with the people and no one could speak English.

Ms. DiGiacomo confirmed that she did not prepare or review any of the safekeeping deposit receipts prepared by personnel under her supervision in the conference room. She described herself as "more of a manager of the department and I really do not become involved in the responsibilities of the supervisors and in these every day functions." She described her supervisors as very competent people who have been working for the casino for several years. She did acknowledge that had she been questioned about any problems, it would have been her responsibility to correct the problem or answer the question.

Having given careful consideration to Ms. DiGiacomo's role in this entire situation, I FIND that she was lax in performing the responsibilities of a supervisor of the cage in the situation which was presented to her. Without even considering the question

of whether she should have refused to allow persons under her supervision to accept safekeeping deposits outside of the cage itself, one can seriously question her judgment in permitting the entire situation in the fourth floor to continue when she and her personnel arrived and found the mass confusion, the total chaos which was presented. This is particularly so in light of the fact that the individuals with whom they were to engage in transactions did not speak English. The fact that someone came forth as an interpreter, while this was certainly a necessary aid in dealing with the non-English speaking persons, should have served as an additional indication that this entire transaction was such that it required careful and detailed supervision to assure that there would be no problems. Under the circumstances, where large sums of cash and checks were being presented by persons who were not able to communicate directly with the cage personnel and through a previously unknown and only partially identified interpreter, it would certainly seem that prudence and reasonable conduct necessitated that Ms. DiGiacomo become a more involved, "hands-on" supervisor. Recognizing that there is a degree of hindsight in all of this, I cannot overlook what appears to be a real lapse in judgment as to the cage manager's responsibilities.

Having said this, I believe that much of the fault for the situation lies not with Ms. DiGiacomo but with the corporate respondent. Given the fact that there had been rumors for sometime that groups of foreigners might be coming to the hotel with large sums of money, and that there was apparently a junket program, albeit a relatively new one, it would seem that some previous consideration should have been given by the corporate respondent to the procedures to be undertaken in handling large groups of non-English speaking gamblers. The situation presented here is one which certainly could not have been considered unique, since the very same group of gamblers had previously been at Playboy and had gambled in Las Vegas. One must suspect that the management of the casino had to have some understanding that the arrival of a large group of non-English speaking personnel might occur some day. There seems to have been a failure to prepare for such an eventuality and to properly instruct the casino personnel, particularly those directly involved in cage operations, in how, when and where to accomplish the various tasks assigned to them under such circumstances. It has only been since this incident that Greate Bay had undertaken to institute training programs and to make what they deemed to be necessary alterations to the cage area in order to accommodate such groups and to adequately train personnel in how to perform under these types of circumstances.

In view of the above, I believe that Ms. DiGiacomo's conduct does require some action. Because of her significant responsibilities as a casino key employee, in the delicate and crucial role of the cage manager, she must be held to a high standard of performance and to a high degree of knowledge of the regulations governing the functioning of her operation. Given her relative inexperience in the position, and considering the fact that this was admittedly the first such experience for the casino, I CONCLUDE that the recommendation of the Division that revocation not occur is entirely correct. In addition, I feel that no suspension of the casino key employee license is required.

I believe that in circumstances of this nature a fine generally would be appropriate. While it is true that in my view the corporate respondent bears the brunt of responsibility for this incident, obviously the individuals who actually act for that respondent must be accountable. In this case, having considered the nature of the incident, the circumstances surrounding it, the testimony of Ms. DiGiacomo, including her financial and family situation, and in consideration of her inexperience and what I consider to be a lack of clear direction from those in authority above her with respect to this type of situation, I CONCLUDE that any fine imposed should be suspended and that a reprimand should be issued. Therefore, it is ORDERED that the decision in this matter shall become a part of Ms. DiGiacomo's permanent record, both with the employer and with the Division and Commission. Any further violations of Commission regulations by this respondent, particularly those connected with accounting and credit matters, will subject the respondent to exposure for considerably more severe penalties.

#### CONCLUSION

For the reasons expressed above, it is ORDERED that the respondent Greate Bay shall pay a fine in the amount of \$163,000, and that the respondent DiGiacomo shall be reprimanded.

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 26, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 26, 1984  
DATE

Bernadette T. Frizer  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

- J-1 Stipulation of Facts
- J-2 Stipulated Joint Exhibits
- Exhibit A Greate Bay's job description for Casino Cage Manager
- Exhibit B Greate Bay's job description for Casino Controller
- Exhibit C Transcript of sworn interview of Patricia Jean DiGiacomo conducted on September 24, 1982, redacted by agreement of the parties from page 28, line 14 through page 33, line 10
- Exhibit D Two (2) page list of names with amounts presented by Hong Kong group to Greate Bay representing allocation of safekeeping deposits
- Exhibit E Copies of thirty-two (32) patron Safekeeping Files pertaining to the Hong Kong group
- Exhibit F The original thirty-two (32) manual Safekeeping Receipts pertaining to the Hong Kong group
- Exhibit G Copies of the forty-eight (48) checks presented by the Hong Kong group on August 15, 1982, as patron safekeeping deposits
- Exhibit H The original thirty-two (32) computer printed Safekeeping Deposit Receipts pertaining to the Hong Kong group
- Exhibit I Transcript of the sworn interview of Paul Chandler conducted on September 24, 1982, redacted by agreement of the parties from page 18, lines 4 through 8
- Exhibit J Transcript of sworn interview of Donna Averill Passarelli conducted on September 24, 1982, redacted by agreement of the parties from page 22, line 19 through page 23, line 4
- Exhibit K Copies of fourteen (14) casino checks verified by Greate Bay, including notations indicating the time of verification and who attested to the checks validity
- Exhibit L The initial computer printed safekeeping withdrawal checks issued to the members of the Hong Kong group on August 15, 1982
- Exhibit M Transcript of sworn interview of Jean DiMartino conducted on October 8, 1982, redacted by agreement of the parties from page 31, line 18 through page 33, line 24
- Exhibit N Copies of excerpts from "The Sands-Atlantic City Accounts Payable Policy" as revised on April 1, 1982
- Exhibit O Copy of Greate Bay's Requisition for Expenditure dated August 19, 1982, regarding the reimbursement of airfare for the Hong Kong group

- Exhibit P Copy of Greate Bay's check #32378, dated August 19, 1982, payable to Michael Tso in the amount of \$325,000 for reimbursement of airfare to the Hong Kong group
- Exhibit Q Copy of Greate Bay's Purchase Order No. 0942, dated September 9, 1982, pertaining to reimbursement of airfare to the Hong Kong group
- Exhibit R Copy of Quarterly Report of Greate Bay Hotel and Casino, Inc. for the quarter ended September 30, 1982
- Exhibit S Copy of excerpt from Greate Bay's "Purchase and Disbursement Summary Payee Check Register" for the month ending August 31, 1982
- Exhibit T Copy of report prepared by Robert Goldstein listing the names of the persons provided with complimentary airfare and an explanation for the accumulation of the costs of airfare reimbursement to the Hong Kong group
- Exhibit U Copy of "Statement Concerning Playboy Checks" dated August 18, 1982, prepared by Donna Averill Passarelli
- Exhibit V Transcript of sworn interview of William Bagnell conducted on September 24, 1982, redacted by agreement of the parties from page 22, line 10 through page 23, line 17
- Exhibit W Copy of Greate Bay's check #1811, dated August 24, 1982, payable to Playboy-Elsinore Associates in the amount of \$85,500
- J-3 Excerpts from Greate Bay's accounting and internal controls submission

On behalf of respondent, DiGiacomo:

P.J.D - 1 Monthly expense data

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STATE OF NEW JERSEY  
 CASINO CONTROL COMMISSION  
 OAL DOCKET NO.: CCC 05460-83  
 AGENCY DOCKET NO.: 83-17

STATE OF NEW JERSEY, DEPARTMENT )  
 OF LAW & PUBLIC SAFETY, DIVISION )  
 OF GAMING ENFORCEMENT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GREATE BAY HOTEL AND CASINO, INC. )  
 t/a SANDS HOTEL AND CASINO OF )  
 ATLANTIC CITY; PATRICIA JEAN )  
 DI GIACOMO; Casino Cage Manager; )  
 WILLIAM F. BAGNELL, Casino )  
 Controller, )  
 )  
 Respondents. )

Civil Action  
 STIPULATION OF FACTS

With 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 Kevin F. O'Toole, Deputy Attorney General, and Leonard C. Horn, Esquire, Attorney for Respondent, Greate Bay Hotel and Casino, Inc., and Nicholas F. Moles, Esquire, Attorney for Respondent, Patricia Jean DiGiacomo, the following facts have

412 been agreed upon and stipulated to as Findings of Fact:

1. Respondent, Greate Bay Hotel and Casino, Inc. (hereinafter called "Greate Bay"), t/a the Sands Hotel and Casino of Atlantic City (hereinafter called "the Sands"), is the holder of a Certificate of Operation effective August 13, 1980, at which time Greate Bay was the holder of a temporary casino permit. Greate Bay has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. On May 7, 1982, the Casino Control Commission (hereinafter called "the Commission") issued Greate Bay a plenary casino license, which was renewed May 7, 1983.

2. Respondent, Patricia Jean DiGiacomo, is the holder of a valid New Jersey casino key employee license, #00867-11, issued by the Casino Control Commission on September 17, 1980, pursuant to Section 89 of the Casino Control Act.

3. Patricia Jean DiGiacomo is now, and at all times referenced herein has been, employed by Respondent, Greate Bay Hotel and Casino, Inc., as its Casino Cage Manager. The duties of a Casino Cage Manager are set forth in a written job description maintained and controlled by Greate Bay and filed with the Casino Control Commission. Attached hereto and incorporated herein and marked as Exhibit A is a true copy of Greate Bay's job description for Casino Cage Manager.

4. Respondent, William F. Bagnell, is the holder of a valid New Jersey casino key employee license, #01096-11, issued by the Casino Control Commission on December 16, 1980, pursuant to Section 89 of the Casino Control Act.

5. William F. Bagnell is now, and at all times referenced herein has been, employed by Respondent, Greate Bay Hotel and Casino, Inc., as its Casino Controller. The duties of a Casino Controller are set forth in a written job description maintained and controlled by Greate Bay and filed with the Casino Control Commission. Attached hereto and incorporated herein and marked as Exhibit B is a true copy of Greate Bay's job description for Casino Controller.

6. According to Robert Goldstein, the Sands' Director of Casino Marketing, the arrival of the Hong Kong group at the Sands Hotel and Casino in Atlantic City was uncertain up until the time that they actually arrived on August 15, 1982. Greate Bay was aware that the Hong Kong group had originated in Las Vegas where they had patronized, among others, the Sands Hotel and Casino, Las Vegas, Nevada in early August, 1982. Greate Bay was also aware that the group had come to Atlantic City and that they were staying at the Playboy Hotel and Casino of Atlantic City.

7. On Saturday, August 14, 1982, Robert Goldstein received a phone call from one of the members of the Hong Kong group who indicated to Mr. Goldstein that the group would not be visiting the Sands, but rather they would be returning to Hong Kong.

8. On Sunday, August 15, 1982, Robert Goldstein received another phone call from one of the members of the Hong Kong group who informed Mr. Goldstein that the group had changed their plans and had decided to visit the Sands. This member of the Hong Kong group requested that Mr. Goldstein arrange for transportation of the group from Playboy to the Sands. Mr. Goldstein then made

arrangements for a bus to pick up and transport the group from Playboy to the Sands on the afternoon of August 15, 1982.

9. On August 15, 1982, Robert Goldstein, upon learning that the group intended to visit the Sands, contacted Lawrence Woo, junket representative, and requested that Mr. Woo greet the group upon their arrival at the Sands. Mr. Woo, in turn, requested that casino host Blanca Luberta assist him in greeting the group.

10. At approximately 4:30 p.m. on Sunday, August 15, 1982, the Hong Kong group arrived at the Sands Hotel and Casino in Atlantic City. The group consisted of approximately 80 persons who represented themselves to be citizens of Hong Kong. It was subsequently determined that the group was composed of thirty-two (32) players. These thirty-two (32) players were accompanied by their wives, and in some instances their children and other relatives. In addition to the thirty-two (32) players there were some non-playing members in the group.

11. Upon the group's arrival, since the group's rooms were not ready, they were travelling with their luggage, and they indicated they were hungry, the members of the group were escorted to a fourth floor conference room by casino host Blanca Luberta, along with one uniformed and two plain clothes security officers, and they were served refreshments.

12. Representatives of Greate Bay, including Robert Goldstein and Paul Chandler, casino credit manager, were aware that the Hong Kong group intended to place safekeeping funds on deposit for the purpose of engaging in gaming activity at Greate

Bay. It was anticipated that several million dollars in cash would be presented by the Hong Kong group. There was no advance indication, however, that the Hong Kong group would be presenting checks as well as cash for safekeeping deposit.

13. Shortly after the group's arrival on August 15, 1982, an interoffice call was received at the casino cage notifying the cage that the group had arrived. Patricia DiGiacomo then contacted Paul Chandler who confirmed the fact that the group had arrived and that they had been escorted to a fourth floor conference room.

14. Paul Chandler suggested to Patricia DiGiacomo that she go to the fourth floor conference room where the patrons had been escorted. Mr. Chandler advised Ms. DiGiacomo that, due to considerations of security, he thought it would not be practical to process safekeeping deposit transactions at the casino cage in view of the large number of patrons involved and the several million dollars in cash that Mr. Chandler understood the Hong Kong group to have. There was a concern that a group the size of the Hong Kong group might possibly disturb casino operations if it congregated at the casino cage. The casino was crowded because it was a Sunday during the busy summer season.

15. With the above information in mind, as well as the fact that Ms. DiGiacomo mistakenly understood that prior approval had been obtained for conducting the transaction in the fourth floor conference room, Ms. DiGiacomo instructed three (3) casino cage supervisors, Donna Averill Passarelli, Jean DiMartino, and Kathy Siegel, and three (3) casino cage cashiers, Joseph Long, Dorothea Massie, and Michael Mullen to accompany her to the fourth floor

conference room. It was anticipated that these cage personnel would be needed to prepare the necessary safekeeping deposit documentation and to count and strap a large sum of cash in a relatively short period of time. Ms. DiGiacomo also contacted security and obtained two security officers to escort her and the other cage personnel to the fourth floor conference room.

16. Ms. DiGiacomo and the cage personnel brought with them to the fourth floor conference room manual Safekeeping Deposit Receipts, patron Safekeeping Files, rubber bands, paper clips, money straps, and other supplies necessary to effectuate a safekeeping deposit transaction. Because cage personnel assumed that the group was only putting cash on safekeeping deposit, they did not bring a calculator to the fourth floor. A calculator is not necessary to count cash because cash is counted by separating it by denomination, strapping it in bundles of set amounts, and then counting the bundles. The forms and supplies that were transported to the fourth floor conference room were carried in a suitcase that is maintained and controlled by the Sands' casino cage department.

17. Patricia DiGiacomo, as Cage Manager, was the highest ranking casino cage representative of Greate Bay in the fourth floor conference room and she was in charge of supervising the business transactions between Greate Bay and the Hong Kong group. Although there had been previous rumors that large groups of players with substantial amounts of cash would visit the Sands, this Hong Kong group was the first group that actually arrived. At this time, Ms. DiGiacomo and the cage personnel under her supervision had little experience dealing with large groups or

with foreigners. Patricia DiGiacomo became casino cage manager for Greate Bay on May 2, 1982. On September 24, 1982, Ms. DiGiacomo was interviewed under oath concerning her role in the business transactions with the Hong Kong group on August 15, 1982. Attached hereto and incorporated herein and marked as Exhibit C is a true copy of the sworn interview of Patricia DiGiacomo.

18. The fourth floor conference room is a public meeting area located within Greate Bay's approved hotel as part of its indoor qualifying space. Since there are no special locks or man-trap doors at the entrance to the fourth floor conference room, two uniformed security guards were posted at the door to screen anyone who desired to enter. Since the fourth floor conference room is not a restricted area and does not contain any surveillance cameras, there were three uniformed security guards, two plain clothes security supervisors and the assistant director of security present in the conference room with the Hong Kong group.

19. When the cage personnel and their security escort entered the fourth floor conference room, according to Patricia DiGiacomo, the room was "bedlam, mass confusion". The room was filled with the 80 members of the group. The room was noisy because many members of the group were conversing in a foreign language, they were eating from buffet tables that had been set up, and some children were even playing ball. A nonplayer member of the group, whose first name was Michael, approached the cage personnel. Michael represented to the cage personnel that he

spoke limited English and would assist in facilitating the transactions between the Hong Kong group and Greate Bay. Michael was the only member of the group who indicated to representatives of Greate Bay that he spoke any English. The atmosphere in the conference room and the amount of money involved made the cage personnel nervous.

20. After arriving at the fourth floor conference room, the cage personnel performed various functions. The first order of business was to begin preparing the necessary documentation for a safekeeping deposit transaction. That documentation included preparation of a patron Safekeeping File and a manual Safekeeping Deposit Receipt for each patron who intended to gamble utilizing safekeeping funds.

21. While in the fourth floor conference room, the procedure utilized by Greate Bay's casino cage personnel and the interpreter named Michael to complete the necessary documentation was as follows: each Hong Kong patron was presented individually to the cage personnel, the interpreter named Michael identified the name of the patron, and the interpreter named Michael then indicated the amount of safekeeping funds to be deposited by that patron.

22. Prior to the completion of the necessary documentation, a member of the Hong Kong group who did not speak English presented to the cage personnel a list of oriental names with amounts recorded adjacent to thirty-two (32) of the names. This member of the Hong Kong group, through the interpreter named Michael, indicated to the cage personnel that the safekeeping

deposits to be presented to Greate Bay were to be distributed as indicated on the list that he had provided, and that the group members were in agreement with this allocation of the funds. The amounts recorded on the list adjacent to the thirty-two (32) names totalled \$2,950,000. Attached hereto and incorporated herein and marked as Exhibit D is a true copy of said list presented by the Hong Kong group to Greate Bay on August 15, 1982.

23. While in the fourth floor conference room, cage personnel completed preparation of thirty-two (32) patron Safekeeping Files for the thirty-two (32) members of the group who intended to gamble. While each Hong Kong patron was presented individually to the cage personnel, as described in paragraph 21, supra, the name of the patron was obtained and recorded, the patron's birth date information was obtained and recorded, and each patron signed their Safekeeping File for subsequent signature verification purposes. Attached hereto and incorporated herein and marked as Exhibit E are true copies of the thirty-two (32) patron Safekeeping Files pertaining to the Hong Kong group.

24. While in the fourth floor conference room, cage personnel also completed preparation of thirty-two (32) manual Safekeeping Deposit Receipts for the thirty-two (32) members of the group who intended to gamble. While each Hong Kong patron was being presented individually to the cage personnel, as described in paragraph 21, supra, the patron's name was printed on the Safekeeping Deposit Receipt, the date of deposit was

recorded, and the amount of safekeeping deposit was obtained and recorded both numerically and in written form. After each patron had signed their Safekeeping File, as described in paragraph 23, supra, each patron also signed Greate Bay's copy of their Safekeeping Deposit Receipt.

25. Safekeeping Deposit Receipts contain a box enabling a cage cashier to check the type of deposit received (cash, chips, cashier check, travelers check, or other). The cage personnel who prepared the thirty-two (32) manual Safekeeping Deposit Receipts pertaining to the Hong Kong group failed to specify the nature of the safekeeping deposit received on four (4) of the Safekeeping Deposit Receipts and they indicated that the nature of the safekeeping deposit received was "cash" on the other twenty-eight (28) Safekeeping Deposit Receipts. Attached hereto and incorporated herein and marked as Exhibit F are the original thirty-two (32) manual Safekeeping Deposit Receipts pertaining to the Hong Kong group.

26. Respondent, Greate Bay Hotel and Casino, Inc., states that the reason cage personnel recorded "cash" as the nature of the safekeeping deposits received on twenty-eight (28) of the Safekeeping Deposit Receipts was that at the time the documents were being prepared, as described in paragraphs 23 and 24, supra, it was represented by the interpreter named Michael that "cash" would be presented. While the documents were being prepared, no cash or checks had yet been given to any representative of Greate Bay, although cage personnel saw an attache case in the

possession of one of the members of the Hong Kong group that was filled with cash.

27. While in the fourth floor conference room, the cage personnel who prepared the Safekeeping Files for the Hong Kong group signed their name and their license number in the appropriate space. Also while in the fourth floor conference room, the cage personnel who prepared the manual Safekeeping Deposit Receipts signed their names on the lines marked "received by" and "certified by."

28. As the safekeeping deposit documentation was being completed in the fourth floor conference room, the member of the Hong Kong group who controlled the attache case presented to the cage personnel cash and checks representing the safekeeping deposit funds for the thirty-two (32) members of the Hong Kong group who intended to gamble at the Sands. This was the first time the Sands cage personnel became aware that the group desired to put checks on deposit. The cage personnel received and took physical possession of the cash while in the fourth floor conference room, where several of the cage personnel strapped, clipped, and then counted the cash presented by the Hong Kong group. Upon counting the cash it was determined to be \$311,350.

29. While in the fourth floor conference room, cage personnel also received and took physical possession of forty-eight (48) checks presented by the member of the Hong Kong group who controlled the group's attache case. The forty-eight (48) checks were presented to Jean DiMartino in a stack with an adding machine tape attached to the stack. The stack contained

several bundles, with each bundle paper-clipped in the middle. Patricia DiGiacomo did not inspect nor did she analyze the nature of the individual checks when they were presented to Jean DiMartino. Casino cage personnel, including Ms. DiGiacomo and Ms. DiMartino, assumed that the members of the group had been previously advised by the marketing department of the Sands' policy regarding the acceptance of checks. The policy of the Sands was to have its marketing department advise potential junket patrons that the Sands could only accept certain types of checks as cash equivalents and would only accept cash for safekeeping from foreigners because of the difficulty in verifying foreign checks or a foreigners credit. Cage personnel assumed that the group was a junket because of its size, the amount of money they understood the group to have, and their limited experience in dealing with large groups.

30. When the forty-eight (48) checks were presented to casino cage shift supervisor Jean DiMartino she proceeded to confirm the amount of funds represented by the checks. In order to confirm the amount of funds represented by the forty-eight (48) checks, Jean DiMartino called down to the cashiers' cage and instructed them to forward a calculator up to the fourth floor conference room. When the calculator arrived at the fourth floor conference room, Jean DiMartino confirmed that the total amount of checks presented by the Hong Kong group represented \$2,638,650. While confirming the total amount of funds represented by the checks, the member of the Hong Kong group who had presented the checks held onto the left side of each bundle

of checks as Ms. DiMartino flipped through the checks entering the amounts into her calculator. Ms. DiMartino did not inspect nor did she analyze the nature of the checks presented for the reason described in paragraph 29, supra. Attached hereto and incorporated herein and marked as Exhibit G are true copies of the forty-eight (48) checks presented by the Hong Kong group as patron safekeeping deposits.

31. Included among the forty-eight (48) checks received in the fourth floor conference room from the Hong Kong group were twenty-six (26) checks that were made payable to a third party or drawn on the accounts of various casinos. These checks totalled \$1,348,650. The remaining twenty-two (22) checks received by the cage personnel of Greate Bay from the Hong Kong group totalled \$1,290,000 and were bank checks drawn on the accounts of various banking institutions. It is agreed upon by the parties hereto that the twenty-six (26) checks made payable to a third party or drawn on the accounts of various casinos were not cash equivalents within the meaning of N.J.A.C. 19:45-1.1 and that the twenty-two (22) bank checks drawn on the accounts of various banking institutions were cash equivalents within the meaning of N.J.A.C. 19:45-1.1.

32. After receiving and taking possession of the \$311,350 in cash and the forty-eight (48) checks, cage personnel confirmed that the total safekeeping deposits presented by the Hong Kong group was \$2,950,000, as set forth in the list provided by the group (see Exhibit D). After the cage personnel reconciled the total amount of safekeeping deposit funds and agreed with the

members of the Hong Kong group that everything was in order, the interpreter named Michael inquired as to whether the foreign language would present a problem when the members of the group went to the gaming tables. Patricia DiGiacomo indicated to Michael that she would have index cards prepared for each Hong Kong patron with their account number which they could present at the gaming tables to assist the pit clerks. Cage personnel packed the cash, the checks, and the supporting documentation into Greate Bay's suitcase. The suitcase was then transported by Patricia DiGiacomo, Jean DiMartino, and a security escort consisting of 5 or 6 security guards, to the casino cage through a back of the house stairwell which enters the casino floor approximately 40 feet from the casino cage.

33. Upon returning to the cashiers' cage, Greate Bay's suitcase was unpacked within the Main Bank area. Patricia DiGiacomo instructed several Main Bank cashiers to recount and reverify the amount of cash received. At this time, several main bank cashiers restrictively endorsed the backs of the forty-eight (48) checks received from the Hong Kong group.

34. Also upon returning to the cashiers' cage from the fourth floor conference room, casino cage cashiers Rita Similides, Richard Lasasso, Gail Beloff, and Glen Moorer were given the manual Safekeeping Deposit Receipts prepared in the fourth floor conference room to enable them to input the data contained on the manual Safekeeping Deposit Receipts into Greate Bay's computer system. Inputting the safekeeping deposit data

into the computer system allows a patron to be issued a computer printed Safekeeping Withdrawal Check at the gaming tables.

35. The safekeeping deposit data pertaining to the thirty-two (32) members of the Hong Kong group who intended to gamble were inputted into Greate Bay's computer system beginning at 6:14 p.m. on August 15, 1982. Computer inputting of the data pertaining to the Hong Kong group was completed by 6:38 p.m. on August 15, 1982, with the exception of one patron, Chor Sze Shiu, whose safekeeping deposit data was inputted into the computer system at 8:38 p.m. on August 15, 1982. As each patron's safekeeping deposit data was entered into the computer by the cage cashiers a computerized Safekeeping Deposit Receipt was printed by the computer. Attached hereto and incorporated herein and marked as Exhibit H are the original thirty-two (32) computer printed Safekeeping Deposit Receipts pertaining to the Hong Kong group.

36. While the cage cashiers were inputting the data into Greate Bay's computer system, Patricia DiGiacomo called pit clerk shift supervisor Dolores Maltz to ask if index cards could be typed by pit clerks. Before any index cards could be prepared, the baccarat pit called the casino cage indicting that some of the Hong Kong patrons were already gambling using cash. Patricia DiGiacomo then decided to use a copy of the group's list of names and amounts (see Exhibit D) and to record the patron account numbers on said list. When this was done, a copy of the list with the account numbers was forwarded to the baccarat pit

clerk's stand in order to help facilitate any communication problems.

37. Shortly thereafter, Michael came up to the casino cage front window to inquire about the index cards. Patricia DiGiacomo informed Michael that the index cards were not going to be prepared since the pit clerks had been advised of the account numbers pertaining to each Hong Kong patron. Patricia DiGiacomo then handed to Michael the patron copies of the manual Safekeeping Deposit Receipts previously prepared in the fourth floor conference room. When the cage cashiers completed inputting the safekeeping information into Greate Bay's computer system, the patron copy of the computer printed Safekeeping Deposit Receipts were not given to the Hong Kong group because Michael had already received the manually prepared receipts.

38. Also upon returning to the cashiers' cage from the fourth floor conference room, Patricia DiGiacomo requested that Paul Chandler, credit manager, initial the forty-eight (48) checks received from the Hong Kong group. The Sands' policy at that time was to have all checks presented for safekeeping initialed by a credit executive prior to acceptance. Mr. Chandler initialed and placed his casino key employee license number, #57-11, in the upper right hand corner of each check. Mr. Chandler also placed the letters "SK", indicating safekeeping deposit, in the upper left hand corner of each check.

39. While initialling the forty-eight (48) checks received from the Hong Kong group on August 15, 1982, Paul Chandler realized that, in addition to receiving checks drawn on various

banking institutions, Greate Bay had received third party checks and checks that were drawn on the accounts of various casinos. Paul Chandler brought this information to the attention of Patricia DiGiacomo and Ms. DiGiacomo expressed her surprise at cage personnel having received third party and casino checks. Ms. DiGiacomo then asked Jean DiMartino if she was aware that there were third party and casino checks presented by the Hong Kong group. Ms. DiMartino responded that she was not aware of that fact either. When Paul Chandler initialed the checks at the cashier's cage, it marked the first time that any Sands' employee had realized the actual nature of the checks received from the Hong Kong group.

40. At this time, Patricia DiGiacomo and Paul Chandler decided to retain possession of the third-party and the casino checks rather than return them to the Hong Kong group. Respondent, Greate Bay Hotel and Casino, Inc., states that the reason the third party and the casino checks were not returned to the Hong Kong group was that since the money received from the group had been pooled and apportioned among the members of the group, Sands employees could not determine which safekeeping deposit accounts had been established using the checks made payable to third parties or the checks drawn on the accounts of other casinos. By this time, the group had left the fourth floor conference room.

41. Mr. Chandler also suggested at this time that casino cage personnel immediately contact the issuing casinos in order to determine that the casino checks had been validly issued to

the Hong Kong group. Attached hereto and incorporated herein and marked as Exhibit I is a true copy of the sworn interview of Paul Chandler conducted on September 24, 1982.

42. After Paul Chandler had initialed the forty-eight (48) checks and suggested that cage personnel attempt to verify the validity of the casino checks by calling the issuing casinos, Paul Chandler asked cage shift supervisors Kathy Siegel and Donna Averill Passarelli to begin this verification process. Attached hereto and incorporated herein and marked as Exhibit J is a true copy of the sworn interview of Donna Averill Passarelli conducted on September 24, 1982.

43. At 7:20 p.m. on August 15, 1982, casino cage shift supervisor Kathy Siegel contacted Kathy Davis, an employee of the Desert Inn and Country Club, Las Vegas, Nevada, and verified the validity of three (3) Desert Inn and Country Club checks received from the Hong Kong group. At 7:25 p.m. on August 15, 1982, casino cage shift supervisor Donna Averill Passarelli contacted Sherry Meenan, casino cage cashier at Playboy Hotel and Casino of Atlantic City, and verified the validity of nine (9) Playboy-Elsinore Associates Casino Cage Disbursement Account checks received from the Hong Kong group. At 9:25 a.m. on August 16, 1982, Donna Averill Passarelli contacted Hose Fernandez, an employee of the Desert Palace, Inc. DBA Caesars Palace, Las Vegas, Nevada and verified the validity of two (2) Caesars Palace checks received from the Hong Kong group. Attached hereto and incorporated herein and marked as Exhibit K are copies of the fourteen (14) casino checks verified by Greate

Bay, including notations indicating the time of verification and who attested to the checks validity.

44. On August 15, 1982, copies of the bank checks received from the Hong Kong group were forwarded to the Credit Department for verification. According to Jane Thompson, Credit Department supervisor, the checks drawn on various banking institutions were verified by contacting the respective banks on Monday, August 16, 1982. The banks were contacted in order to ascertain if any stop payment orders were outstanding on any of said checks. The banks were called by credit clerks under the supervision of Ms. Thompson. When the banks were contacted all of them, except three, stated that the checks did not have stop payments on them. Three banks refused to give out information over the phone and suggested that Ms. Thompson contact the bank's main offices located in Hong Kong. Ms. Thompson indicated that the main offices in Hong Kong were not contacted because of the large distance and the fact that the checks had been already accepted and deposited into the Sands' bank account.

45. The forty-eight (48) checks presented to Greate Bay by the Hong Kong group on Sunday, August 15, 1982, were deposited into Greate Bay's depository bank on Monday morning, August 16, 1982. All forty-eight (48) checks accepted by Greate Bay from the Hong Kong group subsequently cleared the banking system and were credited to the account of Greate Bay.

46. The thirty-two (32) members of the Hong Kong group who had placed safekeeping funds on deposit began withdrawing their safekeeping funds on Sunday, August 15, 1982 at 9:43 p.m. The

initial computer printed safekeeping withdrawal checks were issued at the baccarat pits to the thirty-two (32) players in the Hong Kong group between 9:43 p.m. and 11:54 p.m. Attached hereto and incorporated herein and marked as Exhibit L are the computer printed initial safekeeping withdrawal checks issued to the Hong Kong group on August 15, 1982.

47. The Hong Kong group gambled at the Sands Hotel and Casino on gaming dates August 15, 1982, August 16, 1982, and August 17, 1982. During the graveyard shift of gaming date August 17, 1982, Casino Cage Shift Supervisor, Jean DiMartino, became aware of the fact that the Hong Kong group would be settling their accounts when the casino closed. On the early morning of August 18, 1982 the members of the Hong Kong group went to the front windows of the cashiers' cage to settle their safekeeping deposit accounts and to exchange gaming chips that they had in their possession at that time. Assistant Cage Shift Supervisors Marie Duffy and Denise Galloway assisted Jean DiMartino in issuing cage disbursement checks to the members of the Hong Kong group refunding the outstanding balances in their safekeeping deposit accounts and exchanging gaming chips. On August 18, 1982, fifty (50) cage disbursement checks aggregating \$3,122,800 were issued to the members of the Hong Kong group. Attached hereto and incorporated herein and marked as Exhibit M is a true copy of the sworn interview of Jean DiMartino, Casino Cage Shift Supervisor, conducted on October 8, 1982.

48. During their three day stay at the Sands Hotel and Casino, the members of the Hong Kong group gambled primarily at

the game of baccarat. A review of the player rating forms for the thirty-two (32) members of the Hong Kong group who gambled utilizing the safekeeping deposit funds indicate that during their stay at the Sands, the group collectively won between \$400,000 and \$500,000 from the Sands.

49. Sometime prior to the Hong Kong group's departure from Greate Bay on August 18, 1982, a representative of the Hong Kong group requested from Robert Goldstein, Greate Bay's Director of Casino Marketing, reimbursement of airfare expenses for the Hong Kong group. Mr. Goldstein informed the representative of the Hong Kong group that Greate Bay would consider his request for airfare reimbursement and contact him at a later date.

50. Greate Bay Hotel and Casino, Inc. states that it processed the Hong Kong group's request for complimentary airfare reimbursement pursuant to internal policy procedures. These procedures call for a Requisition for Expenditure to be prepared and approved, a Purchase Order issued, and the disbursement of a check to the intended payee. Attached hereto and incorporated herein and marked as Exhibit N are true copies of excerpts from "The Sands-Atlantic City Accounts Payable Policy" as revised on April 1, 1982.

51. On August 19, 1982, Robert Goldstein prepared a Requisition for Expenditure in the amount of \$325,000 for reimbursement of airfare expenses for the Hong Kong group. Mr. Goldstein requested that the reimbursement check be made payable to Michael Tso, a junket representative of Greate Bay located in Hong Kong. On August 19, 1982, the Requisition for Expenditure

requested by Robert Goldstein was approved by James Tuthill, Executive Vice President, and William Weidner, President and Chief Operating Officer. Attached hereto and incorporated herein and marked as Exhibit O is a true copy of the Requisition for Expenditure regarding the reimbursement of airfare for the Hong Kong group.

52. On August 19, 1982, Greate Bay Hotel and Casino, Inc. issued check #32378 payable to Michael Tso in the amount of \$325,000 from their main operating account at the Atlantic National Bank, Atlantic City, New Jersey. Upon receipt of said check, Michael Tso endorsed the check and submitted it to Mr. Kam Yiu Lau who endorsed the check on behalf of Excellent Travel Service Co., Hong Kong. Attached hereto and incorporated herein and marked as Exhibit P is a true copy of Greate Bay Hotel and Casino, Inc. check #32378.

53. On or about September 9, 1982, Greate Bay Hotel and Casino, Inc. prepared Purchase Order No. 0942 in the amount of \$325,000 for one check payable to Michael Tso for airfare for the Hong Kong group. Attached hereto and incorporated herein and marked as Exhibit Q is a true copy of Greate Bay Hotel and Casino, Inc. Purchase Order No. 0942.

54. Respondent, Greate Bay Hotel and Casino, Inc., failed to report said \$325,000 complimentary travel expenses provided to the Hong Kong group in both its daily Complimentary Service Reports for August, 1982 and its quarterly Complimentary Services Report dated September 30, 1982 filed with the Casino Control Commission. Attached hereto and incorporated herein and marked

as Exhibit R is a true copy of the Quarterly Report of Greate Bay Hotel and Casino, Inc. for the quarter ended September 30, 1982.

55. Greate Bay Hotel and Casino, Inc. did report the \$325,000 check disbursed to Michael Tso on Greate Bay's Purchase and Disbursement Summary Payee Check Register filed with the Casino Control Commission for the month ending August 31, 1982. Attached hereto and incorporated herein and marked as Exhibit S is a true copy of an excerpt from Greate Bay's "Purchase and Disbursement Summary Payee Check Register" for the month ending August 31, 1982.

56. At the request of agent John O'Brien of the Division of Gaming Enforcement, Robert Goldstein was asked to provide any records supporting the accumulation of the costs of the airfare reimbursement and the number of persons provided with the complimentary airfare expenses. Attached hereto and incorporated herein and marked as Exhibit T is a true copy of a report prepared by Robert Goldstein at the request of agent John O'Brien listing the names of the persons provided with complimentary airfare and an explanation for the accumulation of the costs of said complimentary airfare expenses.

57. While the Hong Kong group was still at the Sands, Joanne Rogers, Casino Cage Manager at Playboy Hotel and Casino, contacted the casino cage at the Sands to inform them that Playboy had called its depository bank and requested that a stop payment order be issued on Playboy check #0352 in the amount of \$85,500 payable to Kam Yiu Lau. Kam Yiu Lau had previously presented Playboy check #0352 to Greate Bay on August 15, 1982 as

a safekeeping deposit. Greate Bay had accepted Playboy check #0352 from Kam Yiu Lau and deposited said check in their depository bank on Monday, August 16, 1982. Donna Averill Passarelli, Casino Cage Shift Supervisor, prepared an internal memorandum for Casino Controller William Bagnell titled "Statement Concerning Playboy Checks" which describes the communications between the Sands' casino cage department and Playboy's casino cage department. Attached hereto and incorporated herein and marked as Exhibit U is a true copy of the "Statement Concerning Playboy Checks" prepared by Donna Averill Passarelli.

58. Upon receiving the internal memorandum titled "Statement Concerning Playboy Checks," William Bagnell contacted Playboy and confirmed the information that Kam Yiu Lau had been overpaid \$10,000 when the Hong Kong group settled their accounts at Playboy on August 15, 1982. Greate Bay then notified Kam Yiu Lau, through the interpreter named Michael, that the over payment situation with Playboy had to be rectified before Greate Bay would release any funds to Kam Yiu Lau. Attached hereto and incorporated herein and marked as Exhibit V is a true copy of the sworn interview of William Bagnell conducted on September 24, 1982.

59. At the request of Playboy Hotel and Casino, Kam Yiu Lau gave to the cashier's cage at Greate Bay \$85,500 in cash and instructed Greate Bay to return Playboy check #0352 to Playboy when said check returned uncollected from Greate Bay's depository bank. Kam Yiu Lau received a receipt from the cashier's cage at

Greate Bay for the \$85,500 in cash. Kam Yiu Lau then brought his receipt to the cashier's cage at Playboy and Playboy exchanged the receipt for \$75,500 in cash plus a letter signed by Kam Yiu Lau stating that Playboy check #0352 was to be returned to Playboy.

60. After the Hong Kong group had departed from Greate Bay, Joanne Rogers received information from Playboy's depository bank that Playboy check #0352 had in fact been paid on August 17, 1982. Consequently, Playboy's stop payment order on Playboy check #0352 was ineffective because said check had already cleared the banking system and had been credited to Greate Bay's account.

61. On or about August 24, 1982, Joanne Rogers presented to the cashier's cage at Greate Bay Kam Yiu Lau's receipt for the \$85,500 he had previously given to the Sands in cash. Ms. Rogers also presented to Greate Bay the letter signed by Kam Yiu Lau authorizing the Sands to return check #0352 to Playboy. Since Playboy check #0352 had already cleared and was credited to Greate Bay's account at their depository bank, Greate Bay issued check #1811 in the amount of \$85,500 payable to the order of Playboy-Elsinore Associates and gave said check to Joanne Rogers. Attached hereto and incorporated herein and marked as Exhibit W is a true copy of check #1811, dated August 24, 1982, issued by Greate Bay to Playboy-Elsinore Associates.

62. On August 18, 1982, the Division of Gaming Enforcement received information that a large group of orientals had patronized Greate Bay Hotel and Casino and were about to depart

from Greate Bay with a substantial quantity of funds. In the course of verifying this information on August 18, 1982, the Division learned from Greate Bay that a group of orientals had presented to Greate Bay various checks. Copies of the checks were obtained from Greate Bay cage personnel and it was observed that some of the checks were drawn on Playboy-Elsinore Associates Casino Cage Disbursement Account. The Division then initiated an investigation into the activities of the oriental group at both Playboy and Greate Bay.

63. Respondent, Greate Bay Hotel and Casino, Inc., has instructed its casino cage employees to not prepare any safekeeping deposit documents or any other casino cage documents in a location other than the casino cage.

64. Respondent, Greate Bay Hotel and Casino, Inc., has installed booths appurtenant to the casino cage to enhance Greate Bay's ability to provide a secure private area for the conduct of cage transactions involving large sums of money. At the time of the Hong Kong group's visit to Greate Bay in August, 1982, Greate Bay did not have said booths appurtenant to its casino cage.

65. Respondent, Greate Bay Hotel and Casino, Inc., has improved its internal procedures regarding communication between Greate Bay's casino cage department and Greate Bay's casino marketing department to insure that the casino cage department is given as much advance notice as possible of the expected arrival of any large groups of patrons so that casino cage employees may properly prepare for the groups arrival, including arranging for any necessary interpreters when a group consists of foreigners.

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Patricia Di Giacomo  
PATRICIA DI GIACOMO  
Respondent

(0/13)

## TABLE OF EXHIBITS

- Exhibit A - Greate Bay's job description for Casino Cage Manager.
- Exhibit B - Greate Bay's job description for Casino Controller.
- Exhibit C - Transcript of sworn interview of Patricia Jean DiGiacomo conducted on September 24, 1982, redacted by agreement of the parties from page 28, line 14 through page 33, line 10.
- Exhibit D - Two (2) page list of names with amounts presented by Hong Kong group to Greate Bay representing allocation of safekeeping deposits.
- Exhibit E - Copies of thirty-two (32) patron Safekeeping Files pertaining to the Hong Kong group.
- Exhibit F - The original thirty-two (32) manual Safekeeping Deposit Receipts pertaining to the Hong Kong group.
- Exhibit G - Copies of the forty-eight (48) checks presented by the Hong Kong group on August 15, 1982 as patron safekeeping deposits.
- Exhibit H - The original thirty-two (32) computer printed Safekeeping Deposit Receipts pertaining to the Hong Kong group.
- Exhibit I - Transcript of the sworn interview of Paul Chandler conducted on September 24, 1982, redacted by agreement of the parties from page 18, lines 4 through 8.
- Exhibit J - Transcript of sworn interview of Donna Averill Passarelli conducted on September 24, 1982, redacted by agreement of the parties from page 22, line 19 through page 23, line 4.
- Exhibit K - Copies of fourteen (14) casino checks verified by Greate Bay, including notations indicating the time of verification and who attested to the checks validity.
- Exhibit L - The initial computer printed safekeeping withdrawal checks issued to the members of the Hong Kong group on August 15, 1982.
- Exhibit M - Transcript of sworn interview of Jean DiMartino conducted on October 8, 1982, redacted by agreement of the parties from page 31, line 18 through page 33, line 24.

- Exhibit N - Copies of excerpts from "The Sands-Atlantic City Accounts Payable Policy" as revised on April 1, 1982.
- Exhibit O - Copy of Greate Bay's Requisition for Expenditure dated August 19, 1982 regarding the reimbursement of airfare for the Hong Kong group.
- Exhibit P - Copy of Greate Bay's check #32378, dated August 19, 1982, payable to Michael Tso in the amount of \$325,000 for reimbursement of airfare to the Hong Kong group.
- Exhibit Q - Copy of Greate Bay's Purchase Order No. 0942 dated September 9, 1982 pertaining to reimbursement of airfare to the Hong Kong group.
- Exhibit R - Copy of Quarterly Report of Greate Bay Hotel and Casino, Inc. for the quarter ended September 30, 1982.
- Exhibit S - Copy of excerpt from Greate Bay's "Purchase and Disbursement Summary Payee Check Register" for the month ending August 31, 1982.
- Exhibit T - Copy of report prepared by Robert Goldstein listing the names of the persons provided with complimentary airfare and an explanation for the accumulation of the costs of airfare reimbursement to the Hong Kong group.
- Exhibit U - Copy of "Statement Concerning Playboy Checks" dated August 18, 1982 prepared by Donna Averill Passarelli.
- Exhibit V - Transcript of sworn interview of William Bagnell conducted on September 24, 1982, redacted by agreement of the parties from page 22, line 10 through page 23, line 17.
- Exhibit W - Copy of Greate Bay's check #1811, dated August 24, 1982, payable to Playboy-Elsinore Associates in the amount of \$85,500.

(R/11)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-49  
REGISTRATION NO. 47168-40  
OAL DOCKET NO. CCC 2545-84

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

Complainant, :

V. :

FINAL ORDER

CARLOS AUGUSTO HINCAPIE, a/k/a  
CARLOS A. PINEDA,

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 10, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of December 12, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 27th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement filed against the respondent be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2545-84

AGENCY DKT. NO. 84-49

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

Petitioner,

v.

**CARLOS AUGUSTO HINCAPIE, A/K/A**

**CARLOS A. PINEDA,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, on behalf of the petitioner  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Carlos Augusto Pineda,** respondent, pro se

**Henry C. Willett,** interpreter

Record Closed: August 31, 1984

Decided: October 9, 1984

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

This matter concerns the complaint of the Division of Gaming Enforcement (hereinafter referred to as "Division") filed with the Casino Control Commission on February 17, 1984, seeking the revocation of the respondent's casino hotel employee registration pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The respondent stated that his name is Carlos Augusto Pineda and that the name "Hincapie" is his mother's maiden name.

A prehearing conference was held on May 23, 1984, and at that time Marguerita Diaz, an employee of the Office of Administrative Law, acted as the interpreter. At the prehearing conference, the parties agreed that the issues in this matter are:

- (a) Whether the respondent is qualified to be registered as a casino hotel employee.
- (b) Whether the respondent has overstayed his tourist's visa.
- (c) Whether the respondent has any legal authorization to stay in this country.
- (d) Whether there is a proceeding pending for the deportation of the respondent.

During the prehearing conference, the Division was represented by Deputy Attorney General William Walsh. After the respondent indicated that he was married to a United States citizen and that he has legal authorization to work in the United States, Mr. Walsh advised the respondent to send documents establishing those facts to his office. After he reviewed the documents, Mr. Walsh stated that he would advise the respondent whether or not the Division would withdraw its complaint. By letter dated July 18, 1984, the respondent was informed that the Division would proceed with the hearing in the matter.

At the hearing held on August 10, 1984, it was apparent that there was some confusion on the part of the respondent as to the significance of the documents requested by Mr. Walsh which the respondent had provided, and I attempted to determine whether or not the respondent needed additional time to prepare his case. Mr. Pineda stated that the facts were before me; however, he was reluctant to say that he submitted everything pertinent to his case. Therefore, I kept the record open until August 31, 1984, in order to give Mr. Pineda time within which to submit additional information after he had the opportunity to consider the matter and/or consult with an attorney. Mr. Pineda did not submit any additional material and the record closed on August 31, 1984.

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

- (1) Mr. Pineda is a citizen of Colombia, South America, and he entered the United States at Miami, Florida, on or about January 14, 1983, with a tourist visa that expired on January 20, 1983 (P-2).
- (2) Since Mr. Pineda liked this country and felt that he had an opportunity to find work here, he remained after the expiration of his visa.
- (3) Sometime in February 1983, Mr. Pineda went to the Social Security Office in Miami, Florida, and obtained a Social Security card. He did not pay any money for this card. Thereafter, Mr. Pineda moved to Atlantic City, New Jersey.
- (4) Mr. Pineda married Carol Ann Austin in Atlantic City, New Jersey, on November 25, 1983 (R-1). Ms. Austin is a natural born citizen of the United States (R-1).
- (5) On or about November 30, 1983, the respondent was arrested by the United States Immigration and Naturalization Service and was charged with overstaying his tourist visa, a violation of Section 241(a)(2) of the Immigration and Nationality Act (P-1, P-2).
- (6) In December 1983, the respondent and his wife consulted an attorney regarding the preparation of an application for permanent status for the respondent. The application was filed on April 25, 1984 (P-3).
- (7) On May 25, 1984, the application for permanent status was approved, and since that date, the respondent has been legally permitted to work in this country (P-3).
- (8) At the present time, there is an ongoing investigation by the United States Immigration and Naturalization Service to determine whether or not the respondent's marriage was a fraud.

- (9) Mr. Pineda has been employed by the Golden Nugget Casino and Hotel since May 1983.
- (10) In his letter dated March 23, 1984, Joseph Pizzino, assistant executive steward at the Golden Nugget Casino and Hotel, stated that the respondent's work performance was noteworthy and that he is an industrious, thorough, accurate and conscientious worker (R-2).

In his own defense, Mr. Pineda admitted that he illegally stayed in this country after the expiration of his tourist visa; however, he alleged that until he was arrested he was not aware that he could not legally work in this country. Mr. Pineda stated that he had no difficulty obtaining a Social Security card or a registration from the Casino Control Commission and that no one told him that he could not work in this country without federal authorization. Although Mr. Pineda's statements in this regard appear questionable, I cannot ignore the fact that the respondent was able to obtain a casino registration and that there has been no allegation of any misrepresentation on his application for registration. Nor was any evidence presented to dispute his testimony on how he received a Social Security card. Therefore, giving the respondent the benefit of the doubt, I FIND that, prior to his arrest, the respondent was not fully aware of what he was not allowed to do in this country.

Mr. Pineda testified that he met his wife at a party and that after their marriage they lived together for awhile in Atlantic City. Mr. Pineda candidly admitted that a reason for his marriage was his desire to stay in this country. While they were together, the respondent's wife was working in Atlantic City and she was going to school for bartending and blackjack in the evenings. The respondent's wife went periodically to Camden to visit her children, ages seven and ten years old. Mr. Pineda could not recall the names of the children and he never met them because they resided with their grandparents. After Mr. Pineda and his wife separated in May 1984, he moved to his current residence on Georgia Avenue in Atlantic City. Mr. Pineda did not know the current address of his wife but stated that she worked at the Roy Rogers Restaurant in Atlantic City.

On cross-examination, Mr. Pineda denied that he had paid his wife any money to marry him so that he could stay in this country.

Daniel R. Clark, a criminal investigator employed by the United States Immigration and Naturalization Service, testified that he was assigned to investigate the possibility that an illegal alien was living at a residence owned by Mr. & Mrs. Gonzales in Atlantic City. Mr. Clark determined that the respondent was living in a single room on the second floor of the Gonzales' house, and on November 30, 1983, at approximately 8:00 a.m., Mr. Clark went to the respondent's room and arrested him for illegally staying in this country after his visa expired. At the time of his arrest, Mr. Pineda stated that he was married to a United States citizen; however, his wife was not present in his room and Mr. Clark saw nothing in the room to indicate that she lived there. According to Mr. Clark, the fact that Mr. Pineda was married to a United States citizen was not sufficient in itself to allow him to remain and/or work in this country.

Mr. Clark obtained a copy of the respondent's marriage application, which listed a Newtonville, New Jersey address for Carol Ann Austin, and when he went to this address on December 1, 1983, Mr. Clark was told by the sister of Carol Ann Austin that their parents owned the house, that Carol Ann Austin lived there and worked at Caesars Casino and Hotel in Atlantic City. The sister stated that Carol Ann Austin was not married and that she did not know the respondent. Mr. Clark then went to the welfare office in Newtonville, and he was informed that Carol Ann Austin had been receiving welfare benefits from that office since June 1983 and that their records indicated that she was unemployed and not married. These records also indicated that Carol Ann Austin had two children. Mr. Clark informed the welfare office that Carol Ann Austin was married and later sent the office a copy of the marriage certificate. Carol Ann Austin's welfare benefits were terminated on February 1, 1984, because she gave incorrect information to the welfare office.

On December 8, 1983, Mr. Clark went to the WIN office in Atlantic City and was told that Carol Ann Austin was registered as a single person and was receiving WIN funds to go to a casino school pursuant to a training program for unemployed welfare recipients.

I FIND that Mr. Clark was a credible witness, and by his testimony he showed that his office has reason to question the validity of the respondent's marriage. However, I FIND that insufficient facts were presented in this matter to make any determination as to whether or not the respondent's marriage was a fraud, and that the validity of the

marriage is not an issue in this matter. I recognize that currently Mr. Pineda has a permanent status authorization and that unless this authorization is revoked by a federal court determination, Mr. Pineda can remain and work in this country.

In his closing, Mr. Mountford argued that the respondent was not qualified for registration because he was employed by the casino industry while he was not legally permitted to work in this country and further, that this fact makes his continued registration inimical to the policies of the Casino Control Act. Mr. Pineda stated that he could not understand why the Casino Control Commission was considering revoking his registration since he is now allowed to work in this country.

There is no question that Mr. Pineda worked for a casino from May 1983 through May 1984 and that for that one-year period he was not legally permitted to work in this country. However, based on the facts, I CONCLUDE that Mr. Pineda's continued registration is not currently inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-16c. At the present time, there is no federal prohibition against Mr. Pineda's having a casino industry job, and Mr. Pineda's prior action is not so grievous as to create a permanent impediment against his holding a casino registration.

Therefore, I ORDER that the casino hotel employee registration of Carlos Augusto Hincapie, a/k/a Carlos A. Pineda, not be REVOKED.

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

OAL DKT. NO. CCC 2545-84

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

October 9, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-10-84  
DATE

Michael Lomanta  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 12 1984  
DATE

Ronald J. Parker/phb  
OFFICE OF ADMINISTRATIVE LAW

bc

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

**P-1 Record of Deportable Alien Report prepared by Daniel R. Clark, dated November 30, 1983**

**P-2 Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien, dated November 30, 1983**

**P-3 Notice of Approval of Relative Immigration Visa Petition, dated May 30, 1984**

**FOR THE RESPONDENT:**

**R-1 Record of marriage between Carlos A. Pineda H. and Carol Ann Austin and copy of the birth certificate of Carol Ann Austin**

**R-2 Letter from Joseph Pizzano, Assistant Executive Steward of Golden Nugget Casino and Hotel, dated March 23, 1984**

WITNESSES

**FOR THE PETITIONER:**

**Daniel R. Clark**

**FOR THE RESPONDENT:**

**Carlos Augusto Pineda**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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IN THE MATTER OF THE PETITION :  
OF INTERNATIONAL GAMING :  
CONSULTANTS FOR A DECLARATORY : ORDER  
RULING PURSUANT TO N.J.S.A. :  
52:14B-8 AND N.J.A.C. 19:42-4.1 :

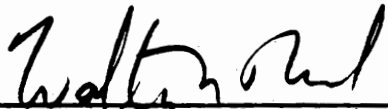
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This matter having been opened to the Casino Control Commission by International Gaming Consultants' petition requesting a declaratory ruling approving the method of funding the prize package for an entry fee baccarat tournament; and the baccarat tournament's prize package to be funded exclusively by the entry fees; 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 September 26, 1984, to deny the relief requested in International Gaming Consultants' petition,

IT IS on this 9th day of November 1984, ORDERED that the petition of International Gaming Consultants requesting a declaratory ruling approving the method of funding the prize package for an entry fee baccarat tournament, be and hereby is denied; and

IT IS FURTHER ORDERED that copies of this Order be served upon International Gaming Consultants and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

  
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Walter N. Read, Chairman

Dated: November 9, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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IN THE MATTER OF THE PETITION OF :  
INTERNATIONAL GAMING CONSULTANTS :  
FOR A DECLARATORY RULING PURSUANT :  
TO N.J.S.A. 52:14B-8 AND N.J.A.C. :  
19:42-4.1 :

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OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN  
CARL ZEITZ, VICE-CHAIRMAN  
JOEL R. JACOBSON, COMMISSIONER  
E. KENNETH BURDGE, COMMISSIONER  
DON M. THOMAS, COMMISSIONER

APPEARANCES:

For International Gaming Consultants:

Nicholas Casiello, Jr., Esquire  
Horn, Kaplan, Goldberg, Gorny & Daniels

For the Division of Gaming Enforcement:

Katherine A. Smith, Deputy Attorney General

For the Casino Control Commission:

Patricia M. Kerins, Senior Assistant Counsel  
Sonia G. Martinez, Assistant Counsel

## I. INTRODUCTION AND PROCEDURAL HISTORY

On April 19, 1984, petitioner, International Gaming Consultants (IGC), filed a petition (amended September 6, 1984) with the Casino Control Commission (Commission) seeking approval of the method of funding the prize package for a baccarat tournament.<sup>1</sup> As described in the petitions, the tournament's prize package was to be funded exclusively by the entry fees and a maximum of 100 persons could participate. Each participant was to pay a \$10,000 entry fee. The entry fees collected would be placed into a fund which would constitute the prize package. Since the prize package would be funded exclusively by entry fees, the entire sum of entry fees would in turn be paid out as prizes. The prize structure called for an award of 50% of the prize package for the champion, 10% for the runner-up and 4% for each of the ten finalists.

The petitioner argued that the proposed baccarat tournament is a variation or composite of the authorized game of baccarat and thus permissible under N.J.S.A. 5:12-5. The

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1. Throughout this opinion the term baccarat refers to the game of baccarat punto banco. N.J.A.C. 19:47-3.1 et seq. New Jersey regulations also provide rules for baccarat chemin de fer although this game has not been played in any New Jersey casino. See, N.J.A.C. 19:47-4.1 et seq.

petitioner also stated that the tournament guidelines<sup>2</sup> did not place restrictions on the use of entry fees and that in IGP-East v. Division of Gaming Enforcement, 182 N.J. Super. 562 (App. Div. 1982) [hereinafter cited as IGP-East], the Court affirmed the authority of the Commission to permit the charging of an entry fee in order to participate in a casino gaming tournament.

The Division of Gaming Enforcement (Division), by letters dated August 7, 1984, September 11, 1984, and September 21, 1984, did not interpose an objection to the proposed tournament. The Division agreed with the petitioner that tournament guidelines did not preclude the use of entry fees to fund the prize. The Division then asserted its position that tournament gaming which involves the payment of an entry fee is not unlawful. See generally, IGP-East, supra at 567.

## II. DISCUSSION

New Jersey has placed a constitutional and statutory limitation on the conduct of casino gaming in this state. The

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2. The tournament guidelines are entitled General Tournament Parameters.

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. Section 100(a) 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. 5:12-100(a), emphasis supplied].

An "authorized game" is defined in section 5 of the Act as:

Roulette, baccarat, blackjack, craps, big six wheel, slot machines, 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 legally conducted by a casino in New Jersey. First, the game may be legally conducted in a casino if it is one of the six enumerated authorized games of roulette, baccarat, blackjack, craps, big six wheel or slot machines and if it is offered 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, 168-169 (1982). Second, the game may be conducted in a casino if the Commission, within its discretion, determines that a proposed game is a variation or composite of one of the six authorized games, and if the Commission takes the following significant steps. First, the Commission must find the variation or composite of the game suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission deems appropriate.<sup>3</sup> N.J.S.A. 5:12-5. Second, the Commission would have to adopt various new rules including rules to govern the conduct of the new game. See, N.J.S.A. 5:12-100(a), 100(e), and 70(f).

If the Commission finds a game to be a variation or composite of one of the six enumerated games and to be suitable for use in a casino, new rules are required before that game can be generally offered in the casinos. N.J.S.A. 5:12-100(a). The Act provides that "[a]ll gaming shall be conducted according to rules promulgated by the commission." N.J.S.A. 5:12-100(e). In addition, the Commission is mandated under section 70(f) of the Act to enact specific regulations "[d]efining and limiting the areas of operation, the rules of authorized games, odds and

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3. The Commission is presently conducting an experimental period for tournament games. Each proposed tournament is reviewed by the Commission for suitability for casino use during this experimental period.

devices permitted, and the method of operation of such games and devices." N.J.S.A. 5:12-70(f). The Commission has satisfied this statutory requirement only as to the six enumerated games currently authorized for play in New Jersey casinos through the promulgation and adoption of appropriate regulations. See, N.J.A.C. 19:47-1.1 et seq. Thus, the Commission does not currently have any rules pursuant to section 70(f) and 100(e) of the Act which would authorize or regulate any tournament game.

The task of drafting rules to govern tournament games is complicated by the fact that tournaments involve elements which are not ordinarily encountered in the six designated games in section 5 of the Act. Such elements include the "buy-in" requirement (that is, the obligation to purchase a certain amount of special chips at the start of each round of play), the elimination rounds of tournament play, the award of prizes based upon competitive standing, and, in some cases, the payment of an entry fee. Therefore, the Commission must utilize the experimental period to develop information regarding not only the suitability of tournament games for casino use but also the necessary controls, limitations and procedures to be incorporated in the rules for tournament gaming.

As to whether a game is a variation or composite of the six listed games, the Act neither defines these terms nor sets any explicit standards for their application. Moreover, the

Commission has never issued a blanket authorization for tournaments merely because they are based on any of the six enumerated games. Thus, as noted earlier, each proposed tournament must be submitted for review and approval by the Commission on a case-by-case basis. To aid the Commission in its review of a proposed tournament, the Commission staff prepared tournament guidelines, which simply outline various factors the petitioner must address and the Commission must consider in regard to the proposed tournament. These factors include: internal controls, equipment, modification to the rules of the underlying or basic game, and advertising. See, N.J.S.A. 5:12-70(f). The outline helps the Commission determine if the proposed game may be properly characterized as a variation or composite of an authorized game. It also aids the Commission in its review of the suitability of the proposed game for casino use and in establishing the appropriate terms and conditions for the trial period. See, N.J.S.A. 5:12-5. Thus, the "guidelines" were established to help the petitioner submit a complete proposal of the game. While the guidelines implicitly recognize that entry fees are not per se

prohibited,<sup>4</sup> they do not purport to resolve any or all issues raised by any particular entry fee scheme. The guidelines are neither statutes nor regulations. They do not set out what activities will be allowed or proscribed. Therefore, the guidelines do not restrict the Commission, as the petitioner has implied, from deciding whether the proposed baccarat tournament, with its use of a \$10,000.00 entry fee per person used exclusively to fund the prize package, can be properly characterized as a variation or composite of an authorized game pursuant to N.J.S.A. 5:12-5. In fact, as stated in the tournament guidelines, "conduct of the tournament is subject to the approval of the New Jersey Casino Control Commission." See, N.J.S.A. 5:12-5 and -100(e).

Whether a proposed tournament constitutes a variation or composite of an authorized game or is suitable for casino use or whether a tournament should be permitted in a casino as a matter of public policy as expressed in the Act are matters left to the discretion of the Commission. See generally, IGP-East, supra at 562-563, 566-567. The Appellate Division's holding in IGP-East

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4. In the internal controls portion of the outline, there is a section dealing with entry fees. If the tournament has an entry fee, the petitioner must submit the following information about the entry fee:
- a. amount;
  - b. purpose and use;
  - c. entry form; and
  - d. procedure if cancelled.

notes that it is the Commission which retains discretion to authorize a tournament game which constitutes a variation or composite of one of the six enumerated games under section 5 of the Act. IGP-East, supra at 567. As the Court states:

The decision we review here, then, is the Commission's determination that an entry fee craps tournament is a variation of an authorized game so as to qualify for experimental testing. It is still within the Commission's province, at the conclusion of the experimental period, to find that such a tournament is not "suitable for casino use." [Id.]

The Court held that a casino craps tournament was properly authorized by the Commission under section 5 of the Act noting its determination was reasonable and would not be disturbed. IGP-East, supra at 562-563, 565-567. Thus, even though the

tournament took on some indicia of a lottery,<sup>5</sup> it would not be considered an illegal gambling scheme under the criminal statutes.

Although the holding in IGP-East affirmed the Commission's determination that a particular entry fee craps tournament was a variation of the authorized game of craps, it in no way precludes the Commission from considering the issues to be determined in this matter. The first issue is whether the proposed baccarat tournament, with its \$10,000.00 entry fee and method of funding the prize package, constitutes a variation

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5. The New Jersey Criminal Code defines "gambling" in pertinent part as the "staking or risking of something of value upon the outcome of a contest of chance..." N.J.S.A. 2C:37-1(b). "Something of value" is defined, in pertinent part, as:

any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [N.J.S.A. 2C:37-1(d)].

"Lottery" is defined as:

an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value. [N.J.S.A. 2C:37-1(h)].

or composite of the authorized game of baccarat. N.J.S.A. 5:12-5. It is the size of the entry fee and the method of funding the prize package for this proposed baccarat tournament which present an issue of first impression for the Commission and which distinguish it from past tournaments which have received Commission approval as a variation or composite of an authorized game. Never before has an entry fee tournament proposed to require such substantial entry fees and to use the total sum of those 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.

This meaningful factual distinction between past tournaments and the proposed tournament can be seen clearly by comparing the entry fee craps tournament in the IGP-East case to the proposed tournament. The main indicia of a lottery present in the IGP-East case arose from a \$250 entry fee charged in a craps tournament.<sup>6</sup> The \$250 entry fee was used to offset marketing, promotional and administrative costs. The Court stated, "[t]he fact that an entry fee is charged does not, in our opinion, change the fundamental nature of the underlying game." IGP-East, supra at 567. In short, the lottery aspect of the craps tournament at issue in IGP-East was incidental to the underlying nature of the authorized game of craps. The proposed

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6. A \$250 entry fee represents the highest entry fee charged to date in any tournament approved by the Commission during this ongoing experimental period.

baccarat tournament, however, is markedly different in that crucial aspect. The proposed entry fee is \$10,000, and it is charged specifically to fund the prize package. Thus, unlike any past tournament which has received Commission approval, this proposed baccarat tournament contemplates that the players contribute a substantial sum of money to form a prize pool and that the casino hold the pool created by the players until the winners are determined in and by play in the authorized game.

The Commission must therefore consider whether the proposed tournament is a variation of one of the six listed authorized games notwithstanding the significant lottery aspects of the proposal. Whether or not the tournament would be considered criminal by the Attorney General if undertaken without Commission approval,<sup>7</sup> the Commission has the responsibility

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7. The Commission notes that the definition of a lottery states that a lottery means "an unlawful gambling scheme" and unlawful means "not specifically authorized by law." See, N.J.S.A. 2C:37-1(h) and 2C:37-1(k). If this proposed baccarat tournament were properly determined to be a variation or a composite of the authorized game of baccarat, then as an "authorized gambling game" it should not be prohibited by our criminal statutes. See, IGP-East, supra at 566; N.J.S.A. 2C:37-1(k) and 2C:37-9. If the Commission determines that the proposed baccarat tournament cannot be found to be an authorized game under section 5 of the Act, then the operation of a baccarat tournament in a casino would be subject to review under our criminal statutes. IGP-East, supra at 566. Whether the tournament would be reviewed or, if reviewed, whether the tournament would be found to violate our criminal statutes is primarily the responsibility of the Attorney General.

and authority to decide that the proposed tournament may not be properly considered a variation or composite of the authorized game of baccarat within the meaning of section 5 of the Act. The Commission must also consider whether the proposed entry fee baccarat tournament violates public policy as expressed in the Act.

In deciding whether the proposed tournament game is a variation or composite of an authorized game under section 5, the Commission must be mindful of the limited exception which the State Constitution and the Act has made to the general policy against gaming. See N.J.S.A. 2C:37-1 et seq. The Commission must be sensitive in exercising its discretion under section 5 of the Act 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 or composites which retain as their basic element one or more of the listed games. 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. See, Casino Control Act, 1977: Hearings on S. 1780 before State Judiciary Committee at 40; Second Interim Report,

New Jersey Governor's Staff Policy Group on Casino Gambling (1977) at 27. 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 this state. Indeed, section 5 of the Act as originally enacted was limited to only the six listed games. In 1980, the amendment adding the language of variation and composite became effective. See L, 1979, c. 282, §1. Significant here is the fact that the Legislature chose not to repose full power in the Commission to approve any additional games which might be suitable for casino use but only those which were variations or composites of the original six. For these reasons, the Commission must assess the proposed baccarat tournament to determine whether it is still essentially the game of baccarat or whether the character of the proposed game is overridden or predominated by the other, lottery-like aspects of the tournament.

At the outset, it seems clear that this tournament's use of an entry fee, a pool of prizes formed therefrom and the payment of tournament prizes, over and above the ordinary baccarat wager payouts, constitutes gambling. The proposed baccarat tournament has all three elements of gambling. First, the money which is paid for the entry fee fits squarely within the definition of something of value. N.J.S.A. 2C:37-1(d).

Second, the entry fee is staked on a contest of chance which is defined as:

any contest, game, pool, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants or some other persons may also be a factor therein. [N.J.S.A. 2C:37-1(a)].

In Boardwalk Regency Corp. 188 N.J. Super 372 (Law Div. 1982), the court held that the skill factor involved in the game of backgammon is not determinative of the issue of whether chance plays a material or immaterial role in the outcome of the activity for purposes of determining whether it constitutes gambling or a contest of chance. Rather, the proper focus is on whether the element of chance is a factor that is material to the final result. The court concluded that a proposed backgammon tournament is a "contest of chance" and "gambling" because there is an element of chance represented by the rolling of two dice which is decidedly a material element to the game of backgammon. "The rolling of the dice constitutes a 'future contingent event not under the actor's control or influence' (see N.J.S.A. 2C:37-1(b)) upon which the players risk something of value." Boardwalk Regency Corp., supra at 379.

In the proposed baccarat tournament it cannot be disputed that the playing of cards throughout the game adds an element of chance and that the result of the card game is determined by some unforeseen accident, usually called "luck."

Thus, the proposed baccarat tournament has an element of chance which is a factor that is material to the final result. It therefore constitutes a contest of chance. Third, the proposed baccarat tournament offers cash awards as prizes to the winners. A prize is "something of value" offered as an inducement to participate in such a scheme. As noted above, "something of value" is defined to expressly include any money. N.J.S.A. 2C:37-1(d). Thus, it cannot be disputed that the proposed baccarat tournament constitutes gambling.

Without attempting to make a conclusive finding as to whether the proposed tournament would be considered a prohibited lottery under the present penal code, the Commission should consider the extent to which the proposed baccarat tournament has indicia of a lottery in order to determine whether those aspects of the proposal so dominate that the tournament should not properly be found to be a variation or composite of an authorized game. Lottery is defined under the penal code as:

an an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value. [N.J.S.A. 2C:37-1(h)].

On its face the definition of lottery includes the traditional three elements necessary to constitute gambling, which are something of value, chance and prize. The proposed baccarat tournament therefore has some indicia of a lottery, as it includes an entry fee which constitutes something of value, a contest of chance, and a prize. While a question remains as to whether the chances here are "represented and differentiated by numbers or by combinations of numbers or by some other media," there is no doubt that the proposal has several indicia of a lottery. See IGP-East, supra at 565-67. Of concern then is the extent to which this proposed tournament has greater indicia of a lottery than past tournaments which have been authorized by the Commission. Specifically, the proposed tournament has very large entry fees and a prize structure which is funded exclusively by the pooled entry fees and which will be distributed by playing a game of chance to those individuals who are fortunate enough to win. Prior to our new penal code, such a pool clearly constituted a lottery in violation of our

criminal laws. See, State v. Steever, 103 N.J. Super. 149 (App. Div. 1968); State v. Lovell, 39 N.J.L. 458 (Sup Ct. 1877). A pool is analytically identical to a lottery in most respects. The participants pay their contributions into the "pool," all agreeing that the sum paid in to the pool shall be distributed in accordance with a stated fortuitous system to the one or more of them who turn out to be the winners. 6A Corbin, On Contracts, §1488 at 655 (1962); 14 Williston, On Contracts, §1665 at 628 (3rd ed. 1972).

As noted earlier a meaningful factual distinction exists between previous tournaments approved by the Commission which utilized entry fees and the proposed tournament. Those entry fees were much smaller, used to defray the marketing costs of the tournament, and did not affect the underlying authorized game or conduct of tournament play, nor was there any redistribution of the fees to the entrants based on the outcome of an authorized game or any other circumstance of chance. In the proposed baccarat tournament, in addition to the regular play of baccarat, the entry fee involved is very high and is being risked on the chance of making a greater return on the pool created. This utilization of extraordinarily large entry fees, coupled with the creation of the pool of money to be won, sets this tournament apart from merely being a variation or composite of an authorized game. 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 from one of baccarat to one of a lottery or other unauthorized pool.

In reaching its determination in this matter the Commission has considered the legislative, constitutional and judicial treatment of gambling and lotteries in New Jersey. The fact that entry fees were required of participants in past tournaments which received Commission approval did not change the underlying nature of the authorized game. In past approved entry fee tournaments, entry fees were either nominal by comparison to a \$10,000 entry fee or were insignificant to the underlying game because they were incidental to the conduct of tournament play. The entry fees were used to defray the marketing, promotional and administrative costs. They never exceeded a few hundred dollars and never interfered with the major thrust of the tournament which was to play the game itself. Where an entry fee can be said to be nominal, the Commission has found that the entry fee component of the proposed tournament does not remove it from the category of a variation or composite of any of the listed authorized games. The character of the authorized game remains essentially that of the listed game or games because the players are not being required to stake such large sums on the outcome of the tournament that the amounts wagered on the baccarat game pale to insignificance.

In the instant case, the pool or lottery aspects of the proposed baccarat tournament clearly predominate over the underlying authorized game, and depend on the game's outcome. The entry fees are no longer insignificant to the underlying game. They are not paid to cover some of the costs of the tournament but rather to fund all of the tournament prizes. A \$10,000 entry fee constitutes a significant gaming investment. A player who puts up a \$10,000 entry fee is risking a significant sum of money and is specifically staking it on the outcome. 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. The Commission finds that this proposed baccarat tournament has an extraordinarily large entry fee and prize structure funded exclusively by such fees and has significant indicia of lotteries or pools which may predominate or override the aspects of the authorized game of baccarat. Thus, the Commission holds that the proposed baccarat tournament is not a variation or composite of the authorized game of baccarat within the meaning and intent of section 5.

This holding is also consistent with the public policy expressed in the Act. The Commission has determined that the proposed baccarat tournament implicates the public policy

expressed in section 100(e) of the Act. Section 100(e) states:

All gaming shall be conducted according to rules promulgated by the commission. All wagers and pay-offs of winning wagers at table games shall be made according to rules promulgated by the commission, which shall establish such minimum wagers and other limitations as may be necessary to assure the vitality of casino operations and fair odds to and maximum participation by casino patrons;... [N.J.S.A. 5:12-100(e)].

Specifically, the Commission notes that section 100(e) of the Act is implicated by the proposed baccarat tournament since the Commission must promulgate rules to assure fair odds to casino patrons. In past years, the Commission has determined that certain entry fee tournaments did constitute variations of authorized games so as to qualify for experimental testing. However, the Commission has not concluded the experimental testing stage and has not yet determined whether any entry fee tournament is suitable for casino use. See, N.J.S.A. 5:12-5; see generally, IGP-East at 567.

Thus far, the experiment has demonstrated that tournament gaming does involve issues and modifications to procedural and substantive rules not contemplated when tournaments were first proposed, which has caused the Commission to extend the experimental period beyond that originally contemplated. One of these issues concerns the methodology and standards by which odds offered in tournaments should be

assessed in carrying out the responsibilities placed on the Commission by N.J.S.A. 5:12-100(e). Indeed, the method for assessing whether a tournament proposal offers fair odds to the patron is not necessarily the same as that used for craps, roulette, blackjack or other casino games. Variables such as the amount of the entry fee, the number of players participating, the rules of the tournament, the amount of the buy-in, the prize structure, the relationship between the entry fee and the individual and aggregate prizes awarded may all effect the fair odds determination as applied to these events.

While the methodology and standards for assessing fair odds in a tournament contest need still to be resolved, the Commission is able to make the following observations. To date, the highest entry fee paid to participate in a tournament has been \$250. In addition, in past tournament the entry fees have been lower than the "buy-in" requirements. This tournament, however, is vastly different. The proposed entry fee is \$10,000 and it is paid specifically to fund the tournament prize package. In essence, instead of the \$250 entry fee maximum that had to be paid in past tournaments in order to participate, this this tournament requires an entry wager of \$10,000. Considering the experimental context in which tournaments are being conducted and the fact that formal standards have not been promulgated for assessing the minimum odds that must exist, the Commission deems it inappropriate to permit a tournament that requires a patron to wager \$10,000. Before the Commission considers approving a wager of this magnitude, there is a need to resolve finally the question of whether tournament gaming is

suitable for casino use under N.J.S.A. 5:12-5 and to establish the formalized rules required by N.J.S.A. 5:12-70 and 100(e), including the standards by which fair odds should be determined.<sup>8</sup>

Indeed, separate and apart from its determination that the tournament is not a proper variation of baccarat, the Commission exercises its authority under section 5 of the Act to establish appropriate terms and conditions of any test or experiment. Simply stated, the Commission finds that this tournament would pose too substantial a risk of unfairness to gaming patrons if it were conducted with the \$10,000 entry fee and prize structure. Because it is in an experimental period, the Commission must not heighten such risks by permitting extraordinarily high amounts of money to be wagered on an event as to which the Commission has not yet reached a final decision

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8. The Commission also notes that section 100(e) of the Act is further implicated by this tournament since the Commission must promulgate rules to assure maximum participation by casino patrons. N.J.A.C. 19:47-8.2(b)(5)(i) and (b)(5)(ii). N.J.A.C. 19:47-8.2 specifies the spread between the minimum wager and the maximum wager at all table games in a casino. Although this regulation has been waived on occasion for certain holiday periods, the \$10,000 tournament entry fee still runs counter to the policy of the Act and the regulations by limiting participation in this tournament to a highly select class of player.

regarding its suitability for casino use. Thus, the Commission has determined that, as a term or condition of experimentation with this tournament, the entry fees must be reduced and brought into line with the amounts previously approved.<sup>9</sup> It must be remembered that this experimentation is for the assistance of the Commission in deciding if the concept would be suitable on a recurrent basis and, if so, what rules must be adopted to govern it. The Commission would be acting irresponsibly if it allowed the experiment with its inherent uncertainties to cause needless harm to the public or the policies of the Act by permitting such oversized wagers during the trial period. For this reason alone, the proposal must be rejected.

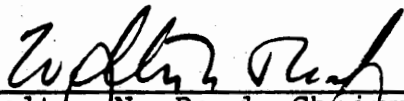
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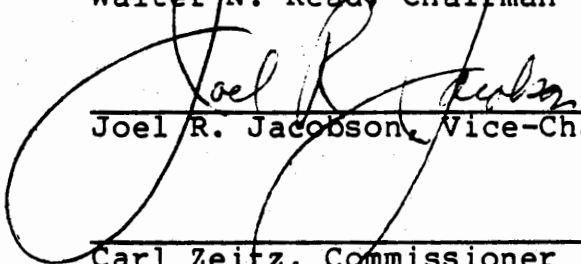
9. Our concerns during this tournament experimental stage can be compared to test nights for casino openings where patrons do not play with real money or wager only small amounts of real money under controlled conditions until the casino is found able to conduct unlimited gaming. During test nights our aim is to reduce the monetary risk a patron faces by controlling minimum wagers and controlling the exposure faced by the casino.

CONCLUSION

For the foregoing reasons, the Commission holds that the proposed baccarat tournament, which imposes a \$10,000 entry fee per participant, used exclusively to fund the tournament prize package, cannot be authorized by the Commission as a variation or composite of the authorized game of baccarat suitable for casino use pursuant to N.J.S.A. 5:12-5. The Commission also holds that the proposed baccarat tournament, with its method of funding, violates the public policy expressed in N.J.S.A. 5:12-100(e) and the legislative policies expressed in N.J.S.A. 5:12-1 et seq. Additionally and separately, the Commission finds that it would be inappropriate to allow the conduct of a baccarat tournament in an experimental basis under the terms and conditions proposed. The size of the entry fee is inappropriate for testing a possibly unsuitable gaming variation. Accordingly, the Commission denies the relief requested by the petitioners.

NEW JERSEY CASINO CONTROL COMMISSION

  
\_\_\_\_\_  
Walter N. Read, Chairman

  
\_\_\_\_\_  
Joel R. Jacobson, Vice-Chairman

\_\_\_\_\_  
Carl Zeitz, Commissioner

Dated: November 9, 1984

III. SEPARATE OPINION OF COMMISSIONER CARL ZEITZ

I agree with the Commission's decision which holds that the proposed baccarat tournament, which imposes a \$10,000 entry fee per participant, used exclusively to fund the tournament prize package, cannot be authorized by the Commission as a variation or composite of the authorized game of baccarat suitable for casino use pursuant to N.J.S.A. 5:12-5. I do not believe it necessary, however, to reach a determination of this issue based on the public policy expressed in N.J.S.A. 5:12-100 (e) or N.J.S.A. 5:12-1 et seq.

  
\_\_\_\_\_  
Carl Zeitz, Commissioner

Dated: November 13, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-83  
REGISTRATION NO. 49063-40  
OAL DOCKET NO. CCC 2544-84

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

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 1, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 14, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 15<sup>th</sup> day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2544-84

AGENCY DKT. NO. 84-83

**DIVISION OF GAMING ENFORCE-  
MENT, DEPARTMENT OF LAW &  
PUBLIC SAFETY,**

Petitioner,

v.

**RICKY J. KLINGER,**

Respondent.

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

**Luis Carrasquillo**, Probation Officer, on behalf of Ricky J. Klinger, respondent, pursuant to R. 1:21-1(e)

Record Closed: August 17, 1984

Decided: September 28, 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 March 21, 1984, seeking the revocation of the respondent's casino hotel employee registration, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Klinger requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held on May 23, 1984, the parties agreed that the issues in this matter are:

- (a) Whether the respondent is disqualified for registration because of his alleged criminal convictions, pursuant to N.J.S.A. 5:12-86c.
- (b) Whether the respondent is disqualified for licensure for his failure to disclose all of the alleged criminal arrests and convictions or his registration application, pursuant to N.J.S.A. 5:12-86b.
- (c) Whether the respondent can establish that he has been rehabilitated, pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing took place on August 3, 1984, and at that time, I indicated that I would keep the record open for two weeks in order to give Mr. Klinger an opportunity to file supplemental information relating to his rehabilitation. No such information was filed and the record in this matter closed on August 17, 1984.

Based on the testimony and exhibits presented at the hearing, I FIND that the pertinent facts in this matter are not in dispute.

On February 26, 1981, an indictment was filed against Mr. Klinger and several other persons containing multi-counts of conspiracy, a violation of N.J.S.A. 2C:5-2, burglary, a violation of N.J.S.A. 2C:18-2, theft by unlawful taking, a violation of N.J.S.A. 2C:20-3 and theft by receiving stolen property, a violation of N.J.S.A. 2C:20-7 (P-4, P-2).

On March 5, 1981, an indictment was filed against Mr. Klinger containing one count of the possession of a weapon, a violation of N.J.S.A. 2C:39-5(d), two counts of the possession of a controlled dangerous substance, a violation of N.J.S.A. 24:21-20a(1), and two counts of the possession of a controlled dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19a(1) (P-6, P-3).

As to these two indictments, Mr. Klinger entered a guilty plea as to one count of burglary, one count of theft by unlawful taking, two counts of theft by receiving stolen property and one count of possession of controlled dangerous substance with intent to sell (P-5, P-7). On July 24, 1981, respondent was sentenced to 180 days in the County Jail and a probation period of three years (P-5, P-7).

On April 1, 1982, the respondent was involved in an automobile accident and sustained serious injuries. Initially, he was admitted to the Atlantic City Medical Center in a comatose state (R-1) and on the next day he was transferred to the Shore Memorial Hospital where he remained until May 3, 1982 (R-3). The respondent was then transferred to the Betty Bacharach Rehabilitation Hospital and the diagnosis was "brain contusion and traumatic subarachnoid hemorrhage, fractures of ribs with hemopneumothorax, fractures of mandible and maxilla, fracture of right ulna, and multiple trauma, abrasions and contusions" (R-1 at p. 1). In the initial psychological evaluation performed at the Betty Bacharach Rehabilitation Hospital, it was noted that the respondent had cognitive and memory impairment associated with his head injury (R-1).

Mr. Klinger started his probation period on July 29, 1981, and Luis Carrasquillo was assigned to be his probation officer (R-2). Mr. Carrasquillo found the respondent to be a "cocky" young man with a poor attitude, and the respondent frequently did not appear for his scheduled appointment. For a period of time Mr. Carrasquillo could not locate the respondent and was later informed by the respondent's sister that Mr. Klinger had been involved in an automobile accident. Since Mr. Klinger continued to fail to appear for his appointments, Mr. Carrasquillo recommended that a charge be filed against him for the violation of probation, and thereafter Mr. Klinger was convicted of this charge.

Sometime after he initiated the recommendation as to the violation of probation charge, Mr. Carrasquillo found out that Mr. Klinger had been severely injured in an automobile accident. When Mr. Carrasquillo saw Mr. Klinger in October 1982, after he was released from the Betty Bacharach Rehabilitation Hospital, there had been a complete change in the respondent's personality, attitude, appearance and ability to communicate. As a result of his accident injuries, Mr. Klinger's actions are slow and his speech is slurred, and he gives the impression of a person on drugs. The respondent now regularly appears for his appointments with Mr. Carrasquillo, and Mr. Klinger frequently calls the probation officer to make sure he has attended his scheduled meeting and sometimes he appears twice for his appointment. The respondent cannot recall his prior convictions, and Mr. Carrasquillo has given the respondent the summarization of his convictions which is used by the probation officer and which he felt was adequate for job applications.

In his application for a registration as a casino hotel employee, Mr. Klinger listed that he had been convicted of receiving stolen goods in January 1980 and of

possession of drugs in March 1980 (P-1). Since Mr. Klinger still cannot recall many things that occurred before his accident, he thought he accurately answered the question on the application. Mr. Carrasquillo stated that if he had seen the Casino Control Commission application he would have given Mr. Klinger a detailed listing of his convictions and arrests.

Mr. Klinger's mother died when he was about 13 years old and he has had a very limited education. Prior to the accident, the respondent worked for a landscaping company and was unemployed during the winter months. During that period of time, Mr. Klinger used drugs and drank a substantial amount of alcohol.

At the time of the hearing, Mr. Klinger was 24 years old, was married with one child, and was working as a kitchen utility worker at Bailey's Park Place Casino and Hotel. Mr. Klinger stated that he no longer uses any drugs and does not drink any alcoholic beverages. The respondent's probation period will end shortly.

Terry Winston, the respondent's immediate supervisor at Bailey's Park Place, testified that the respondent is an excellent worker with an acceptable attendance record. Mr. Winston said that the respondent is slow, but that he does his work, and that it would be very bad for Mr. Klinger to lose his job. Mr. Winston has seen no indication that Mr. Klinger presently uses any drugs or drinks any alcoholic beverages.

Robert Caucci testified that he has known the respondent for many years and, after the respondent's mother died, Mr. Caucci's family tried to help the children. Mr. Klinger worked for Mr. Caucci's family nursery and landscaping business from the time he was about 13 years old until the accident. Prior to the accident, the respondent had been promoted to a crew supervisor, a position which required him to supervise a number of workers. Since the accident, Mr. Caucci stated that there has been a complete change in the respondent's personality; he is now slower, quieter and more sincere, and he now has a speech impediment. Mr. Caucci stated that in his opinion, Mr. Klinger no longer has the physical and mental capacity to work as a crew supervisor.

The respondent's wife, Marlene Klinger, testified that they were married on June 15, 1983, and had one child. Mrs. Klinger knew her husband before his accident and she indicated that he used to be a hard worker with a bad attitude, that he liked to go to parties and that he used to take drugs and drink alcoholic beverages. After the accident,

there has been a major change in her husband's personality, he no longer drinks or takes drugs, he is kind and considerate, and he likes to stay at home with his family. According to Mrs. Klinger, the respondent can no longer remember many things that occurred prior to his accident.

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Klinger was convicted of crimes that are statutory disqualifiers, pursuant to N.J.S.A. 5:12-86c.

Also based on the facts, I **CONCLUDE** that Mr. Klinger did not intentionally fail to disclose fully his prior criminal arrests and convictions. It has been recognized by the Casino Control Commission that not every nondisclosure necessitates disqualification and that there is a difference between mere inadvertence and an intentional and willful omission, In the Matter of the Application of Harl Lee Cooper, OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980); In the Matter of the Application of Steven M. Cohen, OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (Jan. 30, 1980); In the Matter of the Application of William Gonzales, OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980). Therefore, I **CONCLUDE** that Mr. Klinger should not be disqualified from registration for his failure to fully disclose his criminal record on his Personal History Disclosure Form (P-1).

As to the issue of rehabilitation, the Casino Control Act provides that a person can overcome a prohibition against registration by affirmatively demonstrating his or her rehabilitation pursuant to N.J.S.A. 5:12-91(d). This section sets forth eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

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

Based on the facts in the matter, I **CONCLUDE** that the respondent has shown by clear and convincing evidence that he has been rehabilitated. The facts in this matter are unique in that it was not the respondent's convictions but rather an accident which has resulted in a substantial change in the respondent's attitude and lifestyle as well as a change in his personality and ability. The facts show that Mr. Klinger is now a responsible person who is concerned about retaining his job in order to provide for his wife and child and that he no longer uses drugs or consumes alcoholic beverages, which could have been a contributing factor to his former criminal activities. Therefore, there is no reason to believe that Mr. Klinger will be involved in any criminal activities in the future.

I **ORDER** that the complaint filed by the Division against Ricky J. Klinger be **DISMISSED** and that the casino hotel registration of the respondent not be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 28, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

01 OCT 1984  
DATE

Receipt Acknowledged:

Lynn H. McDowell  
CASINO CONTROL COMMISSION  
Criminal Legal Analyst

Mailed to Parties:

OCT 03 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS

For the petitioner:

- P-1 Personal History Disclosure Form filed by respondent on August 11, 1983
- P-2 Investigation Report of Egg Harbor Township Police Department, dated January 19, 1981
- P-3 Galloway Township Police Department Arrest Report relating to Rick James Klinger, dated December 19, 1980
- P-4 Indictment No. I806-80-T-4 filed against Philip Klinger, Ricky Klinger, Albert H. Freiling, Joseph Cressman, David Laverack, and William Laverack
- P-5 Disposition on Indictment No. I806-80-J-4 as to Richard Klinger
- P-6 Indictment No. I850-80-J-4 filed against Ricky J. Klinger
- P-7 Deposition on Indictment No. I850-80-J-4
- P-8 Interrogatories served on Mr. Klinger and his responses

For the respondent:

- R-1 Initial Rehabilitation Medical Evaluation and Psychological Services Report from the Betty Bacharach Rehabilitation Hospital
- R-2 Probation Office Information file regarding Richard Klinger
- R-3 Letter from Stephanie Carracillo, Correspondence Clerk of the Shore Memorial Hospital, dated July 21, 1982

WITNESSES

For petitioner:

Ricky Klinger  
Luis Carrasquillo  
Terry Winston  
Robert Caucci  
Marlene Klinger

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-169  
OAL DOCKET NO. CCC 739-84  
(CCC 5194-83 ON REMAND)  
REGISTRATION NO. 10188-40

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

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 1, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of July 11, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 13th day of JULY 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 739-84

(REMAND OF CCC 5194-83)

AGENCY DKT. NO. 83-169

**DIVISION OF GAMING ENFORCE-  
MENT, DEPARTMENT OF LAW &  
PUBLIC SAFETY,**

Petitioner,

v.

**GEORGE J. KUHNA,**

Respondent.

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**APPEARANCES:**

**William E. Mountford**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**George J. Kuhna**, respondent, pro se

Record Closed: May 2, 1984

Decided: May 31, 1984

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

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

A prehearing conference was scheduled in this matter for October 17, 1983, and the respondent failed to appear and failed to respond to a letter sent by the Office of Administrative Law requesting an explanation for his nonappearance. Based on these facts, Administrative Law Judge Smith, on November 23, 1983, issued an initial decision concluding that Mr. Kuhna had abandoned his appeal and that his registration should be revoked. The Casino Control Commission accepted Mr. Kuhna's explanation for his nonappearance and remanded the matter to the Office of Administrative Law by Order, dated January 31, 1984.

Mr. Kuhna appeared at the second prehearing conference held on March 5, 1984, and at that time, the parties agreed that the issues in this matter are:

- (a) Whether the respondent's convictions disqualify him from continued licensure pursuant to N.J.S.A. 5:12-86c(1).
- (b) Whether the respondent's continued licensure would be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).
- (c) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing in this matter took place on April 13, 1984, and upon receipt of additional letters relating to the issue of rehabilitation, the record closed on May 2, 1984.

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

- (1) On December 4, 1979, the respondent's vehicle was stopped for a traffic light violation. The policeman saw the respondent attempt to kick a plastic bag under the driver's seat and he arrested Mr. Kuhna for possession of less than 25 grams of marijuana, a violation of N.J.S.A. 24:21-20a(4). On January 3, 1980, the respondent was given a six-month conditional discharge (P-1).
- (2) Mr. Kuhna was indicted on a charge of burglary, a violation of N.J.S.A. 2C:18-2, based on an incident which occurred on January 10, 1980. On

June 12, 1980, the respondent pled guilty to this offense and was given a one-year period of probation and fined \$150 (P-2). The respondent has satisfactorily completed this period of probation.

- (3) Mr. Kuhna was indicted on the charges of burglary, a violation of N.J.S.A. 2C:18-2, and theft by the unlawful taking of goods with a value of at least \$200 and not in excess of \$500, a violation of N.J.S.A. 2C:20-3, based on an incident which occurred on October 18, 1981. On December 7, 1981, the respondent entered a plea of guilty as to the burglary charge, and the theft charge in the indictment was dismissed. For this offense, the respondent was required to serve 90 days in the county jail, was placed on probation for a period of 18 months, was required to attend a drug and alcohol program while on probation and had to pay a penalty of \$25 (P-3). Mr. Kuhna has successfully completed this period of probation.
- (4) Mr. Kuhna attended the drug and alcohol rehabilitation program at the Ocean City Resource Center, which was part of the conditions of his probation pursuant to the 1981 conviction.
- (5) On August 5, 1982, Mr. Kuhna was arrested for a drunk driving violation and was conveyed to the police station in a police vehicle. It was alleged that while he was in the police vehicle, Mr. Kuhna disposed of a small metal container holding less than 5 grams of hashish. As to this offense, Mr. Kuhna pled guilty on August 30, 1982, and paid a fine of \$50 and \$25 for court costs.
- (6) After receiving a casino hotel employee registration, Mr. Kuhna worked for Bally's Park Place Casino and Hotel from March 1980 to March 1981 and he quit this job in order to take a position with Playboy Hotel and Casino. After he started working at Playboy, Mr. Kuhna left to take a job with Harrah's Marina Hotel and Casino in April 1981. The respondent worked for Harrah's until he was fired in September 1981.
- (7) After he was released from jail, Mr. Kuhna worked for Claridge Casino and Hotel from June 1982 until he was fired on July 29, 1983.

- (8) Mr. Kuhna is currently working for Scannicchio's Restaurant in Atlantic City and John Varalli, the owner-manager of this restaurant, submitted a letter stating that the respondent has worked there for three months and during that time, Mr. Varalli found him to be a good worker and a person of high integrity (R-2).
- (9) After his release from jail, Mr. Kuhna became interested in music; he is taking guitar lessons and hopes to become a professional musician. In his letter, Mr. Thomas Hands stated that he is the respondent's music instructor and that he considers the respondent to be a serious and talented student (R-1).
- (10) By letter dated April 27, 1984, Mr. Porecca, Jr., stated that he operates Irv's Music Shop, that he has known the respondent for about five years and that the respondent had made purchases in his store and has paid his bills (R-4).
- (11) Mr. Del Monte, a maitre d' employed by Harrah's, in a letter, stated that he highly recommends the respondent for employment as a food server and that the respondent is a trustworthy and good worker (R-3).

At the hearing, Deputy Attorney General Mountford stated that none of the above-mentioned offenses were statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1) and I ORDERED that Issue A as set forth in the prehearing order be dismissed.

In his own defense, Mr. Kuhna admitted that he was guilty of all the offenses set forth above except for the hashish violation in 1982. Mr. Kuhna denied that he had any hashish and alleged that he was told by the police officer and the municipal prosecutor that if he pled guilty he would be given a light sentence and that if he pled innocent, it would go hard on him. Mr. Kuhna was on probation at the time and pled guilty since he was afraid he might be given a jail sentence.

Mr. Kuhna testified that a maitre d' at Harrah's (not Mr. Del Monte) did not like him and that this maitre d' fired him for insubordination after he found Mr. Kuhna eating while on duty. Mr. Kuhna stated that he filed a union appeal but, since he was in jail on the hearing day, which had been postponed several times, it was

determined that he had forfeited his right to a hearing. As to the fact that he was fired by the Claridge, Mr. Kuhna stated that Claridge has a policy of firing an employee after five minor infractions and Mr. Kuhna admitted that he was given five infractions. Mr. Kuhna received two infractions for coming to work late; an infraction for bumping a computer cash register, which caused a malfunction; an infraction for insubordination after he asked the maitre d' not to assign again a certain party to one of his tables after the respondent waited on this party and did not receive a tip; and an infraction when he went to get his paycheck, was told that he would not receive it until he got a new identification badge and insisted that he was in a hurry and wanted his check. Mr. Kuhna stated that the corner of his badge was clipped, but the badge was still being accepted by the check-in machine. The cashier objected to his attitude and language, and the respondent received an infraction and was fired.

Mr. Kuhna admitted that he had a drug and alcohol problem. According to Mr. Kuhna, he has overcome both problems and now, at the age of 22, wants to improve his musical abilities and become a professional musician.

Christopher Kuhna, the brother of the respondent, testified that the respondent got him a job with Harrah's and that the maitre d' who fired his brother did not like the respondent and has a schizophrenic personality. About one year after this maitre d' fired the respondent, he was forced to resign because of his personality. Mr. Christopher Kuhna testified that his brother started using drugs because of peer pressure and that his brother now has a better attitude, no longer takes drugs and wants to become a professional guitar player. According to Mr. Christopher Kuhna, he sees his brother once or twice a week.

I **FIND** that both the respondent and his brother were credible witnesses, and I accept their testimony as to the circumstances underlying the respondent's criminal activities and the fact that he was fired by two casinos.

In closing, Mr. Mountford argued that although none of the respondent's convictions were statutory disqualifiers, the number of criminal incidents renders the respondent's continued registration inimical to the policies of the Casino Control Act and that the respondent had not shown that he had been rehabilitated as provided by N.J.S.A. 5:12-91d.

On his own behalf, Mr. Kuhna argued that the convictions occurred when he was having drug and alcohol problems and that he has now straightened out his life. Mr. Kuhna stated that he now has a goal in life and that he will do nothing wrong in the future since he does not want to jeopardize his ability to become a professional musician.

Based on the facts, I **CONCLUDE** that the Division has not sustained its burden of establishing that the continued registration of Mr. Kuhna will be inimicable to the policies of the Casino Control Commission pursuant to N.J.S.A. 5:12-86C(4).

In addition, the Casino Control Act provides that a person can overcome the prohibitions against registration by affirmatively demonstrating his/her rehabilitation pursuant to N.J.S.A. 5:12-91d, and this section sets forth the following eight specific criteria to be considered in order to determine whether or not the person has been rehabilitated:

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

By his testimony, Mr. Kuhna has made an affirmative showing of rehabilitation. Mr. Kuhna's convictions occurred while he was under 21 years old, and he has completely satisfied his periods of probation. Mr. Kuhna has made a sincere effort to change his life style and is now taking affirmative steps to prepare himself to become a professional musician. There is no indication that there will be a repetition of his illegal activities in the future.

Even if I had concluded that a statutory disqualifier existed in this matter, I **CONCLUDE** that Mr. Kuhna has established by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-91d.

Therefore, I **CONCLUDE** that the complaint filed by the Division be **DISMISSED** and I **ORDER** that the casino hotel employee registration of George J. Kuhna 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.

May 31, 1984  
DATE

Beatrice S. Tylutki  
**BEATRICE S. TYLUTKI, ALJ**

Receipt Acknowledged:

JUN 1984  
DATE

[Signature]  
**CASINO CONTROL COMMISSION**

Mailed to Parties:

JUN 05 1984  
DATE

Ronald J. Parker  
**OFFICE OF ADMINISTRATIVE LAW**

ml/E

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Pleasantville Police Department Investigation Report, dated December 4, 1979, Pleasantville Police Department Arrest Report, dated December 4, 1979, Division of State Police Laboratory Report, dated February 14, 1980, and complaint filed against the respondent and the disposition thereon
- P-2 Linwood Police Department Investigation Report, dated January 10, 1980, Linwood Police Department Arrest Report, dated January 10, 1980, Indictment filed against George J. Kuhna and Judgment of Conviction, dated July 30, 1980
- P-3 Brigantine Police Department Investigation Report, dated October 19, 1981, Brigantine Police Department Arrest Report, dated October 18, 1981, Grand Jury Indictments brought against George J. Kuhna, Judgment of Conviction and Order for Commitment, dated January 11, 1982
- P-4 Stafford Township Police Department Preliminary Report, dated August 8, 1982, Stafford Township Police Department Arrest Report, dated August 5, 1982 and the complaint filed against George J. Kuhna and the disposition on the charge

FOR THE RESPONDENT:

- R-1 Letter from Thomas Hands
- R-2 Letter from John Varalli, dated March 28, 1984
- R-3 Letter from G. Del Monte (received by mail on May 2, 1984)
- R-4 Letter from Anthony P. Porecca, Jr., dated April 27, 1984 (received by mail on May 2, 1984)

WITNESSES

FOR THE RESPONDENT:

George J. Kuhna  
Christopher Kuhna

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
REGISTRATION NO. 40895-40  
APPLICATION NO. 43873-21  
AGENCY DOCKET NOS. 84-150 AND  
84-EA-71 (CONSOLIDATED)  
OAL DOCKET NOS. CCC 3034-84 AND  
3871-84 (CONSOLIDATED)

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

Complainant,

v.

FINAL ORDER

AURELIA R. LYONS,

Respondent.

AND

IN THE MATTER OF THE APPLICATION  
OF AURELIA R. LYONS  
FOR A CASINO EMPLOYEE LICENSE

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These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 1, 1984, recommending that the complaint of the Division of Gaming Enforcement seeking revocation of respondent Lyons's casino hotel employee registration be dismissed and that the application of Aurelia R. Lyons for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on November 14, 1984, to affirm and adopt the

said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement and to deny the casino employee license application,

IT IS on this 16th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement seeking revocation of respondent Lyons's casino hotel employee registration be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the application of Aurelia R. Lyons for a casino employee license be denied based upon the reasons set forth in the Initial Decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

(CONSOLIDATED)

OAL DKT. NOS. CCC 3034-84 AND

CCC 3871-84

AGENCY DKT. NOS. 84-EA-71 AND

84-150

**AURELIA R. LYONS,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW**

**AND PUBLIC SAFETY,**

Respondent.

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**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW**

**AND PUBLIC SAFETY,**

Petitioner,

v.

**AURELIA R. LYONS,**

Respondent.

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**Aurelia R. Lyons, pro se**

**Joanne Cocchiola, Deputy Attorney General, for the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: August 16, 1984

Decided: October 1, 1984

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. The first concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, against Aurelia R. Lyons. In an amended complaint, the Division alleged that Ms. Lyons had committed a statutory disqualifying offense for which the Division seeks revocation of her casino hotel employee registration, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. Ms. Lyons opposed the action. The second matter concerns the application of Ms. Lyons for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division opposed licensure on the basis that Ms. Lyons had failed to disclose information material to licensure, had committed disqualifying criminal conduct and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Ms. Lyons filed her Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on December 15, 1982 (P-12). The Commission advised Ms. Lyons that, based upon information received in a report from the Division, dated March 20, 1984, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. By letter filed on April 25, 1984, Ms. Lyons requested a hearing with regard to her application for licensure. On April 30, 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.

On May 7, 1984, the Division filed its complaint with the Commission. By letter dated May 10, 1984, the Commission notified Ms. Lyons that she had a right to a hearing on the complaint. By letter filed on May 18, 1984, Ms. Lyons requested a hearing. On May 25, 1984, the Commission transmitted the matter to the Office of Administrative Law and requested that the two matters be consolidated. On July 5, 1984, the Division filed its amended complaint.

The matters were consolidated at the prehearing conference on July 5, 1984, and the matter was scheduled for hearing. The record closed on August 16, 1984, upon conclusion of the hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Lyons is currently 25 years of age (P-12). Until July 1984 and except for a one-year period while she attended college, Ms. Lyons has been a resident of New Jersey.

Ms. Lyons is a June 1977 graduate of Atlantic City High School. She attended Immaculata College and in June 1981 graduated from Glassboro State College with a bachelor of arts degree in education (math). During the latter part of 1981 she attended a master's degree program at Glassboro State College.

Ms. Lyons holds a casino hotel employee registration, number 40895-40.

From June to September 1978, Ms. Lyons was employed by the Boardwalk Regency Corporation (BRC) as a cashier. She left employment to return to school.

From June 17 to August 26, 1980, Ms. Lyons was employed by BRC as a pantry worker. Again she left employment to return to school. This employment was not disclosed on her PHDF-2A.

From July 9 to August 19, 1981, Ms. Lyons was employed by BRC as a cashier/checker (P-9). The reason given for the termination of her employment was "personal" reasons, and she is eligible for rehire. This employment was not disclosed on her PHDF-2A.

From August 7 to August 30, 1981, Ms. Lyons was employed by Claridge Hotel and Casino (Claridge) as a bus greeter (P-10). She left this employment to return to college. This employment was not disclosed on her PHDF-2A.

From April 29 to December 16, 1982, Ms. Lyons was employed by the Playboy Hotel and Casino (Playboy) as a food and beverage cashier (P-11). The reason for the termination of her employment was in dispute and will be discussed, infra. This employment was not disclosed on her PHDF-2A.

From April 29 to June 27, 1982, Ms. Lyons was also employed by the Tropicana Hotel and Casino (Tropicana) as a retail clerk (P-10). Again, the circumstances underlying the termination of this employment were in dispute and will be discussed infra. Ms. Lyons did not disclose this employment on her PHDF-2A.

From January through July 1982, Ms. Lyons was employed by the Vineland Residential School as a teacher. Again, this employment was not disclosed on her PHDF-2A.

From September 1981 to July 1982, the applicant resided in Glassboro, New Jersey (P-12). In July 1982, she relocated to Atlantic City (P-12).

On August 13, 1982, Ms. Lyons was arrested by the Egg Harbor Township Police Department and was charged with a violation of N.J.S.A. 2C:20-11, shoplifting (P-1). The arrest and charge emanated from an incident which occurred at the Steinbach department store, where it was alleged that Ms. Lyons altered a price tag on an item of merchandise, which purportedly changed the purchase price by approximately \$43.00. Ms. Lyons was released on her own recognizance. On January 13, 1983, Ms. Lyons was found guilty of the charge and was fined \$175 and \$25 court costs. She was 23 years of age at the time of the incident. Although the incident was not disclosed on her PHDF-2A, Ms. Lyons voluntarily disclosed the incident during a telephonic interview with Division investigator Alexander Love on February 2, 1984.

From December 1982 to February 1983, Ms. Lyons attended and successfully completed craps dealer school. Her tuition was paid for by a CETA grant.

During the 1982/83 school year, Ms. Lyons was employed by the Pleasantville Board of Education as an eighth grade teacher at the Pleasantville Middle School and as a basketball and softball coach. She was not rehired for the following school year because of an incident which will be described hereafter.

On December 15, 1982, Ms. Lyons filed her PHDF-2A with the Commission, in which she sought licensure as a craps dealer (P-12). The various alleged nondisclosures have been discussed above.

Ms. Lyons was involved in an incident in the early morning hours on June 27, 1983, in Egg Harbor City, which involved a Sarah Rice (P-2). As a result of a fight between Ms. Lyons and Ms. Rice, Ms. Rice suffered a severe cut on her left cheek (P-7 and P-8). The Egg Harbor City Police Department charged Ms. Lyons with a violation of N.J.S.A. 2C:12-1b, aggravated assault (P-2). On August 2, 1983, Ms. Lyons was indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2C:39-5d, possession of a weapon, N.J.S.A. 2C:39-4, possession of a weapon for unlawful purposes, and N.J.S.A. 2C:12-1b(1), aggravated assault (P-5). On August 15, 1983, Ms. Lyons entered a plea of not guilty to the charges. On January 3, 1984, she retracted her plea of not guilty and entered a plea of guilty to count three as amended, a violation of N.J.S.A. 2C:12-1(3), aggravated assault—fourth degree. On January 27, 1984, Ms. Lyons was sentenced to a probationary term of two years, was ordered to make restitution in the amount of \$2,000 and was ordered to pay \$25.00 to the Violent Crimes Compensation Board. Counts one and two of the indictments were dismissed. To date, Ms. Lyons has paid \$1,094 of the restitution.

During summer 1983 Ms. Lyons was employed by the Asbury Methodist Church in Atlantic City.

From mid-1983 until the end of the year, Ms. Lyons was employed by the Atlantic City Board of Education as a private tutor and substitute teacher.

From January through April 1984, Ms. Lyons was employed by the Cumberland County Detention Center and the Hopewell Township Board of Education as a part-time reading specialist and reading teacher.

From April through June 1984 Ms. Lyons was employed by the Atlantic City Board of Education as a sixth grade teacher.

For a one and one-half week period during summer 1984, Ms. Lyons was employed by the Atlantic County Probation Office. She resigned voluntarily at the request of her supervisor by reason of the circumstances surrounding the incident of June 27, 1983.

Since August 20, 1984, Ms. Lyons has been employed in Virginia as a full-time eighth grade teacher and as a basketball and field hockey coach.

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. Lyons' shoplifting offense, the circumstances underlying her conviction for aggravated assault, the circumstances underlying her guilty plea to aggravated assault, the reasons for her nondisclosure of certain employment and terminations therefrom in the casino industry on her PHDF-2A and to a Division investigator during a telephonic interview, the circumstances underlying certain terminations of employment and her character, honesty and integrity.

Ms. Lyons explained the circumstances underlying the shoplifting incident which occurred on August 13, 1982. While shopping on her birthday, she tried on a blouse which did not fit. She located another blouse of the exact same style in the correct size, but which had a price tag which was more expensive. Ms. Lyons took both items to the cashier, who charged her the lesser price. At first, she believed her arrest and the charge was a joke. Following her conviction, Ms. Lyons requested her attorney to file an appeal; however, this was not completed in a timely manner. Thereafter, and because of the assault incident, Ms. Lyons did not pursue an appeal of the shoplifting conviction. Although I cannot go behind a conviction and redetermine the guilt or innocence of a person, an examination of the underlying circumstances is appropriate in order to evaluate the seriousness of the matter. Ms. Lyons' credibility will be discussed in greater detail hereafter; nevertheless, her testimony was very persuasive and mitigated substantially the seriousness of the incident.

The incident of June 27, 1983, as a result of which Ms. Lyons pled guilty to aggravated assault in the fourth degree, was extremely complex. The Division relied upon the conviction, the testimonies of Betsey Bartholomew, an agent with the Atlantic County Prosecutor's Office, and Alexander Love, an agent with the Division, and on a police investigation report, including a statement by Sarah Rice, the victim. The Division's proofs indicate that at approximately 3:30 a.m. Ms. Rice approached a vehicle owned by Ms. Lyons, which was parked in the driveway of Leonard Burrell, and in which Ms. Lyons

and Mr. Burrell were seated. Ms. Rice knocked on the window on the driver's side of the vehicle, where Mr. Burrell was seated. He told Ms. Rice to call him at a later time. Ms. Lyons got out of the car, walked around to where Ms. Rice was standing and told her to call Mr. Burrell. Ms. Rice told Ms. Lyons that she was not talking to her and to get back into the car. Thereafter, Ms. Lyons advised Ms. Rice that she had heard from other people that Ms. Rice wanted her. Ms. Rice denied the statement and told Ms. Lyons to get back into the car. Ms. Lyons then stated that if Ms. Rice wanted her she was there. Ms. Rice again denied that she wanted Ms. Lyons. Next, Ms. Lyons pushed Ms. Rice several times. Then Ms. Lyons grabbed Ms. Rice who responded in kind, and a fight ensued. During the fight Ms. Rice realized that she was bleeding. She claimed that Ms. Lyons threatened to cut her throat. Ms. Rice ran to Mr. Burrell for assistance. Mr. Burrell told both women to leave. Ms. Lyons got in her car and left. Ms. Rice went to a telephone and called a relative for assistance in getting to the hospital.

Agent Love testified that during his telephonic interview with Ms. Lyons she stated that Ms. Rice had attacked her with a weapon, that Ms. Lyons had attempted to run away but tripped, and that during the fight Ms. Lyons took away the weapon and used it on Ms. Rice. However, Ms. Lyons never identified the nature of the weapon.

Ms. Lyons testified to her version of the incident and the circumstances underlying the proceedings which followed. During 1982 and while she was a student at Glassboro, Ms. Lyons began to date Mr. Burrell. At or about that time, Ms. Rice introduced herself to Ms. Lyons as a friend of Mr. Burrell's and stated that she had followed Ms. Lyons on occasion. Mr. Burrell advised Ms. Lyons that Ms. Rice was a friend of his. On the first day of Ms. Lyons' employment at the Pleasantville Middle School in September 1982, she observed Ms. Rice. Ms. Lyons also observed Ms. Rice on the second day of school. In response to Ms. Lyons' inquiry as to why she was being followed, Ms. Rice stated that she liked the way Ms. Lyons walked and dressed and was fascinated by her. On the third day of school, Ms. Rice questioned Ms. Lyons regarding her cologne. Thereafter, Ms. Rice frequently followed Ms. Lyons. Ms. Lyons also testified to other specific incidents when Ms. Rice had followed or contacted her. After a basketball game which Ms. Lyons' team lost, Ms. Rice made a telephone call to Ms. Lyons and attempted to discuss the game. On another occasion Ms. Rice took the gas cap off Ms. Lyons' car and put dirt in the gas tank. Ms. Rice also followed Ms. Lyons and Mr. Burrell when they were together. On another occasion Ms. Lyons' car had two flat tires and she observed

Ms. Rice across the street. Also, Ms. Rice would frequently call Mr. Burrell and inform him of Ms. Lyons' whereabouts during a given day. On another occasion when Ms. Lyons was coaching a softball team, she observed Ms. Rice hiding in nearby bushes. Ms. Lyons reported this incident to her principal. Ms. Lyons also related receiving numerous phone calls which were traced to Ms. Rice. Also, Ms. Rice placed letters to Ms. Lyons on her car. Ms. Lyons also discussed being followed by Ms. Rice with her uncles, who were police officers. They advised her to ignore the situation, to avoid Ms. Rice and to protect herself if necessary. Ms. Lyons did not pursue the matter further with the police because she thought Ms. Rice might be a lesbian and might be attracted to her. Also, Ms. Lyons believed that Ms. Rice might be jealous of her relationship with Mr. Burrell, which amused Ms. Lyons. Further, there had been no attempt by Ms. Rice to harm Ms. Lyons and Ms. Lyons physically was not scared. Also, at that time Ms. Lyons was attending dealers school in addition to teaching and was very busy. At that time, Ms. Lyons did not believe that Mr. Burrell was also dating Ms. Rice although she now believes that to be true. Her original opinion was based upon not having observed Mr. Burrell with Ms. Rice.

Ms. Lyons also described the incident of June 27, 1983. That evening Ms. Lyons picked up Mr. Burrell from work, which she did frequently. Mr. Burrell drove Ms. Lyons' vehicle to his home, where they sat in the driveway and talked. Suddenly, Ms. Rice appeared and knocked on the passenger-side window of the vehicle. Upon observing Ms. Lyons, Ms. Rice went to the other side of the vehicle and spoke with Mr. Burrell. Mr. Burrell told her to leave and that he would see her on the street or she could call him. Mr. Burrell told Ms. Lyons to go into the house; however, she did not because she did not fear Ms. Rice. Ms. Rice persisted and made derogatory comments regarding Ms. Lyons. At that point, Ms. Lyons got out of the vehicle, went to the other side and advised Ms. Rice that she had heard Ms. Rice was looking for her. Ms. Rice denied the accusation. Ms. Lyons then asked Mr. Burrell to get out of the car so that she could leave. Ms. Rice grabbed at Ms. Lyons. Ms. Lyons laughed because she believed herself to be physically superior to Ms. Rice. Ms. Rice then swung her fist at Ms. Lyons. Ms. Lyons pushed her away. At this time Mr. Burrell was laughing. Ms. Rice then again came at Ms. Lyons and pursued her a short distance down the road. Ms. Lyons slipped in the dirt and fell to the ground. Thereupon, Ms. Rice grabbed and attacked Ms. Lyons. A tussle ensued, during which Ms. Lyons tried to extricate herself from Ms. Rice. Mr. Burrell continued to laugh and offered no assistance to either of the women.

Ms. Lyons noticed blood on Ms. Rice, but believed it came from her nose. Thereafter, Ms. Rice screamed to Mr. Burrell regarding the blood, stating that she had been cut, and requested assistance. Ms. Lyons went to her car and left. As she was leaving, Ms. Rice threatened Ms. Lyons with a brick. Ms. Lyons was dressed in a sweatsuit which had no pockets. Ms. Lyons picked up a girlfriend from work and returned home at approximately 4:30 a.m. The next morning Ms. Rice's brother and parents called Ms. Lyons and threatened her. Upon the advice of her uncle who was a police officer, Ms. Lyons turned herself in voluntarily to the police. Ms. Lyons was stunned by the incident and did not believe the charges were real. Ms. Lyons later heard by happenstance from a former student that the former student had overheard Ms. Rice and her friends plot an attack upon Ms. Lyons.

Ms. Lyons also described the circumstances underlying the entry of her guilty plea. Prior to the entry of the plea, there had been protracted efforts by Ms. Lyons to attempt to establish her innocence and she was exhausted from the effort. Also, she feared potential incarceration at Clinton, where she had had a job interview and an offer of employment, which she refused because of the conditions. Also, the plea to the amended charges appeared to be guaranteed, was simple, involved no risk and was substantially less expensive than going to trial. Ms. Lyons' attorney strongly recommended that she agree to the plea bargain. Also, her parents advised her to take the plea bargain and end the matter at that point. Ms. Lyons was upset at the time, was unemployed and was embarrassed by the entire incident. She is now sorry that she agreed to the plea bargain. Ms. Lyons had no knowledge that the plea bargain could affect her chances for licensure.

Ms. Lyons produced several affidavits to support her testimony. Khecia Harris recounted two occasions prior to the incident when she observed Ms. Rice follow Ms. Lyons and one occasion thereafter. In an affidavit which was signed but not witnessed, Virginia R. Miller recounted numerous occasions on which she had observed Ms. Rice follow Ms. Lyons. Ethel L. Seymore recounted three incidents in which she had observed Ms. Rice follow Ms. Lyons (R-5, R-6 and R-7).

Ms. Lyons also described two occasions subsequent to her conviction when Ms. Rice had followed her.

Ms. Lyons also explained the reasons why she advised Agent Love that there was a weapon. Ms. Lyons assumed that there must have been a weapon because of the injuries to Ms. Rice and based upon the information set forth in the police report. Therefore, in an attempt to justify the injuries to Ms. Rice, she acknowledged untruthfully the existence of a weapon and stated that it had belonged to Ms. Rice. Nevertheless, Ms. Lyons maintained that she had no knowledge of any weapon.

The version of the incident offered by the Division, which consisted primarily of the statement by Ms. Rice, and the version of the incident by Ms. Lyons differed as to fault, yet they were essentially similar. The significant issue is the believability of Ms. Lyons' testimony. Again, the overall credibility of Ms. Lyons' testimony will be dealt with later.

Ms. Lyons' testimony on this issue was substantially consistent with the statement given by Ms. Rice, but for fault, and was corroborated in significant parts by the affidavits offered, which were prepared in anticipation of a criminal trial. Ms. Lyons' version of the events was plausible, reasonable and internally consistent. Although her explanation of the event was inconsistent with her guilty plea, the explanation of the reasons underlying the plea and the fact that Ms. Rice was the only person injured, explained away any significance to be attributed to the facial inconsistency. It is also noted that although Ms. Lyons' statement to Agent Love concerning the incident indicated that a weapon was used, no weapon was identified. Nevertheless, I am persuaded to believe Ms. Lyons' testimony at the hearing that she had no knowledge of any weapon because her attire in a sweatsuit, which was corroborated by Ms. Rice, provided no opportunity to conceal a weapon and because there was no evidence whatsoever to indicate that Ms. Lyons had either planned or anticipated the event. Further, Ms. Lyons' testimony on this issue was one of the most compelling testimonies I have heard. Accordingly, I believe Ms. Lyons' version of the incident and of the criminal proceedings in their entirety. I so **FIND**.

Also in dispute were the reasons for Ms. Lyons' failure to disclose on her PHDF-2A and during her telephonic interview with Agent Love, until confronted with the information, the following: (1) her employment by BRC from June 17 to August 26, 1980; (2) her employment by BRC from July 9 to August 19, 1981, and the circumstances under which her employment ceased (which is also in dispute); (3) her employment by Claridge

from August 7 to August 30, 1981; (4) her employment by Playboy from April 29 to December 16, 1982, and the circumstances under which her employment was terminated (which is also in dispute); and (5) her employment by Tropicana from April 29 to June 27, 1982, and the circumstances under which her employment was terminated (which is also in dispute).

Ms. Lyons acknowledged her failure to disclose. The reason for her failure to disclose these employments on her PHDF-2A was that the application form was completed during the time she was attending dealer school. Her tuition to school was paid for by a CETA grant. Further, the PHDF-2A was given to Ms. Lyons by CETA and was to be returned to them for filing with the Commission. CETA officials were to validate the information on the form prior to filing. Since Ms. Lyons had not previously advised CETA of her employment history and because she knew that CETA would verify the information on the PHDF-2A with the information in its records, she knowingly and purposefully failed to disclose the stated portion of her employment history.

With regard to her nondisclosure to Agent Love, Ms. Lyons testified that in light of the circumstances which had been occurring with Ms. Rice and based upon her belief that any official interview would be in-person and not by telephone, she was apprehensive about the telephone interview and was not fully convinced that the agent was who he represented himself to be. Therefore, at first she was reluctant to communicate fully with the agent. However, following the agent's inquiries into her employment history and his obvious in-depth knowledge of the circumstances of her employment, she became more confident that he was who he represented himself to be, and thereafter communicated with him more freely. Agent Love testified that he believed Ms. Lyons believed that he was who he represented himself to be. Nevertheless, the agent testified that after some discussion, Ms. Lyons became more willing to discuss the subject areas of inquiry without reservation.

With regard to Ms. Lyons' nondisclosures on her PHDF-2A, I am willing to accept completely her explanation. More specifically, her explanation was reasonable and plausible in all respects, and it consisted of a statement against interest in that her nondisclosure was knowing and intentional.

The reasons for Ms. Lyons' nondisclosures to Agent Love are more difficult to assess. Although the agent believed Ms. Lyons had accepted his representations of his official capacity, he acknowledged that she did not at first openly discuss the areas of

inquiry, and as the conversation proceeded she became more willing to discuss various factors without reservation. The agent's testimony was essentially consistent with Ms. Lyons' explanation and corroborated her testimony. Further, during the same time period as that of the interview, Ms. Lyons was encountering what amounted to harassment by telephone from Ms. Rice, which would logically contribute to her apprehension. Last, it is entirely understandable for any person to whom questions are put concerning matters of a personal nature, even by someone who represents himself to be an official, to be less than willing to discuss the matters by telephone. Accordingly, I am persuaded to accept in full Ms. Lyons' explanations for the reasons of her nondisclosures on her PHDF-2A and to investigator Love. I so **FIND**.

The Division also raised issue with the circumstances underlying Ms. Lyons' termination of several employments. With regard to her employment by BRC from July 9 to August 19, 1981, the Division produced evidence that the reason for termination was personal and that Ms. Lyons was eligible for rehire. This was entirely consistent with Ms. Lyons' testimony and indicates nothing negative. I so **FIND**.

With regard to Ms. Lyons' employment by the Tropicana from April 29 to June 27, 1982, the Division produced evidence of the reason for separation as being a voluntary resignation by reason of failing to report for work without notice (P-10). It is readily apparent that an incident occurred on June 28, 1982, which involved Ms. Lyons' calling her supervisor only ten minutes before her scheduled starting time to indicate that she would not report for work. Apparently, a disagreement ensued. Thereafter, Ms. Lyons did not return to work, nor did she advise her employer that she would not return to work. Ms. Lyons testified that on the day preceding the initial incident, and while she was working in the gift shop, another employee broke some glass and some got into Ms. Lyons' eye. She was advised by a doctor at the Tropicana's infirmary that she had a broken blood vessel and that she should work until it was better. However, that evening she contacted her supervisor, who requested that she call in the morning in the event she was unable to work. In the morning Ms. Lyons felt reasonably well and attempted to get ready for work, but, shortly before she was to report, her eye again caused her pain. When she contacted her supervisor that morning, her supervisor became hostile. Ultimately, Ms. Lyons advised her supervisor that she quit her job. Ms. Lyons received her last check and signed an exit statement, which explained the circumstances of her resignation. Again, I am persuaded to believe the explanation provided by Ms. Lyons, which was essentially unrefuted. Although the Tropicana's records may indicate that

Ms. Lyons was terminated, the report filed by her supervisor corroborates the nature of the disagreement. Further, Ms. Lyons never attempted to nor did she return to work and was never notified of her termination by the Tropicana. Accordingly, no negative inferences can be drawn from this incident. I so **FIND**.

The Division also raised issue with the respondent's termination from employment with the Playboy on or about December 16, 1982, which the Division contended was due to chronic tardiness (P-11). Essentially, Ms. Lyons acknowledged the termination. However, she explained that she held three jobs at the time, lived in Vineland and had difficulty reporting to work on time. Also, she had advised her employer at the time of hire of her commutation difficulties. Again, I am persuaded to accept the explanation offered by Ms. Lyons, which was unrefuted. I so **FIND**.

The Division also questioned the circumstances under which Ms. Lyons was not rehired by the Pleasantville Board of Education. Ms. Lyons testified that she was not rehired as a result of the incident involving Ms. Rice. This testimony was believable in all respects and was unrefuted. I so **FIND**.

Also in dispute were Ms. Lyons' character, honesty and integrity.

Ms. Lyons testified that she relocated to Virginia in order to avoid any further problems with Ms. Rice and in order to pursue her teaching career. However, Ms. Lyons wishes to retain her registration and be licensed for employment in the casino industry on a seasonal basis.

Ms. Lyons also offered four letters from George A. Ross, minister (R-1), Earl W. Hinton, formally employed as associate professor of Education and as director of Minority Affairs at Glassboro (R-2), Calvin H. Ellis, director of Cooperative Education/Academic Field Experiences at Glassboro (R-3), and Helen L. Lewis, a long-time friend (R-4). Each of these persons stated that Ms. Lyons is an ambitious, hardworking, intelligent, fair, honest person of outstanding character and reputation. I further **FIND** that former educators and persons who have known Ms. Lyons for a number of years are of the opinion that she is a person of good character, honesty and integrity.

As indicated throughout this decision, the findings of fact reached depended substantially upon Ms. Lyons' testimony; therefore, her credibility must be assessed. Initially, her position in this matter must be recognized. As the holder of a casino hotel

employee registration and as the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of a record that, from my observations of her demeanor, the plausibility of her testimony, the consistency between her explanation of her actions and the documentary evidence, and from my examination of the documentary evidence, Ms. Lyons testified truthfully. Her testimony was candid, consistent, believable, sincere and most persuasive. In fact, her testimony was most compelling. The respondent acknowledged fully her conduct and accepted responsibility therefor. In the final analysis, I am persuaded to accept her testimony in all respects. I so FIND.

### DISCUSSION OF LAW AND CONCLUSIONS

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

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

So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

Ms. Lyons acknowledged fully her failure to disclose on her PHDF-2A her employment history in the casino industry, which consisted of five positions with three different casino-hotels between 1980 and 1982. She testified candidly that the non-disclosures were knowing and intentional, and for the purpose of keeping her employment history in the casino industry secret from the CETA officials who were to validate her application because full disclosure would have affected negatively the grant provided to her by CETA for the tuition for dealer school. Ms. Lyons made no effort to correct the information provided to the Commission.

With regard to Ms. Lyons' apparent initial nondisclosures to Agent Love, I am persuaded that these were not of the type to warrant denial of licensure. Rather, her refusal to answer certain inquiries was explained away by her justifiable apprehension to discuss matters of a personal nature during a telephone conference with an unknown person.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Ms. Lyons is disqualified from licensure as a casino employee by operation of N.J.S.A. 5:12-86b, by reason of her failure to disclose fully her employment history on her PHDF-2A. This conclusion has no effect upon Ms. Lyons' casino hotel employee registration.

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

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) of the Act mandates that a person who has been convicted of a violation of N.J.S.A. 2C:12-1b(1), aggravated assault—second degree, be disqualified from licensure. Although Ms. Lyons, pursuant to a plea bargain, was convicted of a violation of only N.J.S.A. 2C:12-1b(3), aggravated assault—fourth degree, the Division alleged that her conduct underlying the incident constituted a violation of N.J.S.A. 2C:12-1b(1), which is a disqualifying offense.

In pertinent part, N.J.S.A. 2C:12-1 provides:

....

- 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
  - ....
  - (3) Recklessly causes bodily injury to another with a deadly weapon; . . .

These two degrees of assault may be characterized by different mental states. More specifically, a person is guilty of second degree assault if he "attempts (i.e., he intends) to cause serious bodily harm," or if he causes such injury "purposely or knowingly." N.J.S.A. 2C:2-2b(1) defines "purposely" as:

with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist.

The same statute defines "knowingly" as:

with respect to the nature of this 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.

However, a second degree assault does not necessarily require intentional conduct. The statute also provides that "extreme indifference to the value of human life recklessly causing such (serious bodily) injury" may also suffice as the requisite mental state. N.J.S.A. 2C:12-1b(1). This mental state parallels closely that required for a fourth degree assault, that is, "reckless" causation. N.J.S.A. 2C:12-1b(3). Therefore, when the defendant's mental state is one of "extreme indifference" or "recklessness," the degree of assault depends upon the type of injury sustained. More specifically, a second degree assault requires causation or intent to causation of "serious bodily injury." N.J.S.A. 2C:11-15b defines serious bodily injury as:

Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

By contrast, fourth degree assault requires mere "bodily injury," which is defined as "physical pain, illness or any impairment of physical conditions." N.J.S.A. 2C:11-1a. The degrees of offense are also distinguishable in that aggravated assault in the fourth degree specifies causation with a "deadly weapon," while aggravated assault in the second degree does not require any particular means of causation, i.e., its requirements are met whether the defendant uses a deadly weapon or not provided the defendant caused or intended to cause serious bodily injury.

The Division offered no evidence as to Ms. Lyons' mental state. Rather, the only evidence of her mental state came from the testimony of Ms. Lyons. Clearly, she had no intent or plan to fight with Ms. Rice, let alone cause an injury. Further, although Ms. Rice may have incurred some permanent disfigurement, and such was not conclusively established, there was no evidence to indicate that Ms. Lyons' actions exhibited "extreme indifference to the value of human life." The circumstances described by Ms. Lyons establish conclusively that, at most, she committed aggravated assault in the fourth degree, and nothing more.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that Ms. Lyons committed a violation of N.J.S.A. 2C:12-1b(1).

In the absence of a section 86c disqualifier, Ms. Lyons had no obligation to establish her rehabilitation, pursuant to N.J.S.A. 5:12-90h and 91d. I so **CONCLUDE**.

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

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

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish her qualifications for licensure under section 89b(2). William Gonzales at 8. Therefore, the conclusion that Ms. Lyons failed to disclose fully her casino industry employment history in violation of section 86b automatically precludes her from meeting her burden under section 89b(2) of the Act. Further, an applicant's willingness to disclose fully her casino industry employment history is a significant and reliable means of testing her good character,

honesty and integrity. Nevertheless, it is an easy test for the applicant to meet if she does, in fact, possess good character, honesty and integrity. Also significant is the fact that Ms. Lyons' nondisclosure was intended to keep secret the information from CETA, which provided tuition for her attendance at dealer school.

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

(D) Registration

Because the Division failed to establish that Ms. Lyons' conduct constituted a violation of N.J.S.A. 2C:12-1b(1), aggravated assault in the second degree, it did not establish a statutory disqualifier from holding a casino hotel employee registration. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Aurelia R. Lyons be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that the application of Ms. Lyons 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.

October 1, 1984  
DATE

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

Receipt Acknowledged:

October 1, 1984  
DATE

Vernon D. Smith  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

OCT 03 1984  
DATE

Ronald L. Parker/pro  
OFFICE OF ADMINISTRATIVE LAW

ml/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Egg Harbor Township Police Department - Arrest Report, August 13, 1982; The State of New Jersey v. Aurelia Rene Lyons, Egg Harbor Township Municipal Court, Complaint Number SM32584, August 13, 1982 (2 pages)
- P-2 Egg Harbor City Police Department - Investigation Report, June 27, 1983; Statement of Sarah M. Rice, June 27, 1983; State of New Jersey v. Aurelia Lyons, Egg Harbor City Municipal Court, Complaint, June 29, 1983 (6 pages)
- P-3 Atlantic County Prosecutor's Office, Detective Division - Supplemental Report, July 25, 1983
- P-4 The State of New Jersey v. Aurelia Lyons, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment Number 8-909-83-A (4 pages)
- P-5 The State of New Jersey v. Aurelia R. Lyons, Superior Court of New Jersey, Law Division, Atlantic County - Criminal, Number 969917A, Judgment of Conviction, January 27, 1984 (4 pages)
- P-6 Order for Pre-Sentence Investigation, January 6, 1984; Plea Bargain Agreement; Statement by Defendant, January 6, 1984 (4 pages)
- P-7 Atlantic City Medical Center Emergency Department Record, June 27, 1983
- P-8 Copy of picture of Sarah Rice
- P-9 Letter to Delores Birts from Joanne Cocchiola, July 18, 1984, together with response
- P-10 Letter to Joanne Cocchiola from Barbara A. Miller, July 20, 1984, with attachments (6 pages)
- P-11 Letter to Joanne Cocchiola from Rose Smith, July 23, 1984, together with attachments (13 pages)
- P-12 Personal History Disclosure Form - 2A, Aurelia Rene Lyons, filed December 15, 1982 (24 pages)
- R-1 Letter from George A. Ross, October 5, 1983
- R-2 Letter from Earl W. Hinton, September 6, 1983
- R-3 Letter from Calvin H. Ellis, August 10, 1983
- R-4 Letter from Helen L. Lewis
- R-5 Affidavit of Khecia Harris, September 21, 1983 (2 pages)
- R-6 Affidavit of Virginia R. Miller, September 28, 1983 (signed but not witnessed) (2 pages)
- 5227 Affidavit of Ethel L. Seymore, September 1, 1983 (2 pages)

WITNESS LIST

FOR THE DIVISION:

Betsey Bartholomew  
Alexander Love

FOR MS. LYONS:

Aurelia R. Lyons

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 00902-11  
AGENCY DOCKET NO. 83-EA-206  
OAL DOCKET NO. CCC 0263-84

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IN THE MATTER OF THE APPLICATION  
OF MICHAEL MARKO  
FOR RENEWAL OF HIS CASINO  
KEY EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 17, 1984, recommending that the application of Michael Marko for renewal of his casino key employee license be denied; and the applicant having filed exceptions to the Initial Decision on October 17, 1984, to which the Division of Gaming Enforcement filed a reply on October 25, 1984, to which the applicant filed a rebuttal on November 1, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on November 21, 1984, to affirm and adopt the said Initial Decision and to deny the application,

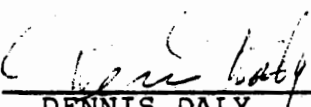
IT IS on this 27th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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WORD PROCESSING  
TRINITY  
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**INITIAL DECISION**

OAL DKT. NO. CCC 263-84

AGENCY DKT. NO. 83-EA-206

**MICHAEL MARKO,**

Petitioner,

v.

**STATE OF NEW JERSEY,**

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Nicholas F. Moles, Esq.,** for petitioner (Wilson, Jacobson, Winkelstein & Scerni, attorneys) and **G. Michael Brown, Esq.,** co-counsel for petitioner (Brown & Michael, attorneys)

**Stephen D. Schrier,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 23, 1984

Decided: September 14, 1984

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

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

THE CHARGES

Petitioner was Food and Beverage Director at Harrah's Marina Hotel and Casino from January 1980 until October 1983. Thereafter, he was transferred to the Harrah's Trump Plaza, where he remained until January 1984, when his services were terminated. It is undisputed that while at the Marina he received a total of five checks from two individuals who did business with Harrah's. Four of the checks were from Carl Jacobson. He represented two companies, A.J. Marrucca and Sons, a produce vendor, and Murray Berkowitz and Sons, a meat vendor, each doing business with Harrah's. One check came from Charles Foster, a supplier of restaurant and kitchen specialty items, who also did business with Harrah's. Respondent believes that these were kickbacks or at best improper loans. Petitioner denied any impropriety. He explained that the check from Foster and one of the checks from Jacobson were loans from these two friends and were unrelated to any decision which he took on behalf of Harrah's. The other checks from Jacobson were monies which Jacobson owed him and which were simply being repaid. Petitioner denied any foreknowledge of Jacobson's connection to vendors in Atlantic City and testified that Foster's business in Atlantic City had been winding down at the time he accepted the loan from him.

From this broad outline the issues for hearing were as follows:

1. Whether petitioner's acceptance of checks from vendors or representatives of vendors constituted the crime of commercial bribery, N.J.S.A. 2C:21-10, though not prosecuted, N.J.S.A. 5:12-86g.
2. Whether petitioner misrepresented information or failed to disclose material facts during interviews with respondent's agents, in violation of N.J.S.A. 5:12-86b. If so, whether there are special circumstances which explain such failure.
3. Whether the underlying conduct or any disclosure failure undermine petitioner in his affirmative obligation to establish good character, honesty and integrity, as a condition of licensure, N.J.S.A. 5:12-89b(2).

4. Whether the underlying conduct or any disclosure failure undermine petitioner in his affirmative obligation to establish his financial integrity and business ability as a condition of licensure, N.J.S.A. 5:12-89b.1 and 3.

Immediately prior to the commencement of the hearing, respondent filed a motion seeking to amend the Prehearing Order to reflect an additional issue. Here it is charged that petitioner violated N.J.S.A. 5:12-100(n), which prohibits a casino key employee from gambling in Atlantic City casinos. This issue was added to the charges.

#### THE CHECKS

Though the investigation of the matter developed an evermore complex weave as it progressed, it began when respondent learned of the five checks. The first of these was check no. 563, dated April 29, 1981, in the amount of \$200 from Jacobson's personal account to petitioner. The second check, no. 1849, is dated February 10, 1982, in the amount of \$1,000 from Jacobson to petitioner. It is a check of RepCom International, Mr. Jacobson's business in Lancaster, Pennsylvania. The third check, no. 107, is from Jacobson's personal account. It is dated March 17, 1982, in the amount of \$200. The final check from Jacobson, no. 201 is through his firm, RepCom International. It is dated August 4, 1982, and is in the amount of \$1,000, payable to petitioner. The fifth check is from Resco Hotel Planning and Purchasing Corporation, Charles Foster's firm. It is in the amount of \$2,000 to petitioner and is dated May 12, 1982.

#### THE INTERVIEW WITH AGENT YASKIN

Harry Yaskin has been employed by respondent as an investigator since September 1978. Prior to that time, he had served for some 28 years as an investigator, and in various other positions, with the Internal Revenue Service. He is a certified public accountant. After respondent learned of the five checks, it began an investigation. Agent Yaskin was part of that investigation. He interviewed petitioner on January 28, 1983, at petitioner's office. Ostensibly, the interview was scheduled to update petitioner's renewal form signed on March 12, 1982.

The renewal application asks questions which are primarily intended to determine whether anything new requiring disclosure has happened since the previous filing. The financial disclosure portion of the application asks the licensee to list assets and liabilities. Assets are broken down into categories such as cash on hand, cash in banks, accounts receivable, notes receivable, and loans receivable with a catchall category for "other assets." Where there are such assets, the form asks that a schedule be attached specifying from whom these monies are due. Similarly, the form categorizes liabilities as notes payable to banks, notes payable to others—unsecured, notes payable to others—secured, accounts payable, with a catch-all category for "other liabilities." Petitioner made various disclosures of assets and liabilities on the form. Under accounts payable, he attached a schedule on which he listed what appears to be a Citibank credit card debt of \$1,000, a debt to his attorneys of \$2,000, debts to two dentists of \$250 and \$150 respectively, and a debt to another physician of \$135.

Immediately above petitioner's signature on the form is a certification which states:

This is to certify that all the statements contained herein and in my supporting schedules are true and give a correct showing of my financial condition as of the date indicated. I further certify that I had no liabilities, direct or contingent, business or accommodation, except as set forth in this statement, and that the title to all assets therein set forth is in my name solely except as may otherwise be noted. IN THE EVENT OF ANY MATERIAL ADVERSE CHANGE IN MY FINANCIAL CONDITION, I AGREE TO NOTIFY THE CASINO CONTROL COMMISSION IMMEDIATELY IN WRITING.

None of the checks which had already been received at the time petitioner signed this document were disclosed. Agent Yaskin testified that he went down the list of assets and liabilities set forth in the renewal form with petitioner inquiring as to any changes. By this time each of the five checks had been received, but agent Yaskin testified that petitioner did not take the opportunity to disclose them.

Agent Yaskin testified that the interview lasted most of the day and that, in his opinion, it went very smoothly. He did not raise his voice with petitioner and it did not appear to him that petitioner was at all upset during the interview. The importance of this testimony will become more clear after the discussion of petitioner's testimony.

THE SWORN INTERVIEWS

On May 16, 1983, a sworn interview of petitioner was conducted by Deputy Attorney General Schrier. Mr. Schrier opened the interview with the following statement:

Mr. Marko, before we begin, I just want to explain once again on the record so that it is clear that we are presently investigating you, you have a key renewal application in for a casino license at the present time. . . .

I want you to be aware that if at any time you want to stop the interview, get a drink of water, whatever you'd like to do, we are not here to detain you in any way. I just want you to be aware that you can take whatever steps you feel necessary during the interview. . . .

In addition, the statements that you will be giving today are under oath, you have to keep that in mind.

When asked during this interview initially if he had borrowed any money from friends as a personal loan, Mr. Marko indicated that he had a loan from Jacobson in the amount of \$2,000. He denied accepting any other loans since becoming employed by Harrah's. He was then shown each of the five checks and corrected his earlier testimony, explaining each check. The first check, No. 563, dated April 1981, for \$200, from Jacobson was repayment of monies petitioner had lent Jacobson to gamble. Check No. 107, dated March 1982, in the amount of \$200 involved an incident in which his assistant, Karen Stubblefield, lent Jacobson \$200 in cash one evening when he ran short while gambling. Jacobson then made a check payable to petitioner, who in turn repaid Stubblefield. Petitioner explained check No. 1849, the February 10, 1982 \$1,000 check from RepCom International as the repayment of monies which Jacobson had owed him going back to late 1979. At the time petitioner was the owner of a restaurant in Lancaster, Pa. known as Armands. He occasionally provided dinner service at people's homes. Jacobson was repaying him for such an evening's work. Just prior to this explanation in response to another inquiry he stated that Jacobson paid him for this service just after he relocated to Atlantic City. Petitioner explained the August 4, 1982 check from RepCom as a loan from Jacobson. Petitioner explained the \$2,000 check from Charles Foster as a loan as well. Petitioner had received notice that the Internal Revenue Service was about to garnish his wages because of back taxes owed. Foster, whom he had

known since 1968, and who was present when the news came, immediately offered to help out with a loan. Petitioner explained that he did not disclose the receipt of these loans because he did not want his wife, from whom he was separated, or his creditors from the subsequent failure of Armands, to know of it.

As part of his rationale for accepting checks from Jacobson, he indicated that they were old friends going back to the time that petitioner opened Armands in 1976. He stated that to his knowledge Jacobson was in the electronics and travel business and had no connection to vendors in Atlantic City. He specifically denied that he knew Jacobson was an agent of A.J. Marrucca or Murray Berkowitz.

During this interview he also admitted to gambling in Atlantic City casinos other than Harrah's.

On May 16, 1983, the same day that petitioner was interviewed by Mr. Schrier, Mr. Jacobson was interviewed by Deputy Attorney General Rosemary Quinn. Petitioner was a close personal friend, and he had lent him money on a few occasions because he was in need as a result of his separation from his wife and the bankruptcy of Armands. He did not mention repayment of a debt in 1982 for tableside service performed in 1979. The loans were not intended to influence his friend, nor in his estimation did they. He acknowledged that he had represented Marrucca and Berkowitz in Atlantic City. His statement appears also to acknowledge that petitioner knew this. As this developed into a crucial credibility question in the case, it may be important to quote directly from his examination:

Q. Have you ever discussed with Mr. Marko your business down in Atlantic City at his casino or any other casino and how he could assist you?

A. In the beginning, yes, sure.

Q. What type service did he provide you?

A. Nothing except in the beginning.

Q. What type of assistance?

A. Nothing other than go see this guy, he's the one in charge. He would save me knocking on doors.

Q. Did he provide you any other service other than giving you a name to contact?

A. No. That's a lot. You know when the big boss says go in the door, maybe—I never used his name going in.

On June 14, 1983, Deputy Attorney General Quinn interviewed Murray Berkowitz. During the course of the interview, Mr. Berkowitz was asked three times whether petitioner knew that Jacobson represented him. Each time he answered, "Oh sure, he was" and "Oh yes, I'm sure." and "Oh sure, he knew that." He also characterized petitioner as hard working and absolutely honest.

On July 14, 1983, Deputy Attorney General Quinn interviewed Charles Foster. Mr. Foster corroborated that he had known petitioner for some 15 years and that they were good business friends. He was aware of petitioner's bankruptcy and IRS problems and offered to lend him \$2,000. Petitioner requested that he issue him a letter evidencing the loan, which was done. The loan, which was made in May 1982, was then repaid over the course of the summer. The letter from Mr. Foster is in evidence. While each of the other persons who was interviewed ultimately testified at the hearing, Mr. Foster died in the interim.

#### THE CONFLICTS OF INTEREST POLICY

On April 29, 1982, Holiday Inns, Inc., the parent corporation of Harrah's, issued a conflicts of interest memorandum. It states:

ALL EMPLOYEES OF HOLIDAY INNS, INC. AND ITS SUBSIDIARIES SHALL AVOID FINANCIAL OR PERSONAL SITUATIONS WHICH MIGHT INFLUENCE GOOD JUDGMENT IN DEALING ON BEHALF OF THE COMPANY WITH OUTSIDE FIRMS OR INDIVIDUALS.

The following specific acts or transactions are to be avoided but in no way limit your responsibility to avoid other situations which might impair your judgment in acting on behalf of the company:

.....

Borrowing or accepting money from a company doing business with our company.

.....

Accepting gifts or favors that may influence your judgment or that could be embarrassing.

....

Indirect conflicts of interest are also prohibited.

....

If a question arises in your mind concerning a present situation or a proposed transaction, you should immediately contact the general counsel or a designated attorney in the law department.

This policy was distributed amongst the managers and department heads within Harrah's and a certification, dated June 12, 1982, indicates that petitioner received and understood it.

#### THE TESTIMONY

Petitioner testified in his own behalf. He was born in Hungary in 1933. In 1951 at the age of 18, he was arrested for organizing against the Communist party and was sentenced to 15 years in prison. There he underwent long periods of threat and torture. After the revolution in 1956, when many thousands were killed, he managed a harrowing escape to the West. He eventually wound up in Switzerland, where he began to rebuild his life. Though he was a veterinary medicine student in Hungary, it was impossible for him to continue this program in Switzerland, and he eventually turned to hotel management. He graduated first in his class at the Hotel Management School in Lucerne, Switzerland. In the process, he also learned to speak German, French and Swiss. In 1964 he came to the United States, where he held a series of positions as food and beverage director at various major hotel chains throughout the country. In 1969 he became an American citizen. He testified that eventually he tired of working for others, and in 1976 when an opportunity presented itself, he opened his own restaurant, Armands, in Lancaster, Pennsylvania. Here, he met Carl Jacobson, who became a regular customer.

Sometime in 1979 things began to sour. It developed that his wife was having an affair with his best friend and by the end of the year she had taken their two children and gone. His business was also failing and eventually went into bankruptcy. He and Jacobson became close friends. Petitioner described him as a willing and sympathetic listener.

Once it was clear that his restaurant was going to fail, petitioner began a search for employment which brought him to Harrah's as food and beverage director. He began work on January 21, 1980. Harrah's was then in the planning stages for opening during the fall of the year and petitioner worked in setting up the kitchens and restaurants in the hotel. He was involved in everything from hiring personnel to ordering necessary furnishings and the like. He testified however that he did not decide from whom to buy items. He merely provided the specifications for what was needed to his supervisors, and if approved, these would be given to the purchasing department, which is responsible for buying at competitive prices. He acknowledged that he could influence this process, but that the decisions were made by others. John Allen, the executive vice-president for Harrah's eastern operations, corroborated that petitioner, who was under his supervision, had no organizational say in the purchasing of products.

Sometime during summer 1980, Chuck Foster began to supply Harrah's with specialized gourmet items such as silver trays and carts. This was not done particularly through petitioner's urging. His superior had seen some of Foster's work while at the Fairmont Hotel in Philadelphia and out of that developed the connection to Harrah's. Petitioner testified that most of Harrah's major business with Foster was completed by summer 1981 and that thereafter he was used mainly to provide replacement items when something broke. At the height of his business with Harrah's, Foster was doing a few hundred thousand dollars a month.

The record reveals that in the months before and after the May 1982 Foster loan, Foster did from a few hundred to a few thousand dollars' worth of business with Harrah's. Petitioner's name appears on a number of requisition forms as either generating the request for an item or as a sign-off. It develops further that in December 1983, Foster's company, Resco, put in a bid to do kitchen work on the new Harrah's Trump Plaza facility then under construction in Atlantic City. He did not receive that contract but had he, it would have amounted to approximately a three and one-half-million-dollar job. Petitioner was transferred by Harrah's to plan and oversee the development of the Trump Restaurant and kitchen facilities on October 27, 1983.

Petitioner testified that sometime during summer 1980 an individual identified throughout the hearing as Zebly whom he had previously met in Lancaster and who was quite friendly with Jacobson, came to the trailer at which he was then working while the hotel was being completed to introduce a firm of produce vendors known as A.J. Marrucca

and Sons. There were a number of people in the trailer and he simply directed Zebly and Marrucca to one of these individuals to discuss the chef's produce needs. Jacobson was not around at the time although he did stop by a bit later. To his knowledge at the time, Jacobson had no business connection to Marrucca. It was only during the interview with Schrier that he began to realize that it was otherwise. Werner Zeferer, the executive chef at Harrah's, corroborated the sequence of events in the trailer.

In early 1982, Harrah's was having problems with its meat vendors. The chefs were complaining that deliveries were late and that quality was poor. Petitioner was also receiving an excessive number of complaints from customers. In January, he sent a confidential letter to the Purchasing Department complaining about the meat problem. In February or March 1982, Jacobson introduced petitioner to an individual named Murray Berkowitz. The first few times that they met there was no discussion of Berkowitz's business. They had a few drinks, they met once for dinner, and the conversation was mainly social. A few weeks later Berkowitz, who was in the Casino having lunch at one of the cafeterias, called and asked that petitioner join him and then pointed out that the steak he was having was of low quality. He informed him that he was a meat supplier to some of the best restaurants in New York and that if he purchased meat from him he guaranteed that there would be no further complaints. Petitioner testified that he introduced Berkowitz to his chef, Werner Zeferer, in order to acquaint him with Harrah's needs and then informed him that the decision could only be made at the Company's central headquarters in Reno, Nevada. Petitioner then sent a letter to Julius Weiss, the Corporate Executive Chef in Reno, complaining about the existing meat problem and suggesting that he consider Berkowitz. Thereafter, sometime in April 1982, Weiss, while on a business trip to New York, visited the Berkowitz plant and approved it. Harrah's began to purchase meat from Berkowitz in May 1982. Julius Weiss testified at the hearing and corroborated these events.

Petitioner testified that Jacobson visited him in Atlantic City on a once or twice a week basis and though Berkowitz accompanied Jacobson from time to time, at no time during this period did he know that Jacobson was a representative of Berkowitz in Atlantic City.

Petitioner also testified concerning the four checks from Jacobson. He corrected his earlier sworn statement in one respect. He testified that check no. 1849, the first \$1,000 check dated February 10, 1982, was a loan from Jacobson. Check no. 201, the second \$1,000 check, dated August 4, 1982, was the repayment by Jacobson for the tableside service rendered at Jacobson's home in 1979. Petitioner testified that he did not disclose the existence of these checks to Mr. Yaskin, first, because he did not want his wife or his creditors to know about it, but also because Mr. Yaskin did not ask him about personal loans only about bank loans. He also repeated the story concerning the \$2,000 loan from Charles Foster. Although he had initially reported to Mr. Schrier in their interview that Mr. Foster provided this loan on the same day that he learned that the IRS was to garnish his wages, that, in fact, was not true. The check from Mr. Foster is dated May 12, 1982. The Notice of Labor and Wage Execution from the IRS is dated April 15, 1982, and a release of that levy is dated April 20, 1982. Petitioner explained that although the Foster check came later he still considered the matter part of his overall IRS problem because in order to release the levy he had to sign away the right to certain past refunds from the IRS which he had intended to use for other purposes. As these funds were no longer available, when he spoke to Foster on May 12, 1982, he deemed that his problem resulted from his IRS situation.

Karen Stubblefield corroborated petitioner's testimony to the effect that she lent Jacobson \$200 sometime in March 1982 because he had run out of money gambling. Petitioner then paid her back in cash.

Petitioner went on to testify that whatever errors or omissions resulted from his interview with Mr. Yaskin and from his sworn interview with Mr. Schrier, came about because of the intimidating nature of these two meetings. He testified that both Mr. Yaskin and Mr. Schrier were loud in their questioning, did not permit him an opportunity to review documents and think through his answers, and pressed him to the point that he eventually became both disgusted and unnerved and answered unthinkingly. He testified that overall, these interviews reminded him of the secret police interrogations he underwent during his imprisonment in Hungary and he simply couldn't cope with them. Additionally, with respect to the interview with Mr. Yaskin, he testified that he was under great pressure in the days prior to the interview. He had been seeing a woman in Atlantic City after the breakup of his marriage and he thought that he might again marry. Just prior to the interview, this relationship ended. He also had a disturbing telephone call the night before from his daughter, who said that she was planning to run

away from home. Thus, he had no sleep prior to that interview. This is why, for example, when agent Yaskin asked him if he paid rent he told him that he paid \$850 per month when, in fact, he had only been asked by Harrah's to begin paying rent at a unit which he had been occupying since moving to Atlantic City, on which they paid rent. He telephoned Mr. Yaskin the following business day and corrected this error.

Petitioner acknowledged that he introduced Carl Jacobson to various people in and out of Harrah's but this was only as a friend and not in any way to enhance his business prospects.

Petitioner explained that he forthrightly admitted in his interview with Mr. Schrier that he gambled in Atlantic City. He had no idea that this was inappropriate. He knew only that he could not gamble at Harrah's and did not.

In support of his contention that he was an individual uniquely susceptible to pressure under interrogation, petitioner submitted the reports of two psychiatrists. Dr. Robert Sadoff, M.D., examined him on May 11, 1984, and after reviewing his history of emotional trauma wrote:

He has had significant experiences while incarcerated in Hungary and had developed an anxiety and a fear of authority figures. . . . Mr. Marko does possess the kind of personality configuration and conflicts, that would cause difficulty in responding to long-term authority questioning. . . . In addition to the personality problems that he brought with him from Hungary as a result of his incarceration there, Mr. Marko also had superimposed upon the attitudes and difficulties immediate crisis in his life which include the rejection by his long-term girlfriend, the fears about his daughter, the turbulence in his marriage, and his financial security. Thus, it is my opinion that Mr. Marko responded to the investigators in the manner he did as a result of his personality difficulties and the anxieties and depression imposed upon him as a result of his current life stresses.

Dr. Gerald Cooke, Ph.D., saw him on May 14, 1984. He too reviewed his history in detail and concluded:

Mr. Marko is the type of individual because of his past experiences and his personality, who would respond to the investigation with passive-aggressively expressed hostility and with a certain amount of disorganization in his thought processes. Because of his past experiences, Mr. Marko is a man who feels that it is very important for him to be in control. He fears loss of control and has a

tendency to minimize or deny disturbing feelings which might threaten this control. He has some underlying feelings of inferiority and a fear that others will perceive this within him. He compensates for this by working very hard and striving for success. He also compensates for this by adopting a manner of speech, dress, and relating which he hopes will impress others. While these characteristics have led him to be successful in his field, they also produce a personality which is somewhat rigid and inflexible when it comes to dealing with disturbing emotional situations. Another major theme in his personality interacts with this first theme in making him quite vulnerable to situations such as the interrogation by the Gaming investigators. On measures of a tendency to develop paranoid thinking, Mr. Marko is in the highest one percent of the population. While some of this tendency is reactive to his present circumstances, much of the tendency is a general personality characteristic which preexisted this investigation. That is, Mr. Marko already had a considerable amount of fear and anger toward authority figures from his experiences with the Germans and the Russians. . . .

Another important theme in Mr. Marko's personality testing is an underlying sense of deterioration that he has. Part of this is related to somewhat normal experiences of mid-life crisis. However, the testing indicates a response to this which is far greater than that of the average man of Mr. Marko's age. . . . He is battling against feeling that he could emerge from this again having "lost everything." He would then find himself a man of 50 with nothing and he has a feeling that it would almost be like starting over again. These feelings are extremely disturbing to him and he is having some difficulty maintaining his confidence in himself and his ability to bounce back from the situation. . . .

It is this combination of feeling of loss and the depression and anxiety that accompanies it with the hostility and fear toward authority figures which, in my opinion, influenced his responding to the investigators.

Carl Jacobson testified on petitioner's behalf as well. He went through the history of their relationship in much the same way as had petitioner concluding that they were close friends. Mr. Jacobson described himself as a successful salesman and entrepreneur. He acknowledged that he had no experience in the produce or meat business but that he had an ability to bring the right people together and make money. He met Marrucca, whose facility was located in Asbury Park, through his friend Zebly. Zebly lived in the Asbury Park area. When he learned that Marrucca was in the produce business he realized that there might be an opportunity here through petitioner to gain entry into the lucrative Atlantic City market. He and Zebly became agents for Marrucca for a percentage of the business to be done and they began to solicit on his behalf. When Zebly

went with Marrucca to visit petitioner in his trailer at Harrah's in summer 1980, he was in the area but did not enter the trailer. Zebly did all of the talking on Marrucca's behalf and he never let on that he had any association with Marrucca. The association did not last very long because Marrucca was unable to supply the kind of quality that Harrah's expected and eventually they ceased doing business with Marrucca.

Jacobson testified that eventually he had the idea that he could furnish meat to Atlantic City hotels. Through a finder he was directed to Murray Berkowitz. Berkowitz had a high reputation in the meat business and had been trying during 1981 to get into the Atlantic City market with little success. Jacobson assured him that he knew the right people and could open doors for him. The two men entered into a handshake agreement and came to Atlantic City to solicit business. Jacobson testified that he did not disclose his relationship with Berkowitz to petitioner. His relationship with Berkowitz turned out to be fairly successful and his own commissions came to approximately \$25,000. Berkowitz did many hundreds of thousands of dollars worth of business with a number of casinos.

Jacobson's testimony concerning his four checks to petitioner was consistent with petitioner's recitation. To the extent that this varied from his earlier sworn statement, he explained that he was unprepared for the original interview and simply did not recall all of the relevant facts. He also noted that check no. 1849, dated February 10, 1982, was actually misdated and was probably issued on March 10, 1982. Checks placed in evidence which immediately precede and follow this one are also misdated. It should also be noted that Jacobson's secretary entered the February 10, 1982 check on his books as a commission payment. Jacobson testified that this was an error on her part, which was later corrected.

Murray Berkowitz also testified. He has been in the wholesale meat business since 1952 primarily in the New York area. He does approximately \$15 million a year in business. Before he met Jacobson he was having difficulty breaking into the Atlantic City market. He described the initial meetings with petitioner in very much the same way that petitioner had described it. There was no talk of the meat business until they met a few weeks later for a third or fourth time in Harrah's cafeteria. He testified that business was not discussed very frequently during their meetings and that he never discussed his relationship with Jacobson with petitioner. Nevertheless, he testified that he simply assumed that petitioner was aware of his relationship to Jacobson because of their long-

standing friendship. He testified that when he first spoke to petitioner concerning the meat business, petitioner did not seem surprised about it. He had no reaction.

There were a number of witnesses who testified at respondent's request. Gustav Mahler is the Executive Chef at the Golden Nugget and has been so employed since August 1980. He testified that petitioner telephoned him sometime in October 1980 to ask if he would meet a friend of his from Lancaster who was representing a vegetable company in Atlantic City. Jacobson's name was not mentioned during the conversation. He agreed, and a few weeks later he met petitioner, Jacobson and Zebly for dinner at Resorts. Petitioner introduced Jacobson and Zebly, as representatives of a vegetable company. It happened that Golden Nugget was ready to hire produce vendors because it was to open in the near future. Both Jacobson and Zebly talked throughout dinner indicating that their client, A. J. Marrucca and Sons, could provide anything that the hotel needed. Jacobson handed him a business card across the dinner table in petitioner's presence. The card, which was placed in evidence, indicates that Jacobson is a representative of A.J. Marrucca and Sons. Jacobson invited him to Marrucca's plant in Asbury Park and a short time thereafter he, Jacobson and Zebly visited the plant. He delivered a positive report to his superiors concerning Marrucca's operations and eventually Marrucca received a contract to do business with the Golden Nugget.

Michael Randazo is a food and beverage purchasing agent for Harrah's. After purchasing began receiving complaints about Marrucca's product and had decided not to use him any more, petitioner telephoned and asked him to give Marrucca another chance. At the time he had been on the job for only a month and he accepted that recommendation.

Mr. Robert Aberhoff, the Director of Food and Beverage at the Tropicana, also testified. He has been in this line of work since 1958. He first heard of Berkowitz in fall 1982 when Berkowitz called for an appointment to discuss the possibility of providing meat to the Tropicana. He referred him to the purchasing department. A few days or a week later, petitioner telephoned and asked if he would see his friend Carl Jacobson, who was a representative of the Berkowitz Meat Company. During the phone conversation, petitioner stated that he was familiar with the Berkowitz Meat Company and that it has an excellent product. Jacobson, petitioner and Aberhoff met that same day in one of the lounges at the Tropicana. Petitioner introduced Jacobson as a representative of Berkowitz, and they had a conversation concerning the Berkowitz Meat Company. He

made no introduction on Berkowitz's behalf and suggested that Jacobson go to the purchasing department. Mr. Aberhoff testified that petitioner had never called him before or after this incident. He related that he and petitioner have a cordial relationship though they are competitors.

Murray Berkowitz was recalled at a later date to indicate that he had a few, small orders from the Tropicana through February and March 1982. One of these was from Aberhoff, though the records do not show his signature on the order. Mr. Aberhoff had no recollection of ever having met or heard of Berkowitz before Berkowitz called him in fall 1982.

Joseph Trotto was the court reporter who took petitioner's statement with Mr. Schrier. He has 18 years of experience and specifically recalled the interview because this was his first gaming enforcement job and because petitioner had an accent. He testified that the interview went smoothly. It did not appear to him that Mr. Schrier was overbearing or that the witness was in any way agitated or upset.

Respondent also submitted a psychiatric evaluation of petitioner from Dr. Harry Brunt. He concluded that there was no reason to believe that petitioner could not be expected to respond normally to questioning.

#### FINDINGS

Based on the foregoing discussion, I **FIND** the following facts:

1. Petitioner and Carl Jacobson are close personal friends.
2. Petitioner was at all times aware that Carl Jacobson represented the interests of A. J. Marrucca and Sons and Murray Berkowitz and Sons in Atlantic City casinos.
3. Petitioner made efforts to advance the interests of A.J. Marucca and Sons and Murray Berkowitz and Sons.
4. Check no. 1849 in the amount of \$1,000 dated February 10, 1982, was actually made out on March 10, 1982, and was cashed by petitioner on March 11, 1982. This money was a loan from Carl Jacobson.

5. Petitioner signed his renewal application on March 12, 1982. He intentionally failed to disclose the existence of the loan cashed the previous day.
6. Check no. 201 in the amount of \$1,000, dated August 4, 1982, was a loan from Carl Jacobson to petitioner.
7. When he accepted this loan, petitioner had already signed Harrah's policy statement concerning conflict of interest and was aware that it was a violation of company policy to accept such a loan.
8. In May 1982, Charles Foster was doing business with Harrah's.
9. The money received by petitioner from Foster in May 1982, was a loan. In failing to disclose it, though he was still paying it back at the time he signed Harrah's conflict of interest policy, petitioner at the least exhibited poor business judgment.
10. Petitioner testified falsely during the hearing when he stated that he had been harassed into errors during the course of his interviews with Agent Yaskin and Deputy Attorney General Schrier.

#### CONCLUSIONS

Respondent's first charge is that petitioner committed the crime of commercial bribery. N.J.S.A. 2C:21-10 provides that a person commits commercial bribery when:

- a. . . . he solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate the duty of fidelity to which he is subject as

- (1) An agent, partner, or employee of another. . .

Respondent has a difficult burden here. It has shown that petitioner received a benefit in the form of these loans, and that he did violate his duty of fidelity by pressing the interests of Marrucca and Berkowitz at Harrah's and elsewhere. Given the finding that he had knowledge of Jacobson's relationship with Marrucca and Berkowitz, I do not

accept that the introductions and meetings in which he participated were benign and solely in the name of comradery. Nevertheless, to show commercial bribery respondent must also prove that the benefits which petitioner received were "consideration" for violating his duty of fidelity. To do this it must overcome the implausability of an assertion that Jacobson, wise in the way of sales, and petitioner, of long experience in the restaurant and hotel business, would complete a kickback arrangement by check. These men saw each other frequently, and there was ample opportunity to make exchanges in cash. Additionally, they were close personal friends. Jacobson is by his own testimony a successful businessman, and petitioner was having serious financial problems. Thus the existence of interest-free loans, without a note or due date, does not by itself permit a negative inference. It is in this crucial link that respondent's proofs fail.

The two \$200 checks from Jacobson were reasonably and consistently explained. One of the checks is in some measure corroborated by Mrs. Stubblefield. Though Mr. Foster died prior to the hearing, his sworn interview indicates that he lent petitioner \$2,000 to deal with his IRS problems and a letter which he issued at petitioner's request the following week serves to memorialize that transaction. Petitioner's error with respect to the exact date of the loan in relation to his IRS problems appears to be of no import.

The two \$1,000 checks from Jacobson were not well explained. In his sworn interview, petitioner stated first that Jacobson paid him back for the tableside service from Armands, shortly after he came to Atlantic City. This would have been sometime in 1980. When shown the February 1982 check, he explained that this was the tableside service repayment. When shown the August 4 check, he stated that this was a loan. At the hearing, the August 4 check became the tableside service repayment, and the February 10 check became the loan. Though his testimony at the hearing agreed with petitioner, Jacobson did not mention tableside service in his sworn interview and did not quite remember the August 4 check, but he assumed generally that both \$1,000 checks were loans. These shifts appear to be meaningful, but I believe they were mainly attempts by petitioner to shelter himself from the charge that he violated Harrah's conflicts policy and are not evidence of bribe taking. It is clear that petitioner was paying Jacobson back for something through his efforts to advance the interests of Marrucca and Berkowitz. But that seems to have had more to do with their long-standing friendship than with the loans. That, in my estimation, is not the link which the statute addresses. It seems more likely than not that petitioner was truthful when he stated in his

sworn interview that Jacobson paid the tableside service debt shortly after he came to Atlantic City. After all, Jacobson was well aware of his friend's problems and there is no reasonable explanation in the record for his failure to pay his debt for at least one and one-half years.

Beyond the question of commercial bribery, however, it is fairly clear that petitioner was well aware of Jacobson's business in Atlantic City. In their interviews with Deputy Attorney General Quinn, both Jacobson and Berkowitz so stated. Jacobson is petitioner's close friend and at the hearing, he recanted his earlier statement. Berkowitz is friendly with petitioner as well and petitioner has been of considerable aid in his business. At the hearing, he shaded his testimony a bit and said only that he perceived that petitioner was aware of his relationship with Jacobson but that he could not state as a fact that it was so. I accept their prior statements. More importantly on this point, Gustav Mahler, a highly credible individual who thought of himself as petitioner's friend, testified that petitioner introduced him to Jacobson as a representative of Marrucca at a dinner in October 1980. Indeed, Jacobson gave him a card in petitioner's presence which identified him as such. Robert Aberhoff was also a credible witness and he testified that petitioner telephoned him in fall 1982 in order to set up a meeting with Jacobson so that they could discuss Berkowitz. They met that same day for this purpose. Mahler and Aberhoff were completely disinterested and their testimony is accepted without reservation.

Thus, petitioner accepted loans from Jacobson with full knowledge of his status. Recognizing it to be inappropriate, he did not disclose the February 10, 1982 check on his renewal form. The form was signed the day after he cashed the check. Importantly, he did disclose the existence of other debts of smaller amount. Having generally accepted his testimony concerning the two \$200 checks, I do not take his failure to list the first of these which was a loan, as anything more than a technical infraction. When given an opportunity with Agent Yaskin to disclose the two \$1,000 checks from Jacobson and the \$2,000 check from Foster, he did not. At the least he gave misleading answers to Mr. Schrier in their interview of June 1983 concerning the checks, and gave false answers concerning his knowledge of Jacobson's connection to vendors. While each of these larger checks might originally have been explained as the act of an individual who was under great financial and emotional stress, having failed to disclose them and having denied knowledge of Jacobson's relationship to vendors, it is these problems as much as the acceptance of the loans which become the character issue in the case.

Additionally, petitioner violated Harrah's written policy with respect to conflicts when he accepted the August 4, 1982 check from Jacobson and in all likelihood violated the policy when he failed to disclose the existence of the check from Foster, which he was still paying back when he acknowledged receipt of the policy. The conflicts memo directs that where questions arise as to "a present situation or a proposed transaction," corporate counsel should be contacted.

The final major area of testimony to discuss is petitioner's effort to show that whatever inconsistencies, omissions, or falsehoods resulted from the interview with Mr. Yaskin and Mr. Schrier were caused by their overbearing questioning and his prior life experiences. The psychiatric reports in evidence which reflect that he has a passive-aggressive personality, suffers from persecution complexes, and a fear of authority, require as a condition precedent the factual finding that he was harassed during these two interviews. Without this trigger, petitioner is one of a large class of people who have through their lives suffered at the hands of authority, and who have psychological scars as a result. I found Agent Yaskin's testimony concerning the regular nature of their interview to be credible and I accept it. In the case of his sworn statement with Deputy Attorney General Schrier there is a transcript available which I have reviewed and which gives no indication of harassment. Indeed, the opening statement made by Deputy Attorney General Schrier which was quoted above indicates a sensitivity to the fact that the interview is being conducted without the presence of counsel and gives petitioner every opportunity to stop, think, or take a break. While it is true that a tone of voice cannot be discerned from the bare record, Mr. Trotto, the court reporter, a completely disinterested person, testified that this was a perfectly normal interview. That testimony was highly credible and is accepted.

Petitioner was in many ways a sympathetic witness. Much of what he said during the course of the investigation and in this hearing might be understood in terms of an individual seeking to extricate himself from this self-created mire and, in doing so, sinking more deeply. Having accepted loans which he knew were inappropriate, he sought first to conceal them, and then to minimize them by denying that he knew Jacobson was the agent of Marrucca and Berkowitz, and by implying that Foster was winding down his business in Atlantic City. But his willingness to impunge others in an effort to remove a cloud from himself is a different order of fabrication, and in my estimation goes directly to the character issue in the case.

Petitioner admitted in his interview with Mr. Schrier that he gambled in Atlantic City Casinos other than Harrah's. He testified that he had no knowledge that this was impermissible. Respondent found this hard to believe considering that this was a general prohibition on all key employees and that it would have had to come up in conversation. While there is merit in this argument, there is nothing else in the record which would allow such a conclusion, and I cannot find that he was aware of this prohibition. Nevertheless, as a key employee, he ought to have known, and this goes to business ability. Commonly, the Casino Control Commission imposes fines for such violations. Given the ultimate recommendation in the case, there is no need currently to develop a separate remedy for this violation.

Based on the foregoing, it is my **CONCLUSION** that petitioner has not established that he possesses the financial integrity and ultimately the good character necessary to retain his casino key employee license. It is **ORDERED** that his application for renewal be and hereby 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.

9/14/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

1984  
DATE

Receipt Acknowledged:

*[Signature]*  
CASINO CONTROL COMMISSION

September 19, 1984  
DATE

Mailed to Parties:

*Ronald J. Pappas* r.s.  
OFFICE OF ADMINISTRATIVE LAW

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**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Affidavit - Joseph Golath
- P-1a Affidavit - Katalin Gallasz
- P-1b Affidavit - Jino Zolton R. Gallasz
- P-1c Marko Resume
- P-2 Article by Thomas Griffin "Marko Happiest of New U.S. Citizens" Photo
- P-4 11/5/69 letter from Carlos Hampe to Marko
- P-5 Article: Sutton Place goes Creole
- P-6 Article: Try a Mint Julep at Creole Festival
- P-7 Article: Couple Makes Traveling a Cook's Tour
- P-8 Article: Creole Menus with an Authentic Taste
- P-9 Article: Over the Counter: A Memorable Meal
- P-10 Article: Dallas After Dark
- P-11 Article: Summer at Venetian Room
- P-12 Article: Beefeaters Plan to Dine in Dallas
- P-13 Article: Culinary Adventure: Pyramid Room - Fairmount Dallas
- P-14 Article: Breckenridge: Mike Marko Appointed Corporate F & B  
Director
- P-15 Article: Ex-Political Prisoner New Treadway Director
- P-16 Article: Marko Heads Hotel Firm, dated 2/3/76
- P-18 Article: Manheim Twp. Middle School Students Enjoy French  
Cuisine at Armands
- P-19 Article: Casino Network: Michael Marko's Escape to Freedom
- P-20
- P-21 Article: Management Update (Harrah's Horizon)
- P-22 Memo from Mike Marko to Ray Horner dated 1/13/82
- P-23 Memo from Mike Marko to Julius Weiss dated 3/24/82

- P-24 Article: "84 People on the Move in 1984" (Atlantic City Magazine)
- P-25 Copy of figures depicting commission received by Carl Jacobson from Berkowitz (P-1) and Marrucca (P-2)
- P-26 4/30/84 letter from Murray Berkowitz with figures attached
- P-27 Memo from John Allan to Michael Marko dated 3/3/82
- P-28 Affidavit of Karen Jean Humbel dated 5/29/84
- P-29a RepCom Check No. 1844
- P-29b RepCom Check No. 1845
- P-29c RepCom Check No. 1846
- P-29d RepCom Check No. 1847
- P-29e RepCom Check No. 1848
- P-29f RepCom Check No. 1849
- P-29g RepCom Check No. 1850
- P-29h RepCom Check No. 1851
- P-29i RepCom Check No. 1852
- P-29j RepCom Check No. 1853
- P-30 Report of Gerald Cooke, Ph.D.
- P-30a Report of Gerald Cooke, Ph.D.
- P-31 Report of Dr. Robert Sadoff

FOR THE RESPONDENT:

- R-1 RepCom International check dated February 10, 1982, payable to Mike Marko, signed by Carl Jacobson
- R-2 RepCom International check dated August 4, 1982, payable to Mike Marko, signed by Carl Jacobson
- R-3 Carl Jacobson's personal check dated March 17, 1982, payable to Mike Marko, signed by Carl Jacobson
- R-4 Carl Jacobson's personal check dated April 29, 1981, payable to Mike Marko, signed by Carl Jacobson

- R-5 Letter w/attached bank statements dated February 4, 1983, to Harry Yaskin from Mike Marko re: bank statements for 1982
- R-6 CCC March 1982 application for casino key and casino employee license renewal for Michael Marko
- P-7 IRS Notice of Levy on Wages, Salary and Other Income dated April 15, 1982, for Michael Marko
- R-8 IRS Release of Levy on Wages, Salary and Other Income dated April 20, 1982, for Michael Marko
- R-9 Letter dated April 27, 1982, to IRS from Eleanor Mazzeo, Harrah's Payroll Supervisor, re: release of Levy on Wages, Salary and Other Income
- R-10 Letter dated April 19, 1982, to Ralph DaGrossa, IRS from Mike Marko re: 1981 Income Tax Return
- R-11 Memo dated May 25, 1982, to Ray Horner from Michael Randazzo re: monthly status report
- R-12 Letter dated May 31, 1983, to Michael Marko from Carl Jacobson re: check dated August 3, 1982, was to cover services at Armands
- R-13 Resco Hotel Planning and Purchasing Corp. check dated May 12, 1982, payable to Michael Marko, signed by Charles Foster
- R-14 Check disbursement journal for Resco dated May 1982
- R-15 Revised check disbursement journal dated May 1982 for Resco
- R-16 Letter dated May 14, 1982 to Michael Marko from Charles Foster re: Resco check no. 11902 - loan for IRS problems, w/initials
- R-17 Letter dated May 14, 1982 to Michael Marko from Charles Foster re: Resco check no. 11902 - loan for IRS problems, w/o initials
- R-18 Letter dated July 27, 1983 to Harry Yaskin from Michael Marko re: attached conflicts of interest regulation and Simon Lever's, CPA, letter referring to discarded restaurant records
- R-19 Letter dated July 21, 1983 to William Madden from Gary D. Armentrout re: Harrah's check no. 286732 and conflicts of interest policy w/attachments
- R-20 Harrah's Purchase order requisition forms for pur(A-K) chases from Resco
- R-21 Carl Jacobson, Sales Manager business card - A. Marrucca and Sons, Inc.
- R-22 Transcript of sworn statements of Charles Foster and Murray Abrahams dated July 14, 1983
- R-23 Transcript of sworn statement of Murray Berkowitz, dated June 14, 1983
- R-24 Transcript of sworn statement of Michael Marko, dated May 16, 1983

OAL DKT. NO. CCC 263-84

R-25 Transcript of sworn statement of Carl Jacobson dated May 16, 1983

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 82-198  
OAL DOCKET NO. CCC 1242-84  
LICENSE NO. 07141-21

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

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 19, 1984, recommending that the respondent's casino employee license be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of August 1, 1984, to modify the said Initial Decision and to revoke the respondent's casino employee license,

IT IS on this 27th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

Based upon the credible testimony of Robert Del Rossi, coupled with the ALJ's finding that the respondent lacked credibility, the Commission rejects as unnecessary any reliance upon a letter dated May 3, 1984, from Stephen Imperiale (R1 in evidence) to reach the conclusion that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and -86(g), -89(b)(2) and 90(b).

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

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1242-84

AGENCY DKT. NO. 82-198

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**SANTOS MARTINEZ,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Steven C. Harris, Esq.,** for respondent

Record Closed: May 4, 1984

Decided: June 18, 1984

**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 20, 1982, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 86c and g, 90e and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's arrest on October 29, 1982, for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3 and conspiracy, in violation of N.J.S.A. 2C:5-2. On January 12, 1983, the Casino Control Commission suspended the respondent's casino employee license

pending the final disposition of this matter. The following issues to be resolved at the hearing have been identified:

1. Whether the respondent has committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89 and 90 of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.
3. Whether the disqualification provision of section 86c(4) is applicable to conduct which does not result in a conviction, and whether section 90 of the act, which refers to the qualification requirements for a casino employee, embraces the good character, honesty and integrity requirement set forth in section 89b(2) of the act.

#### PROCEDURAL HISTORY

The complaint of the Division of Gaming Enforcement was filed with the Casino Control Commission on December 20, 1982. The respondent's answer to the complaint was filed on January 10, 1983. On January 12, 1983, the Casino Control Commission ordered that the respondent's casino employee license be suspended pending the final disposition of this matter. On the same date, the Commission granted the respondent's request for a deferral of the hearing, pursuant to N.J.S.A. 5:12-86d.

On February 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. 52:14F-1 et seq. A prehearing conference was held on March 15, 1984, and the hearing was held on May 4, 1984.

THE MOTION TO DISMISS

At the commencement of the hearing, counsel for the respondent submitted a letter memorandum seeking dismissal of the complaint of the Division of Gaming Enforcement. It was acknowledged by the respondent that he had been arrested on October 29, 1982, and charged with theft by an unlawful taking in violation of N.J.S.A. 2C:20-3 and conspiracy in violation of N.J.S.A. 2C:5-2. These charges arose from the allegation that the respondent, while dealing the game of craps at Harrah's Hotel Casino, overpaid bets of a casino patron in the amount of \$56. Pursuant to an investigation conducted by Harrah's security personnel, the respondent was videotaped performing his duties as a craps dealer immediately prior to his arrest.

Pursuant to the Prehearing Order entered in this matter, counsel for the respondent was to be permitted to view the videotape, at a reasonable time and upon reasonable notice. It is undisputed that the respondent and his counsel had previously viewed the videotape in its entirety on or about March 29, 1983, pursuant to the criminal charges against the respondent.

The respondent and his counsel were unable to again view the videotape. On behalf of the Division of Gaming Enforcement, the Deputy Attorney General represented that he had only learned within the previous week that the videotape was no longer available because it had been returned to Harrah's Casino by the Division of Criminal Justice following the respondent's satisfactory completion of a pretrial intervention program and the dismissal of the criminal charges. Apparently, Harrah's security personnel had reused the videotape.

It is the respondent's contention that the videotape is exculpatory in nature and that he is prejudiced and unable to defend the charges against him without the use of the tape. Citing State v. Carter, 69 N.J. 420 (1967), the respondent contends that due process and the right to a fair trial require that the State disclose to the defense not only evidence that affirmatively tends to establish a defendant's innocence, but any information material and favorable to a defendant's cause, even where the evidence concerns only the credibility of a state's witness. The respondent also cites Brady v. Maryland, 373 U.S. 83 (1963), contending that it is the state's duty to disclose all evidence favorable to the defense, and that suppression by the prosecution of evidence favorable to an accused upon

request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.

The Division of Gaming Enforcement conceded that the reuse of the videotape was an unfortunate error. However, the deputy attorney general argued that, whether or not the videotape would be material, there was direct, competent evidence available from an eyewitness to the transaction in question, and that testimony would be subject to cross-examination.

Counsel for the respondent acknowledged that the cases which he had cited in support of his motion to dismiss the complaint of the Division of Gaming Enforcement all concerned criminal matters. He was unable to find any citation in an administrative law context to support his motion. While it is apparent that the evidence which was inadvertently destroyed is material to this proceeding, principles of fundamental fairness in the context of administrative law are not violated by proceeding to a hearing without the evidence. In the first instance, the respondent and his counsel had both viewed the videotape, and were able to prepare for the hearing with regard to its contents. Furthermore, counsel for the respondent would be afforded an opportunity to fully cross-examine the eyewitness offered by the Division of Gaming Enforcement and the respondent would be able to testify on his own behalf concerning his conduct. For these reasons, the respondent's motion to dismiss the complaint of the Division of Gaming Enforcement was dismissed.

#### FINDINGS OF FACT

The respondent is a 25-year-old resident of Atlantic City, New Jersey. He holds casino employee license No. 07141-21, issued by the Casino Control Commission on December 5, 1979. This license permits the respondent employment in a licensed casino as a craps or blackjack dealer. At the time of his arrest on October 29, 1982, the respondent had been employed as a craps dealer at Harrah's Casino for approximately three months. For approximately two years prior to that date, the respondent had been employed as a craps and blackjack dealer at the Golden Nugget Casino in Atlantic City.

It is undisputed that the respondent was dealing the game of craps at Harrah's Casino on the evening of October 29, 1982, and that his brother, David Martinez, wagered at the respondent's craps table for approximately three and one-half hours on that

evening. It is undisputed that Harrah's Casino Surveillance Operator Robert Del Rossi observed and videotaped the respondent's performance while dealing craps on craps table No. 10. Between 6:48 p.m. and 7:14 p.m., Del Rossi allegedly observed 4 overpayments by the respondent to a casino patron, later identified as David Martinez, the respondent's brother (Exhibit P-3). David Martinez was detained by casino security personnel and escorted to the offices of the Division of Gaming Enforcement. For a time, he denied that he knew or was related to any of the dealers on the craps tables where he had been playing. When the respondent was brought to the room and then placed in an adjoining room, David Martinez admitted that the respondent was his brother. At approximately 7:55 p.m., the respondent and his brother were advised of their constitutional rights and placed under arrest and charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, and conspiracy, contrary to N.J.S.A. 2C:5-2 (Exhibits P-1 and P-2).

It is undisputed that the respondent was accepted into the Atlantic County Pretrial Intervention Program on August 3, 1983 (Exhibit R-2). Pursuant to his enrollment in the pretrial intervention program, the respondent was required to report on a monthly basis, and to perform 50 hours of community service work. In addition, it was expected that the respondent make a concerted effort to secure employment. It is undisputed that the respondent satisfactorily performed over 50 hours of community service at the Latin Organization of Atlantic City and that the respondent obtained employment on his own initiative (Exhibit R-1). Steven J. Imperiale, Coordinator of the Intervention Program, reported by letter dated May 3, 1984, that the respondent had reacted very favorably to the intervention program, having reported as directed without missing a day, having secured gainful employment, and having performed community service in an "outstanding" manner (Exhibit R-1). As a result, the criminal charges against the respondent were administratively dismissed on January 9, 1984 (Exhibit R-2). The respondent has never been the subject of any other criminal charges.

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

The material factual dispute in this matter concerns the nature of the respondent's conduct while dealing craps at Harrah's Casino on the evening of October 29, 1982. Testifying on behalf of the Division of Gaming Enforcement, Surveillance Shift Supervisor Robert Del Rossi recalled his observation of the respondent on that evening using a closed circuit television. According to Del Rossi, he holds a casino key employee

license for security and a craps and blackjack dealer casino employee license. He has been trained in all aspects of the casino games, including cheating.

On the evening of October 29, 1982, Del Rossi was a surveillance officer and he was asked by his shift supervisor to observe the respondent deal craps. According to Del Rossi, this assignment arose from allegations by a box person that the respondent had attempted to overpay a specific patron on previous occasions. In a span of approximately 40 minutes, Del Rossi observed the respondent overpay a particular patron on 4 occasions, beginning at approximately 6:45 p.m. and ending at approximately 7:13 p.m. These overpayments included paying too much on a winning bet, not picking up a losing bet, rearranging a bet and dropping extra betting checks for no apparent reason (Exhibit P-3).

Del Rossi testified that there are three dealer positions on a craps table and that the craps dealers will rotate through the positions. According to Del Rossi, when the respondent moved from one position to another, the patron whom he was overpaying would move with him. Del Rossi observed that the respondent did not overpay any other patrons. He later learned that the patron who had been overpaid by the respondent was the respondent's brother. The total overpayment appeared to be approximately \$50.

Testifying on his own behalf, the respondent stated that he was aware of no policy of Harrah's Casino which would prohibit a relative of a dealer from wagering at that dealer's table. According to the respondent, his brother, David Martinez, placed approximately 125 bets at the respondent's table, between approximately 4:30 p.m. and 7:20 p.m. on October 29, 1982. The respondent emphatically denied making any overpayment on any bets which were placed by his brother.

The respondent testified that he reviewed the videotape of the incident in question and did not observe any instances of overpayment. He acknowledged that he was questioned immediately after the alleged incident by Division of Gaming Enforcement Investigator Barbara Friese and that he said to her that if there were any overpayment, it had been unintentional. According to the respondent, if any mistake were revealed on the videotape, it would be an instance where he picked up a wager of his brother which he should not have.

It is undisputed that the respondent was initially turned down for enrollment in the pretrial intervention program because he had denied his involvement in any over-

payment to his brother. Significantly, the respondent acknowledged that he subsequently admitted his involvement solely for the purpose of obtaining enrollment in the pretrial intervention program.

The acknowledged but unexplained reluctance of the respondent's brother to admit to the investigators his relationship to the respondent does not enhance the believability of the respondent's version of events. Similarly, the respondent's credibility is placed in doubt as a result of his assertion that he falsely admitted overpaying his brother's wagers in order to gain admission to the pretrial intervention program. In contrast, Surveillance Shift Supervisor Del Rossi testified in a manner which was straightforward and sincere, and entirely worthy of credit. In particular, Del Rossi stated that the case stands out in his mind because it involved an allegation of a dealer cheating the casino, and the Division of Gaming Enforcement participated in the investigation, with a report being submitted by Del Rossi (Exhibit P-3). According to Del Rossi, this was a fairly rare occurrence which he well remembers. Having reviewed all of the testimony and other evidence offered in this matter, and having assessed the credibility of the witnesses, I further **FIND** that the respondent on four occasions overpaid his brother David Martinez, a casino patron, while dealing craps at the Harrah's Casino on October 29, 1982.

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the act authorizes the revocation of licensure or registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license or registration.

Pursuant to sections 90e, 86c(4), 86g and 129 of the Casino Control Act, the Casino Control Commission may revoke the licensure of any licensee disqualified on the basis of his commission of an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. In order to determine whether this offense indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its

remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Dkt. No. 79-CL-1 (1979).

I have found that the respondent, while employed and performing as a craps dealer at a licensed casino, participated in a scheme to overpay wagers to his brother, a casino patron. Although the amount of overpayment was small, it is particularly significant that the illegal conduct involved dishonesty in the performance of his duties as a craps dealer. Commendably, the respondent satisfactorily completed the requirements of a pretrial intervention program and the criminal charges against him were dismissed. This satisfactory completion including outstanding performance of a community service requirement. However, less than two years have passed since the respondent's dishonest conduct while performing as a craps dealer in a licensed casino.

In light of all of the circumstances, the respondent's offense indicates that his participation in the legalized gaming industry at the present 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 Casino Control Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4). Pursuant to section 86g, such conduct disqualifies the respondent from continued licensure, even though his conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Based on the credible evidence in the record, I also **CONCLUDE** that the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a and 89b(2) of the act, as incorporated in section 90 of the act. Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino employee license, pursuant to sections 86c and g, 90e and 129 of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of the respondent 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 18, 1984  
DATE

19 JUN 1984  
DATE

JUN 21 1984  
DATE

ml

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

- P-1 Investigation Report, dated October 31, 1982
- P-2 Supplemental Investigation Report and Criminal Complaint, dated October 29, 1982
- P-3 Surveillance Report, dated October 29, 1982
- P-4 Supplementary Investigation Report, dated September 27, 1983

**FOR THE RESPONDENT:**

- R-1 Letter, dated May 3, 1984
- R-2 Pretrial Intervention Documents and Order of Dismissal, dated January 9, 1984

WITNESSES

**FOR THE PETITIONER:**

Robert Del Rossi

**FOR THE RESPONDENT:**

Santos Martinez

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 84-86 AND  
84-EA-115  
REGISTRATION NO. 24344-40  
APPLICATION NO. 51824-22  
OAL DOCKET NOS. CCC 2543-84 AND  
CCC 5678-84 (CONSOLIDATED)

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
TERRY LEE NEWMAN, : FINAL ORDER  
Respondent. :  
AND :  
IN THE MATTER OF THE APPLICATION :  
OF TERRY LEE NEWMAN :  
FOR A CASINO EMPLOYEE LICENSE :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 22, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed and further, that the application of Terry Lee Newman for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions thereto on November 13, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on

November 28, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement and grant the application of Terry Lee Newman for a casino employee license,

IT IS on this 4th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter which is incorporated herein and made a part hereof, be and hereby is affirmed and adopted by the Casino Control Commission; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be dismissed based upon the reasons set forth in the Initial Decision; and

IT IS FURTHER ORDERED that the application of Terry Lee Newman for a casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 2543-84

AND CCC 5678-84

(CONSOLIDATED)

AGENCY DKT. NOS. 84-86 and

84-EA-115

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

Petitioner,

v.

**TERRY LEE NEWMAN,**

Respondent.

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**TERRY LEE NEWMAN,**

Applicant,

v.

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

Respondent.

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**Joanne Cocchiola,** Deputy Attorney General, for the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Terry Lee Newman, pro se**

Record Closed: September 7, 1984

Decided: October 22, 1984

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. The first concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, against Terry Lee Newman. The Division alleged that Mr. Newman had been convicted of a statutory disqualifying offense, for which the Division sought revocation of his casino hotel employee registration, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. Mr. Newman opposed the action. The second matter concerns the application of Mr. Newman for licensure by the Casino Control Commission (Commission) as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division opposed licensure on the basis that Mr. Newman had committed a disqualifying criminal offense and lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

On March 21, 1984, the Division filed its complaint with the Commission. By letter dated March 23, 1984, the Commission notified Mr. Newman that he had a right to a hearing on the complaint. By letter dated April 3, 1984, Mr. Newman requested a hearing. On April 11, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 22, 1984, and the matter was scheduled for hearing.

Mr. Newman filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on February 1, 1984 (R-1). By letter dated July 24, 1984, the Commission advised Mr. Newman that, based upon information received in a report from the Division, dated June 28, 1984, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By reason of Mr. Newman's request for a hearing with regard to the Division's complaint, the Commission assumed Mr. Newman would request a hearing on his application, and on July 31, 1984, transmitted the matter to the Office of Administrative Law and requested that the matters be consolidated for purposes of hearing.

The matters were consolidated at the hearing on September 7, 1984. The record closed upon conclusion of the hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Newman is 25 years of age (R-1). He relocated permanently to Atlantic City in August 1979.

Mr. Newman was involved in an incident on July 14, 1980, when he was 21 years of age, which led ultimately to the initiation of criminal proceedings. At approximately 10:00 p.m., Mr. Newman, together with four other young men between the ages of 17 and 21, secured matches from his father's store and went to a hay storage barn. The barn was owned by a person for whom he had occasionally worked on a part-time basis. Mr. Newman had never had any difficulties with the owner of the barn. Although the identity of the person who started the fire was in dispute, it was clear that Mr. Newman either directly or indirectly participated in the barn's being ignited. As a result, the barn and its contents were destroyed. Mr. Newman acknowledged the incident, that he was aware the fire was to be started and that he took no preventative action. He further testified that the barn was burned for a "thrill."

When he relocated to Atlantic City, in August 1979, Mr. Newman was unaware that the Virginia State Police were conducting an investigation of the incident.

From August 1979 to December 1980, Mr. Newman was employed by Consolidated Laundry in Atlantic City, as a general laborer. He resigned his position for better employment.

On September 2, 1980, a warrant was issued for Mr. Newman's arrest (P-3). The warrant was based upon charges that he had violated Va. Code § 18.2-80, arson.

From December 1980 to February 1981, Mr. Newman was employed by Harrah's Associates (Harrah's) as a steward. He resigned from this position.

On February 5, 1981, Mr. Newman was arrested and was extradited to Virginia (P-2 and P-4). In April 1981, a Grand Jury of the Commonwealth of Virginia issued a presentment, which charged Mr. Newman with a violation of Va. Code § 18.2-80 arson (P-5). On June 8, 1981, he pled not guilty, waived his right to a trial by jury, was tried by the Circuit Court of Westmoreland County and was found guilty of the charges. On July 23, 1981, he was sentenced to five years in the penitentiary, three years suspended, three years supervised suspension upon release from incarceration, ordered to make restitution to the owner of the barn in the amount of \$2,250 within two years of release and ordered to pay \$162.60 court costs (P-2 and P-5).

Juvenile proceedings against John A. Neal, who was also charged with arson, were nolle prossed (P-2).

Mr. Newman was released from prison on January 12, 1982, at which time his probation commenced. He immediately returned to Atlantic City.

In June 1982, Mr. Newman earned a graduate equivalency degree (GED). He pursued a GED because he thought it would be of assistance in future employment and because he had nothing else to do.

From June to September 1982, Mr. Newman was employed by Steelman's Laundry in Atlantic City, as a general laborer. This was seasonal employment.

From May 1983 to May 1984, Mr. Newman was employed in the Atlantic County Supportive Work Program. He was assigned to the Civil Court House in Atlantic City. He earned \$3.35 per hour. His employment record was very positive (R-4).

Since April 29, 1984, Mr. Newman has been employed by Harrah's at Trump Plaza as a carpet shampooer. He earns \$6.10 per hour. His employment record is very positive (R-3).

Because Mr. Newman had not made restitution to the owner of the barn within the two years following his release from prison as provided for at sentencing on June 28, 1984, a show cause order was issued by the Circuit Court of Westmoreland County, Virginia, which proposed to revoke Mr. Newman's probation (P-5). He learned of the Show Cause Order from Marion Torian, probation officer with the Atlantic County Probation

Office. Shortly thereafter, he made restitution in a lump sum. Effective July 23, 1984, the show cause order was cancelled (P-6). Mr. Newman has otherwise satisfactorily met the requirements of his probation (R-5). He has committed no further 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 identity of the person who ignited the fire, the reasons for Mr. Newman's failure to make timely payment of restitution and his character, honesty and integrity.

The Division offered statements made by the other four individuals involved in the burning of the barn (P-1). The statement made by Louis E. Hall implicated Mr. Newman, although John A. Neal was identified as having possession of the matches. The remaining three statements, including that of John A. Neal, indicated that the makers thereof did not know whether Neal or Mr. Newman started the fire.

Mr. Newman testified that Neal started the fire. Nevertheless, he conceded that he knew the fire was going to be set and that he observed Neal start the fire without making any effort whatsoever to prevent the incident.

I am persuaded to accept Mr. Newman's testimony to the effect that Neal started the fire. The statement of Louis E. Hall was not persuasive and the statements of the three remaining individuals, including Neal, did not identify Mr. Newman as the person who started the fire. Further, Mr. Newman's admission of his role in the incident indicated that he was as culpable as if he had started the fire.

With regard to the late payment of restitution, although Mr. Newman claimed that he did not make earlier payments because of a desire to make a lump sum payment, he conceded that there was no reason why he could not have made a partial payment sooner. More specifically, he contended that while employed by the Atlantic County Supportive Work Program, where he earned \$3.35 per hour, that he had insufficient

income to make payments. However, once he became employed by Harrah's at Trump Plaza in late April 1984, his earnings were sufficient for him to make payments. It was abundantly evident that he made no effort to make any payment on restitution until he was apprised of the issuance of the show cause order (P-5). Nevertheless, once he learned of the order he made immediate payment in full. Although his actions in this regard were not positive, the negative inferences to be drawn therefrom are not significant.

Mr. Newman testified that he will not commit any violations of the criminal laws in the future by reason of his experiences from his prior misconduct. More specifically, he has a strong desire not to return to jail and is fully cognizant of the time and money he lost as a result of his misconduct.

Mr. Newman called Florence Browne, who is employed by the Atlantic County Department of Social Services, Division of Welfare. Ms. Browne has known him since late January 1982 through his employment by the Atlantic County Supportive Work Program. For a period of approximately four months, the Mr. Newman performed maintenance responsibilities for Ms. Browne's office. Although the witness was unaware of the nature of his criminal misconduct prior to the prehearing conference, she was aware that the purpose of the program was for the rehabilitation of prior offenders. Ms. Browne testified that Mr. Newman performed his job well and was trustworthy with regard to paperwork left on desks and personal belongings of other employees, i.e., handbags. The witness also testified that Mr. Newman has exhibited a strong desire to improve his lifestyle through hard work and that he was well-respected by her co-workers.

Mr. Newman also produced five letters in support of his character, honesty and integrity. Paula Stewart-Murphy, vocational advisor II with Atlantic County Community College, stated that he was a serious and hardworking student in the GED program (R-2). Anne B. Terrell, environmental services shift supervisor for Harrah's at Trump Plaza, stated that he has been a responsible, dedicated and loyal employee (R-3). John Lukum, civil courthouse supervisor for Atlantic County, stated that he performed his employment responsibilities well, was promoted to crew chief and was very responsible (R-4). Marion Torian, probation officer with Atlantic County, stated that the respondent has learned that violent conduct is an unacceptable means of behavior and that he has exhibited a definite improvement in judgment and attitude (R-5). Last, Heywood Artis, Atlantic County district court officer, stated that he has known Mr. Newman for three years and has observed him to be a nice person and very willing to help others (R-6).

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

1. Mr. Newman has acknowledged fully and has accepted responsibility for his misconduct.
2. Although he did not ignite the fire, his knowledge of and participation in the incident renders him as culpable as if he had started the fire.
3. There is little, if any, likelihood that he would again commit criminal misconduct.
4. Mr. Newman was dilatory in making restitution to the victim of his criminal misconduct. Nevertheless, he has made restitution in full.
5. Mr. Newman's conduct since his incarceration and during the period of his probation exhibits a significant change in his behavior with regard to his maturity and his responsibility for his own conduct.
6. An associate, a probation officer, a former instructor and a current supervisor of Mr. Newman 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) 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. Newman's conviction constitutes a violation of section 86c(1) of the Act, and, accordingly, establishes that he does not possess the requisite degree of good character, honesty and integrity required for licensure, under section 89b(2) of the Act. Although Mr. Newman acknowledged his misconduct, he contended that he maintained the requisite degree of good character, honesty and integrity by means of his rehabilitation, pursuant to section 90h of the Act.

(A) N.J.S.A. 5:12-86c(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 Mr. Newman's conviction constitutes a violation of a statutory disqualifier listed under section 86c(1) of the Act.

It was not disputed that the conviction for a violation of Va. Code § 18:2-80 is comparable to a violation of N.J.S.A. 2C:17-1(a)2, arson, which is a statutory disqualifying offense under section 86c(1) of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Newman's conviction disqualifies him from holding either a casino employee registration or license, pursuant to section 86c(1) of the Act.

(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 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 voca-

tional schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Newman is registered as a casino hotel employee and has, since April 1984, been employed by Harrah's at Trump Plaza as a carpet shampooer. As such, he has no responsibilities for actual gaming activities, nor does he have substantial contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial patron contact. Also, as a potential holder of a casino employee license, he would likely have greater contact with casino patrons.

Second, Mr. Newman was convicted of arson. This is a very serious offense, and his conduct exhibited the willful destruction of private property. However, there was no intent to harm any person.

Third, Mr. Newman testified that the fire was started as a "thrill." His actions were without provocation and were thoughtless. Essentially, he offered no excuse for his misconduct.

Fourth, the incident occurred on July 14, 1980, approximately four years ago.

Fifth, at the time of the offense, Mr. Newman was 21 years of age. There was no evidence that his misconduct was due to immaturity.

Sixth, Mr. Newman's misconduct was an isolated incident.

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

Eighth, Mr. Newman has demonstrated significant rehabilitative efforts. In addition to serving his sentence, he complied with the requirements of his probation. Although he has made restitution, he did not do so in a timely manner, and he made payment only after the issuance of a show cause order. However, until April 1984, Mr. Newman did not have significant income with which to make payment. In addition, he has established a positive employment record since the incident, including his five-month period of employment with Harrah's at Trump Plaza. Also, he has demonstrated clearly his intent not to repeat his misconduct. Given his age at the time of the offense, the fact that the offense was an isolated incident, and his conduct thereafter, a sufficient time has

passed during which he has demonstrated his rehabilitation. In the final analysis, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct.

I **CONCLUDE** that Mr. Newman 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. Accordingly, I further **CONCLUDE** that no sanction should be imposed against Mr. Newman's registration, pursuant to section 130 of the Act.

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

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

Mr. Newman has affirmatively demonstrated his rehabilitation. He has satisfied his sentence, not repeated his misconduct and has successfully embarked upon a career in the casino industry. There is virtually no likelihood of Mr. Newman's committing any unlawful acts in the future. Therefore, he presents no risk to the public and to the integrity of gaming operations. An examination of the "whole man" concept

clearly and convincingly establishes that Mr. Newman 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. Newman has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino employee registration of Terry Lee Newman be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that the application of Mr. Newman for licensure as a casino employee be **GRANTED**.

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

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

October 22, 1984  
DATE

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

Receipt Acknowledged:

October 22, 1984  
DATE

Kenneth T. Frigo  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 24 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

bc

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Commonwealth of Virginia, Department of State Police, Bureau of Criminal Investigation Report of Investigation, October 9, 1980 (30 pages)
- P-2 Virginia State Police - Supplemental Investigative Report, February 11, 1981 (30 pages)
- P-3 Commonwealth of Virginia, County of Westmoreland - Arrest Warrant, September 2, 1980
- P-4 Commonwealth v. Terry Lee Newman, Warrant of Arrest, executed February 5, 1981
- P-5 Circuit Court of Westmoreland County, Commonwealth of Virginia, April term, 1981 Presentment; Commonwealth v. Terry Lee Newman - Felony number 340, June 8, 1981; Order - Felony number 340, July 23, 1981; Show Cause Order, June 28, 1984 (6 pages)
- P-6 Commonwealth of Virginia, Department of Corrections, Probation and Parole District 33 Order, July 26, 1984
- R-1 Personal History Disclosure Form - 2A, Terry Lee Newman, filed on February 1, 1984 (23 pages)
- R-2 Letter from Paula Stewart-Murphy, August 21, 1984
- R-3 Letter from Anne B. Terrell, August 16, 1984
- R-4 Copy of letter from John Lukum
- R-5 Letter from Betty Lou Sochocky, August 13, 1984; Progress Report prepared by Marion Torian, August 14, 1984 (2 pages)
- R-6 Letter from Heywood Artis, August 23, 1984

WITNESS LIST

FOR THE DIVISION:

None

FOR THE RESPONDENT:

Florence Browne  
Terry Lee Newman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 83-EA-199 AND  
83-CSI-12  
OAL DOCKET NO. CCC 10040-83  
(CONSOLIDATED)  
APPLICATION NOS. 44415-21 AND  
01229-70

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IN THE MATTER OF THE APPLICATION OF  
EARL OSBORNE FOR A CASINO EMPLOYEE  
LICENSE (JUNKET REPRESENTATIVE)

AND

FINAL ORDER

IN THE MATTER OF THE APPLICATION OF  
MANDE TRAVEL, INC., d/b/a GALA TOURS  
FOR A CASINO SERVICE INDUSTRY LICENSE  
(JUNKET ENTERPRISE)

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These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 16, 1984, recommending that the application of Earl Osborne for a casino employee license (junket representative) and that the application of Mande Travel, Inc., d/b/a Gala Tours for a casino service industry license (junket enterprise) be granted; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on September 19, 1984, to affirm and adopt the

Initial Decision and to grant the aforementioned applications subject to the conditions hereafter specified,

IT IS on this 19th day of NOVEMBER 1984, ORDERED that the applications of Earl Osborne for a casino employee license (junket representative) and Mande Travel, Inc., for a casino service industry license (junket enterprise) be and hereby are granted based upon the reasons set forth in the Initial Decision of the Office of Administrative Law which is affirmed, adopted, incorporated herein by reference and made a part hereof, and conditioned upon the following:

Earl Osborne and Mande Travel, Inc., engage in no business activity directly or indirectly with Irving Snow, Harold Halpern, Prime Tours, Eastern Sportsmen Travel Club, H&H Tours or Vita Tours as well as any business entities in which Irving Snow and/or Harold Halpern may hereinafter acquire an interest.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Earl Osborne, Mande Travel, Inc., and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 10040-83

AGENCY DKT. NO. 83-EA-199 &

83-CSI-12

**EARL OSBORNE & MANDE TRAVEL, INC.,**

Petitioners,

v.

**STATE DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**John L. Grossman, Esq.,** on behalf of petitioner (Perskie & Nehmad, attorneys)

**Rosemary Quinn, Deputy Attorney General,** on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 5, 1984

Decided: July 13, 1984

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

This matter concerns the applications of Earl Osborne and Mande Travel, Inc., for licensure as a Junket Representative and Junket Enterprise respectively, pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq. Respondent filed objections to their licensure with the Casino Control Commission and upon petitioner's request, 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.

Mande Travel is Mr. Osborne's wholly-owned business, and its licensure is entirely dependent on his ability to establish by clear and convincing evidence that he is a person of good character, honesty and integrity. N.J.S.A. 5:12-102, 89b(2). One element in this assessment are his business and personal associations. Mr. Osborne has never been arrested or indicted for any crime, nor has any question been raised about his business ability. The basis of respondent's objection is that Mr. Osborne associates with known criminals and persons of criminal reputation. As such, his involvement in the Atlantic City Casino Industry would undermine the state's effort to assure the public that legalized gambling can proceed in the state without the intrusion of this undersirable element. N.J.S.A. 5:12-1(b).

For the reasons set forth herein, I believe that Mr. Osborne has met his burden of persuasion, and that he and his company should be licensed.

Mr. Osborne's wife and son testified in his behalf. The family has lived in the same neighborhood in New York City for many years and enjoys a good reputation. There are a series of letters in the record from business associates, competitors, and friends to the effect that Mr. Osborne has over the years enjoyed a good reputation for character, honesty and integrity. Indeed, in the limited testimony presented by respondent, it acknowledged that its investigation revealed no adverse information about his reputation, but did reveal positive information.

Earl Osborne also testified. He is 52 years old. He is a graduate of the high school of Industrial Arts in New York City and attended courses at the Barnard Baruch School of Business. Prior to becoming involved in the junket business he was in sales. During the latter part of the 1960's, he went on a few junket excursions organized by a Mr. Frank Catenaccio (also referred to during the hearing as Frankie Cee). In November 1972, Mr. Catenaccio offered Mr. Osborne a job in a junket business known as Concord of St. Martin and he accepted. His job was to make reservations for customers and to maintain records. When he was hired, the business sent patrons solely to the Concord Hotel in St. Martin. Later, it became a general junketeer and changed its name to Concord Tours. At this point, an individual named Jay Fontana became associated with the company. Mr. Osborne testified that a Matthew Ianniello (also referred to during the hearing as Matty the Horse) visited Jay Fontana and Frankie Cee on a few occasions at the premises. Concord Tours went out of business in August 1974.

The first area of respondent's complaint has to do with Mr. Osborne's association with Frankie Cee and Jay Fontana and any friendship or association that he may have had with Matthew Ianniello. Mr. Osborne testified that he was never more than an employee in Concord Tours and had no personal relationship with Frankie Cee or Mr. Fontana. He was introduced to Matthew Ianniello, but does not know him and has no business or other relationship with him. Respondent presented no witness on these points; nevertheless, it saw the matter differently. It pointed to the fact that Mr. Osborne was called to testify before a grand jury in 1976 concerning these three individuals and refused to do so unless granted immunity from prosecution. At first, he was not granted immunity and did not testify. Approximately a year later he received immunity and testified. Respondent believes that Mr. Osborne's relationship to these individuals is not entirely innocent.

The record does not develop whether Frankie Cee or Jay Fontana have any criminal past or reputations for criminal association. There is some reference to newspaper articles linking Matty Ianniello to organized crime.

Mr. Osborne testified that he was not the target of these investigations but nevertheless sought immunity because he was nervous about testifying and was informed that this was his right. An FBI report, in evidence, by an agent who apparently interviewed him prior to his testimony before the grand jury, concerns itself with Frankie Cee., and Jay Fontana and their relationship to Matty Ianniello. There is no indication that Mr. Osborne was the subject of the investigation or that he was anything less than cooperative.

After Concord Tours went out of business, Mr. Osborne held other junket-related jobs until 1978 when he founded Mande Travel. He rented an office at 551 5th Avenue in New York City at a monthly rental of approximately \$300. He had no employees and no secretary. The rent was about to go up substantially in spring 1981 and he sought out new space at 310 5th Avenue.

Respondent makes no complaint about Mr. Osborne's associations between August 1974 and spring 1981. The second and final area of difficulty has to do with his associations at 310 5th Avenue. Here he rents desk space in a suite of offices for \$150 a month from an Irving Snow. He shares a room with a bookkeeper, a travel counselor and a secretary. Mr. Snow operates a junket business and other related businesses from these

offices. Prime Tours is Mr. Snow's junket business and Vita Tourist is his regular travel agency. He also operates a company known as Eastern Sportsmans Club, Inc. An individual named Harold Halpern also runs a perfume closeout business from this floor. He rents separate office space. Mr. Osborne testified that he is not engaged in any business with Mr. Halpern, he does not answer his telephone or provide him with any other service. Mr. Osborne testified that he first met Mr. Halpern when he relocated his business.

Mr. Osborne testified that he is not permitted to book airline tickets because he is not a travel agent and so he sends most of his business to Vita Tourist for which he receives a commission from Mr. Snow. Mr. Snow is approximately 67 years old, and Mr. Osborne hopes one day to purchase Vita Tourist.

Respondent sees a number of problems in Mr. Osborne's connection to Mr. Snow and to Mr. Halpern. Both were indicted in January 1967 for illegally operating a gambling ship on the high seas in violation of 18 U.S.C. § 1083 and 2. In February 1971, they pled guilty to that offense. Mr. Snow was fined \$500 and Mr. Halpern was fined \$300.

Mr. Osborne testified that prior to being informed by respondent of these convictions he had not known of them. He asked Mr. Snow about it and Mr. Snow explained that the participants at the time had no idea that they were conducting an illegal operation and that in his estimation it had all been a mistake.

There is an additional criminal matter in which Mr. Halpern was involved. In 1970 he pled guilty to the crime of criminal contempt in the state of New York for failure to give responsive answers during a grand jury investigation concerning a conspiracy to commit bribery, coercion, larceny by extortion, criminal usury and violation of gambling laws. He was fined \$500. Of special interest is the fact that he would not discuss any relationship that he may have had with the late Angelo Bruno, a known organized crime figure. Mr. Bruno also pled guilty in that same matter to criminal contempt and perjury and was sentenced to six months in prison.

Mr. Stephen Ockxridger, an investigator for respondent, testified that he interviewed Mr. Snow in summer 1978 and was informed that Mr. Snow and Mr. Halpern were partners in the Eastern Sportsmans Club. Detective Goree Fleck of the New Jersey

State Police testified that Mr. Snow was denied a junket license in Nevada. He did not know why.

Mr. Osborne testified that he was unaware of any business relationship between Mr. Snow and Mr. Halpern in Eastern Sportsman. He believed that this had been Mr. Snow's business. He did know that Mr. Snow had been denied a junket license in Nevada and is not permitted to send patrons to the Condato Hotel in Puerto Rico.

This is the substance of the record. From it respondent seeks a finding that Mr. Osborne's business associations are such as to undermine his proofs with respect to good character, honesty and integrity. It relies in large part on the decision of the Superior Court, Appellate Division, in In re: Boardwalk Regency Casino Application, 180 N.J. Super 324 (App. Div. 1981), modified in part, 90 N.J. 361 (1982). There the court dealt with the relationship of Clifford and Stewart Perlman, Chairman of the Board of Caesar's World, Inc., and Vice Chairman, respectively, with persons of unsavory reputation and on how that reflected upon the Perlmans' good character, honesty and integrity. The court in supporting the Commission's factual findings quoted its language that the Perlmans had a "repeated and enduring" relationship with Alvin Malnik, "a person of unsuitable character and . . . reputation . . . [who] associated with persons engaged in organized criminal activities, and . . . [who had] himself participated in transactions that were clearly illegitimate and illegal." Id at 335. The court concluded that their key employee licenses had been properly denied, not because of any wrongdoing on their part but because of their "apparent continuing insensitivity to the potential impact of those associations in this sensitive industry." Id. at 348. The court also looked to the Commission's finding that the Perlmans had been put on notice as early as 1972 by gaming authorities in the state of Nevada concerning these relationships and their continuation long thereafter.

Respondent also relies upon criteria set out by the Casino Control Commission for assessing such matters. In Application of Resorts International Hotel for a Casino License, (May 22, 1979) the Commission wrote:

Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the servability of its associates, termination of the

association and the reasons for termination. Only after all the significant circumstances are taken into account can it be determined whether an association casts an unfavorable light upon the applicant or person to be qualified. The mere fact that some innocent relationship may have existed with persons of unsuitable character would not alone indicate a failure to meet the standard of good character, honesty and integrity.

I do not believe that these criteria or the opinion of the Court in Boardwalk Regency, offers respondent more than superficial support. The connections in the instant matter to organized crime figures or to persons of unsuitable reputation are quite tenuous. Respondent pointed first to Mr. Osborne's refusal to testify before the grand jury concerning information that he may have had about Frank Catenaccio, Jay Fontana and Matthew Ianniello. An adverse inference from such failure to testify is permitted, Levin v. Levin, 129 N.J. Super. 142, 145 (App. Div. 1974); Childs v. McCord, 420 F. Supp. 428 (D.Md. 1976), affirm'd, 556 F. 2d 1178 (4th Cir. 1977) and Mr. Osborne's refusal to testify without immunity does raise an eyebrow. However, he did give an interview to the FBI in March 1976 and did testify with immunity. His testimony here is that he was not the subject of the investigation and he was never charged with a crime. Mr. Osborne was a credible witness. I accept his explanation to the effect that his only reason for seeking immunity was that he was afraid and had been advised that this was his right. Respondent placed nothing in the record to rebut this testimony.

Beyond this, respondent alleged that Matthew Ianniello was associated with organized crime. There is really no support for this in the record. Moreover, it is not he who employed Mr. Osborne. There is no indication that Jay Fontana or Frankee Cee has any criminal background other than that both were investigated in 1976.

Concerning the second area of respondent's complaint, Mr. Snow did plead guilty to the crime of gambling on the high seas. He was fined \$500. There is nothing in the record to indicate that Mr. Snow was involved before or after in any other criminal activity. This one conviction does not make him an unsuitable associate for our purposes. Mr. Halpern's later offense is of greater interest. He was convicted of criminal contempt with Angelo Bruno, a known organized crime figure. Mr. Snow and Mr. Halpern are involved in Eastern Sportsmans Club together. Mr. Osborne does business with Mr. Snow through Vita Tourist. Thus Mr. Osborne does business with an individual who is in another business with an individual, who was associated with Angelo Bruno. That, it seems, is not the intensity of relationship contemplated in the commissions criteria. Moreover, though

the record reveals that Mr. Halpern was involved in two crimes there is no adverse information about him since 1970. Thus, while we may all be able to agree that Angelo Bruno was a person of longstanding bad reputation and unsavory character, Mr. Osborne never met Mr. Bruno. At worst Mr. Osborne has some connection to Mr. Halpern, concerning whom there is no evidence of wrong doing over the last 14 years. Even here, however, I accept Mr. Osbornes testimony that he barely knows Mr. Halpern, and that their main connection is that they have offices on the same floor in a building in New York City.

Based on the foregoing, it is my conclusion that Mr. Osborne has met his affirmative burden and it is **ORDERED** that he and Mande Travel be issued Junket Representative and Junket Enterprise Licenses respectively.

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

*Nancy D. Leick*  
CASINO CONTROL COMMISSION  
Assistant Council

Mailed to Parties:

JUL 18 1984  
DATE

*Ronald J. Parker*  
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

- P-1 Letter from Rabbi Irwin Isaacson, dated March 1, 1984
- P-2 Letter to Casino Control Commission from Isaac Feilkoff, dated March 26, 1984
- P-3 Letter to Casino Control Commission from Arthur Zuckerman, dated April 13, 1984
- P-4 Letter to Casino Control Commission from Stanley Goldaber, dated March 27, 1984
- P-5 Letter to Casino Control Commission from Hy Gomer, dated March 22, 1984
- P-6 Letter of reference for Earl Osborne from Eli Nieman, Principal, Annadale Park School, dated March 23, 1984
- P-7 Letter to Casino Control Commission from Alan B. Gross, dated April 26, 1984
- P-8 Letter to Casino Control Commission from Stanley Aawonson, dated March 28, 1984
- P-9 Letter to Casino Control Commission from Alfred J. Luciani, Executive Vice President, Golden Nugget Casino, dated January 13, 1984
- P-10 Letter to Casino Control Commission from Lawrence H. Woo, dated December 1, 1983
- P-11 Letter of reference for Earl Osborne from Susan Alloy, dated March 6, 1984
- P-12 Letter of reference for Earl Osborne from Hugh A. Andrews, dated March 6, 1984
- P-13 Letter to Casino Control Commission from Ed McDonough, dated December 6, 1983
- P-14 Letter to Casino Control Commission from Michael J. McCartney, dated December 7, 1983
- P-15 Letter to Casino Control Commission from Murray Goodman, dated December 5, 1983
- P-16 Letter to Casino Control Commission from Ann Ginsberg, dated December 15, 1983
- P-17 Letter of reference for Earl Osborne from Ruben C. Causa

- P-18 Letter to Casino Control Commission from Jerry Porta, dated January 11, 1984
- P-19 Letter to Casino Control Commission from Peggy Balladur, dated December 7, 1983
- P-20 Letter to Casino Control Commission from Robert Goldstein, dated December 19, 1983
- P-21 Letter to Casino Control Commission from Joseph Cortez, dated January 12, 1984
- P-22 Letter to Casino Control Commission from Lenore Ricevuto, dated December 5, 1983
- P-23 Letter to Casino Control Commission from Michael Leven, dated December 16, 1983
- P-24 Letter to Casino Control Commission from Anthony J. Giannone, dated April 3, 1984
- P-25 Letter to Casino Control Commission from Louis R. Ferrara, dated May 9, 1984
- P-26 Letter to Casino Control Commission from Jerry Brownfeld, dated March 8, 1984
- P-27 Letter to Casino Control Commission from Edward Kurland, dated March 9, 1984
- P-28 Letter to Casino Control Commission from Morris B. Rosenman, dated March 18, 1984
- P-29 Letter to Casino Control Commission from Ronald P. Gross, dated March 5, 1984
- P-30 Letter to Casino Control Commission from Charles S. Kaufman, dated March 29, 1984
- P-31 Letter to Casino Control Commission from Robert E. Rakity, dated March 26, 1984
- P-32 Letter to Casino Control Commission from Ben Adelman, dated March 27, 1984
- P-33 Letter to Casino Control Commission from Al Bergen, dated March 27, 1984
- P-34 Letter to Casino Control Commission from Frank Abroscat, dated April 10, 1984
- P-35 Letter to Casino Control Commission from Stanley Albert, dated March 13, 1984

P-36 Letter to Casino Control Commission from Nathan Muchnick, dated April 9, 1984

P-37 Information concerning the Privacy Act

P-38 Marked for identification

**FOR THE RESPONDENT:**

R-1 Indictment, dated January 25, 1967

R-2 United States District Court Information, dated February 16, 1971

R-3 Copy of Death Certificate of Peter N. Martella

R-4a Judgment of conviction of Irving Snow, dated April 8, 1971

R-4b Judgment of conviction of Jerome Kurtz, dated April 8, 1971

R-4c Judgment of conviction of Henry Shapiro, dated April 8, 1971

R-4d Judgment of conviction of Harold Halpern, dated April 8, 1971

R-4e Judgment of conviction of Theodore Black, dated June 25, 1971

R-4f Judgment of conviction of Harry Snow, dated April 8, 1971

R-5a Indictment, Criminal Contempt, Perjury in the first degree, dated June 16, 1970

R-5b Certified copy of Judgment of Harold Halpern, dated September 1971

R-6a Indictment of Angelo Bruno, dated February 22, 1972

R-6b Judgment of Angelo Bruno, dated February 1972

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-264  
OAL DOCKET NO. CCC 740-84  
(CCC 6818-83 ON REMAND)  
REGISTRATION NO. 45832-40

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

Complainant, :

V. : FINAL ORDER

JOSEPH PATTERSON, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 1, 1984, recommending that the casino hotel employee registration held by Joseph Patterson be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of July 11, 1984, to affirm and adopt the said Initial Decision and to revoke the respondent's casino hotel employee registration,

IT IS on this 13th day of JULY 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

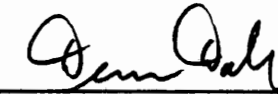
IT IS FURTHER ORDERED that the respondent's casino hotel employee registration be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 740-84

(Remand of CCC 6828-83)

AGENCY DKT. NO. 83-264

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

Petitioner,

v.

**JOSEPH PATTERSON,**

Respondent.

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**APPEARANCES:**

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

**Joseph Patterson**, respondent, pro se

Record Closed: May 4, 1984

Decided: May 31, 1984

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

This matter concerns the complaint of the Division of Gaming Enforcement (hereinafter referred to as the "Division") filed with the Casino Control Commission on August 11, 1983, seeking the revocation of the respondent's casino hotel employee registration, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Patterson requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled in this matter for September 30, 1983, and the respondent failed to appear and failed to respond to a letter sent by the Office of Administrative Law requesting an explanation for his nonappearance. Based on these facts, Administrative Law Judge Masin on November 1, 1983, issued an initial decision concluding that Mr. Patterson had abandoned his appeal and that his registration should be revoked. The Casino Control Commission accepted Mr. Patterson's explanation for his nonappearance and remanded the matter to the Office of Administrative Law by order, dated January 31, 1984.

Mr. Patterson appeared at the second prehearing conference, which was held on March 5, 1984. At the hearing, which took place on May 4, 1984, Deputy Attorney General Cocchiola requested that several issues be deleted from the prehearing order and I agreed to the deletions. The remaining issues in this matter are:

1. Whether the respondent is disqualified from continued licensure due to an alleged criminal conviction, pursuant to N.J.S.A. 5:12-86c.
2. Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

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

1. There was an investigation as to Mr. Patterson's involvement in a burglary and theft at the residence of Carol Braunlin on March 1, 1982 (P-1, P-3). No formal criminal charge was brought against Mr. Patterson regarding this matter.

2. On July 29, 1982, Mr. Patterson was indicted for the following:

Count 1 - Unlawful entry into the residence of Joseph Raimondi on April 29, 1982, for the purpose of committing a theft, a violation of N.J.S.A. 2C:18-2.

Count 2 - The theft of property with a value in excess of \$500, belonging to Joseph Raimondi, a violation of N.J.S.A. 2C:20-3.

Count 3 - Unlawful entry into the residence of Monika Franco on June 7, 1982, with the intent to commit a theft, a violation of N.J.S.A. 2C:18-2 (P-2 P-5, P-6).

3. On September 16, 1982, Mr. Patterson pled guilty to counts one and two of the indictment and count three was dismissed (P-6).
4. Respondent failed to appear for sentencing and a warrant was issued for his arrest on November 4, 1982 (P-4).
5. On May 16, 1983, Mr. Patterson was sentenced to two years' probation, ordered to make restitution in the amount of \$639.47 and ordered to serve 150 hours in community service work (P-6).
6. G., a juvenile, was allegedly involved in the burglary and theft of the residencies of Ms. Braunlin and Mr. Raimondi. According to this juvenile, Mr. Patterson persuaded him to participate in these criminal actions (P-3).
7. When he was arrested for the burglary and theft at the Raimondi residence, the police officer alleged that Mr. Patterson attempted to conceal a lady's watch and a man's ring (P-3). Mr. Patterson did not recall having a ring, but admitted that he had a watch which G. had given him to sell and that he knew it was stolen property.
8. At the time of the hearing, Mr. Patterson was 22 years old and was employed as a waiter at the Hallorah Plaza in Pennsauken, New Jersey.
9. Mr. Patterson is still on probation, has completed the required hours of community work and is making restitution by installment payments.
10. Mr. Patterson was employed by Tropicana Hotel and Casino for approximately six months as a food server and left the position because of the distance that he had to travel from his residence to Atlantic City.

On his own behalf, Mr. Patterson stated that he was convicted for one criminal action and has admitted his mistake. Mr. Patterson stated that he is now making restitution, that he has learned from his mistake and that he has not been involved in any criminal activity since the 1982 offense. Mr. Patterson argued that he has shown that he has been rehabilitated and he felt that it was not necessary for him to bring any witnesses, affidavits or letters in order to corroborate his position relating to rehabilitation.

In closing, Deputy Attorney General Cocchiola argued that the Division had shown that Mr. Patterson was convicted of a statutory disqualifier and that Mr. Patterson had failed to show that he had been rehabilitated.

Based on the facts, I **CONCLUDE** that the Division has sustained its burden of establishing that Mr. Patterson was convicted of a statutory disqualifier pursuant to N.J.S.A. 5:12-86.

The Casino Control Act provides that a person can overcome a prohibition against registration by affirmatively demonstrating his/her rehabilitation, and sets forth certain criteria to be considered in order to determine whether or not the person has been rehabilitated, N.J.S.A. 5:12-91d. After the prehearing conference on March 5, 1984, a copy of this statute was sent to the respondent.

By his testimony, Mr. Patterson has made an inadequate showing of rehabilitation. Mr. Patterson has not yet completed his period of probation and has relied solely on the fact that he has had only one criminal conviction for burglary and theft, and that he has not been involved in any criminal activity since 1982. Although these factors are clearly relevant, I **CONCLUDE** that Mr. Patterson has not established by clear and convincing evidence his rehabilitation as set forth in N.J.S.A. 5:12-91d.

Therefore, I **ORDER** that the casino hotel employee registration of Joseph Patterson be revoked.

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

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

May 31, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

01 JUN 1984  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 05 1984  
DATE

Ronald J. Parker/phb  
OFFICE OF ADMINISTRATIVE LAW

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APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE

**For the Petitioner:**

- P-1 Investigation Report, regarding the burglary and theft at the residence of Carol Braunlin
- P-2 Investigation Report, regarding the burglary and theft at the residence of Joseph Raimondi
- P-3 Report relating to the burglary and theft at the Braunlin and Raimondi residences
- P-4 Arrest Report regarding Joseph Patterson, dated May 13, 1983
- P-5 Investigation Report, regarding a burglary and theft at the residence of Monika Franco
- P-6 Indictment and Judgment of Conviction entered against Joseph Patterson
- P-7 Personal History Disclosure Form-4, submitted by Joseph Patterson

WITNESSES

**For the Petitioner:**

None

**For the Respondent:**

Joseph Patterson

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-CL-3  
OAL DOCKET NO. CCC 3388-84

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IN THE MATTER OF THE QUALIFICATION  
OF MANUEL O. PEREDO, A PERSON WHO  
MUST BE QUALIFIED IN CONNECTION  
WITH THE APPLICATION OF GREATE BAY  
HOTEL AND CASINO, INC., AND  
PRATT HOTEL MANAGEMENT COMPANY, INC.,  
FOR RENEWAL OF THEIR PLENARY  
CASINO LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on July 3, 1984, concluding that Manuel O. Peredo is found qualified in connection with the casino licenses held by Greate Bay Hotel and Casino, Inc., and Pratt Hotel Management, Inc., and that he be granted a casino key employee license; and the Division of Gaming Enforcement having indicated by letter dated July 12, 1984, that it has no objection to the initial decision; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on July 25, 1984, to modify the said initial decision, and to find Mr. Peredo qualified;

IT IS on this 9th of AUGUST 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified to reject that portion which orders that a casino key employee license be issued to Manuel O. Peredo, based on the fact that a casino key employee license was not sought by Mr. Peredo; and

IT IS FURTHER ORDERED that Manuel O. Peredo be and hereby is found qualified based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 3388-84

AGENCY DKT. NO. 84-CL-1

**MANUEL O. PEREDO,**

Petitioner,

v.

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

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**APPEARANCES:**

**Nicholas F. Moles, Esq.,** for petitioner (Wilson, Jacobson, Winkelstein & Scerni, attorneys)

**Mary Jo Flaherty,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 4, 1984

Decided: July 3, 1984

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

Manuel O. Peredo applied to the Casino Control Commission for qualification to the standards of a casino key employee. He was hired by Pratt Hotel Corporation, a holding company of Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel, and Pratt Hotel Management, Inc., a casino licensee, to serve in the positions of vice president and controller of Pratt Hotel Corporation. Although Mr. Peredo is to have no responsibility whatsoever for the operations in Atlantic City, casino or otherwise, he is required to qualify, pursuant to N.J.S.A. 5:12-85 and by Commission orders setting conditions on the Casino license of Greate Bay.

By letter of April 26, 1984, the Division of Gaming Enforcement advised the Commission that while it was taking no position with respect to whether Mr. Peredo was qualified, it did wish to advise of certain information which it had discovered in the course of its investigation of Mr. Peredo's background. Some of this information was deemed to be negative. The Commission transferred the matter to the Office of Administrative Law for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 17, 1984, and a Prehearing Order was issued on May 23. A hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on June 4, 1984.

As set forth in the Prehearing Order, the case revolves around four issues. Specifically, the Division questions whether Mr. Peredo has the requisite good character, honesty, and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)2, and the requisite financial integrity required by section 89(b)1. In connection with these qualifying requirements, the Division alleges that Peredo transported \$17,000 from Mexico into the United States, in violation of reporting requirements set forth in 31 U.S.C. 5316, which at the time of the incident was 31 U.S.C. 1101. In addition, the Division questions specifics of Peredo's federal income tax returns for 1981 and 82 and contends that denial of licensure might be required, pursuant to N.J.S.A. 5:12-86(c)4 and 86(g).

In addition to the financial questions noted above, the Division suggests that Peredo filed false and misleading information in connection with his Personal History Disclosure Form and provided false and misleading information in interviews and sworn interviews conducted by the Division with respect to his alleged failure to disclose that on October 11, 1960 he had been charged with an administrative violation of the United States Immigration Laws. The failure to provide accurate information, or the submission of false and misleading information concerning information material to licensure would require denial of licensure, pursuant to N.J.S.A. 5:12-89(b)2.

Finally, the Division questions whether Mr. Peredo improperly entered into employment as vice president and controller of Pratt Hotel Corporation without having first received the appropriate temporary approval. The Division suggests that such employment might adversely impact on Peredo's demonstration of the requisite business ability required for a casino key employee, pursuant to N.J.S.A. 5:12-89(b)3.

THE IMMIGRATION MATTER

Testimony concerning Mr. Peredo's entry into the United States and subsequent involvement with the immigration authorities was provided by Mr. Peredo. According to the applicant, he was born in Cuba in 1937. He attended schools in Cuba and eventually entered Havana University. He went to school for four years, but the school was closed in 1958-59 as a result of the revolutionary activities which culminated in the ouster of the Batista regime and its replacement by the Castro government. According to Peredo, during his time in the university the Batista government conducted frequent searches in the dormitories.

When Fidel Castro took over the government on January 1, 1959, Peredo was a student at the university. Within three or four months thereafter, he began to realize that the Castro regime was making things worse rather than better. Peredo was at the time employed by the accounting firm of Peat, Marwick and Mitchell in its Havana office. He had started as a junior accountant and worked his way up to a senior accountant. Peat, Marwick's business in Cuba was heavily involved with U.S. corporations doing business in that country. According to Peredo, the Castro regime acted against the interests of these companies, nationalizing such industries as the sugar industry. Peredo observed that the government's agrarian reform laws were not being used as they were allegedly intended and the land was being kept for the government. During the 1959-60 period, most professionals in Cuba left the country. In mid-1959, Peredo's apartment was searched by the police and he was taken to a police station for questioning. Upon his release, he was given a warning that he had better not be picked up again.

As a result of the government's activities in connection with the nationalization of industry, business for Peat, Marwick and Mitchell fell and Peredo was laid off. He determined in early 1960 that he should leave Cuba. He had a tourist visa and obtained one for his wife. During this time, the Cuban government was beginning to limit the freedom of its citizens to leave the country.

On September 17, 1960, Mr. Peredo and his wife arrived in New York. They had come on a tourist visa which was valid for 60 days. The visa would have expired on November 16, 1960. According to Peredo, he arrived in New York with \$300 in his pocket,

having only been allowed to take out \$150 per person. He stayed with a relative and then moved in temporarily with a friend in Union City, New Jersey. He went to the immigration service in Newark during the first part of October. It was suggested to him by a friend that he would receive more favorable treatment in Newark than in New York. Peredo asked for political asylum. He filed an affidavit with the Service explaining his circumstances. On October 11, 1960, Clarence C. Philips, apparently an agent for the Immigration and Naturalization Service, prepared a "Record of Apprehension or Interview," a copy of which was placed in the record in this case. According to that document, "Subject (Peredo) with wife surrendered in the Newark office asking for political asylum."

According to Mr. Peredo, at the time that he sought political aslyum his ability to speak English was "next to zero." The affidavit filed on October 11 was written out for him during his interview. Peredo was able to read and write English, but could not speak it.

Mr. Peredo testified that he had never seen the "Record of Apprehension or Interview," until June 1, 1984, when it was obtained for the purposes of this hearing. While at Immigration on October 11, Peredo was fingerprinted and pictures were taken of him. He felt somewhat humiliated by this process. At no time was Mr. Peredo advised by the immigration personnel that he had violated any immigration laws, nor was he told how the procedure for obtaining political asylum worked.

During the hearing, the Division entered into evidence an "Order to Show Cause and Notice of Hearing," dated October 18, 1960. This document, prepared in connection with deportation proceedings under section 242 of the Immigration and Nationality Act, indicates that Mr. Peredo (referred to in the document as Peredot-Lara) had entered the United States on September 17, 1960, as a "visitor for pleasure . . . authorized to remain in the United States until November 16, 1960." The document continues by noting that "you now state that you do not intend to depart from the United States." Based on this information, the Order states that:

It is charged that you are subject to deportation pursuant to the following provisions of law:

Section 241(a)(9) of the Immigration and Nationality Act, in that, after admission as a non-immigrant under section 101(a)(15) of said act, you failed to comply with the

conditions of the non-immigrant status under which you were admitted.

The Order establishes that a hearing "before a Special Inquiry Officer" would take place on October 25, 1960 in Newark.

On October 25, 1960, a "Decision of the Special Inquiry Officer" was issued in connection with Mr. Peredo's case. The document states that Peredo appeared before the special inquiry officer (whose name could not be clearly read from the photocopy) and that Peredo had "admitted that the factual allegations contained" in the Order to Show Cause were true. The decision finds Peredo deportable from the United States on the charges in the Order and indicates that "respondent has not applied for any discretionary relief." As a result, the Order establishes that Peredo was to be deported from the United States.

In November 1960, a Warrant of Deportation was prepared which established that Mr. Peredo was to be deported for having "failed to comply with the conditions of the non-immigrant status under which he was admitted."

According to Mr. Peredo's testimony at this hearing, he was never aware that any order had been issued to deport him from the United States nor was he aware that he had ever violated the immigration laws. The applicant testified that he never saw the Warrant of Deportation until the Friday before this hearing. He never attended a hearing with a judge, hearing officer, stenographer, but instead only met with one agent. He was never sent back to Cuba and never told that he would have to leave. In fact, he claims that he was told that he could stay in this country. He remained here and never failed to report for his monthly visits to immigration. He was never again fingerprinted until he eventually obtained a permanent visa.

Beginning in late 1961, Mr. Peredo attempted to obtain a permanent visa which would permit him to remain in the United States. He wrote to the United States Consul in Montreal for an application. He was advised that in order to obtain the permanent visa, it was necessary for him to leave the territory of the United States and reenter. He obtained approval for the permanent visa in 1962 and went to Immigration to tell them about this. He was told that he could not leave the country and would need to request a hearing. At this time Peredo's English was much better. In July 1962, he had a hearing, the results of which are set forth in an Order Granting Motion to Reopen

Proceedings. This document, admitted in evidence as P-6, indicates that in connection with Mr. and Mrs. Peredo that they were ordered deported on October 25, 1960 because they had failed to comply with the conditions of their non-immigrant status. The document continues by stating that "the respondents now move to reopen the proceeding to apply for voluntary departure." The Order recites that the Peredos had been "invited by the United States Consulate General at Montreal" to obtain immigrant visas on July 19, 1962. The motion to reopen was not opposed and was granted. The outstanding order of deportation was withdrawn.

Mr. Peredo became a United States citizen on September 5, 1968.

Mr. Peredo was questioned concerning whether he had ever advised Investigator Al White of the Division of Gaming Enforcement that he had been cited for a violation of the immigration laws and that he had been called in and fingerprinted. Peredo denied having told White that he had been charged with such a violation or that he had been "called in" and fingerprinted. The fingerprinting actually occurred when he had appeared on his own volition at Immigration on October 11, 1960. He did agree that he had told Peredo that the fingerprinting procedure had been humiliating.

In connection with the immigration matter, Investigator White testified that he had prepared a report concerning his interview with Peredo which occurred in Dallas, Texas during the week of January 23, 1984. The redacted version of that report was placed in evidence as P-10. In the report the agent advised that he interviewed Peredo about the "administrative violation." The report continues

"he stated at that time he was required to report on a monthly basis to Immigration. He failed to report and was called in and fingerprinted and was cited in 1960 for an administrative violation of Immigration Laws. By his own admission, he was not concerned with this violation, although he was humiliated by the FBI fingerprinting him for it."

During his testimony at the hearing, Investigator White noted that he had asked Peredo about an entry on an FBI rap sheet concerning the alleged violation of immigration laws. Peredo maintained that he had never been arrested or charged. He was asked about his immigration situation and described it to White. White maintained that Peredo told him that he did not think at the time that the violation with which he was charged was so serious. On cross-examination, White agreed that it was possible that

he might have made a mistake about the sequence of events in connection with the visa. In addition, he noted that the term "administrative violation" was not used by Peredo but was probably suggested to White by having been mentioned to him by his boss who had called him in Dallas to advise him of the arrival of the FBI rap sheet in New Jersey and the entry on it showing an immigration violation. If Peredo did use the term "administrative violation," it is possible, according to White, that he may have "led him to say it."

#### DISCUSSION

A consideration of the circumstances under which Mr. Peredo entered this country and the historical context in which his entry occurred indicates that there was nothing at all surprising that a citizen of Cuba who had a legal way of entering the United States, in Peredo's case, a visitor's visa, might have taken advantage of the situation in order to get himself into this country so that he could seek to stay here permanently and avoid returning to Cuba. The judge can take judicial notice that thousands of Cubans, professional and otherwise, fled to the United States in the early 1960's to escape the Castro government. Mr. Peredo was one of many and there was probably nothing unusual about his story as compared to others who came here at the same time.

The evidence presented in connection with the "administrative violation" of the immigration laws is not particularly enlightening as to the whys and wherefores of the actions taken by the Immigration Service. There is no doubt that when Mr. and Mrs. Peredo entered the United States, having in their minds the intention of not returning to Cuba, that they may have violated immigration laws since they came in under the pretext that they were merely visitors and would be returning to their homeland. Therefore, it may not be surprising that Immigration went through the formal procedures of obtaining an order which would support the deportation of the Peredos back to Cuba. These proceedings apparently occurred within a very short of time after the Peredos arrival in this country and their voluntarily appearance at the Immigration Service in Newark. According to Peredo, he could not obtain political asylum because the United States and Cuba still had diplomatic relations.<sup>1</sup>

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<sup>1</sup> Whether this is legally correct is not of significance in this case.

An examination of the documentary evidence and of Mr. Peredo's story demonstrates that despite the fact that an order was obtained which would have supported his deportation, he was in fact not deported. Eventually, having secured employment in this country, and having gone through the procedures necessary in order to obtain an "green card" as a holder of a permanent visa, Peredo obtained the necessary order withdrawing the deportation order and allowing him to go to Montreal. Thereafter, there appears to have been no question that Mr. Peredo was legally in the United States.

Having examined the circumstances, the historical context, and the testimony of Mr. Peredo, as well as the documentation provided, and in the absence of any indication by way of evidence that there was anything more serious about Mr. Peredo's situation than that he used the visitor's visa as a convenient way to get out of Cuba and into the United States, I can find no basis for denying Mr. Peredo licensure as a result of anything in connection with his immigration status. First of all, I **FIND** that Mr. Peredo's entry into the United States, while perhaps technically a violation of immigration laws, was, given the historical context, quite understandable. I **CONCLUDE** that, although the Immigration Service went through the technical step of obtaining the necessary order which would support deportation, that there was apparently no real effort to remove him from this country and that the failure to carry through with the deportation may have reflected an appreciation of Peredo's status as one who was fleeing from what was perceived in the early 1960's as the emergence of a communist dictatorship in Cuba. Therefore, I **FIND** that whatever violation Peredo may have been guilty of was technical at best and is certainly no bar to his entry into the casino field. Further, in connection with the interview with Investigator White, I **CONCLUDE** that Mr. Peredo honestly was unaware that he had been charged with a violation of immigration laws because, I **FIND**, that in 1960 he was unaware of the immigration procedure and spoke little English, and did not have a full and complete understanding of what exactly was occurring during the first days of his contact with the Immigration Service. I **FIND** that he was not aware that he had been charged with a violation of immigration laws when he applied for his licensure, when he filed his Personnel History Disclosure Form, and when he spoke with White in Dallas.<sup>2</sup> With respect to the investigator's report, I **FIND** that indeed Investigator White may have been confused about the exact sequence of events concerning

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<sup>2</sup> The 1962 proceeding to remove the deportation order likewise appears to have been technical in nature and I **FIND** no evidence that it served to enlighten Mr. Peredo about any violation of the law.

the immigration situation and the visa. White did not have the immigration file with him and had no access to the documents which have been placed in evidence here. In addition, there is no evidence that Mr. Peredo had any access to these documents at the time. As to the statements in White's redacted report that Peredo "failed to report and was called in," I **FIND** that this is a mistaken interpretation of what Mr. Peredo stated in the interview. I **CONCLUDE** that there is no evidence that Peredo ever failed to report, and I **FIND** that he did not tell this to White. In addition, I do not find any support for White's statement that Peredo "by his own admission . . . was not concerned with this violation."

For the reasons expressed, I **CONCLUDE** that the applicant did not file false and misleading information as part of his Personnel History Disclosure Form and did not provide false and misleading information to the Division in any interviews. Therefore, at least in connection with the immigration situation, I **FIND** nothing which indicates that Mr. Peredo does not have the requisite good character, honesty, and integrity required by section 89(b)2.

THE FAILURE TO REPORT MONEY BROUGHT INTO THE UNITED STATES

From April 1, 1979 through March 1983, Mr. Peredo was employed by Posedas de Mexico in Mexico City. Posedas de Mexico is an affiliate of Pratt Hotel Corporation. Peredo worked as assistant controller. While living in Mexico, Peredo maintained bank accounts in Mexican banks. On September 1, 1982, the Mexican government ordered that all Mexican bank accounts be converted to pesos so that someone who had dollars in a dollar-denominated account in a Mexican bank would instead hold pesos. The result of this was that there would be a substantial loss of money due to the level at which the government set the price of pesos. In order to convert the pesos back to dollars, a high premium would be charged.

On September 4, 1982, Peredo transported approximately \$14,000 from Mexico to Miami. He had flown to Miami for the purpose of depositing the money into a Miami bank account. There was nothing illegal about the transportation of the money from Mexico to the United States. The money had been held by Peredo in a safe in his home in order to protect it against the possibility of the rumored government control or seizure of banks. It was not illegal to keep dollars in a safe. The only illegality which seems to have been involved in the transportation of this money was Mr. Peredo's admitted failure to

declare that he was carrying over \$5,000 into the United States. Such a declaration was required by 31 U.S.C. 1011, now 31 U.S.C. 5316. This statute provides:

- (a) Except as provided in subsection (c) of this section, a person . . . shall file a report under subsection (b) of this section when the person . . .
  - (1) Transports or has transported monetary instruments of more than \$5,000 at one time -
    - (a) . . .
    - (b) To a place in the United States from or through a place outside the United States; . . .

According to testimony, it is standard procedure on flights coming into the United States from overseas for the airline to pass out a customs declaration such as exhibit P-16. This document contains a question no. 11:

Are you or any family member carrying over \$5,000 (or the equivalent value in any currency) in monetary instruments such as coin, currency, travelers checks, money orders or negotiable instruments in bearer form? (If yes, you must file a report on Form 4790, as required by law.)

Note: It is not illegal to transport over \$5,000 in monetary instruments; however, it must be reported.

Two boxes are placed to the right of the question, one to be checked if the answer is "yes" and one to be checked if the answer is "no." The document then contains a certification that the statements contained are true.

According to Mr. Peredo, when he arrived in the United States on September 4, 1982 carrying \$14,000, he was well aware that he was required to report the transportation of the money into the country. He also was well aware that he had over \$5,000 on his person. However, according to Peredo, he had filled out the customs declaration so many times and checked "no" in answer to question 11 so often that when it came time to fill out the declaration, he "automatically" checked "no" without thinking and did not report the fact that he was bringing in over \$5,000 in currency. The money was deposited in a bank in Miami the next day and then transferred out of that savings account into a checking account in a different bank a few days later (the checking account was in a bank which was closed on Saturday).

Investigator Al White testified that when he interviewed Peredo in Dallas, Peredo advised him that it was illegal for persons in Mexico to hold dollars. In his redacted report, White states,

Because of this, Mexicans try not to hold pesos but dollars. It is illegal to do so but Mr. Peredo says Mexicans tend to ignore this law.

During the interview, Peredo agreed that he had not reported the transportation of the \$14,000.

In his testimony, Mr. Peredo denied that there was anything illegal about holding dollars in a safe in Mexico. The currency restrictions had not prevented the holding of dollars, but only dealt with the conversion of dollar-denominated accounts into pesos and restrictions on trading dollars for pesos. The witness denied that he had ever told White that it was illegal for Mexicans to hold dollars. He did tell White that it was illegal to trade currencies.

During the hearing, Investigator White denied that there was ever any mention about trading dollars rather than holding dollars. He firmly believes that Peredo told him that it was illegal to hold dollars. Since there is a question on the Personal History Disclosure Form dealing with trading of foreign currency, the witness believed that he would have picked up anything that had to do with trading.

#### DISCUSSION

In some ways it is perhaps difficult to believe that Mr. Peredo, carrying a substantial portion of his savings in the rather significant figure of \$14,000, could possibly have inadvertently checked "no" on the customs declaration, particularly when, as he noted, he was well aware of the requirement of declaring transportation of over \$5,000. Although at first blush the story seems to strain credibility, on closer examination it is difficult to imagine why Mr. Peredo would not have declared the money. The customs declaration itself states that there is nothing illegal about bringing over \$5,000 into the country and Mr. Peredo's unrebutted testimony was that there was nothing illegal about holding dollars in Mexico. No evidence has been presented here to establish that anything that Peredo did was a violation of Mexican law. Therefore, one assumes that had he

declared the \$14,000 nothing would have happened. In addition, since he deposited the money almost immediately into a bank, it cannot be said that he was hiding the money. Thus, in the absence of any evidence that anything involving this money constituted an illegal act, it is difficult to imagine why Mr. Peredo would have seen it in his best interest not to declare the money. Given the fact that there appears to be no understandable motive for the failure to declare, the otherwise potentially difficult story about the inadvertent marking of the customs declaration tends to gain credibility. While the failure to properly file the form subjected Peredo to possible civil penalties under 31 U.S.C. 5321, or potentially to criminal penalties under 31 U.S.C. 5322, there is no evidence from which I can find any reason to believe that Peredo purposely, intentionally, and for improper motives refrained from filing the declaration. Therefore, in the absence of such evidence, I am convinced that Mr. Peredo was truthful in his testimony when he stated that he inadvertently failed to declare the money. In making this judgment, I am relying not only on the absence of any apparent motive for concealing the money, but in addition am relying on my overall impression that Mr. Peredo is an honest, conscientious, sincere, and law abiding individual. While his lack of care in connection with this customs declaration indicates conduct which is not to be condoned, Mr. Peredo is no less fallible than anyone else, and I cannot conceive that, in the absence of any apparent improper motive, his failure to properly fill out the form is a basis for any conclusion that he has less than the requisite good character, honesty, and integrity required for licensure by N.J.S.A. 5:12-89(b)2. Further, I do not find any indication that this incident demonstrates a lack of financial integrity. In the absence of an improper motive, Mr. Peredo's integrity is not called into question. Therefore, I **FIND** that with respect to this matter, the incident does not denigrate from the required showing of financial integrity under N.J.S.A. 5:12-89(b)1.

#### THE INCOME TAX MATTERS

On his 1981 tax return, Mr. Peredo listed a \$900 deduction for a tax return preparation fee. His 1982 return reflected an \$800 deduction for the preparation of the return. During the interview in Dallas, Investigator White questioned Peredo about these deductions. Peredo stated that the deduction was inaccurate and that while he took responsibility for the return which he had signed, he had been unaware that the tax return preparation fees had been overstated. In fact, he indicated that he had paid his accountant \$225 for the preparation of returns each year. In addition, Peredo noted that

the accountant who had prepared the returns had not signed them because "it was his impression that since she wasn't registered to prepare U.S. returns, she need not sign them."

During the hearing, Mr. Peredo explained that his returns had been prepared by a Mexican CPA employed by a United States accounting firm located in Mexico City which specialized in the preparation of income taxes. According to the witness, it was his understanding that the accountant had for some reason not registered herself with the United States Embassy as was apparently required and therefore she was not appropriately authorized to act as an official preparer of tax returns. For that reason, she did not sign the form. With respect to the overstatement of the preparation fee, the witness testified that he assumed that the accountant had been attempting to do him a favor by overstating the fees. He had reviewed the returns when she had returned them to her, had only examined the return in a cursory fashion, concentrating on the information concerning income and the amount due. He claimed that he was totally unaware of the \$800 and \$900 deductions. Subsequently, Mr. Peredo filed amended returns. As a result, he owed the IRS \$9.00 for the 1982 return and \$16 with respect to the 1981 return.

In connection with the 1982 return, Mr. Peredo listed a deduction for \$250 for insurance premiums for medical and dental care. In the interview in Dallas, he indicated that this figure was incorrect. In fact, it appears that according to information presented through the testimony of Mr. Peredo as well as through correspondence received from Mateo Sancho Cervera, attorney-in-fact for Posedas de Mexico, Mr. Peredo had withheld from his salary in the calendar year 1982 1,460 pesos on a semi-monthly basis in order to cover health and hospitalization insurance for his dependants. Peredo's own insurance was provided free of charge. According to Peredo's testimony, the actual expense to him for his dependents insurance coverage was approximately \$627.

#### DISCUSSION

An examination of the information provided concerning the tax returns indicates that Mr. Peredo, while he should have been more careful in examining his return on a line-by-line basis, does not appear to have intended to cheat the government in any way. It seems inconceivable that Mr. Peredo would have attempted to defraud the

government out of \$9 one year and \$16 the next. It is far more likely that an inadvertent mistake was made on the part of the accountant, who also could not reasonably have been attempting to reduce Mr. Peredo's taxes by over-stating the preparation fee when the difference was so minimal. According to a memorandum from Investigator White concerning a telephone conversation with the accountant, she believes that she may have erroneously included Peredo's fee along with that of someone named Luis Ponce.

I can find nothing in connection with the tax preparation fees that indicates that Mr. Peredo was attempting to do anything improper, and I **FIND** that there is nothing about this matter, or about the deduction for insurance expenses, that in any way detracts from Peredo's honesty or integrity or his financial stability or integrity.

Since I can find nothing that indicates that this was anything more than an inadvertent mistake, I cannot truly fault Mr. Peredo's determination to have the same accountant prepare his 1983 tax return. While one might question whether, given the circumstances, there is some lack of judgment in giving the business to Pacheco again, I believe that to challenge Mr. Peredo's qualifications or his judgment on such flimsy grounds would be inappropriate.

#### MR. PEREDO'S EMPLOYMENT STATUS

The Division contends that Mr. Peredo improperly assumed the duties of vice president and controller for Pratt Hotel Corporation before receiving temporary qualification. N.J.S.A. 5:12-89a provides that, "no person may be employed as a casino employee unless he is the holder of a valid casino key employee license issued by the Commission."

The Commission contends that from September 16 until the Commission's order of January 25, 1984 (written order, January 30, 1984), Mr. Peredo was improperly employed in the vice presidential and controller positions and that his having held those positions indicates a lack of business ability and a failure to establish the requisite business ability demanded by N.J.S.A. 5:12-89(b)3.

Examination of the record indicates that Peredo received the offer of employment in Mr. Pratt's letter of August 1, 1983. That letter provided that he would be

elected as vice president and corporate controller "as soon as you have completed the PHD 1 form for filing." Initially, a PHD 4 form was filed on October 19. Apparently at that time Peredo was already working, although he did not hold the title of vice president and controller. By Ms. Flaherty's October 25 letter, Mr. Moriority, Senior Vice President and General Counsel for Pratt, was directed to have Peredo file the PHD 1 form "within 45 days from the date of the filing of the PHD 4 form." The PHD 1 form was filed on January 11.

Mr. Peredo was not actually elected to the position of vice president and corporate controller until May 1984. According to his own testimony, there was no change in his duties from the time before his election and after.

I **FIND** that for all practical purposes Mr. Peredo did function as vice president and corporate controller of Pratt Hotel Corporation prior to his actually being formally elected to the positions. I **FIND** that he appears to have complied in good faith with the filing requirements of the Commission as directed by the Division. The corporation made appropriate request of the Commission for an order to permit Mr. Peredo to operate on a temporary basis and that order was issued in January. I cannot conceive that under the circumstances there is any reason to deny Mr. Peredo licensure as a casino key employee or to fault his business ability because of the fact that from September until the end of January he performed the function, although not holding the title, of vice president and controller. Perhaps there is some fault on the part of the corporation and one might even fault Mr. Peredo for not confirming independently that he was authorized to perform his functions. However, to say that any of this so adversely affects Mr. Peredo's business ability as to permit denial of licensure on that basis would be ludicrous.

I **CONCLUDE** that there is no basis for denying licensure with respect to Mr. Peredo's employment status with the corporation.

#### GOOD CHARACTER EVIDENCE

Although the Division has not raised any additional grounds for challenging Mr. Peredo's licensure, as a general matter, it is appropriate to comment on the evidence that was presented by Peredo to support his contention that he has the requisite good character, honesty and integrity for licensure, a requirement which he must prove by

clear and convincing evidence. He presented the testimony of Francisco Zinser, the executive vice president of Posedas de Mexico since December 1979 and Mr. Peredo's supervisor when Peredo was employed for that company. Zinser, who described himself as a friend of Peredo's, testified that the applicant had an exceptional character, was honest, and a good family man with a very fine reputation in the community.

In addition, Peredo presented sworn statements from Hugh A. Andrews, Director of Finances for Posedas de Mexico, Cornelius E. Smyth, a business associate of Peredo's, and Mark Schumacher, Esq., a member of the Florida Bar and attorney for Peredo in several business capacities. Each of these gentlemen strongly supports Mr. Peredo's character, honesty, and integrity and indicates that their own personal views as well as their knowledge of his reputation in the community reflect Peredo's positive qualities.

I am satisfied from the evidence presented, both in terms of the affidavits and the testimony of Mr. Zinser, in addition to my own assessment of Mr. Peredo's character, honesty, and integrity in connection with the matters discussed above, that he possesses the requisite good character, honesty, and integrity. He has established the same by clear and convincing evidence.

#### CONCLUSION

Since I find nothing in the evidence that indicates that Mr. Peredo was lacking in the requisite characteristics mandated by the statute for one required to qualify as a casino key employee, I can find no basis for denying Mr. Peredo's licensure. Nothing raised by the Division establishes any significant detrimental mark against the applicant. Therefore, I **CONCLUDE** that he is qualified for licensure.

It is **ORDERED** that the appropriate casino key employee license be issued.

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

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

July 3, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 6, 1984  
DATE

Bernadette T. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 12 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On Behalf of Petitioner:

- P-1 Affidavit of Manuel Peredo-Lara, dated October 11, 1960
- P-2 Record of Apprehension or Interview, dated October 11, 1960
- P-3 Order to Show Cause and Notice of Hearing, dated October 18, 1960
- P-4 Decision of the Special Inquiry Officer, dated October 25, 1960
- P-5 Warrant of Deportation, dated November 1960
- P-6 Order Granting Motion To Reopen Proceedings
- P-7 Letter of May 21, 1984 from Manuel O. Peredo to Regional Commissioner
- P-8 Letter of May 24, 1984 from Wayne L. Joy, Associate Regional Commissioner
- P-9 United States Department of Justice, Criminal Record Sheet
- P-10 Redacted portion of Investigator Al White's report concerning Dallas interview
- P-11 Letter of August 1, 1983 from Edward T. Pratt, Jr.
- P-12 Letter of October 19, 1983 from William D. Moriarity, II
- P-13 Letter of October 25, 1983 from Mary Jo Flaherty, Deputy Attorney General
- P-14 Petition, dated January 13, 1984
- P-15 Letter enclosing Order, dated February 13, 1984
- P-16 Customs Declaration form

- P-17 Photocopy of portion of Coconut Grove Bank statement
- P-18 United States Individual Income Tax Return for 1981
- P-19 United States Individual Income Tax Return for 1982
- P-20 Letter of May 22, 1984 from Mateo Sancho Cervera
- P-21 Photocopy of check, dated September 2, 1982
- P-22 Sheet containing rates of exchange for Mexican peso and the United States dollar
- P-23 Photocopy of amended tax return for 1981
- P-24 Photocopy of amended tax return for 1982
- P-25 Affidavit of Mark Schumacher, Esq.
- P-26 Affidavit of Cornelius E. Smyth
- P-27 Affidavit of Hugh A. Andrews
- P-28 Interview Report

On Behalf of Respondent:

- D-1 Transcript of sworn interview of Manuel O. Peredo, March 28, 1984
- D-2 Personal History Disclosure Form-1
- D-3 Resolution of New Jersey Casino Control Commission Concerning the Casino License Renewal Applications of Greate Bay Hotel and Casino, Inc. and Americas - New Jersey Management, Inc. and Containing Findings, Conditions and Effective Dates, dated April 3, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
PETITION REFERENCE NO. 279401

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PETITION OF THE ATLANTIC CITY :  
CASINO HOTEL ASSOCIATION :

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ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a petition with the Commission on October 23, 1984, by the Atlantic City Casino Hotel Association seeking a limited reconsideration under N.J.S.A. 5:12-107d. of the Commission's holding in State v. Playboy-Elsinore Associates, et al., Docket No. 83-16 (October 10, 1984), concerning the meaning of "bearer" as used in N.J.A.C. 19:45-1.1, or, alternatively, a declaratory ruling on the meaning of "bearer" as used in N.J.A.C. 19:45-1.1, or, alternatively, a waiver under N.J.A.C. 19:40-1.3(d) of the requirements of N.J.A.C. 19:45-1.1 as they relate to the definition of cash equivalents until such time as it can be amended, or alternatively, a request pursuant to N.J.S.A. 5:12-69c. to amend N.J.A.C. 19:45-1.1 regarding the definition of cash equivalents; and the Commission, at its public meeting of October 24, 1984, having heard the arguments of counsel and considered the entire record in this matter and having resolved, for good cause shown, to entertain the petition for a declaratory ruling as requested by the petitioner and to reject all other relief requested,

IT IS on this <sup>1<sup>st</sup></sup> day of November 1984, ORDERED that the petition requesting a reopening of State v. Playboy-Elsinore Associates, et al., Docket No. 83-16 (October 10, 1984), be and hereby is denied; and

IT IS FURTHER ORDERED that the petition for the amendment of N.J.A.C. 19:45-1.1 and a waiver of the present regulation under N.J.A.C. 19:40-1.3(d) be and hereby is denied; and

IT IS FURTHER ORDERED that, in light of the Commission's consideration of the petition for declaratory ruling concerning the definition of cash equivalents in N.J.A.C. 19:45-1.1, the interpretation of "bearer" as articulated in State v. Playboy-Elsinore Associates, et al., Docket No. 83-16 (October 10, 1983), be and hereby is stayed during the pendency of the Commission's consideration of the petition; and

IT IS FURTHER ORDERED that this order be served upon the Atlantic City Casino Hotel Association and the Division within five days of the date herewith.

NEW JERSEY CASINO CONTROL COMMISSION

By: 

ROBERT J. GENATT  
GENERAL COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 83-16  
OAL DOCKET NO. CCC 04557-83

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STATE OF NEW JERSEY, DEPART- :  
MENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

PLAYBOY-ELSINORE ASSOCIATES, :  
t/a PLAYBOY HOTEL AND CASINO OF :  
ATLANTIC CITY; JOANNE MARIE :  
ROGERS, CAGE MANAGER; :  
CHRISTOPHER R. GIBBONS, CASINO :  
COMPTROLLER; WILLARD C. HOWARD, :  
JR., FORMER VICE PRESIDENT OF :  
CASINO OPERATIONS; AND HENRY M. :  
APPLEGATE, III, VICE PRESIDENT :  
OF FINANCIAL SERVICES, :

AMENDED FINAL ORDER

Respondents. :

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This matter having been opened to the New Jersey Casino Control Commission upon the stipulation of fact filed on December 29, 1983, in resolution of the complaint filed by the Division of Gaming Enforcement on January 18, 1983, alleging violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and Commission regulations, N.J.A.C. 19:45-1.1 et seq.; and the Commission, after carefully considering the entire record of the proceedings and the legal arguments of the parties, having resolved at its public meeting of October 10, 1984, to find certain violations and assess certain sanctions for the reasons set forth in a final Commission decision dated October 10, 1984,

IT IS on this 31<sup>st</sup> day of October 1984, ORDERED that the

findings of fact and conclusions of law as set forth in the final Commission decision in this matter dated October 10, 1984, which is incorporated herein by reference and made a part hereof, be and hereby are adopted by the Commission; and

IT IS FURTHER ORDERED that respondent Playboy-Elsinore Associates, now Elsinore Shore Associates, pay a civil penalty in the amount of \$186,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Joanne Marie Rogers pay a civil penalty in the amount of \$500, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Christopher R. Gibbons pay a civil penalty in the amount of \$1,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Christopher R. Gibbons's casino key employee license be and hereby is suspended without pay for a period of seven days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 16, 1984; and

IT IS FURTHER ORDERED that respondent Willard C. Howard, Jr. pay a civil penalty in the amount of \$5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

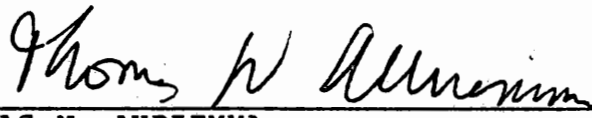
IT IS FURTHER ORDERED that respondent Henry M. Applegate, III, pay a civil penalty in the amount of \$5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Henry M. Applegate's casino key employee license be and hereby is suspended without pay for a period of fourteen days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 23, 1984, under the conditions as outlined in the Commission final decision in this matter; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY:



THOMAS N. AURIEMMA  
DEPUTY DIRECTOR  
LEGAL DIVISION

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 83-16  
OAL DOCKET NO. CCC 04557-83

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STATE OF NEW JERSEY, DEPART- :  
MENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

PLAYBOY-ELGIN ASSOCIATES, :  
t/a PLAYBOY HOTEL AND CASINO OF :  
ATLANTIC CITY; JOANNE MARIE :  
ROGERS, CAGE MANAGER; :  
CHRISTOPHER R. GIBBONS, CASINO :  
COMPTROLLER; WILLARD C. HOWARD, :  
JR., FORMER VICE PRESIDENT OF :  
CASINO OPERATIONS; AND HENRY M. :  
APPLEGATE, III, VICE PRESIDENT :  
OF FINANCIAL SERVICES, :

FINAL ORDER

Respondents. :

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This matter having been opened to the New Jersey Casino Control Commission upon the stipulation of fact filed on December 29, 1983, in resolution of the complaint filed by the Division of Gaming Enforcement on January 18, 1983, alleging violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and Commission regulations, N.J.A.C. 19:45-1.1 et seq.; and the Commission, after carefully considering the entire record of the proceedings and the legal arguments of the parties, having resolved at its public meeting of October 10, 1984, to find certain violations and assess certain sanctions for the reasons set forth in a final Commission decision dated October 10, 1984,

IT IS on this <sup>th</sup> 29 day of October 1984, ORDERED that the

findings of fact and conclusions of law as set forth in the final Commission decision in this matter dated October 10, 1984, which is incorporated herein by reference and made a part hereof, be and hereby are adopted by the Commission; and

IT IS FURTHER ORDERED that respondent Playboy-Elsinore Associates, now Elsinore Shore Associates, pay a civil penalty in the amount of \$186,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Joanne Marie Rogers pay a civil penalty in the amount of \$500, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Christopher R. Gibbons's casino key employee license be and hereby is suspended without pay for a period of seven days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 16, 1984; and

IT IS FURTHER ORDERED that respondent Willard C. Howard, Jr. pay a civil penalty in the amount of \$5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

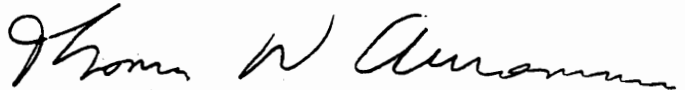
IT IS FURTHER ORDERED that respondent Henry M. Applegate, III, pay a civil penalty in the amount of \$5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Henry M. Applegate's casino key employee license be and hereby is suspended without pay for a period of fourteen days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 23, 1984, under the conditions as outlined in the Commission final decision in this matter; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY:

  
THOMAS N. AURIEMMA  
DEPUTY DIRECTOR  
LEGAL DIVISION

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NO. 83-16  
OAL DOCKET NO. CCC 04557-83

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STATE OF NEW JERSEY, DEPART- :  
MENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

PLAYBOY-EL SINORE ASSOCIATES, :  
t/a PLAYBOY HOTEL AND CASINO OF :  
ATLANTIC CITY; JOANNE MARIE :  
ROGERS, CAGE MANAGER; :  
CHRISTOPHER R. GIBBONS, CASINO :  
COMPTROLLER; WILLARD C. HOWARD, :  
JR., FORMER VICE-PRESIDENT OF :  
CASINO OPERATIONS; AND HENRY M. :  
APPLEGATE, III, VICE-PRESIDENT :  
OF FINANCIAL SERVICES, :

Respondents. :

COMMISSION DECISION

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APPEARANCES:

Marilu Marshall, Esq. for Respondents  
Playboy-Elsinore Associates, Joanne  
Marie Rogers, Christopher R. Gibbons and  
Henry M. Applegate, III

Steven R. Bolson, Esq. for Respondent  
Willard C. Howard, Jr.

Kevin F. O'Toole, Deputy Attorney General for  
Division of Gaming Enforcement

Dennis Daly, Senior Assistant Counsel  
Nancy Q. Shickler, Assistant Counsel for  
New Jersey Casino Control Commission

The Division of Gaming Enforcement (DGE) filed a complaint

against respondents Playboy-Elsinore Associates,<sup>1</sup> Joanne Marie Rogers, Christopher R. Gibbons, Willard C. Howard, Jr., and Henry M. Applegate, III with the Commission on January 18, 1983. That complaint alleges that the respondents committed a number of violations of the Casino Control Act and Commission regulations in connection with a group of gamblers from Hong Kong ("Hong Kong group") which visited the Playboy casino during the period of August 12 to 15, 1982. A notice of defense and request for a hearing was filed on behalf of all respondents with exception of respondent Howard on February 24, 1983. Counsel on behalf of Mr. Howard filed a notice of defense and a hearing request on March 11, 1983. A prehearing conference was held before Hearing Commissioner Joel R. Jacobson on May 12, 1983. Thereafter, on June 15, 1983, the Commission transferred the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

In the OAL, all the respondents and the DGE agreed to a stipulation of facts. The parties made a motion for the Commission to recall the case from the OAL on November 15, 1983. That order was signed by Chairman Read on November 29, 1983, and the matter was thereafter returned to the Commission on December 29, 1983.

By letter dated February 16, 1984, the parties were asked to address several legal issues raised as a result of an initial

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1. On June 5, 1984, Playboy-Elsinore Associates changed its name to Elsinore Shore Associates. The casino licensee was not altered in any other respect.

review of the stipulation of the facts. The parties were also requested to brief the issue of the appropriate sanction(s). Marilu Marshall, Esq., counsel for all respondents except Howard, filed her letter brief on March 12, 1984. The DGE filed its brief on March 22, 1984. There has been no written response from counsel on behalf of Mr. Howard.

A second prehearing conference was held on April 17, 1984, in order to clarify certain factual issues raised by the stipulation of facts.

Oral argument of counsel for all respondents and the DGE on the appropriate sanction, if any, to be imposed was heard at the Commission's public meeting of September 12, 1984. In support of its contention that no sanction should be imposed under section 130, the respondents presented testimony from Robert Maxey, Chief Executive Officer of Elsinore.

#### FACTS

We accept the stipulation of facts filed by the parties on January 13, 1984. The essential facts for purposes of this decision are as follows. On the morning of August 11, 1982, Playboy management personnel, including respondents Rogers and Gibbons, were advised that a group of oriental gamblers known as the "Hong Kong group" were expected to arrive at the Playboy Hotel and Casino on the following day, August 12, 1982. In anticipation of their arrival, a meeting was held at approximately 8:30 p.m. on August 11, 1982, involving

respondents Howard and Rogers, as well as Jerry L. Cook, casino credit manager, Barry C. Rubinson, director of casino marketing, Howard S. Moskovitz, credit executive, and Su-Min (Frank) Hsu, casino host. Respondent Howard made contact with the Hong Kong group through a relative of Mr. Hsu and was informed by them that the group intended to present cash equivalents to be placed on safekeeping deposit at Playboy. Mr. Howard made arrangements to pick up copies of the checks to be presented so that they could be forwarded to credit clerks for verification in advance of the group's arrival. Respondent Rogers advised respondent Gibbons that copies of the checks would be arriving late that evening and would be verified by cage personnel the following morning, August 12, 1982.

Upon her arrival at Playboy on the afternoon of August 12, 1982, Rogers reviewed the copies of the checks and discovered that, in addition to bank checks, there were also cage disbursement checks from several Las Vegas casinos. She then contacted Gibbons and apprised him of this fact, questioning whether the casino checks were to be accepted as cash equivalents when presented. Gibbons then met with respondent Applegate, who was then vice-president of financial services, and expressed the same concerns. The matter was discussed between respondents Applegate and Howard and, afterwards, Applegate told Gibbons that the casino checks were to be accepted as cash equivalents if verified and authorized by the credit department. Gibbons so

advised Rogers, noting that acceptance was contingent upon the credit department's verification and authorization.

Ms. Rogers was approached at approximately 5:00 p.m. by Howard Moskowitz, casino credit executive, who inquired whether it was possible to use one of the meeting rooms in the casino hotel facility, known as the Margate Suite, for the arrival of the Hong Kong group and the processing of their safekeeping deposits. Mr. Moskowitz was concerned because of the large number of people in the Hong Kong group and the fact that they did not speak English. Rogers contacted Gibbons and "advised him that this would be done." (Stip. at para. 21). Casino cage personnel proceeded to the Margate Suite with safekeeping deposit documents which had been prepared in advance.

The Hong Kong group arrived at approximately 7:30 p.m. and was directed to the Margate Suite. Present at that time were respondents Howard and Rogers, Messrs. Cook, Moskowitz, Rubinson and Hsu, Carol A. White, executive casino host, Richard Dennis Yin, credit executive, various casino cage personnel and one security officer.

Seventy-five checks were presented by the Hong Kong group in the Margate Suite totalling \$1.9 million. Of those checks, thirteen were drawn on cage disbursement accounts of various Las Vegas casinos. Moreover, five checks made payable to Tony Lau, tour escort, were accepted.<sup>2</sup> Furthermore, sixteen of the

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2. The DGE charged that the corporate respondent had violated the Casino Control Act and Commission regulations by accepting two checks as "cash equivalents" which were made payable to "Winston Y.C. Ming" and "Chan Wai-Ho, Anthony" in Count IV, paras. 24 and 25 of the amended complaint. As part of the stipulation of settlement, the DGE withdrew that allegation.

checks accepted had not been verified. Respondent Rogers was advised by Jerry Cook, credit manager, that the Hong Kong patrons would be allowed to gamble against the unverified checks.

The Hong Kong group gambled at Playboy from the evening of August 12, 1982, to August 15, 1982. The group then moved to the Sands to gamble until August 18, 1982. As part of the settling of the safekeeping deposits, the sixteen bank checks totalling \$660,000, which had not been verified were returned to the Hong Kong group. In addition, eight Playboy-Elsinore Associates casino cage disbursement account checks were issued, all of them payable to Kam Yiu-Lau, one of the leaders of the group. Mr. Lau also requested reimbursement for the airfare for the entire group. Respondent Howard advised respondent Rogers that 43 members of the Hong Kong group would be reimbursed \$1,800 each for airfare. Respondent Rogers issued a check payable to Kam Yiu-Lau in the amount of \$77,400 for this purpose. The licensee acknowledges that it failed to report the \$77,400 complimentary travel expense on either its daily complimentary service report to the DGE for August 1982 or its quarterly complimentary service report dated September 30, 1982, filed with the Casino Control Commission. It was reported among other items in the Playboy's statement of income as a casino expense in the quarterly report filed with the Commission for the quarter ending September 30, 1982, as well as the casino licensee's "complimentary services schedule" for the twelve-month period

ending December 31, 1982. (Exhibits K and L).

After the group's departure, cage personnel discovered that they had miscalculated the safekeeping deposit refund in the amount of \$10,000. On August 16, 1982, respondent Howard contacted Kam Yiu Lau at the Sands Hotel and Casino, advised him of the miscalculation and requested that he return the overpayment. Cage personnel also contacted Playboy's depository bank, the First National Bank of South Jersey, and requested that a stop payment order be issued on Playboy check #0352 made payable to Kam Yiu Lau in the amount of \$85,500. Mr. Lau had presented this check to the Sands on August 15, 1982, as a cash equivalent to be placed on deposit. To resolve this problem, Mr. Lau placed an additional \$85,000 on deposit with Greate Bay for which he received a receipt. He then returned to Playboy where, in exchange for this receipt and an authorization for the return of the Playboy check to Playboy, he received \$75,500. It appears that the stop payment order was issued too late and was ineffective. Greate Bay was paid the full \$85,500 on the deposited check. On August 24, 1982, respondent Rogers appeared at the Sands casino cage, and, in exchange for the receipt issued to Mr. Lau and his letter authorizing release of the cancelled check to Playboy, she received a check made payable to Playboy-Elsinore Associates in the amount of \$85,000. However, the complaint does not charge any violation of the Act or Commission regulations occurred as a result of this incident.

This case presents many of the same issues as were involved in State v. Greate Bay Hotel and Casino and Patricia DiGiacomo, Docket No. 83-17 (1984) (hereafter referred to as "the Sands case" or simply "Sands") which involved the same group of patrons. Hence, the disposition of this case is in large part controlled by our decision in the Sands case. We will therefore approach this case in a similar fashion, addressing each count of the complaint seriatim, although the determination of appropriate sanctions if any, will be reserved until after the merits vel non of the alleged violations are determined.

ACCEPTANCE OF CASH EQUIVALENTS OUTSIDE THE CAGE AREA (COUNT I)

The corporate respondent admits that it accepted \$1.9 million in checks as cash equivalents outside the cage area from the Hong Kong group on August 12, 1982. (Stip. at 19).

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

We find that the casino licensee violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.15(b), -1.24(a) and -1.25(e) in

accepting \$1.9 million in checks as cash equivalents from the Hong Kong group in the Margate Suite.

FAILURE TO PROPERLY RECORD CUSTOMER DEPOSIT FORMS (COUNT II)

The corporate respondent admits that it failed to record accurately the nature of the patron safekeeping deposit received when it prepared 48 customer deposit receipts for the Hong Kong group. (Stip. at 19). On each customer deposit form, cage personnel were directed by respondent Joanne Rogers to indicate that cash was accepted from the group rather than cash equivalents. (Stip. at paras. 32-33). The corporate respondent indicates that "cash" was marked on the forms by cage personnel because they were unable to cross-reference check numbers and payees to the corresponding receipts in equal amounts in following the allocation system requested by the group.<sup>3</sup>

The result of the actions here was the obscuring of the audit trail for these customer deposits. As the Division notes in its brief, the documents at issue here provide no record of any checks having been received from the Hong Kong group. We agree that "[b]y preparing inaccurate and unreliable documentation there was a clear potential to cover up the true nature of the entire Hong Kong episode. Therein lies the enormous risk to the integrity of the regulatory process the violations of Count II created." (DGE brief at 23).

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3. The DGE has not alleged in this complaint that the so called "pooling procedure" which in part contributed to this violation was unlawful. We do not determine the propriety under the Act and regulations of such procedures. However, we are deeply concerned that the acceptance, pooling and redistribution of the Hong Kong group's safekeeping assets occurred without any written authorization by the members who originally held the funds. In fact, the inability of cage personnel to correlate the assets presented with the allocations requested by the group leader resulted in the improper recording of the transaction on the customer deposit forms. However, as we stated at the outset, the Division has not alleged that pooling practice is unlawful so that we need not render a decision on that issue in this case.

Consistent with our determination in Sands, we find that the corporate respondent has committed 48 violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(h)(5).

FAILURE TO VERIFY CASH EQUIVALENTS (COUNT III)

The corporate respondent admits that it accepted 16 checks as cash equivalents without verifying the validity of those checks prior to their acceptance in violation of N.J.A.C. 19:45-1.25(e). It appears that Playboy had a procedure in place in which it would call the issuing bank to confirm the issuance of the check to the patron involved prior to permitting the patron to gamble against such funds. In fact, the majority of the checks accepted were verified in this manner by use of photocopies provided to casino personnel the day before the arrival of the group. The 16 checks at issue in this Count of the complaint were not among the copies provided to the casino licensee. Although the checks were returned to the gamblers at the time they reconciled their accounts and left Playboy on August 15, 1982, those funds were made available to them to gamble against during their stay at Playboy.

Because of the corporate respondent's admission on this issue, it is not necessary for the Commission to interpret N.J.A.C. 19:45-1.25(e) to outline what verification procedures

would have been necessary under the circumstances in this case. We find that the corporate respondent breached N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(e) in failing to verify 16 cash equivalents prior to their acceptance.

ACCEPTANCE OF NON-CONFORMING INSTRUMENTS (COUNT IV)

There are two distinct charges made in this Count of the complaint. The first concerns the 13 checks which the corporate respondent admits it accepted as "cash equivalents" that were drawn on accounts of various Las Vegas casinos constituting violations of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). It is evident from the factual stipulation that casino management was aware that the Hong Kong group intended to present casino checks to be placed on deposit as cash equivalents, and further they were aware that such checks did not fit within the definition of cash equivalent as defined by N.J.A.C. 19:45-1.1. See Stipulation at paragraphs 15-18.

Again, we have already dealt with this issue in the Sands decision. We there held that the acceptance of 26 non-conforming checks worth a total of \$1,348,650 was essentially a loan from

the casino to the patrons, a practice that is unambiguously condemned by section 101 of the Casino Control Act. N.J.S.A. 5:12-101. See also N.J.A.C. 19:45-1.24(a). By the same token the record here establishes that the corporate respondent committed 13 violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). Moreover, the decision to take this action in contravention of the statute and Commission regulations was made at a meeting of high-level management personnel, specifically, the vice-president of financial services (Applegate) and the vice-president of casino operations (Howard). Such a circumstance warrants special consideration in the penalty phase of this decision.

The second aspect of this count concerns the five additional checks which the DGE alleges were accepted in violation of sections 101 and 99, and N.J.A.C. 19:45-1.24 when the corporate respondent accepted five checks made payable to Tony Lau totalling \$280,000. This presents an issue not decided in the Sands case. While similar checks made payable to Mr. Lau were presented to the Sands, the corporate respondent in that case stipulated that such checks were non-conforming and therefore violative of the Act and pertinent Commission regulations. Here, however, we have no such stipulation. The issue then is one of first impression. For reasons hereafter stated, we find that the five checks in question do not conform to the definition of cash equivalent because they are not made

payable to the casino licensee, "bearer" or "cash" and the instrument is neither a certified check, cashier's check, treasurer's check, recognized traveler's check, recognized money order or recognized credit card.

Section 101(a) contains a broad prohibition relating to the extension of credit and check cashing. The ensuing subsections contain several exceptions to the general prohibition, but nevertheless impose strict conditions on advancing credit and cashing checks to facilitate gambling. See Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598, 603 (App. Div. 1981). One of those exceptions, Section 101(b), provides that:

Nothing in this subsection shall be deemed to preclude the establishment of an account by any person with a casino licensee by a deposit of cash or recognized traveler's check or other cash equivalent, or to preclude the withdrawal, either in whole or in part, of any amount contained in such account. [Emphasis added.]

In keeping with the Legislature's imposition of strict controls over credit for gaming purposes (Salomone, supra. at 607), we have strictly defined and interpreted the exceptions and imposed detailed regulations where necessary. See N.J.A.C. 19:45-1.25, -1.26, -1.27, -1.28 and -1.29; In the Matter of the Petition of Boardwalk Regency Corporation to Amend N.J.A.C. 19:45-1.1 (order dated November 15, 1982). See also State v. Comdata Network, Inc., Docket No. 80-CSI-1 & 2 (1981).

Four of the checks made payable to Tony Lau were issued by the Hang Lung Bank Ltd. drawn upon its corresponding or commercial account at Irving Trust Company in New York. The remaining check was issued by Hang Lung Bank Ltd. on its commercial or corresponding bank account at Bank of America in San Francisco, California. This kind of check on which the bank is the drawer and a second bank is the drawee is known as a bank check. White & Summers, Handbook of the Law Under the Uniform Commercial Code, §17-5 (1972) at 578.

The list of instruments to be considered cash equivalents in N.J.A.C. 19:45-1.1 does not include bank checks. Moreover, there are distinctions between bank checks and the instruments contained in the cash equivalent definition which mitigate against a finding that they should be included within that list of instruments acceptable as cash equivalents. The instruments presently included within the Commission regulation are generally recognized as being substitutes for cash. These instruments are as liquid as cash because they represent guaranteed obligations of the bank or other financial institution rather than that of an individual or non-financial entity. At least one court in New Jersey has noted a distinction between cashier's checks, one of the instruments designated in the definition, and bank checks. The court states:

...a bank check is, in effect, an ordinary check since it is not accepted when issued and may be dishonored by the bank upon which it is drawn when it is presented for payment. National Newark & Essex Bank v. Giordano, III N.J. Super. 347, 352 (Law Div. 1970).

Since bank checks are not accepted upon issuance and do not represent guaranteed obligations of the bank they do not provide any of the protections of a cashier's check. Thus, a bank check offers no more protection at law than an ordinary personal check. The holder of a bank check, other than a certified check, has no recourse against the drawee bank when that bank wrongfully dishonors the instrument. N.J.S.A. 12A:3-409. The only recourse of the holder of the bank check is against the drawer. With regard to the five checks at issue here, the only legal action the casino could institute on a dishonored check would be against the drawer bank, Hang Lung Bank Ltd. There would not be any action available by the casino against the American banks. Of course, if the drawer bank refuses payment based upon a forged endorsement, the casino would have an action against the forger. N.J.S.A. 2A:3-419(2). Thus, we hold that bank checks are not cash equivalents within the definition of N.J.A.C. 19:45-1.1.

There is yet another feature about these five checks that requires discussion. Cash equivalents under Commission regulations are required to be made payable to the casino licensee, "bearer" or "cash." The DGE suggests in its brief that a check which is endorsed in blank by the payee is converted into "bearer paper." Under this analysis a check which is made

payable to the patron and endorsed in blank becomes a check made payable to bearer and, absent any other deficiency, would comport with the definition of cash equivalent.

We understand that casino licensees have been operating under the assumption that this interpretation is correct. We now hold to the contrary.

The reasons for our strict construction of the statute and regulation in this area were stated at the outset. We perceive a crucial difference between a conforming cash equivalent instrument made payable to "bearer" and one which is converted to a bearer instrument by virtue of the endorsement in blank by the payee. That difference is the effect of a forged endorsement on the validity of the instrument. For example, a cashier's check made payable to "cash" or "bearer" does not require an endorsement to negotiate the instrument. On such instruments even a forged endorsement will not restrict its negotiability. Similarly, there is no endorsement necessary on a cash equivalent made payable to the casino, and the original drawee bank would have no defense against a cashier's check properly signed by a bank officer but stolen from the original remitter.

However, under the Uniform Commercial Code, a forged signature cannot legally bind the person whose name is forged

unless that person ratifies the forger's endorsement. N.J.S.A. 12:3-404(1). The possessor of such an instrument has no right to enforce payment by any party to the check. Santos v. First National State Bank of New Jersey, 186 N.J. Super. 52, 72 (App. Div. 1982). Further, if a party mistakenly pays a check with a forged endorsement, that party can collect against the person who first cashed the check. See N.J.S.A. 12A:3-419; Brady on Bank Checks (4 Ed. Bailey, 1969), §15.10 at 46. In short, requiring the endorsement of a patron in order to convert a check made payable to a patron to a "bearer" check involves more risk than accepting a check made payable to the casino licensee, "cash" or "bearer." Under our strict limitations on cash equivalent transactions, failing a change in the regulation or statute, we reject the practice of accepting otherwise valid cash equivalent instruments made payable to a specified payee and endorsed in blank as cash equivalents pursuant to N.J.A.C. 19:45-1.1.

Therefore, we find that the acceptance of five bank checks payable to Tony Lau was in violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.1 and 1.24(a).

FAILURE TO REPORT COMPLIMENTARY SERVICES TO THE REGULATORY AUTHORITIES (COUNT V)

The casino licensee admits that it failed to report the \$77,400.00 payment to the Hong Kong group for complimentary

airfare reimbursement to the DGE as part of the daily complimentary services report required by N.J.A.C.

19:45-1.2(c)(3). (Stip. at 21). Further, it admits that it failed to include this expense in its quarterly complimentary service report to the Commission as required by N.J.A.C.

19:45-1.9(c)(1). Ibid. The airfare reimbursement was included in Playboy's statement of income as a casino expense in the quarterly report filed with the Commission. (Stip. at para. 46).

As we stated in Sands, failure to keep the Commission and Division apprised of complementaries through existing reporting requirements undermines the regulatory and enforcement functions of the agencies. Effective monitoring over junket and complimentary services mandates that these reports be filed. There is no indication that the corporate respondent attempted to comply with the reporting requirements. We deem it to be a very serious violation of N.J.A.C. 19:45-1.2(c)(3) and -1.9(c)(1).

#### PENALTY DETERMINATION

Section 129 provides the Commission with a variety of sanctions available to it that may be imposed for violations of Act and regulations. These include the revocation or suspension of a casino's license or certificate of operation; restitution or cease and desist orders; issuance letters of reprimand or censure and the imposition of monetary civil penalties. Moreover, these penalties may be imposed individually or in combination. It is

evident that the Legislature wished to empower the Commission with wide discretion regarding the enforcement of the Act. "Of paramount importance is a need for flexible civil sanctions. The Commission should be clearly empowered to devise the remedy best suited to the offense. To this end, there should be emphasis on alternative or cumulative sanctions." Second Interim Report, Staff Policy Group on Casino Gambling, (February 17, 1977) at 54. The Commission's power concerning monetary penalties was specifically considered:

Regarding monetary penalties, the Commission should be empowered to pose a range of fines; however, it must be emphasized that penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business in this State. Furthermore, the Commission should be empowered to levy a monetary fine in lieu of more drastic action. A monetary penalty of sufficient magnitude would provide the desired deterrent effect and should also provide a stimulus for effective completion of any disciplinary proceedings. [Id. at 54-55].

The Act also provides standards that we are required to consider in determining the appropriate sanction in any disciplinary action brought before us. Those standards include:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrants;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
- c. Any justification or excuse by the licensee or registrant;
- d. Prior history of the particular licensee or registrant involved with respect to gaming activity;

- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant.
- [N.J.S.A. 5:12-130].

These standards incorporate some of the traditional goals adopted by society for imposing sanctions for misconduct. Though there are obvious limits to the analogy, some reference to concepts developed in the field of criminal law is appropriate. Four goals have often been articulated to justify punishment: retribution, deterrence, both of the offender and others, rehabilitation of the offender and protection of the public through isolation of the offender. See e.g., State v. Ivan, 33 N.J. 197, 199 (1960). Incarceration and rehabilitation have little or no relevance in this administrative context. However, retribution and deterrence are both articulated in the statute, specifically in section 129(5) which provides for civil penalties "to punish misconduct and to deter future violations...." These aims work in conjunction with the overall purposes of the Casino Control Act and, in particular, the maintenance of the public confidence and trust in the credibility and integrity of the regulatory process and casino operations. The relationship between the need to punish misconduct appropriately and the maintenance of the public's trust in the integrity of the regulatory process is evident. Particularly in a highly sensitive industry such as gaming, breaches of the law mandate an

equally severe rebuke. Lesser penalties would depreciate the seriousness of the breach. Cf., United States v. Bergman, 416 F.Supp. 496 (S.D.N.Y. 1976), M.P.C. §7.01(1)(c). However, such "just desserts" will always be tempered by the idea of blame-worthiness, recompense and proportionality. United States v. Bergman, supra at 500.

Deterrence is not limited to its effect upon the respondent alone. It is directed also to those who may follow thereafter. State. v. Ivan, supra at 202. The deterrent effect on others is a significant aid to the regulators of casino gaming as it is in the field of criminal law.

The corporate respondent, through the testimony of Robert Maxey, has raised other considerations for the Commission to weigh in determining the proper sanction in this case. He has argued against any sanction for misconduct, contending "there is not one thing that this licensee can do differently than it has already done and which it began to do prior to any knowledge that this problem even existed." (T227-24 to T228-2)<sup>4</sup> This argument may mitigate the severity of a sanction but does not obviate the need for punishment.

Mr. Maxey also questioned the significance of any deterrent effect within the casino industry by the application of sanctions against the corporate respondent. He indicated that in

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<sup>4</sup> "T" refers to the transcript of the public meeting of the Commission on September 12, 1984.

the face of severe sanctions, casino personnel might be more inclined to hinder an investigation or conceal actions and violations of the Act and regulations. We would hope that Mr. Maxey, and all other persons required to meet the exacting qualifications of casino key employee licensees, are well aware of the continuing duty imposed upon all licensees, registrants and qualifiers under the Casino Control Act to cooperate with and provide any assistance required by the Commission and the Division, as well as to inform the regulatory authorities of any acts which they believe constitute a violation of the Casino Control Act. N.J.S.A. 5:12-80(d) and (g). Any action in conscious derogation of this duty would be dealt with most severely by this Commission.

Mr. Maxey also argued that the corporate licensee has done everything it can do to remedy the situation and that it did so willingly and to its own economic detriment. On cross examination by the DGE attorney, he acknowledged that the changes were made in order for the casino licensee to function properly. As we stated earlier, remedial efforts are recognized in the determination of the proper sanction. However, participation in casino operations as a licensee is a revocable privilege and is conditioned upon the "proper and continued qualification of the individual licensee...and upon the discharge of the affirmative responsibility of each such licensee...to provide...any assistance and information necessary to assure that the policies declared by the Act are achieved." N.J.S.A. 5:12-1(8). If the

licensee does not continue to operate properly, at whatever economic cost, it cannot continue to hold a license.

With these considerations in mind, we have weighed the proper penalty to be imposed against the corporate respondent. They are as follows.

1. Count I - Acceptance of Cash Equivalents.

This is an extremely serious violation. A multi-million dollar transaction took place in an unsecured, unmonitored hotel suite, with no attempt to notify or involve the regulatory agencies ordinarily present. There is very little if anything to distinguish this case from the Sands matter. The conduct of the corporate respondent here is no less serious than that taken by the Sands personnel. It merits an equally severe sanction. Consistent with the Commission's analysis in the Sands case, the acceptance of the checks in the hotel suite is deemed to be one violation. We assess a \$50,000 civil penalty against the corporate respondent for acceptance of the Hong Kong group's funds as a cash equivalent deposit in the Margate Suite.

2. Count II - Customer Deposit Forms.

Again, the facts and circumstances of this case are virtually identical to those in the Sands case. The effect of inaccurately describing the transactions on the customer deposit forms was to obscure if not conceal the entire transaction which took place in the Margate Suite. Moreover, the inaccurate

records are responsible, in part, for the problems encountered later when the casino sought to refund the proper amount of money to the Hong Kong group. Consistent with the Sands case, we find that each form that was inaccurately prepared constitutes a separate and distinct violation under the statute and regulations. Therefore, we assess a civil penalty of \$1,000 per violation for 48 violations in the preparation of 48 inaccurate customer deposit forms. The total fine for the violations assessed under Count II is \$48,000.

3. Count III - Cash Equivalent Verification.

Although a serious attempt was made to verify the checks to be offered as cash equivalents, the corporate respondent nevertheless accepted 16 checks worth \$660,000, and made no attempt at prior verification of them as required by the Act and Commission regulations. We acknowledge the effort to verify as many checks as possible. To the extent that compliance with the law is laudatory, the personnel involved are to be congratulated. However, in a strictly regulated industry, compliance is required and therefore expected. We therefore conclude that a penalty of \$1,000 per violation, the same as that imposed upon the Sands for identical violations, is the appropriate penalty.

4. Count IV - Acceptance of Nonconforming Instruments.

The corporate respondent accepted 13 checks drawn on accounts at various Las Vegas casinos in violation of section 101

of the Act. Acceptance of each of these checks is a separate and distinct violation. The decision to accept these checks was a conscious and deliberate one on the part of the management level employees for whose conduct the corporate respondent is responsible. In the Sands case, similar violations were sanctioned at the rate of \$3,000 per check. However, considering the positions of the personnel and the deliberate nature of the action taken, we believe that a more stringent sanction should be assessed against the corporate respondent here. Therefore, for the acceptance of 13 casino checks, a civil penalty of \$4,000 per violation will be assessed.

We have also found that the acceptance of the five bank checks made payable to Mr. Lau was improper because bank checks, as defined earlier in this opinion, are not included within the types of instruments set forth in N.J.A.C. 19:45-1.1, and further because such checks were not made payable to the casino licensee, bearer or cash. An endorsement in blank is insufficient to convert an instrument to bearer paper for purposes of the regulation at issue. Nevertheless, in view of the near universal misconceptions among the industry and the regulators on this issue, we find it inappropriate to impose any sanction for these violations. See N.J.A.C. 5:12-130(b) and (c).

5. Count V - Complimentary Reports.

Such failures tend to preclude or at least hinder the essential regulatory functions of both the Commission and the

Division of Gaming Enforcement. Any violation which undermines valid law enforcement and regulatory purposes merits a harsh sanction. Accordingly, we assess a \$10,000 civil penalty against the corporate respondent for violating N.J.A.C. 19:45-1.2(c)(3) and an additional \$10,000 for violating N.J.A.C. 19:45-1.2(9)(c)(1).

LIABILITY OF INDIVIDUAL RESPONDENTS

1. Joanne Marie Rogers

Ms. Rogers was employed at the time of the incident as the casino cage manager and licensed as a casino key employee. As cage manager she was responsible for the control, accounting and reporting of all casino cage transactions. As we noted in the Sands case, the person who holds the position of casino cage manager is required to have extensive casino industry experience and a thorough knowledge of the Casino Control Act and regulations that relate to casino operations and internal controls. She is expected to maintain compliance with the Act and regulations and monitor those within her authority in doing the same. It is evident from the Stipulation of Facts that respondent Rogers had a crucial role in the failure of the cage to comply with accounting and internal control procedures in the acceptance of the checks from the Hong Kong group. It is also evident that Ms. Rogers sought the advice and authority of her superiors before taking crucial steps in this episode. For example, when reviewing copies of the checks to be presented by

the Hong Kong group, respondent Rogers discovered that cage disbursement checks from Las Vegas casinos were included among the proffered checks. She contacted respondent Gibbons, the casino controller, who, after consultation with other members of casino management, directed Rogers to accept the cage disbursement contingent upon phone contact and verification with each credit department of those casinos.

It is unclear from the Stipulation whether respondent Rogers, at the request of a casino executive, made the decision to transfer cage personnel up to the Margate Suite. The Stipulation indicates that respondent Rogers again contacted her superior, respondent Gibbons, and "advised him that this would be done." (Stip. at para. 21).

Ms. Rogers was the highest ranking cage officer in the Margate Suite at the time the checks were accepted. It was under her instructions that cage personnel prepared the customer deposit receipts which did not accurately describe the transactions. Respondent Rogers acknowledged that she instructed the cage cashiers to circle "cash" because of the inability to cross-reference check numbers and payees to the corresponding check receipts in equal amounts. (Stip. at para. 33). She advised her superior of this procedure after the preparation of the customer deposit forms was completed.

As cage manager, it is respondent Rogers's responsibility to determine whether a cash equivalent has been verified and may be accepted by the casino. Upon acceptance, a patron may gamble against that cash deposit. N.J.A.C. 19:45-1.25. When presented with sixteen unverified checks in the Margate Suite, respondent Rogers did not exercise her authority in rejecting those checks prior to verification but rather sought the direction of Jerry Cook, credit manager, as to whether the patrons would be allowed to gamble against those sixteen checks. This indicates some confusion in respondent Rogers's judgment as to who has the authority to authorize gambling against cash deposits. For the casino credit manager to make that decision is clearly an incompatible function.

It is evident from the record that ~~respondent~~ respondent Rogers was directed by her superiors to take actions which constituted the violations in this complaint. However, she cannot be absolved from all responsibility. Casino key employees have an obligation to abide by their responsibilities as licensees as well as achieving the monitoring aims of the corporate employer. We are also aware that respondent Rogers is not currently employed in the casino industry in Atlantic City. Upon consideration of all the above circumstances, we assess a \$500 civil penalty against Ms. Rogers.

2. Christopher R. Gibbons

At the time of the violations, respondent Gibbons was casino controller and a key licensee. He supervised all cage and

internal control functions as well as other financial aspects of the corporate respondent. Within the corporate structure, he was respondent Roger's immediate supervisor.

On August 12, 1982, respondent Gibbons was advised of the inclusion of sixteen cash disbursement checks from Las Vegas casinos among the group of checks to be presented by the Hong Kong group. He discussed this problem with his supervisor, respondent Applegate. Gibbons was advised by Applegate to accept the casino checks as cash equivalents if verified and authorized by the Las Vegas casino credit departments. Respondent Gibbons so advised Joanne Rogers.

Respondent Gibbons was also aware that respondent Rogers had removed the cage functions up to the Margate Suite and was advised that cage personnel had inaccurately recorded the safekeeping deposits received in the suite. He was not present in the Margate Suite during these transactions and there is no indication in this record that he was advised that sixteen checks were accepted prior to verification by cage personnel.

Respondent Gibbons is a high ranking financial officer within the corporate structure of the casino licensee. As such, he must be held to a high degree of responsibility. It appears from the record that at least on one occasion he requested guidance from his superior and was told to take actions which

resulted in a violation of the statute. When advised that his subordinate was involved in activities contrary to the regulatory structure, he took no action to correct or remedy the situation. Such disregard for the regulatory system is unacceptable.

In our view a suspension of respondent Gibbon's casino key employee license for seven days and a \$1,000 civil penalty are appropriate. During the period of suspension, Mr. Gibbons shall not engage in any activities for which a license or registration is required. For this time period, he may not receive any remuneration from his employer, including salary, vacation or sick leave, nor be compensated in any other manner. We so order.

3. Henry M. Applegate, III

At the time encompassed by the complaint, respondent Applegate was vice president of financial services of the corporate respondent. His responsibilities included the monitoring of all financial aspects of the corporation including both the hotel and casino cage functions. He is the highest ranking financial officer named in the complaint.

From the stipulated facts, it is apparent that Mr. Applegate made the decision to accept thirteen casino checks as cash equivalents in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25. There is no evidence that he was made aware of subsequent violations involving cage personnel. However, all of these functions were under his authority by virtue of his position. The Division argues in its complaint that through his supervising authority, respondent Applegate should be held accountable for these violations. We agree.

Respondent Applegate was involved in the initial stages of the visit of the Hong Kong group. He made the decision to accept checks from them in violation of section 101. From his actions, explicitly or implicitly, came the message to accommodate these gamblers without regard to the regulatory restraints.

To sanction this conduct, we suspend respondent Applegate's casino key employee license for a period of 14 days and assess a civil penalty of \$5,000. Mr. Applegate is subject to the same restrictions outlined with reference to Mr. Gibbons during his suspension period. However, we must take note that Mr. Applegate is no longer employed by the corporate respondent. Rather, he is now employed by another casino licensee, Golden Nugget Operating Company (GNOC). While it is not our intention to visit any harm upon GNOC, some disruption of its normal operation may be anticipated by the temporary loss of a high-level management official such as Applegate. As is the case when any employee credential is suspended, Mr. Applegate will not be permitted to perform any function for which a valid license is required. However, should GNOC encounter a situation where information of which Mr. Applegate is the sole repository is needed, or some other emergent situation arises, GNOC personnel may contact Mr. Applegate during the period of his suspension to secure such information as they may require. However, if such contact is made, the conversation must be memorialized in writing and made available for inspection by the DGE and the Commission upon request.

4. Willard C. Howard

At the time of the events cited in the complaint, respondent Howard was vice president of casino operations and the holder of a casino key employee license. Mr. Howard's functions related to casino gaming operations and he had no authority under Commission regulations over any cage function.

Mr. Howard's active participation throughout the transgressions at issue here is established in the record. He arranged to have copies of the Hong Kong group's checks transmitted to the cage for verification prior to the Hong Kong group's arrival. He, along with respondent Applegate, made the decision to accept the cash disbursement checks from the Las Vegas casinos. He was the highest ranking member of casino management present in the Margate Suite when the highly irregular transactions described above occurred.

Presently, Mr. Howard is not employed at any operating casino in Atlantic City. In view of all the circumstances, we find that a \$5,000 civil penalty is an appropriate sanction to impose against respondent Howard, and we so order.

CONCLUSION

Based upon our findings and conclusions as set forth above, the Commission assesses civil fines against the corporate respondent totalling \$186,000 for the violations charged in counts I-V. The individual respondents are sanctioned in the following manner: Joanne Marie Rogers - \$500 civil penalty; Christopher R. Gibbons - seven-day suspension and a \$1,000

Applegate, III - fourteen-day suspension and a \$5,000 penalty;  
and Willard C. Howard - \$5,000 penalty.

*Walter N. Read*  
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WALTER N. READ

*Don M. Thomas*  
\_\_\_\_\_  
DON M. THOMAS

*Carl Zeitz*  
\_\_\_\_\_  
CARL ZEITZ

*E. Kenneth Burdge*  
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E. KENNETH BURDGE

Commissioners Thomas and Zeitz respectfully dissent to the  
penalties imposed on respondents Applegate and Howard.

DATED: October 10, 1984

SEPARATE OPINION OF COMMISSIONER JOEL R. JACOBSON

Initially, I join with the majority of the Commission in its findings of facts and conclusions of law in this case. I am in complete agreement with the findings and sanctions to be imposed upon Joanne Marie Rodgers, casino cage manager, Christopher Gibbons, casino controller, Willard C. Howard, former vice president of casino operations, and Henry M. Applegate, III, vice president of financial services. However, I am of the opinion that the penalty levied against the casino licensee is inadequate to deter future violations by it or any other casino licensee in Atlantic City.

As has already been indicated, this case is quite similar to the case previously decided by the Commission entitled State v. Greate Bay Hotel and Casino Inc. and Patricia DiGiacomo, which I will refer to hereafter as the Sands case. Both cases involve the same group of patrons and the same types of regulatory violations.

In the Sands case, the casino licensee accepted 48 checks totalling approximately \$2.6 million and some \$300,000 in U.S. currency outside of the security of the cashiers' cage in a fourth floor conference room. Here, Playboy-Elsinore accepted 75 checks totalling approximately \$1.9 million outside of its cage in the Margate Suite.

In the Sands case, cage personnel failed to properly record the nature of 32 customer deposit receipts; here, Playboy failed to record 48 of such receipts.

In the Sands case, twenty-two checks were accepted as cash equivalents without being verified prior to acceptance; here, 16 checks were accepted by Playboy without proper verification.

In the Sands case, 26 checks were accepted as cash equivalents that did not comport with the requirements of a cash equivalent; here 18 such checks were accepted by Playboy.

In the Sands case, travel reimbursements made to the "Hong Kong" group totalling \$325,000 were not reported to the Commission and Division as required. Here, Playboy failed to report \$77,400 in travel reimbursements paid to the same group.

Although as this brief comparison indicates, both casino licensees, in the two cases, are guilty of the same types of regulatory violations, the most distressing similarity between the two cases is the total disregard for regulatory requirements that occurred in order to foster the licensee's business interests. When a choice had to be made between complying with the regulatory requirements imposed by this State and the perceived pecuniary benefits that could be derived from violating those requirements, both casino licensees came to the same conclusion--the requirements and regulatory control of this State were expendable.

As I stated in dissenting to the penalty imposed by the majority in the Sands case, "...[f]inancial penalties, easily computed by casino managers as a cost of doing business, do not serve as an effective deterrent to continued violations."

"[W]here compliance with regulatory structure is concerned, the only way to close their fiscally-focused eye is to close the casino's door." (Sands, Dissent at 4).

When, as in the present case, high executive officials, such as the casino controller and vice president of financial services, are willing to make regulatory compliance subordinate to pecuniary gain, there is no question that the attitude of the casino licensee, itself, toward complying with the requirements of this State is clearly implicated. In my view, the only method of changing this attitude, of assuring that the authority of this State is clearly recognized and of deterring future violations of this kind is to sanction the casino licensee beyond the mere imposition of additional costs. This Commission should demonstrate to the casino industry that the requirements of this State are paramount; that casino gambling was not authorized for the exclusive pecuniary benefit of those who own and operate these facilities; and that the casino license they hold is a privilege conditioned on their willingness and ability to operate under strict and rigorous regulatory control.

In my estimation, the one way in which these lessons can be learned by an industry motivated by greed is for the Commission to remove any possibility of pecuniary gain that can be derived from the violation of the restrictions imposed by this State. As I indicated in the Sands case, monetary penalties simply do not assure that result. Instead, this Commission should order the casino closed for at least 24 hours. During this period, all casino personnel shall report to their regular shifts, at which time management shall review with them the requirements of the Casino Control Act and the Commission regulations, emphasizing the need for compliance with these

requirements.

While I also agree with the comments made by the majority in response to Mr. Maxey's testimony, I would like to offer an additional comment about his approach.

Periodically, Mr. Maxey responds to some compulsion to lecture both the Division of Gaming Enforcement and the Casino Control Commission on how to perform their jobs. As he offers his persistent criticisms, it becomes obvious that Mr. Maxey's problems are more geographic than substantive. He, obviously, has difficulty in understanding how regulatory climate can be affected by latitude and longitude.

The reality is that Mr. Maxey now happens to be in, not Nevada, but New Jersey, where "machismo" is not sufficiently terrifying to compel a state-imposed collapse of vigorous regulatory authority.

In my opinion, this sanction addresses the underlying causes of the violations at issue here. These types of violations will cease "only when employees of the casinos are made aware of the overriding regulatory concerns [and of] their individual responsibilities." (Sands, Dissent at 4).

  
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JOEL R. JACOBSON  
COMMISSIONER

DATED: October 10, 1984

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**FILED**

**JAN 13 1984**

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. CCC 04557-83  
AGENCY DOCKET NO. 83-16

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

Plaintiff,

v.

PLAYBOY-ELSINORE ASSOCIATES,  
t/a PLAYBOY HOTEL AND CASINO  
OF ATLANTIC CITY; JOANNE MARIE  
ROGERS, Casino Cage Manager;  
CHRISTOPHER R. GIBBONS, Casino  
Controller; WILLARD C. HOWARD,  
JR., former Vice President of  
Casino Operations; HENRY M.  
APPLEGATE III, Vice President  
of Financial Services,

Respondent.

Civil Action

STIPULATION OF FACTS

With 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 Kevin F. O'Toole, Deputy Attorney General, and Marilu Marshall, Esquire, Attorney for Respondents, Playboy-Elsinore Associates, Joanne Marie Rogers, Christopher R. Gibbons, and Henry M. Applegate III, and Steven Bolson, Esquire, Attorney for Respondent, Willard C. Howard, Jr., the following facts have been agreed upon and stipulated to as Findings of Fact:

1. Respondent, Playboy-Elsinore Associates, t/a Playboy Hotel and Casino (hereinafter called "Playboy") is the holder of a Certificate of Operation effective April 14, 1981, at which time Playboy was the holder of a temporary casino permit. Playboy has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. On April 14, 1982, the Casino Control Commission (hereinafter called "the Commission") issued Playboy a conditional casino license, which was renewed April 11, 1983.

2. Respondent, Joanne Marie Rogers, is the holder of a valid New Jersey casino key employee license, #00434-11, issued by the Casino Control Commission on December 5, 1979. Joanne Marie Rogers is now, and at all times referenced herein has been, employed by Respondent, Playboy-Elsinore Associates, as its casino cage manager.

3. Respondent, Christopher R. Gibbons, is the holder of a valid New Jersey casino key employee license, #01204-11, issued by the Casino Control Commission on August 27, 1981. At all times referenced herein Christopher R. Gibbons was employed by Respondent, Playboy-Elsinore Associates, as its casino controller. On or about June 14, 1983, Christopher R. Gibbons was promoted to Vice President of Finance by Playboy Hotel & Casino.

4. Respondent, Willard C. (Bucky) Howard, Jr., is the holder of a valid New Jersey casino key employee license, #01105-11, issued by the Casino Control Commission on December 8, 1980. Willard C. Howard, Jr. was employed by Respondent,

Playboy-Elsinore Associates, as Vice President of Casino Operations from August 10, 1981 until October 10, 1982, including at all times referenced herein. On or about October 20, 1982, Willard C. (Bucky) Howard became Vice President of Casino Operations at the Tropicana Hotel & Casino, where he is presently employed.

5. Respondent, Henry M. Applegate III, is the holder of a valid New Jersey casino key employee license, #01045-11, issued by the Casino Control Commission on December 8, 1980. Henry M. Applegate III was employed by Respondent, Playboy-Elsinore Associates, as Vice President of Financial Services from August 17, 1981 until April 8, 1983, including at all times referenced herein. On or about April 11, 1983, Henry M. Applegate III became Vice President of Finance & Administration at the Golden Nugget Hotel & Casino, where he is presently employed.

6. On the morning of August 11, 1982, Joanne Marie Rogers, casino cage manager, was advised by Christopher R. Gibbons, casino controller, and Jerry L. Cook, casino credit manager, that a group of orientals (hereinafter called the "Hong Kong group") might be arriving at Playboy Hotel & Casino the following day, August 12, 1982.

7. At 8:30 p.m. on August 11, 1982, a meeting was held on the Sixth Floor of the Playboy Hotel and Casino for the purpose of obtaining additional information about the Hong Kong group. In attendance at the meeting were Willard C. (Bucky) Howard, Jr., Joanne Marie Rogers, Jerry L. Cook, Barry C. Rubinson, Director

of Casino Marketing, Howard S. Moskowitz, credit executive, and Su-Min (Frank) Hsu, casino host.

8. At the meeting on August 11, 1982 described in paragraph 7, supra, Bucky Howard contacted the Hong Kong group in New York City regarding their plans to arrive at the Playboy Hotel & Casino on August 12, 1982. Bucky Howard's contact with the group was Hwa Min Hsu, an attorney at law in the State of New York whose business address is 120 Broadway, Suite 940, New York City, New York. Hwa Min Hsu is the brother of Su-Min (Frank) Hsu, Playboy's casino host.

9. On August 11, 1982, Hwa Min Hsu informed Bucky Howard that the Hong Kong group was comprised of approximately 55 persons who were presently staying at the New York Hilton and would arrive at the Playboy Hotel and Casino on the evening of August 12, 1982. Hwa Min Hsu further informed Mr. Howard that the Hong Kong group would be presenting cash equivalents for safekeeping upon their arrival.

10. Bucky Howard advised the persons in attendance at the August 11, 1982 meeting of the information received from Hwa Min Hsu. At this time the type of cash equivalents that would be presented was questioned and the difficulty in completing verification of the cash equivalents due to the group's late arrival was discussed. It was then suggested that since the group members were in New York City, Bucky Howard should contact Hwa Min Hsu again and request copies of the cash equivalents to be presented so that verification procedures and preliminary paperwork could be completed prior to the group's arrival.

11. At the August 11, 1982 meeting described in Paragraphs 7 through 10, supra, Bucky Howard contacted Hwa Min Hsu again and requested copies of the checks expected to be presented as cash equivalents. Mr. Howard also made arrangements for a Playboy limousine to pick up the copies of the checks at the New York Hilton late that night and to deliver them to the Playboy Hotel and Casino. The limousine driver was instructed to leave the copies of the checks with the Concierge who was to contact Robert Kahler, casino cage shift manager, to pick up the copies of the checks and forward them to credit clerks in the morning to commence verification procedures.

12. At 10:30 p.m. on August 11, 1982, the meeting described in Paragraphs 7 through 11, supra, was adjourned. Joanne Marie Rogers then contacted and advised Christopher R. Gibbons that copies of the checks would arrive late and would be verified the following morning, August 12, 1982.

13. On the morning of August 12, 1982, Joanne Marie Rogers contacted the casino cage from her home and was advised that the copies of the checks had arrived and that they were being verified by credit department employees.

14. Joanne Marie Rogers reported to work on August 12, 1982 at 1:00 p.m. and reviewed the copies of the checks in order to identify the types of cash equivalents that would be presented and in order to ensure that verification procedures would be completed prior to bank closings.

15. Upon reviewing the copies of the checks that the Hong Kong group would be presenting as cash equivalents, Joanne Marie

Rogers discovered that, in addition to bank checks, there were also Cage Disbursement Checks from Las Vegas casinos. Ms. Rogers contacted Christopher Gibbons and advised him of this situation. Ms. Rogers questioned whether these casino checks were to be accepted as cash equivalents when presented by the Hong Kong group. Christopher Gibbons informed Ms. Rogers that he would advise her accordingly.

16. Following his conversation with Joanne Rogers described in Paragraph 15, supra, Christopher R. Gibbons met with Henry M. Applegate III, then Vice President of Financial Services. Mr. Gibbons conveyed to Mr. Applegate the information he had received from Joanne Rogers and Mr. Gibbons questioned whether the Cage Disbursement Checks from Las Vegas casinos were to be accepted as cash equivalents when presented by the Hong Kong group.

17. Henry M. Applegate III then discussed the situation with Willard C. (Bucky) Howard. Following his discussion with Mr. Howard, as well as the discussion referred to in paragraph 16, supra, with Mr. Gibbons, Henry Applegate indicated to Christopher R. Gibbons that the casino checks were to be accepted as cash equivalents if verified and authorized by the credit department.

18. Christopher R. Gibbons, after having been advised by Henry Applegate III that the casino checks were to be accepted as cash equivalents, called Joanne Rogers and advised her that the Cage Disbursement Checks from Las Vegas casinos presented by the Hong Kong group were to be accepted, contingent upon the credit department's verification and authorization.

19. On the afternoon of August 12, 1982, Joanne Rogers inquired as to the status of the verification process with regard

to the copies of the checks drawn on the accounts of various banking institutions from credit clerk Pamela Allen Walker. Ms. Walker informed Ms. Rogers that the credit department was incurring difficulty with several checks drawn on the Bank of America in San Francisco, California. Ms. Rogers then assisted in the verification procedures with respect to the checks drawn on the Bank of America. Attached hereto and incorporated herein and marked as Exhibit A is a true copy of Playboy's "Checks Verified Log" which documents the credit department's verification of bank checks performed on August 12, 1982 prior to the group's arrival.

20. After receiving instructions to accept from the Hong Kong group all of the checks which Playboy had received copies of, Joanne Rogers instructed cage personnel to prepare, in advance, Customer Deposit Receipts, Payment Vouchers, and Safekeeping Files for the Hong Kong group. Patron names and amounts were entered on these documents corresponding to the information on the copies of the checks that had been received.

21. At approximately 5:00 p.m. on August 12, 1982, Joanne Rogers was approached by Howard Moskowitz, casino credit executive, about the possibility of utilizing a Margate Suite for the Hong Kong group's arrival because of the large number of members in the Hong Kong group and the fact that they spoke a foreign language. The Margate Suites are meeting rooms located on the fifth floor of Playboy's casino hotel facility. Joanne Rogers then contacted Christopher R. Gibbons and advised him that this would be done. Ms. Rogers also instructed Teresa M. Taylor, casino cage shift manager, to proceed to the Margate Suite with

casino cage personnel and with the safekeeping deposit documentation for the Hong Kong group that had been prepared in advance.

22. At 7:30 p.m. on August 12, 1982, the Hong Kong group arrived at Playboy Hotel and Casino and was directed to one of the Margate Suites located on the fifth floor.

23. Playboy personnel who were present in the Margate Suite at this time were Willard C. (Bucky) Howard, Joanne Marie Rogers, Jerry L. Cook, Howard S. Moskowitz, Barry C. Rubinson, Su-Min (Frank) Hsu, Carol A. White, Executive Casino Host, Richard Dennis Yin, credit executive, various casino cage personnel, and a security officer.

24. Three oriental individuals, two unnamed and a third named Tony Lau, represented to the Playboy officials that they were the organizers of the Hong Kong group. These three individuals arrived in the Margate Suite before the other group members. While in the Margate Suite, one of these individuals presented to Joanne Rogers a list of names with amounts recorded adjacent to forty-eight (48) of the names. Attached hereto and incorporated herein and marked as Exhibit B is a true copy of said list presented by the Hong Kong group to Joanne Rogers.

25. Along with the list of names with amounts adjacent to the names, as described in paragraph 24, supra, one member of the Hong Kong group presented to Joanne Rogers, while in the Margate Suite, seventy-five (75) checks aggregating a total face value of \$1,900,000.00 as safekeeping deposits to enable forty-eight (48) members of the Hong Kong group to gamble at Playboy. Attached hereto and incorporated herein and marked as Exhibit C are true

copies of the seventy-five (75) checks presented by the Hong Kong group as patron safekeeping deposits.

26. While in the Margate Suite, Joanne Rogers received said seventy-five (75) checks presented by the Hong Kong group as patron safekeeping deposits. Included among said seventy-five (75) checks were thirteen (13) checks drawn on the Cage Disbursement Accounts of various Las Vegas casinos. Said thirteen (13) casino checks are described below:

	<u>Check #</u>	<u>Issuer</u>	<u>Amount</u>
(1)	5282	Desert Palace, Inc., DBA Caesar's Palace, Las Vegas	\$20,000.00
(2)	76024	Desert Inn & Country Club, Las Vegas	20,000.00
(3)	76027	Desert Inn & Country Club, Las Vegas	10,000.00
(4)	76035	Desert Inn & Country Club, Las Vegas	10,000.00
(5)	76047	Desert Inn & Country Club, Las Vegas	10,000.00
(6)	76053	Desert Inn & Country Club, Las Vegas	10,000.00
(7)	B30801	Sands Las Vegas	30,000.00
(8)	B30805	Sands Las Vegas	15,000.00
(9)	B30809	Sands Las Vegas	15,000.00
(10)	B30814	Sands Las Vegas	10,000.00
(11)	B30819	Sands Las Vegas	30,000.00
(12)	B30824	Sands Las Vegas	50,000.00
(13)	B30826	Sands Las Vegas	<u>50,000.00</u>
			\$280,000.00

27. Also included among seventy-five (75) checks presented by the Hong Kong group were seven (7) bank checks made payable as follows:

	<u>Check #</u>	<u>Payee</u>	<u>Issuer</u>	<u>Amount</u>
(1)	17124	Tony Lau	Hang Lung Bank LTD	\$20,000.00
(2)	17126	Tony Lau	Hang Lung Bank LTD	20,000.00
(3)	17137	Tony Lau	Hang Lung Bank LTD	100,000.00
(4)	17139	Tony Lau	Hang Lung Bank LTD	100,000.00
(5)	17961	Tony Lau	Hang Lung Bank LTD	40,000.00
(6)	41440	Winston Y.C. Ming	Chekiang First Bank LTD	50,000.00
(7)	17958	Chan Wai-Ho, Anthony	Hang Lung Bank LTD	50,000.00
				\$380,000.00

28. With regard to checks #1 through 5 payable to Tony Lau, as described in paragraph 27, supra, Playboy states that Tony Lau unrestrictively endorsed the checks and authorized the use of said checks as safekeeping deposits for the Hong Kong group. As referred to in paragraph 24 of this Stipulation, supra, Tony Lau was one of the organizers of the Hong Kong group. Tony Lau's name appears on the list of patrons (see Exhibit B) and is identified thereon as a "Tour Escort." Tony Lau, however, was not one of the forty-eight (48) members of the Hong Kong group who utilized the patron safekeeping deposits in order to gamble.

29. With regard to checks #6 and 7 payable to "Winston Y.C. Ming" and "Chan Wai Ho, Anthony", as described in paragraph 27, supra, Playboy states that the "anglicization" of the names of two members of the Hong Kong group resulted in a discrepancy. In

other words, the check made payable to "Winston Y.C. Ming" actually belonged to Wilson Ngan and the check made payable to "Chan Wai Ho, Anthony" actually belonged to Wai Wang Chan. Playboy states that the misspelling on said checks represented different ways to angelicize Chinese names. Wilson Ngan and Wai Wang Chan were members of the Hong Kong group and did engage in gaming activity from the safekeeping deposits.

30. While in the Margate Suite, the member of the Hong Kong group who had presented the list of names and the seventy-five checks to Joanne Rogers, requested one receipt for the entire amount deposited. Joanne Rogers spoke with Carol White and Su-Min (Frank) Hsu regarding this request for a single receipt. Su-Min (Frank) Hsu explained to the individual who presented the list and the checks that paperwork had already been prepared for the Hong Kong group from the copies of the checks provided. The member of the Hong Kong group informed Su-Min (Frank) Hsu that the proceeds from the checks were to be allocated as indicated on the list he had provided, and that the group members were in agreement with this allocation.

31. While in the Margate Suite, Joanne Rogers then called the casino cage and instructed them to forward additional Customer Deposit Receipts and Payment Vouchers to the Margate Suite because the previously prepared documents had to be redone.

32. While in the Margate Suite, Joanne Rogers instructed the cage personnel under her supervision to prepare new Customer Deposit Receipts for the forty-eight (48) members of the group who intended to gamble. Ms. Rogers instructed the cage personnel to record the method of safekeeping deposit as "cash" even though

only checks had been presented. While in the Margate Suite, the cage personnel prepared the new Customer Deposit Receipts, had each patron sign the Receipt, and issued the patron copies of the Receipts to the group. Attached hereto and incorporated herein and marked as Exhibit D are true copies of said forty-eight (48) Customer Deposit Receipts pertaining to the Hong Kong group's safekeeping deposits.

33. Although said Customer Deposit Receipts contain a line enabling a cage cashier to circle the type of deposit received (cash, chips, or cash equivalent), Joanne Rogers states that she instructed the cage cashiers to circle "cash" rather than "cash equivalent" because of the inability to cross-reference check numbers and payees to the corresponding Customer Deposit Receipts in equal amounts. Following preparation of the Customer Deposit Receipts, Joanne Rogers telephoned Christopher Gibbons at his residence to inform him of the overall proceeding in the Margate Suite.

34. While in the Margate Suite, Joanne Rogers and the cage personnel under her supervision compared the actual checks received from the Hong Kong group with the copies of checks received prior to the group's arrival. With regard to the checks drawn on various banking institutions, the above comparison disclosed that forty-six (46) bank checks had been verified prior to acceptance from the copies of said checks. However, it was discovered that sixteen (16) bank checks, aggregating a total value of \$660,000.00, had not been verified prior to acceptance because no copies of these checks had been presented the previous day.

35. While in the Margate Suite, cage personnel also reviewed the checks presented by the Hong Kong group for proper endorsements and it was determined that all checks were properly endorsed. The bank checks were then segregated into those that had already been verified and those that needed to be verified. Copies were made of the sixteen (16) bank checks that needed to be verified. These copies were forwarded to the credit department and said sixteen (16) bank checks were verified the following morning, August 13, 1982 (see Exhibit A).

36. Joanne Rogers asked Jerry Cook, credit manager, if the Hong Kong patrons would be allowed to gamble against the unverified checks on the night of August 12, 1982. Jerry Cook responded in the affirmative.

37. While in the Margate Suite, cage personnel under the direction of Joanne Rogers also prepared forty-eight (48) Payment Vouchers for each of the members in the Hong Kong group who intended to gamble at Playboy. Said Payment Vouchers are documents used by Playboy to input the safekeeping deposit data into Playboy's computer system. Attached hereto and incorporated herein and marked as Exhibit E are true copies of said forty-eight (48) Payment Vouchers.

38. While in the Margate Suite, cage personnel under the direction of Joanne Rogers completed preparation of forty-eight (48) Safekeeping Files. Identification credentials were checked and recorded, mother's maiden name information was obtained and recorded, each patron signed the Safekeeping File for subsequent signature verification purposes, and the initial safekeeping

deposit was posted on the Safekeeping File. Attached hereto and incorporated herein and marked as Exhibit F are true copies of said forty-eight (48) Safekeeping Files.

39. Upon completion of the Customer Deposit Receipts, the Payment Vouchers, and the Safekeeping Files for the forty-eight (48) members of the Hong Kong group who intended to gamble, all documentation and the checks accepted as safekeeping deposits were transported by Joanne Rogers to the casino cage. The documents were then forwarded to the Check Bank on Level I of Playboy's casino for the purpose of inputting the data into Playboy's computer system.

40. The safekeeping deposit data pertaining to the forty-eight (48) members of the Hong Kong group who intended to gamble were inputted into Playboy's computer system between 9:22 p.m. and 9:56 p.m. on August 12, 1982. At approximately this same time, the members of the Hong Kong group went to the casino floor and requested withdrawals of their safekeeping deposits. The initial safekeeping withdrawal checks were issued to the members of the Hong Kong group between 9:27 p.m. and 10:30 p.m. on August 12, 1982. Attached hereto and incorporated herein and marked as Exhibits G and H are true copies of the computer printouts for the initial safekeeping deposits pertaining to the Hong Kong group and the initial safekeeping withdrawal checks issued to the Hong Kong group on August 12, 1982.

41. The Hong Kong group gambled at the Playboy Hotel and Casino on gaming dates August 12, 1982, August 13, 1982, and August 14, 1982. On the early morning of August 15, 1982, the

Hong Kong group advised casino cage manager Joanne Rogers that they wished to settle their accounts.

42. On the morning of August 15, 1982, Joanne Rogers reviewed the Hong Kong patron's safekeeping files and determined that the total safekeeping deposit refund due to the Hong Kong group was \$1,445,500.00. The sixteen (16) bank checks totalling \$660,000.00, as described in paragraphs 34 and 35 of this Stipulation, supra, were returned to the Hong Kong group by Joanne Rogers because said checks had not been deposited by Playboy. Joanne Rogers then issued eight (8) Playboy-Elsinore Associates, Casino Cage Disbursement Account checks totalling \$785,500.00 to the Hong Kong group as the balance of their safekeeping deposit refund. Said eight (8) Playboy-Elsinore Associates, Casino Cage Disbursement Account checks are described as follows:

<u>Check Number</u>	<u>Payee</u>	<u>Amount</u>
0331	Kam Yiu Lau	\$100,000.00
0332	" " "	100,000.00
0333	" " "	100,000.00
0334	" " "	100,000.00
0335	" " "	100,000.00
0336	" " "	100,000.00
0337	" " "	100,000.00
0352	" " "	<u>85,500.00</u>
		\$785,500.00

43. Also on the morning of August 15, 1982, Mr. Kam Yiu Lau requested from Playboy-Elsinore Associates reimbursement for

airfare in the amount of \$140,300.00. Mr. Kam Yiu Lau submitted a list of the members in the group who had gambled and requested reimbursement of \$3,500.00 each for 37 members of the group and \$1,800.00 each for 6 members of the group. Mr. Kam Yiu Lau also prepared and submitted a proposed Receipt for said airfare reimbursement. Attached hereto and incorporated herein and marked as Exhibit I is a true copy of the Hong Kong group's list of requested airfare reimbursements and proposed Receipt for same.

44. Casino Cage Manager Joanne Rogers inquired from Willard C. (Bucky) Howard, then Vice-President of Casino Operations, as to what steps should be taken regarding Kam Yiu Lau's request for airfare reimbursement. Willard C. (Bucky) Howard advised Joanne Rogers that forty-three (43) members of the Hong Kong group would be reimbursed \$1,800.00 each for airfare. In response to these instructions, Joanne Rogers issued check #0350 drawn on the Playboy-Elsinore Associates, Casino Cage Disbursement Account payable to Kam Yiu Lau in the amount of \$77,400.00. Attached hereto and incorporated herein and marked as Exhibit J is a true copy of an Interoffice Correspondence dated August 15, 1982 from Joanne Rogers to Bucky Howard, Request for Disbursement form A00212, and Playboy check #0350 in the amount of \$77,400.00.

45. Respondent, Playboy-Elsinore Associates, Inc., failed to report said \$77,400.00 complimentary travel expenses provided to the Hong Kong group in both its daily Complimentary Service Reports for August, 1982 and its quarterly Complimentary Services

Report dated September 30, 1982 filed with the Casino Control Commission.

46. Respondent, Playboy-Elsinore Associates, Inc., states that the \$77,400.00 expense incurred in reimbursing the Hong Kong group airfare was included in Playboy's statement of income as a casino expense in the quarterly report filed with the Commission for the quarter ended September 30, 1982. Playboy also states that said reimbursement of airfare to the Hong Kong group was reported to the Commission on Playboy's "Complimentary Services Schedule" for the 12 months ended December 31, 1982. Attached hereto and incorporated herein and marked as Exhibits K and L are true copies of Playboy Hotel and Casino's "Statements of Income" for the three months ended September 30, 1982 and 1981, and Playboy Hotel and Casino's "Complimentary Services Schedule" for the 12 months ended December 31, 1982.

47. On Sunday, August 15, 1982, following the Hong Kong group's departure from Playboy Hotel and Casino, cage personnel at Playboy discovered that they had miscalculated the safekeeping deposit refund due to the Hong Kong group resulting in an overpayment of the refund in the amount of \$10,000.00. On Monday, August 16, 1982, Willard C. (Bucky) Howard contacted Kam Yiu Lau at the Sands Hotel and Casino and advised him of the miscalculation and the overpayment and requested that he return the overpayment. Attached hereto and incorporated herein and marked as Exhibit M is a true copy of an Interoffice Correspondence dated August 16, 1982 from Joanne Rogers to Christopher Gibbons.

48. On Wednesday, August 18, 1982, Playboy called their depository bank, the First National Bank of South Jersey, and requested that a stop payment order be issued on Playboy check #0352 in the amount of \$85,500.00 payable to Kam Yiu Lau. Kam Yiu Lau had presented Playboy check #0352 to the Sands Hotel and Casino on August 15, 1982 as a safekeeping deposit. The Sands Hotel and Casino had accepted Playboy check #0352 as a "cash equivalent" from Kam Yiu Lau on August 15, 1982 and had deposited said check in their depository bank on August 16, 1982.

49. In view of the stop payment order on Playboy check #0352, on Wednesday, August 18, 1982, Mr. Kam Yiu Lau gave to the cashier's cage at the Sands Hotel and Casino \$85,500.00 in cash and instructed the Sands to return Playboy check #0352 to Playboy when said check returned uncollected from the Sands' depository bank. Kam Yiu Lau received a receipt from the cashier's cage at the Sands for the \$85,500.00 in cash. Kam Yiu Lau then brought his receipt to the cashier's cage at Playboy and Playboy exchanged the receipt for \$75,500.00 in cash plus a letter signed by Kam Yiu Lau stating that Playboy check #0352 was to be returned to Playboy.

50. On Thursday, August 19, 1982, Joanne Rogers received information from the First National Bank of South Jersey, Playboy's depository bank, that Playboy check #0352 had in fact been paid on August 17, 1982. Consequently, Playboy's stop payment order of August 18, 1982 on Playboy check #0352 was ineffective because said check had already cleared the banking system.

51. On or about August 24, 1982, Joanne Rogers presented to the cashier's cage at the Sands Hotel and Casino Kam Yiu Lau's receipt for the \$85,500.00 in cash he had given to the Sands on August 18, 1982. Ms. Rogers also presented to the Sands the letter signed by Kam Yiu Lau authorizing the Sands to return check #0352 to Playboy. Since Playboy check #0352 had already cleared and was credited to the Sands account at their depository bank, the Sands issued check #1811 in the amount of \$85,500.00 payable to the order of Playboy-Elsinore Associates and gave said check to Joanne Rogers. Attached hereto and incorporated herein and marked as Exhibit N is a true copy of check #1811, dated August 24, 1982, issued by Sands to Playboy.

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it accepted \$1,900,000.00 in checks as cash equivalents from the Hong Kong group while in the fifth-floor Margate Suite, as alleged in Count I of the Amended Complaint and set forth in paragraph 26 of this Stipulation, supra, in violation of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.24(a), N.J.A.C. 19:45-1.15(b), and N.J.A.C. 19:45-1.25(e).

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it prepared forty-eight (48) Customer Deposit Receipts for the Hong Kong group that failed to accurately record the nature of the patron safekeeping deposit received, as alleged in Count II of the Amended Complaint and set forth in paragraph 32 of this Stipulation, supra, in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.24(h) (5).

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it accepted sixteen (16) checks drawn on various banking institutions as cash equivalents without verifying the validity of said checks prior to their acceptance, as alleged in Count III of the Amended Complaint and set forth in paragraph 34 of this Stipulation, supra, in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(e).

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it accepted thirteen (13) checks as "cash equivalents" that were drawn on the accounts of various Las Vegas casinos, as alleged in Count IV, paragraphs 7 through 20, of the Amended Complaint and set forth in paragraph 26 of this Stipulation, supra, in violation of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a).

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it accepted five (5) checks as "cash equivalents" made payable to Tony Lau, as alleged in Count IV, paragraphs 20, 21, 22, 23, and 26, of the Amended Complaint and set forth in paragraph 27 of this Stipulation, supra. Whether said acceptance constitutes a regulatory violation has not been agreed upon by and between the parties hereto.

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it accepted two (2) checks as "cash equivalents" made payable to "Winston Y.C. Ming" and "Chan Wai-Ho, Anthony" as alleged in Count IV, paragraphs 24 and 25, of the Amended Complaint and set forth in paragraph 27 of this Stipulation, supra. Plaintiff, Division of Gaming Enforcement, withdraws said

allegation of regulatory violations regarding said checks based upon Playboy's representation that "Winston Y.C. Ming" and "Chan Wai-Ho, Anthony" were in fact Wilson Ngan and Wai Wang Chan, respectively.

WHEREAS, Respondent, Playboy-Elsinore Associates, admits that it failed to report regulated complimentary travel expenses reimbursed to the Hong Kong group in its Daily and Quarterly Complimentary Services Reports filed with the Division of Gaming Enforcement and the Casino Control Commission, as alleged in Count V of the Amended Complaint and set forth in paragraph 45 of this Stipulation, supra, in violation of N.J.S.A. 5:12-102(f), N.J.A.C. 19:45-1.2(c) (3) and N.J.A.C. 19:45-1.9(c).

Kevin F. C. Toole

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Deputy Attorney General  
Attorney for Plaintiff  
State of New Jersey, Department of  
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Gaming Enforcement

Marilyn Marshall

MARILU MARSHALL, ESQ.  
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Playboy-Elsinore Associates,  
Attorney for Respondents  
Playboy-Elsinore Associates, Joanne  
Marie Rogers, Christopher R. Gibbons,  
and Henry Applegate, III

Joanne Marie Rogers

JOANNE MARIE ROGERS  
Respondent

Christopher R. Gibbons

CHRISTOPHER R. GIBBONS  
Respondent

Henry M. Applegate III

HENRY M. APPELEGATE, III  
Respondent

Steven Bolson

STEVEN BOLSON, ESQ.  
Vice-President of Legal Affairs  
Tropicana Hotel & Casino  
Attorney for Respondent  
Willard C. Howard, Jr.

Willard C. Howard Jr.

WILLARD C. HOWARD, JR.  
Respondent

TABLE OF EXHIBITS

- Exhibit A - Playboy Hotel & Casino's "Checks Verified Log" for August 12, 1982 and August 13, 1982.
- Exhibit B - Two (2) page list of names with amounts presented by Hong Kong group to Playboy representing allocation of safekeeping deposits.
- Exhibit C - Copies of seventy-five (75) checks presented by the Hong Kong group on August 12, 1982 as patron safekeeping deposits.
- Exhibit D - Copies of forty-eight (48) Customer Deposit Receipts pertaining to the Hong Kong group's safekeeping deposits.
- Exhibit E - Copies of forty-eight (48) Payment Vouchers pertaining to the Hong Kong group's safekeeping deposits.
- Exhibit F - Copies of forty-eight (48) Safekeeping Files pertaining to the Hong Kong group's safekeeping deposits.
- Exhibit G - Playboy Hotel & Casino's computer listing of "safekeeping deposits" for August 12, 1982 pertaining to the Hong Kong group.
- Exhibit H - Playboy Hotel & Casino's computer listing of "markers issued" for August 12, 1982 pertaining to the Hong Kong group.
- Exhibit I - Hong Kong group's list of requested airfare reimbursements and proposed Receipt.
- Exhibit J - Interoffice Correspondence dated August 15, 1982 from Joanne Rogers to Bucky Howard, Request for Disbursement form A00212, and copy of Playboy check #0350.
- Exhibit K - Playboy Hotel & Casino's "Statements of Income" for the three months ended September 30, 1982 and 1981.
- Exhibit L - Playboy Hotel & Casino's "Complimentary Services Schedule" for the 12 months ended December 31, 1982.
- Exhibit M - Interoffice correspondence dated August 16, 1982 from Joanne Rogers to Christopher Gibbons regarding \$10,000.00 overpayment to Hong Kong group.
- Exhibit N - Copy of Greate Bay Hotel and Casino, Inc., Sands - Atlantic City check #1811, dated August 24, 1982, payable to Playboy-Elsinore Associates, in the amount of \$85,500.00

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-279  
OAL DOCKET NO. CCC 7715-83  
LICENSE NO. 27853-22

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

Complainant,

ORDER OF REMAND

v.

MIGUEL ANGEL POSADA

Respondent.

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law (OAL) on June 1, 1984, recommending revocation of the casino employee license of respondent Miguel Angel Posada; and the respondent having filed exceptions to the initial decision on June 20, 1984, to which the Complainant filed no reply; and the Commission after having considered the entire record of the proceedings resolved at its public meeting of August 1, 1984, to remand this matter to the OAL,

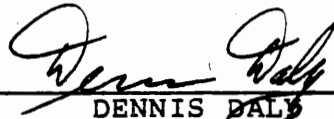
IT IS on this 5th day of SEPTEMBER 1984, ORDERED that this matter be and hereby is remanded to the OAL for further expansion of the record. Without limiting the scope of the hearing on remand, the Commission desires to have the following issues considered:

1. Whether the respondent's admitted theft of coins from a slot machine tray during his employment at the Golden Nugget is an inimical offense warranting disqualification pursuant to N.J.S.A. 5:12-86(c)(4) and (g).
2. Whether the above described theft precludes the respondent from demonstrating his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).
3. Whether the respondent provided false or misleading information on the PHDF-4 concerning either his alien status or his social security number which would warrant disqualification pursuant to N.J.S.A. 5:12-86(b).

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7715-83

AGENCY DKT. NO. 83-279

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

Petitioner,

v.

MIGUEL ANGEL POSADA,  
Respondent.

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APPEARANCES:

William E. Mountford, Jr., Deputy Attorney General, on behalf of the petitioner  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Miguel Angel Posada, respondent, pro se

Louis Correa, Interpreter

Henry C. Willett, Interpreter

Record Closed: April 17, 1984

Decided: May 31, 1984

BEFORE BEATRICE S. TYLUTKI, ALJ:

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

A prehearing conference was held on January 13, 1984, and at that time, Marguerita Diaz, an employee of the Office of Administrative Law, acted as the interpreter. At the prehearing conference, the parties agreed that the issues in this matter are:

- (1) Whether the respondent gave a fraudulent social security number in his application for a casino employee license.
- (2) Whether the respondent is presently illegally in the United States and whether he made any intentional misrepresentation regarding the circumstances of his entry into the United States on his application for a casino employee license.
- (3) Whether the petitioner's action makes his continued licensure inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c.
- (4) Whether the respondent can meet the requirements for good character, honesty and integrity as required by N.J.S.A 5:12-89(b)2.

The hearing took place on April 6, 1984 and upon receipt of a document (R-5) from Mr. Posada, the record in the matter closed on April 17, 1984.

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

- (1) Mr. Posada is a citizen of Colombia, South America and he illegally entered the United States on or about December 1980 near Miami, Florida.
- (2) Mr. Posada came to the United States because he was unable to get specialized medical treatment for an eye injury in Colombia.
- (3) Mr. Posada was arrested by the United States Immigration and Naturalization Services on April 27, 1982, and was charged with illegal entry into the United States (P-1, P-2, P-3, R-4).

- (4) After a hearing, an Immigrant Judge ordered the voluntary departure of the respondent on or before June 7, 1982 (P-3).
- (5) In April 1982, Mr. Posada received a divorce in New York State from his wife, Mery Posada (R-5), a citizen of Colombia, and on May 17, 1982, he married Sonia Florez, an United States resident (R-2), who has filed a petition requesting that Mr. Posada be allowed to stay in the United States (R-1).
- (6) Mr. Posada has been allowed to stay in the United States pending an investigation regarding his divorce and remarriage (R-1).
- (7) Mr. Posada was told at the time of his arrest on April 27, 1982, that he could not legally work in the United States and that neither his remarriage to a United States resident or the fact that he has been permitted to remain in the United States allows him to work in this country.
- (8) Someone gave Mr. Posada a Social Security Card containing the number 063-11-2987, and Mr. Posada paid this person approximately \$100 (R-3).
- (9) On his application for a casino employee license, Mr. Posada gave his Social Security Number as 063-11-2987, set forth the name of a sponsor for his entry into the United States and did not respond to the question asking for a copy of his visa, work papers or passport (P-4). In response to the question asking for his alien number, Mr. Posada inserted the word "transaction" (P-4), and at the hearing he stated that this meant that the matter was in "process."
- (10) Mr. Posada received a casino employee license on May 13, 1981.
- (11) Mr. Posada had to work in order to earn money for his eye operation and with the assistance of his casino union, Mr. Posada had an eye operation at the Wills Eye Clinic in Philadelphia, Pennsylvania.

- (12) Mr. Posada was employed by the Golden Nugget as a casino area attendant. He was fired for dishonesty. Mr. Posada took coins left in a slot machine and the person who left the coins there complained to the security guard. According to Mr. Posada, it is the practice of cleaning employees to take coins left in slot machines or found on the floor.
- (13) For awhile, Mr. Posada was employed by both Playboy Hotel and Casino as a casino cleaner and Tropicana Hotel and Casino as a public area attendant.
- (14) When he was arrested on April 27, 1982, Mr. Posada was working as a kitchen attendant at Resorts Hotel and Casino and he left his position shortly thereafter.
- (15) Mr. Posada is currently employed as a public area attendant at Playboy Hotel and Casino.

In his own defense, Mr. Posada admitted that he entered the United States illegally; however, he was not aware that the Social Security card was improperly obtained for him even though he paid approximately \$100 for the card. Mr. Posada had a newspaper article from the Atlantic City Press (P-4) admitted into evidence. This article indicated that the Casino Control Commission had refused to suspend the registrations of certain alleged illegal aliens. Such a suspension would have been before an administrative hearing on a complaint filed by the Division.

Mr. Posada speaks only a few words in English and has a limited ability to read the English language. It was unclear at the hearing as to whether Mr. Posada filled out his own application for a casino employee license or whether he was assisted by either a friend or a Casino Control Commission employee.

Mr. Mountford argued that Mr. Posada was in this country illegally and that he was violating the federal law by working in this country without the necessary authorization. Further, Mr. Mountford stated that Mr. Posada gave a false Social Security number and did not fully disclose the circumstances regarding his entry into the United States in his application for a casino employee license.

Mr. Posada stated that he has been given permission to stay in the United States and that he wants to remain in this country.

Based on the above, I **FIND** that Mr. Posada was aware that he was not entitled to work in the United States and that he paid a person to obtain a Social Security card for him since he knew that he could not legally obtain one for himself. Also, I **FIND** that Mr. Posada intentionally gave false and misleading information on his license application in order to avoid admitting that he had illegally entered the United States.

Based on the facts, I **CONCLUDE** that the Division has shown that the respondent's continued licensure would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c, and that the respondent has not shown that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)2. Therefore, I **ORDER** that the casino employee license of Miguel Angel Posada be **REVOKED**.

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

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

May 31, 1984  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

01 JUN 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

JUN 06 1984  
DATE

Mailed to Parties:  
Ronald S. Parker  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

- P-1 Record of Deportable Alien, sets forth the circumstances regarding the arrest of Mr. Posada for illegal entry into the United States
- P-2 Order to Show Cause regarding the charge that Mr. Posada illegally entered the United States
- P-3 Decision of the Immigration Judge in the matter involving Mr. Posada
- P-4 Part of the application filed by Mr. Posada for a casino employee license

FOR THE RESPONDENT:

- R-1 Notice of Defense signed by Mr. Posada, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa signed by Maria Sonia Posada, and Notice Extending the Deportation Date for Mr. Posada
- R-2 Certificate of Marriage of Miguel Posada and Sonia Florez
- R-3 Social Security card with the name of Miguel Posada and the Social Security number of 063-11-2987
- R-4 Newspaper article appearing in the Atlantic City Press on September 22, 1983.
- R-5 Divorce Judgment in the matter of Miguel Posada v. Mery Posada (received by mail on April 17, 1984)

WITNESSES

FOR THE PETITIONER:

Henry C. Willett

FOR THE RESPONDENT:

Miguel Angel Posada

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
PETITION NO. 243203

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IN THE MATTER OF RESORTS :  
:   
INTERNATIONAL HOTEL, INC., : OPINION  
:   
\$1,000,000 HOUSING PROGRAM :  

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NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN  
JOEL R. JACOBSON, VICE-CHAIRMAN  
CARL ZEITZ, COMMISSIONER  
E. KENNETH BURDGE, COMMISSIONER  
DON M. THOMAS, COMMISSIONER

APPEARANCES:

For Resorts International Hotel, Inc.:

John M. Donnelly, Esq.

For the Division of Gaming Enforcement:

Richard Morrissey, Deputy Attorney General

For the Department of the Public Advocate:

David G. Sciarra, Assistant Deputy Advocate

For the Casino Control Commission:

Robert J. Genatt, General Counsel  
Steven M. Ingis, Assistant Counsel  
Barbara P. Lampen, Chief of Policy, Planning and  
Development

## **I. PROCEDURAL HISTORY**

During hearings before the Casino Control Commission on April 13 and May 10 and 11, 1983, Resorts International Hotel, Inc. (Resorts) presented a two-part housing program in support of its petition for a Statement of Compliance with the housing condition of its license which required Resorts to dedicate the sum of \$1,000,000 to a realistic program for low and moderate income housing in Atlantic City.<sup>1</sup> The proposal consisted of Phase I, an infill housing program of 10 to 15 units to be occupied by over-income tenants of public subsidized housing, and Phase II, a program encompassing the construction of 60 additional homes to be occupied by over-income residents of public and private subsidized housing and employees and members of city authorities in Atlantic City who did not presently enjoy home ownership. The vacancies created in subsidized housing would be filled by qualified families presently on the Atlantic City Housing Authority's waiting list for public housing.

On October 5, 1983, the Commission issued an opinion approving Phase I as a realistic program conditioned upon a showing of performance by Resorts but withheld decision regarding Phase II pending further documentation. The Commission advised that it would closely monitor the progress of Resorts' housing program and would review its status at

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1. For a review of the procedural history prior to these hearings, see the Commission's opinion dated October 5, 1983, In the Matter of the Petition of Resorts International Hotel, Inc. for a Statement of Compliance with \$1 Million Housing Condition.

Resorts' license renewal hearing in February of 1984. At that time, Resorts would be required to demonstrate some appreciable progress in the implementation of its housing program.

At the renewal hearing, Resorts advised the Commission that construction of the housing units in Phase I (now set at 13) would begin by March 1984 and that by the spring of 1984 the units would be occupied. Resorts represented that Phase II had been changed, and that it would now entail the rehabilitation of 11 housing units, which would be available to over-income tenants in subsidized housing, similar to the criteria for Phase I. The Commission concluded that Resorts had demonstrated "some appreciable progress" towards the implementation of Phase I and Phase II of the housing program. This finding was conditioned upon the requirement that Resorts file monthly progress reports to enable the Commission to directly monitor the housing program on an ongoing basis.

Pursuant to the above condition, Resorts filed reports for March, April and May 1984. In its April report, Resorts advised the Commission that Phase II's rehabilitation program had been abandoned with the exception of four renovated housing units that were awaiting occupancy. In addition, Resorts noted that Phase I construction was considerably behind schedule and that the units would not be completed until August of 1984.

On May 17, 1984, the Office of the Public Advocate filed a motion for a hearing to reconsider the status of Resorts' housing program to determine whether Resorts was in compliance with the license condition. The Public Advocate maintained that Resorts' periodic reports had failed to provide sufficient evidence of continuing progress in instituting this program, thereby necessitating a further review by the Commission of the question of Resorts' compliance with the housing condition of its license. On June 6, 1984, the Commission granted the Public Advocate's motion, ruling that cause existed to review the status of the housing program and to conduct a hearing to determine whether Resorts had satisfied its license condition. On June 27, 1984, the Commission further ruled that Resorts had the burden of proving its compliance by clear and convincing evidence.

Prior to the hearing, the Commission conducted two prehearing conferences to define the outstanding issues and the scope of the hearing. At the prehearing conference of June 15, 1984, the Commission advised Resorts that in assessing whether satisfactory progress was being made, it would require a comprehensive review of what had transpired with respect to implementing the program, as well as a sequential timetable indicating all necessary measures that had to be taken to complete the program. In this regard, the Commission would examine the efforts that had been made since

the February 1984 license renewal hearing to complete Phase I. The review of Phase II would be more expansive and would include an examination of what had transpired since the program was initially presented to the Commission in 1983.

On July 30, August 2 and 15, 1984, the Commission conducted a hearing to determine whether appreciable progress had been made in the implementation of this program so as to constitute compliance with the housing condition of Resorts' license renewal.

## II. FACTS

Resorts' revised \$1,000,000 housing program is now composed of three phases: Phase I, an infill housing project with 12 modular homes, to be occupied by over-income tenants of public subsidized housing in Atlantic City; Phase II, 7 rehabilitated homes plus one infill unit originally part of Phase I, to be occupied on a priority basis in descending order by over-income residents of public subsidized housing, over-income residents of private subsidized housing and finally, public employees of Atlantic City who did not presently enjoy home ownership; and Phase III, still in the planning stage but anticipated to produce between 10 to 20 additional infill units with eligibility for participation to follow the guidelines of Phase II.

The status report for Phase I indicated that considerable progress had been made since the February 1984

license renewal hearing. Completion of the project was scheduled for August 31, 1984. Sixteen families from public subsidized housing had participated in the lottery to select the occupants of Phase I, thirteen of which had been chosen for the then contemplated 13 units, with three families chosen as alternates. Ultimately, four families, including the selected family for unit number 13, dropped out of the program, leaving the Housing Authority to proceed with construction of 12 houses. The Housing Authority returned the 13th lot to the city for disposition, and received in return a substituted lot to be included in Phase II construction.

The chosen families of Phase I selected their homes from prefabricated models manufactured by Avis Homes, to be constructed on site by Holly Run Enterprises, Inc. The units had a base price of \$40,000 plus certain options and amenities that were available to individual homeowners at additional expense. The participating families made a down payment of 3% of the purchase price.

Testimony revealed that Collective Federal Savings & Loan had encountered difficulty in completing the financial evaluations of the prospective homeowners, thereby delaying settlement on the houses. Thus, the residents in Phase I would be required to temporarily occupy the homes pursuant to lease agreements, paying a monthly rental equal to their monthly mortgage payment. These payments would not be applied

to the purchase price. Such lease arrangements were necessary to prevent vandalism of unoccupied premises pending closing on the houses. Resorts had offered to assist the bank with the necessary evaluations and the Housing Authority had requested the Federal National Mortgage Association to intercede to expedite the final settlements for Phase I. Resorts and the Housing Authority expected that the problem would be resolved within a reasonable period.

Apart from the delay in closing on the houses, Phase I has proceeded with reasonable facility, especially when compared with the lengthy delays that had previously been encountered. Resorts' chronology of events showed that site work had begun for the first unit on June 7, 1984, one day after the building permit had been obtained, the first house had been placed on its foundation on June 12, 1984, and the first family had moved into a unit on July 6, 1984. A total of eight units were on their foundation and two were already occupied. The parties represented that all twelve homes in Phase I would be completed by August 31, 1984. This sentiment was echoed by a Holly Run representative who stated that since they had straightened out the problem surrounding the obtaining of building permits with the assistance of Resorts, construction had been proceeding in an orderly fashion. There had also been some delay caused by the utility companies. He

indicated it took approximately one week to do the site preparation, foundation work and erection of the units to completion and that a completion date of August 31, 1984, was a realistic goal.

Resorts' and the Housing Authority's representatives testified that the greatest problems had occurred in obtaining building permits, transferring the deeds from the city, completing title searches on the properties and processing the participating families through the mortgage approval system. In this regard, the evidence showed that although the Housing Authority had received the deeds in November 1983, it did not order title searches until February 1984. Resorts' representatives detailed the affirmative measures it had taken to accelerate these procedures, particularly in resolving the permit problems. In this regard, we find that most of Resorts' initiatives were taken since April 1984 (R2).

Oscar Harris, Executive Director of the Housing Authority, stated that once Phase I was completed, the Housing Authority would conduct an evaluation of the program before proceeding with the remainder of the project. Such an evaluation would take one week.

The effect of the removal of these over-income residents will be to open a corresponding number of units for qualified families on the Housing Authority's waiting list for public housing. According to Patricia Redd of the Housing

Authority, there are 1500-2000 families currently on the waiting list, with 23 vacancies in public housing. There was no estimate as to how long it would take to re-rent these public housing units, although the Housing Authority did not foresee any difficulty in filling the vacancies.

The record revealed that Phase II had again been modified and now consisted of seven rehabilitated properties, four of which had been completed and were awaiting occupancy. Phase II was finally progressing towards completion following a lengthy delay in adopting the necessary ordinance approving the Redevelopment Plan and authorizing conveyance of the parcels from the City to the Housing Authority. The delay was caused primarily because of a dispute between Oscar Harris and city council members concerning eligibility requirements for participation in the program. A change in city administration also contributed to the delay.

On February 8, 1984, Ordinance #12 was introduced in City Council by Councilmen Whelan and Whittington, providing for the conveyance of eleven city owned properties to the Housing Authority which in turn would sell these parcels to qualified buyers under certain conditions. Section 4 of Ordinance #12 restricted participation in Phase II to over-income residents in public subsidized housing (P6). This matter was tabled on February 28, 1984, with no action taken.

The Housing Authority inspected the properties and determined that six of the lots were unacceptable for rehabilitation and requested that the Ordinance be modified to delete these parcels. Mr. Harris also objected to the eligibility criteria contained in Section 4 and proposed substituting language that would leave the decision regarding eligibility criteria to the sole discretion of the Housing Authority. This disagreement was finally resolved with the adoption of Ordinance #55 (R5) on July 25, 1984, which contained in Section 4, eligibility criteria on a priority basis, with over-income residents of public subsidized housing to get first preference in the selection process, and providing for alternative measures in the event that category did not supply a sufficient pool of interested families. Thus, over-income residents of private subsidized housing and employees of the city and its authorities who did not presently enjoy home ownership were also included in descending order of priority. No income limits were established for interested families. Although the record reflects the fact that Resorts participated in the negotiations to resolve the problem engendered by Section 4, it further shows that Resorts did not advocate a particular position in the dispute.

Ordinance #55 provided for the conveyance of five properties to be rehabilitated for sale in Phase II. Upon

further review, the Housing Authority determined that two additional parcels should be added to the list. A separate ordinance involving the conveyance of these two parcels was required but had not been adopted at the time of the hearing. The parties anticipated no problems, however, in adding these two parcels to Phase II, for a total of seven. The properties would be sold at a price of \$25,000 per unit. Selection of the purchasers would be through a lottery to be conducted in the same fashion as Phase I. The Housing Authority represented that 14 over-income families from public subsidized housing had expressed an interest in participating in the lottery. As of June 1, 1984, there were 63 over-income families in public housing in Atlantic City. The Housing Authority was unable to provide an accurate estimate regarding the number of over-income families in private subsidized housing.

The combined expenditures for Phase I and II are projected to total approximately \$675,000.00. The Housing Authority expected Phase III to provide at least 10 units at \$40,000 per unit. If that is the case, the total funds committed for the entire program will exceed the \$1,000,000 figure (R4). Phase III was merely in the development stage, however, and as of yet, no properties had been selected. Eligibility would be the same as with Phase II.

### III. CONCLUSIONS OF LAW

The Commission initially considered the subject of Resorts' housing program during a hearing in 1983 pursuant to a petition filed by Resorts for a Statement of Compliance with the housing condition of its casino license. According to the testimony at that hearing, the entire program would be completed by the end of 1983.

We approved Phase I as a realistic program for low and moderate income housing, emphasizing the critical fact that even though the newly constructed homes would, in all likelihood, not be affordable to low and moderate income households, such targeted families would nevertheless benefit directly from the program as the result of vacancies being created in public housing that would ultimately be filled by qualified families on the Housing Authority's waiting list for public housing. The Commission viewed the multi-party program as a creative approach to the housing needs of Atlantic City and eagerly anticipated its prompt and successful completion.

Our enthusiasm with the prospect of having such a program was later tempered, however, by our overriding concern with the lack of progress in making this proposal a reality. Approval of Phase I was therefore made conditional upon a showing of performance. Moreover, the Commission was unable to render any decision regarding Phase II because it had not progressed beyond the initial planning stage. The Commission indicated that we would closely monitor the progress of the housing program and would review the status at Resorts'

license renewal hearing in February 1984. At that time, Resorts would be required to demonstrate some appreciable progress in the implementation of Phase I and Phase II.

As the facts outlined earlier demonstrate, there was good cause for the Commission to be concerned that the program would not be expeditiously implemented. Despite reported assurances that the promised housing would be shortly built and occupied, there were continued delays, revisions and frustrations. Earlier representations regarding a projected completion schedule for Phase I had proven totally inaccurate. It also became apparent that Phase II was in serious difficulty of ever getting off the ground. Moreover, no further proposals to satisfy the commitment had been presented. A serious question had therefore been raised as to whether this program would successfully satisfy the monetary commitment. Accordingly, our fears and concerns justifiably aroused, we recognized the need for a thorough review of the status of this program.

Having described the course of events precipitating this reexamination of the housing program, we now turn to the current status of the program as reflected by the proofs adduced at the hearing. Resorts' revised \$1,000,000 program now consists of Phase I with twelve modular homes; Phase II with seven rehabilitated units plus one infill unit originally

scheduled for Phase I, and Phase III, expected to produce ten to twenty new houses.

The status report for Phase I indicates that considerable progress has definitely been made since the February 1984 license renewal hearing. Our concerns regarding Phase I have been eased by the evidence which clearly demonstrated that it would be substantially completed by the end of the summer of 1984. All parties were genuinely pleased that tangible results could finally be observed as the first families to benefit from this program began to move into their new homes. The vacancies created in public housing would eventually be filled by families presently on the Housing Authority's waiting list. It was this aspect of the plan that the Commission had previously ruled to be a direct benefit to low and moderate income housing.

The proofs further revealed that the seven rehabilitated units in Phase II would in all likelihood be ready for occupancy prior to the next license renewal date of February 1985. The Housing Authority indicated that fourteen families in public subsidized housing had expressed an interest in participating in the lottery that will be conducted to fill these units. It thus appears that vacancies in public housing will again become available allowing families presently on the Housing Authority's waiting list for public housing to obtain the desired housing. It was not

altogether clear that this significant result would occur when Phase II was originally presented. Applying the same rationale enunciated for Phase I, the Commission determines Phase II to be a realistic program for low and moderate income housing because it will open units in public housing for qualified families. In addition, due to the relatively nominal \$25,000 price of these units, it is also possible that some moderate income households may be able to participate in the program by purchasing one of the rehabilitated units. This would of course be an added benefit.

Thus, to a certain extent, Phase I and Phase II, when finally completed, will satisfy the requirement of creating low and moderate income housing. However, it is also true that the committed expenditures total approximately \$675,000, far short of the \$1,000,000 level. Consequently, Resorts is still confronted with having to satisfy this remaining portion of its commitment.

In an effort to satisfy the condition completely, Resorts introduced Phase III which is an extension of Phase I and is expected to produce ten to twenty newly constructed homes at \$40,000 per unit. Phase III is still in the planning stage and will not begin until an evaluation of Phase I has been completed. In the event that a minimum of ten houses are constructed and if a corresponding number of vacancies in public housing are created and appropriately occupied as a

result, the monetary commitment will be satisfied. At this juncture, however, these two significant propositions are merely speculative. Experience has shown the Commission that Resorts' predictions for this plan have been overly optimistic. In addition, there is a legitimate question as to whether there will be a sufficient pool of interested participants from subsidized housing for Phase III, a necessary ingredient if it is to prove a realistic program for low and moderate income housing by creating vacancies to be filled off the Housing Authority's waiting list. Similar to the case last year concerning Phase II, the Commission therefore withholds decision on whether Phase III is a realistic program pending further progress and documentation.

The Commission emphasizes, however, that we readily approve the conceptual basis of Phase III. Indeed, in our October 1983 opinion we stated that if Phase I could be expanded to produce 25 units at a cost of \$40,000 per unit and to vacate 25 units in public housing, Resorts will have succeeded in satisfying its total commitment. We strongly urge the Housing Authority to proceed with this project in a more expeditious fashion than has previously been exhibited. Further, we note again that the Housing Authority, through Mr. Harris, stated that the evaluation of Phase I would take only

one week. We therefore expect no delay on that point. Resorts is encouraged to take whatever measures are necessary to accelerate the progress of this program. The Commission cannot tolerate more postponements nor will we be amenable to any substantial modifications. There is no valid reason why appreciable progress cannot be demonstrated by the next license renewal hearing in February 1985 so as to enable this Commission to approve Phase III as a realistic program.

In addition to providing a forum for determining the current status of the program and deciding whether appreciable progress had been made to implement the project, the hearing also served as an opportunity to examine why this program had encountered such inordinate delays. Resorts introduced documentary evidence in an effort to demonstrate in chronological order what had transpired with respect to instituting this program (R2). Unfortunately, this evidence did not satisfactorily explain why the program was permitted to proceed so slowly. Resorts also itemized the initiatives it had taken to accelerate the program's progress. These measures included attending conferences with the Housing Authority, assisting the banks with processing the applicants, meeting with city officials and helping the builder obtain some of the necessary permits.

The general thrust of Resorts' presentation may be summarized as an attempt to convey the impression that the inordinate amount of delays were attributable to unpredictable factors that are inevitably and unavoidably encountered in coordinating a multi-faceted program of this level. The Commission recognizes that instituting a program of this nature, which required the cooperation and interaction of several parties, especially during a period of political transition, will necessarily result in some degree of unavoidable delay. We have anticipated such developments and have made allowances in liberally extending the time for final completion of the program. To suggest, however, that the delays experienced herein can be dismissed in such cavalier fashion ignores the reality of the situation. On the contrary, we conclude that the protracted delays could have been diminished by a significant degree if the responsible parties had taken appropriate action. In so stating, the Commission does not intend to imply that the actions of any individuals or agencies were calculated to perpetuate delay, but rather to emphasize the fact that bureaucratic concerns were unfortunately permitted to obscure the ultimate purpose of completing this program as quickly as possible. This point is best exemplified by the dispute detailed above involving the ordinance for Phase II.

The Commission recognizes that Resorts is not altogether to blame for the tedious movement of this program, but by the same token, Resorts cannot be held totally blameless. We have listened to Resorts' protestations that it cannot be held accountable for the program which is being operated by the Housing Authority, and to a certain degree, we can appreciate Resorts' predicament. It bears repeating, however, that Resorts elected to initiate this program in collaboration with the Housing Authority without consulting with the Commission. Moreover, when this proposal was originally formulated, Resorts did not insist that the Housing Authority restrict the program to benefit low and moderate income households. We previously determined that since Resorts chose this particular course of action, it could not absolve itself of complete responsibility nor escape potential criticism for subsequent developments.

We appreciate the fact that Resorts ultimately took affirmative measures to expedite the program but we must also wonder if Resorts had moved earlier and with more aggressiveness whether this entire project could have proceeded more rapidly. The record shows that in the spring of 1984, when Resorts took a more active role, the many problems besetting this program were somehow more easily resolved than in prior months when Resorts was less of a factor. Although we do not impugn the efforts of Resorts, we

do feel that it must share some of the responsibility for allowing these delays to reach such dramatic proportions.

With respect to the role played by the Housing Authority, the Commission realizes that that agency is far more capable of completing such a program successfully than Resorts would be if it acted in an independent capacity. The Commission approved the program with this understanding. At that time, however, the Commission reasonably expected that the Housing Authority would make every effort to expedite completion of the program for the creation of low and moderate income housing. The Commission is particularly dismayed, therefore, by the incredible testimony that adoption of the Phase II ordinance was delayed some five months primarily because of Mr. Harris' reluctance to express in writing certain eligibility requirements for the plan even though, as he testified, he did not disagree in principle with the program's objective of producing low and moderate income housing. The fact that this project was permitted to remain stagnant for so long due to such a dispute is inconceivable and raises questions in our minds regarding the Housing Authority's commitment to the swift completion of the project. The Commission also cannot accept the notion that the Housing Authority was in no way responsible for any delay in implementing Phase I. Certainly, the program's progress must be placed in sharp contrast with the experience of Talton Ray,

offered by Resorts as an expert in housing developments, who was able to operate a similar program in New York City in a more expeditious and successful fashion.

The Commission had hoped that in a project of this nature, with the salutary goal of producing a limited number of low and moderate income housing opportunities, the parties responsible for operating and coordinating the program would be able to settle their differences and work together in a spirit of cooperation to bring this program to a satisfactory conclusion. The Commission has been extremely frustrated and disappointed that such hopes have not materialized. We are also greatly concerned that a program of such relatively minor proportions, when one considers the number of houses being contemplated, could encounter this level of delay and possible neglect. It certainly does not instill confidence in the ability of these local instrumentalities to conquer the larger revitalization challenge confronting the City. Nevertheless, based on the experience gained thus far, we fully expect a more concerted and successful effort to swiftly complete the remainder of the current program.

#### **IV. CONCLUSION**

The Commission reiterates that we view this housing program conceptually as a creative approach to the housing problems existing in Atlantic City. Unfortunately, the objective has not been accomplished with the facility we had originally anticipated. When the program was first presented,

we never contemplated that it would encounter such problems nor take this long to complete. We also question what will become of the remaining uncommitted funds from the \$3,000,000 mortgage pool.

The end result is undeniable, however, that ultimately, this program will succeed in creating a limited number of housing opportunities for low and moderate income families. The Commission concludes that appreciable progress has been demonstrated in implementing Phase I and Phase II of the program. We withhold any decision concerning Phase III pending further progress. Resorts has now satisfied approximately \$675,000 of its \$1,000,000 commitment. The construction of ten additional homes in Phase III, coupled with the creation of corresponding vacancies in subsidized housing and the proper filling of these vacancies, will satisfy the total commitment.

The Commission will again review the status of this program at the license renewal hearing in January and February 1985. In the interim, Resorts is subject to the following requirements:

- 1) bi-weekly status reports regarding Phase I and Phase II shall be provided to Commission staff;
- 2) a detailed plan and timetable for Phase III shall be submitted to the Commission staff within fifteen days of the date of the decision;

3) assuming the staff finds the plan for Phase III to be in accordance with this opinion, Resorts shall provide by-weekly progress reports;

4) Resorts shall provide to the Commission staff within one week of the Commission's decision the results of the evaluation of Phase I; and

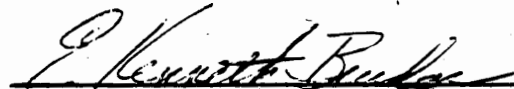
5) Resorts shall immediately advise the Commission staff of any problems encountered in implementing any aspect of this program.

NEW JERSEY CASINO CONTROL COMMISSION

  
WALTER N. READ, CHAIRMAN

  
JOEL R. JACOBSON, VICE-CHAIRMAN

  
CARL ZEITZ, COMMISSIONER

  
E. KENNETH BURDGE, COMMISSIONER

  
DON M. THOMAS, COMMISSIONER

DATED: October 31, 1984.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-37  
OAL DOCKET NO. CCC 3314-84  
LICENSE NO. 30446-21

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

Complainant, :

FINAL ORDER

V. :

NICHOLAS J. RENZETTI, :

Respondent. :

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 5, 1984, recommending that the complaint filed by the Division of Gaming Enforcement against Nicholas J. Renzetti be dismissed; and neither party having filed exceptions or objections thereto; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of October 24, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint filed by the Division of Gaming Enforcement,


IT IS on this 30th day of OCTOBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement against Nicholas J. Renzetti be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
THOMAS N. AURIEMMA  
DEPUTY DIRECTOR  
LEGAL DIVISION



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3314-84

AGENCY DKT. NO. 84-37

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

Petitioner,

v.

**NICHOLAS J. RENZETTI,**

Respondent.

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**APPEARANCES:**

**William E. Mountford, Jr.,** Deputy Attorney General, on behalf of the petitioner  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Alfred J. Bennington, Jr., Esq.,** on behalf of the respondent

Record Closed: July 19, 1984

Decided: September 4, 1984

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On February 10, 1984, petitioner (DGE) filed a complaint seeking revocation of respondent's casino employee license. At respondent's request the Casino Control Commission deferred the revocation hearing until after respondent's completion of a pretrial intervention program.

Upon completion of the pretrial intervention program, respondent requested dismissal of the complaint. On May 4, 1984, the Casino Control Commission entered an order denying respondent's request and the matter was thereafter transmitted to the Office of Administrative Law for an expedited hearing, pursuant to N.J.S.A. 52:14F-1 et seq.

On May 18, 1984, respondent filed an answer and affirmative defenses to petitioner's complaint. A prehearing conference was held on June 4, 1984, resulting in a prehearing order which identified the following issues:

1. Did respondent violate N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 24:21-20(a)1 (possession of a controlled dangerous substance - methamphetamines), and N.J.S.A. 24:21-20a(4) (possession of a controlled dangerous substance - marijuana under 25 grams)?
2. If respondent committed any of the three offenses, does the offense impugn his reputation for good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2) as incorporated into N.J.S.A. 5:12-90?
3. If respondent committed any of the criminal offenses alleged in the complaint, is his continuing licensure inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4)?
4. Notwithstanding the respondent's successful completion of the pretrial intervention program, is he disqualified from continuing licensure, pursuant to N.J.S.A. 5:12-86g?
5. Does respondent's completion of a pretrial intervention program nevertheless render him unsuitable for licensure?

A hearing was held on July 19, 1984, at the Somers Point Municipal Court, Somers Point, New Jersey.

#### FINDINGS OF FACT

##### Undisputed Relevant Facts

Respondent is 36 years old, married, and the father of three children. He is employed as a craps dealer by Resorts International Hotel Casino.

On September 7, 1983, while respondent was working the swing shift, a DGE official asked to have respondent removed from the casino floor. The official informed respondent that his residence had been raided by the police and that a firearm and "other things" had been found.

The search (pursuant to a warrant) produced the following items (P-1):

1. A plastic bag (found in a bureau drawer) containing 6.27 grams of marijuana.
2. A plastic bag with a white powder substance (found in a closet, in the pocket of respondent's jacket) later determined by a laboratory test to be .036 grams of methamphetamine.
3. An unloaded Colt automatic handgun, .45 caliber (found on the top shelf of a closet, in plain view). A police check of the weapon revealed that it was stolen.

Neither respondent nor his wife are certain as to why they were victims of a search warrant, however, they suspect that a relative with whom they do not get along, was the informant.

Respondent admits that the marijuana belonged to him and his wife and that they occasionally smoked it in the privacy of their home. However, he has not smoked since the September 7, 1983 incident, because he does not want to jeopardize his family. Respondent acquired marijuana through friends who gave it to him; he emphasized that he did not purchase it.

As a result of the search, respondent and his wife were arrested and charged with receiving stolen property in violation of N.J.S.A. 2C:20-7, possession of a controlled dangerous substance (methamphetamines) in violation of N.J.S.A. 24:21-20a(1) and possession of a controlled dangerous substance (marijuana under 25 grams) in violation of N.J.S.A. 24:21-20a(4) (P-1). Respondent returned to work the evening of the arrest and has worked continuously since the arrest as a craps dealer.

After the arrest, respondent and his wife were accepted into the Atlantic County Pretrial Intervention Program (PTI). Initially, the PTI coordinator told respondent that entry into the program might be difficult because of the arrest for a violation of N.J.S.A. 2C-20:7 since a weapon was involved. However, he suggested that respondent apply for the program. The application was accepted almost immediately.

Respondent had a brief consultation with an attorney who recommended that he enter PTI. He did not have any other legal representation regarding the criminal charges or PTI. Respondent had not been advised by the attorney (or anyone else) that his casino employee license might be jeopardized by his PTI participation. Respondent believed that his license was not in jeopardy since the March 21, 1984 Order of Dismissal pursuant to R. 3:28 stated that respondent's successful completion of PTI resulted in the court records being marked "complaint dismissed —matter adjusted" (R-2). Had respondent known that notwithstanding his successful completion of PTI, that a license revocation proceeding would be instituted, he would have pursued other legal options (such as trial) rather than electing to participate in PTI.

Respondent entered PTI at the pre-indictment stage as a Prosecutor's referral. He enrolled in the program on October 23, 1983, with an anticipated dismissal date of April 24, 1984. A letter from Steven J. Imperiale, dated February 15, 1984, stated that respondent's ". . . adjustment has been above par and we anticipate an early dismissal of his pending charges" (R-1).

Respondent called three character witnesses to testify as to his reputation for good character, honesty and integrity. I find the testimony of these three witnesses to be undisputed and credible. The first character witness, George Rigopoulos, is a floor person who has been employed by Resorts International Hotel Casino for four years. He has known respondent for approximately two and one-half years in primarily a professional, rather than social relationship. Mr. Rigopoulos is respondent's supervisor approximately four out of five days per week. Mr. Rigopoulos stated that respondent is well-liked in the casino industry. His reputation for honesty is good. Respondent is friendly and extremely helpful to young dealers who are becoming involved in the gaming industry. Mr. Rigopoulos has never seen him smoke marijuana. Prior to the hearing he did not know that respondent had used marijuana although he was not surprised, since marijuana, in his opinion, is not considered to be a "heavy drug". Mr. Rigopoulos stated that respondent does not have a reputation in the casino industry as a drug user.

The second character witness was Brian Hansberry, a pit boss at Resorts International Hotel Casino. He has been employed for six years in the gaming industry and holds a casino key employee license. As a pit boss, Mr. Hansberry supervises approximately 37 people on a daily basis. He has known respondent for approximately two and one-half years, primarily through employment. Mr. Hansberry testified that respondent has a reputation as one of the best dealers. Respondent is one of the few dealers who are permitted to deal high limit games, in which the dealer's honesty and method of dealing are critical factors. Mr. Hansberry also noted that respondent is very helpful to some of the new dealers. He stated that the respondent is a man of his word. As a pit boss, Mr. Hansberry must be aware of dealers who might be using drugs. He has never observed respondent engaging in behavior which would lead him to suspect that he might be utilizing drugs. Until the hearing, he did not know that respondent had smoked marijuana. This information did not surprise him, since he was of the opinion that marijuana usage is a fairly common occurrence. The criminal complaints filed against respondent did not alter Mr. Hansberry's opinion of him.

The third character witness, Anthony Malerb is 33 years old and resides in Pennsauken, New Jersey. He is a supervisor at the Philadelphia Navy Yard and has known respondent for 20 years. Mr. Malerb testified as to respondent's reputation in the South Philadelphia community where they grew up together. He stated that the respondent had an excellent reputation for honesty, that he was well-liked and helpful to people, and that he was a man of his word. Mr. Malerb and respondent had smoked marijuana together on a few occasions five or six years ago. Mr. Malerb has never known the respondent to use methamphetamine, stating that respondent does not need to use drugs. He has never known respondent to distribute drugs, and stated that to the best of his knowledge respondent did not buy drugs, rather, he only used marijuana if someone gave it to him. Respondent and Mr. Malerb also worked together in the navy yard for one year. The respondent moved out of the South Philadelphia area in 1980, and after he moved, they saw each other less frequently. Mr. Malerb did not know that respondent had the firearm in his home.

Respondent, Diane Renzetti (respondent's wife) and Mary Ann DiCiano (respondent's mother-in-law) testified as to how respondent and his wife acquired the firearm. Respondent's father-in-law (Mr. DiCiano) died on May 4, 1983. In July 1983 Mrs. DiCiano sorted out her deceased husband's personal items. She found the gun, which she

did not believe was loaded. She gave the gun to respondent and his wife when Mrs. Renzetti said that she would like to have it for sentimental reasons. Mrs. DiCiano did not know that her husband had the gun; she did not know how, when or under what circumstances he had acquired it.

Respondent and his wife also credibly testified that they also did not know how or where Mr. DiCiano had obtained the gun. When Mrs. DiCiano gave the gun to her daughter and son-in-law, the gun and the clip were separate and both were inside a bag. Respondent did not open the chamber to the gun, did not pull the trigger and the clip was empty. He could not recall if he actually checked the gun to see if it was loaded, but his feeling was that his mother-in-law would not have given him a loaded gun.

#### Disputed Facts

Respondent does not dispute that .037 grams of methamphetamine were found in the pocket of his jacket, however, he disputes that the drug was his. Respondent testified (1) that he does not know in which pocket the methamphetamine was found, (2) that he had never seen the methamphetamine, and (3) that the last time he had worn the jacket, (prior to the search), was on the day of Mr. DiCiano's funeral. Respondent stated that he did not know what methamphetamine is or what reaction methamphetamine is expected to produce in a person who utilizes it. He said he did not know if methamphetamine was commonly known as "speed" that he does not use methamphetamine, that he could not afford to use it and, he does not need to use it.

Diane Renzetti testified that approximately one week before the search she was out with friends when someone offered the methamphetamine to her. She accepted it reluctantly so that she would not be pressured into using it. She took the methamphetamine home with her and put it in the respondent's jacket pocket without telling him she had done so. She stated that after she put the drugs in his pocket, she forgot that they were there. She stated that she does not utilize methamphetamine, and that further, if her husband thought she utilized it, he would be extremely angry.

I **FIND** Mrs. Renzetti's testimony to be improbable. While it is clear that the testimony of a competent witness cannot be capriciously rejected, there must be a valid reason for such action, such as the witness' story being inherently improbable, or contradicted by some other testimony. Rains v. Rains 127 N.J. Eq. 328, 332 (E.&A. 1940), In re Perrone, 5 N.J. 514, 522 (1950). Mrs. Renzetti's testimony is inherently improbable and contradictory in and of itself. It is difficult to accept her testimony that she reluctantly accepted the drug although she did not use the drug, yet she proceeded to hide it in her husband's pocket knowing he would become extremely angry if he thought that she used the drug. One must logically question why Mrs. Renzetti did not immediately dispose of the drug if she did not intend to use it.

While N.J.S.A. 5:12-107a(6) permits a finding to be made upon evidence introduced in a hearing ". . . 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 the civil action . . .", I do not find that the Ventnor City Police Department reports which charged both respondent and his wife with possession of a controlled dangerous substance (methamphetamine) to be sufficient evidence to warrant a finding that respondent committed that particular offense. Had the arrest report been supported by other corroborating documentation or the testimony of witnesses who could substantiate that respondent was guilty of the offense, a different conclusion might be reached. However, a mere arrest and investigation report and complaint which charged respondent and his wife with the same criminal violation is patently insufficient for a responsible person to rely upon in the conduct of serious affairs, in concluding that respondent was guilty of possession of methamphetamine.

Notwithstanding that I have rejected Mrs. Renzetti's testimony as it relates to the methamphetamine, it is unnecessary to make a finding as to what she intended to with the drug since this hearing involved revocation of respondent's license. I further **FIND** that based upon respondent's credible testimony, absent a judgment of conviction for possession of methamphetamine, that petitioner has failed to meet its burden of proof that respondent actually committed a violation of N.J.S.A. 24:21-20(a)1. A violation of that statute requires a person to "knowingly or intentionally" possess a controlled dangerous substance. Petitioner presented no evidence to demonstrate that respondent "knowingly or intentionally" possessed the methamphetamine.

DISCUSSION AND CONCLUSIONS OF LAW

Respondent argues that he should retain his casino employee license for the following reasons:

1. It is significant that petitioner did not attempt to temporarily suspend his license pending this hearing.
2. Petitioner has to prove that he actually committed the offense(s) for which he was charged, since no judgments of conviction were entered. He argues that petitioner did not meet its burden of proof to demonstrate that he received stolen property and that he was in possession of methamphetamine.
3. None of the offenses for which the respondent was charged relate to his participation in the gaming industry.
4. Petitioner has failed to establish that the stolen firearm was operable, since there was no operability report submitted, and there is no evidence that the gun was capable of being fired. Further, the police report alleging that the gun was stolen constitutes double hearsay. No evidence was presented to adequately substantiate that the gun was stolen, insofar as it is not known who reported the gun stolen or from whom it was stolen.
5. Respondent claims that persons charged with weapons offenses are not generally permitted to enter a PTI program. Further, if respondent knew that the gun was stolen, since he and his wife were charged with the crime, he could have easily attempted to have his wife assume the guilt.
6. Respondent has not had the opportunity to cross-examine the informant who supplied the police with the information which resulted in the search warrant being issued.

7. Respondent's admission that he has occasionally smoked marijuana is not conduct which is inimical to the policies of the Casino Control Act or casino operations. Respondent argues that drug consumption is rampant nation-wide. Further, in an attempt to save his license, he could have had his wife assume the blame for the possession of the marijuana as well as the methamphetamine.
8. Respondent produced sufficient testimony from highly qualified individuals as to his reputation for good character, honesty and integrity.

Petitioner argues that respondent is not fit for licensure for the following reasons:

1. Petitioner simply has to prove by the preponderance of the evidence that respondent committed the criminal offenses. Citing N.J.S.A. 5:12-107a6, petitioner alleges that the investigation and arrest reports introduced into evidence are sufficient to prove that respondent did commit the crimes for which he was accused, notwithstanding that he was never prosecuted due to his PTI participation. Petitioner also notes that the arrest occurred as the result of a search warrant issued upon probable cause.
2. Respondent did not refute that the marijuana and methamphetamine was found in his apartment, or that the gun was stolen. N.J.S.A. 2C:20-7 is a statutory disqualifying offense pursuant to the Casino Control Act.
3. Respondent is under a continuing obligation to maintain his reputation for good character, honesty and integrity, as a condition of maintaining his revocable casino employee license. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979). Respondent deals with substantial sums of money on a continuing basis in his course of employment. If petitioner proves by the preponderance of the evidence that respondent committed the offenses for which he was charged, the burden then shifts to the

respondent to prove by clear and convincing evidence his reputation for good character, honesty and integrity as well as to demonstrate his rehabilitation.

CONCLUSIONS

Respondent admits that he was in possession of 6.27 grams of marijuana on the date of the arrest. I therefore **CONCLUDE** that respondent did violate N.J.S.A. 24:21-20a(4).

Respondent does not deny that methamphetamine was found in his jacket pocket on the night of the arrest. However, he does dispute that the methamphetamine belonged to him, contending that the drug belonged to his wife.

I **CONCLUDE** that petitioner has failed to meet its burden of proof that respondent is guilty of receiving stolen property. N.J.S.A. 2C:20-7 requires the person accused of the theft to receive property of another knowing ~~that it had been~~ stolen, or believing that it is probably stolen. State v. Kimbrough, 109 N.J. Super. 57 (App. Div. 1970). Under certain circumstances, guilty knowledge may be inferred where a defendant receives stolen goods under circumstances which would satisfy a person of ordinary intelligence and caution that they were actually receiving stolen property. State v. Rowe, 57 N.J. 293, 299 (1970). Based upon the credible testimony of respondent, his wife and mother in law as to the circumstances under which the respondent acquired the gun, and absent any evidence presented by petitioner that respondent knew that the gun was stolen when he received it, and absent any evidence to infer guilty knowledge, I **CONCLUDE** that respondent did not violate N.J.S.A. 2C:20-7. Absent a conclusion that respondent had guilty knowledge of receiving stolen property, I need not address the issue of whether or not the gun was operable.

Respondent successfully participated in the Atlantic County pretrial intervention program, resulting in the criminal complaints being dismissed. Rule 3:28, Guideline 4, states "Enrollment in PTI programs should be conditioned upon neither informal admission nor entry of a plea of guilt. Enrollment of defendants who maintain their innocence should be permitted unless the defendant's attitude would render pretrial

intervention ineffective." I do not construe respondent's participation in the PTI program as an admission of guilt for possession of methamphetamine and receiving stolen property. Any defendant accused of a crime is eligible to apply for PTI. R. 3:28, guideline 2.

Since I have concluded that the evidence presented is only sufficient to warrant a conclusion that respondent was guilty of possession of marijuana, the issue becomes whether or not that violation impugns respondent's reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, February 1979 at page 9, the Casino Control Commission stated that ". . . reputation is relevant to raise questions which the applicant is obliged to answer; but the real issue is the applicant's actual character, with special attention being given to the subject matter of the reputation." Based upon the credible testimony of all three witnesses (all of whom knew respondent has used marijuana), which was undisputed by petitioner either through cross-examination or through the production of rebuttal witnesses or documentation, I **CONCLUDE** that respondent met his burden of proof through clear and convincing evidence of his reputation for good character, honesty and integrity.

I **CONCLUDE** that respondent's possession of marijuana is not inimical to the policy of the Casino Control Act and to casino operations. Inimicality encompasses ". . . 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 process of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations." In the Matter of the Application of Resorts International Hotel, supra at page 15. I do not find that respondent's admission of occasional use of marijuana as well as his possession of the drug in the past would in any way justifiably undermine public confidence in the integrity of the regulatory process of gaming operations, or would in any way enhance the danger of unsuitable, unfair or illegal practices. Respondent's supervisors who testified at the hearing, stated that respondent has been a totally responsible employee, and that they have never observed any behavior by respondent on the job that would indicate that he was under the influence of any drugs which were interfering in his ability to perform his job. There is no evidence presented that respondent's occasional private use of marijuana has jeopardized his employment or that respondent attempted to influence any casino employee to use marijuana on the job or elsewhere.

Finally, petitioner argued that the respondent's rehabilitation may be an issue. I **CONCLUDE** that rehabilitation is not an issue in this case, since N.J.S.A. 5:12-90h requires a licensee to affirmatively demonstrate his rehabilitation if he has been convicted of an offense enumerated in the Casino Control Act. Respondent was not convicted of any statutory disqualifying offense.


ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner's complaint seeking revocation of respondent's casino employee 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 Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

September 4, 1984  
DATE

  
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

September 5, 1984  
DATE

  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

September 7, 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

EXHIBITS INTRODUCED INTO EVIDENCE

- P-1 Ventnor City Police Department Investigation Report, dated September 8, 1983; Ventnor City Police Department Arrest Report, dated September 7, 1983; Request For Examination of Evidence from the New Jersey State Police; Laboratory Report from New Jersey State Police, dated October 11, 1983; Order of Postponement from the Superior Court of New Jersey, dated April 24, 1984; Complaints In the Matter of the State of New Jersey v. Nicholas John Renzetti, dated September 8, 1983 (9 pages including certification page of the Atlantic County Clerk)
- R-1 Letter, dated February 15, 1984, from Steven J. Imperiale, Coordinator for the Atlantic County Pretrial Intervention Program.
- R-2 Order of Dismissal Under Rule 3:28 In the Matter of State of New Jersey v. Nicholas John Renzetti, dated March 15, 1984 (2 pages)

LIST OF WITNESSES

No witnesses for the Division

For the respondent:

Mary Ann DiCiano  
Nicholas John Renzetti  
Diane Renzetti  
George Rigopoulos  
Anthony Malerb  
Brian Hansbury

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-29  
LICENSE NO. 645-70  
VENDOR ID NO. 02768

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

Complainant, :

FINAL ORDER

v. :

RESCO HOTEL PLANNING AND  
PURCHASING CORPORATION, :

Respondent. :

---

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a proposed stipulation of settlement June 8, 1984, as orally modified by the parties at the Commission's public meeting of November 21, 1984, wherein the president of the respondent company admitted that he failed to monitor and review the financial books and records of the respondent; and it appearing that the parties have agreed, among other things, that the respondent would pay a civil penalty in the sum of \$5,000 in full settlement of the complaint filed by the Division of Gaming Enforcement on January 25, 1984; and the Commission, after considering the entire record in this matter, having resolved at its public meeting of November 21, 1984, for good cause shown, to adopt the proposed stipulation of settlement, as orally amended, and assess a civil penalty upon respondent in the amount of \$5,000,

IT IS on this *18<sup>th</sup>* day of DECEMBER 1984, ORDERED that the proposed Stipulation of Settlement in this matter be and hereby is adopted as orally amended; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of \$5,000, based upon the terms agreed upon in the Stipulation of Settlement, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that paragraph D shall be and hereby is amended to read as follows:

This settlement shall be full and final settlement of all matters contained herein.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

Irwin I. Kimmelman  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

**FILED**

JUN 08 1984

CASINO CONTROL COMMISSION  
LEGAL DIVISION

BY: Rosemary Quinn  
Deputy Attorney General  
(609) 984-7220

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

Plaintiff,

vs.

RESCO HOTEL PLANNING &  
PURCHASING CORPORATION,

Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET No. 84-29  
OAL DOCKET No. CCC 01502-84

STIPULATION OF SETTLEMENT

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The issues 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 & Public Safety, Division of Gaming Enforcement by Rosemary Quinn, Deputy Attorney General and William F. Maderer, Esq., Attorney for Respondent, Resco Hotel Planning and Purchasing Corporation, and said matters having been resolved, it is hereby consented to and agreed by the parties that:

1. Respondent currently holds a casino service industry license #645 issued by the Casino Control Commission on July 6, 1982;
2. Since its licensure, the Respondent has been conducting business with several of the casino hotel facilities in Atlantic City;
3. Charles Foster served as vice-president of the Respondent from its inception until his death on October 15, 1983;

4. Giacomo Abbate has always held the position of president of this Respondent;
5. Prior to Mr. Foster's death, Messrs. Abbate and Foster were the sole officers of Respondent, each holding an equal percentage of its shares of stock;
6. Messrs. Foster and Abbate previously owned Regency Corporation, a manufacturer of restaurant equipment, which is currently owned by Mr. Abbate and Mr. Foster's estate;
7. The Respondent primarily acted as the sales company for products manufactured by the Regency Corporation and other kitchen products purchased from other distributors and manufacturers;
8. The responsibility of the officers of the Respondent and Regency Corporation were divided so that Charles Foster was solely responsible for the marketing of both companies' products and the management of the financial affairs and financial records of both companies, whereas Mr. Abbate was responsible for the design and manufacturer of items produced by Regency Corporation;
9. On May 12, 1982, Charles Foster drafted a check, on the bank account maintained by the Respondent, in the amount of \$2,000 payable to Michael Marko, who held the position of food and beverage director of the Harrah's Marina Casino/Hotel;
10. This \$2,000 check was originally recorded in the Respondent's journals as a loan to Michael Marko;
11. While Mr. Foster was still alive, the Respondent's bookkeeper informed the Division of Gaming Enforcement that the journal entry for the Michael Marko check was changed by her shortly after May 12, 1982, at the direction of Mr. Foster, so as to reflect a loan to the Respondent through the Regency Corporation without any reference to Michael Marko;
12. The Respondent's bookkeeper also informed the Division of Gaming Enforcement, prior to Mr. Foster's death, that at his direction she again changed the journal entry for the Michael Marko check in July of 1983 to reflect that a \$2,000 loan was made to Michael Marko and had been repaid in full;
13. Charles Foster and the Respondent's bookkeeper were unable to explain the reason for the various changes in the journal entry concerning the \$2,000 payment to Michael Marko;
14. Charles Foster admitted that he made a \$2,000 payment to Michael Marko which was allegedly a loan to pay an outstanding tax lien. However, Division investigation revealed that Mr. Marko's tax lien has been satisfied prior to this alleged loan from the Respondent;
15. Mr. Abbate stated he was not aware that a company check had been written to the order of Michael Marko at the time of its execution. Division investigation has not disclosed any information which would indicate otherwise;

16. Mr. Abbate was informed by Charles Foster that the Division of Gaming Enforcement was questioning Mr. Foster and the Respondent's bookkeeper about the \$2,000 payment to Michael Marko in July of 1983, but Mr. Abbate stated he was not aware that questionable changes were made to the Respondent's financial records concerning the Michael Marko check. Division investigation has not revealed any information to the contrary;

17. Mr. Abbate, as president, should have and failed to monitor and review the financial books and financial records of the Respondent after being apprised that the Respondent had written a check to Michael Marko.

18. Mr. Abbate is currently the sole officer and manager of both the Respondent and the Regency Corporation and has taken control of both companies' financial affairs, and records; and,

19. The parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and the Respondent has agreed to refrain from making payments to the casino/hotel facilities of Atlantic City and all employees or agents of those facilities, outside the normal course of business.

IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

A. Respondent agrees to pay the Casino Control Commission a fine of Five Thousand Dollars (\$5,000).

B. Respondent agrees that its president will closely monitor and supervise the management of the Respondent's financial books and records.

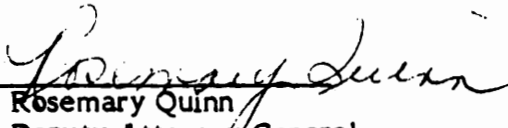
C. Respondent agrees that it will fully cooperate with the Division of Gaming Enforcement in its investigation and the pending hearing concerning Michael Marko.

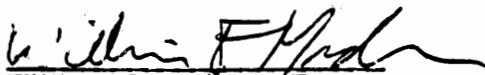
D. This settlement shall be full and final settlement of all matters contained herein and shall not be used against the Respondent in any further proceeding before the Casino Control Commission.


The undersigned consent to the form and entry of the above Stipulation of Settlement.

Respectfully submitted,

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey

By   
Rosemary Quinn  
Deputy Attorney General

  
William F. Maderer, Esq.  
Attorney for Respondent

  
Giacomo Abbate  
President of Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-198  
OAL DOCKET NO. CCC 9516-83  
APPLICATION NO. 44266-21

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APPLICATION OF BRYANT ROGERS  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 18, 1984, recommending that the application of Bryant Rogers be denied; and Bryant Rogers having filed exceptions to the Initial Decision on June 11, 1984; and the Commission having considered the entire record of these proceedings resolved at its public meeting on July 11, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 13th day of JULY 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and


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

IT IS FURTHER ORDERED that, Bryant Rogers 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 Bryant Rogers from retaining his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 9516-83

AGENCY DKT. NO. 83-EA-198

**BRYANT ROGERS,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Bryant Rogers, petitioner, pro se**

**Anthony D'Elia, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: April 17, 1984

Decided: May 17, 1984

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

This matter concerns petitioner's application for licensure as a casino employee, pursuant to N.J.S.A. 5:12-1 et seq. and objections thereto filed by respondent with the Casino Control Commission. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N J.S.A. 52:14F-1 et seq.

The two broad issues involved here are whether petitioner failed to reveal material facts when he filed his Personal History Disclosure form (PHDF) and whether his

prior history of arrest and conviction, his employment record and information concerning nonpayment of loans are sufficient to undermine any proofs which he may present to establish his good character, honesty and integrity by clear and convincing evidence.

The facts with respect to the first issue are undisputed. Petitioner was arrested on June 10 and June 13, 1974 in Ocean City on charges of assault and battery (N.J.S.A. 2A:170-26); molesting and interfering (N.J.S.A. 2A:170-29); resisting arrest (N.J.S.A. 2A:85-1); and escape (N.J.S.A. 2A:104-6). He was found guilty of assault and battery and sentenced to a sixty-day suspended jail term and fined \$50. The remaining charges were dismissed. On June 8, 1976, petitioner was arrested and charged with assault and battery (N.J.S.A. 2A:170-26). He was found guilty and fined \$25. On June 22, 1976, petitioner was arrested again on charges of assault and battery (N.J.S.A. 2A:170-26). Petitioner was found guilty and received a \$50 fine. On August 11, 1981, petitioner was arrested and charged with assault (N.J.S.A. 2C:12-1a(1)) and obstructing the administration of law (N.J.S.A. 2C:29-1). Petitioner was found not guilty on both counts. Petitioner disclosed the last arrest on the PHDF but did not disclose any of the prior arrests or convictions. He testified that he did not go back more than five years when he filled out the form.

The question on the PHDF asks "have you . . . ever been arrested, indicted, charged with or convicted of a criminal or disorderly person's offense...?". N.J.S.A. 5:12-86. provides:

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

- b. Failure of the applicant to . . . reveal any fact material to qualification. . . .

Thus, the failure to disclose by itself provides a sufficient basis for rejection of petitioner's application.

Most of the testimony at the hearing was taken up with the facts and circumstances surrounding the second issue in the case. In June 1974, petitioner was arrested in what appears to have been a youth gang disturbance. Officers of the Ocean City Police Department who investigated the matter at the time testified that petitioner

was among a group of youths who attacked an officer. Petitioner testified that this was a racial incident in which the police harassed him and other black youths. At the time, petitioner was approximately twenty years old. Respondent presented no details about the two 1976 arrests and convictions, however, petitioner testified that these involved altercations in his home, one of which took place during a party. The incident of August 1981 involved an officer's attempt to arrest petitioner's brother. This resulted in some scuffling in which the officer testified that petitioner impeded his efforts and in which petitioner testified that he attempted to prevent a fight between his brother and the officer. As noted earlier, petitioner was found not guilty on this charge and it is undisputed that though he and his brother left the scene they ran directly to police headquarters to report the matter. Petitioner testified with respect to this issue that his brother was reluctant to go with the officer because he felt that there had been no basis for an arrest. There was apparently an outstanding warrant which the officer felt required an arrest and which petitioner's brother believed had been previously resolved.

It is undisputed that petitioner obtained a loan from the New Jersey Higher Education Assistance Authority in January 1977 and to date has made no payment on it. Petitioner testified that he has had no money to pay the loan but fully intends to do so. The record also reflects that the Guarantee Bank of Atlantic City was required to repossess petitioner's automobile in January 1980 because of his failure to make installment payments.

There is also some derogatory information in the record concerning petitioner's prior employment history with a firm known as Dee Lumber Company. In June 1976, petitioner was fired for failure to report to work. In September 1980, he was hired again by the company but failed to disclose in an application that he had previously been fired. When the facts were discovered, he was terminated. Petitioner testified that he had gone into the army in June 1976 and was unaware that he had been suspended until he was informed of this by the company after he was rehired.

Petitioner testified that he was in the Army from June 1976 until 1979 when he returned to Atlantic City. At that time, he went to work at the Playboy Hotel and Casino in the maintenance department. He had been terminated from that position at one point but was rehired and has been employed at Playboy continuously.

This is the substance of the record on the question of good character, honesty and integrity. As indicated supra, the failure to disclose all prior arrests and convictions is by itself sufficient to deny petitioner's application. There is no indication that the failure was inadvertent or that it is otherwise excusable. The additional information in the record concerning prior nondisclosed arrests, employment history, failure to pay an educational loan and the repossession of an automobile all raise legitimate suspicions about petitioner's qualification to hold a license but are not by themselves so serious that they could not be overcome by a substantial affirmative showing of good character. The 1974 arrest took place when petitioner was approximately twenty years old. The two 1976 convictions were for minor matters. The underlying conduct described at the hearing for the August 1981 incident leads to the conclusion that petitioner probably made a mistake in judgment in interposing himself between his brother and the officer but in fact he and his brother made their way to police headquarters to report the matter immediately. Petitioner testified that he has been employed almost continuously from 1979 to the present at the Playboy Hotel and Casino. There is no indication in the record that he has given anything less than able service. Nevertheless, when all of this is taken together with his failure to disclose information, I do not believe that the record carries petitioner's burden of establishing good character by clear and convincing evidence.

Based on the foregoing, it is **ORDERED** that petitioner's application be and hereby 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.

5/17/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

May 17, 1984  
DATE

*James D. Smith*  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

MAY 21 1984  
DATE

*Ronald L. Parker*  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR THE PETITIONER:

- P-1 Civil Action, Notice of Application for Wage Execution, dated March 26, 1984
- P-2 Notice from Guarantee Bank, dated January 14, 1980

FOR THE RESPONDENT:

- R-1 Ocean City Police Department Arrest Report, dated 6-6-74
- R-2 Ocean City Police Department Arrest Report, dated 6-6-74
- R-3 Personal History Disclosure Form, dated January 17, 1983

WITNESSES

Bryant Rogers, petitioner  
Captain Harry Lord, Ocean City Police  
Lieutenant Robert McGuirl  
Trooper John L. Sullivan, N.J. State Police

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-204  
OAL DOCKET NO. CCC 265-84  
APPLICATION NO. 44321-21

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IN THE MATTER OF THE APPLICATION  
OF TIMOTHY A. SANDERS FOR A CASINO  
EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 14, 1984, recommending that the application of Timothy A. Sanders for a casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting on June 27, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 5th day of July 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 265-84

AGENCY DKT. NO. 83-EA-204

**TIMOTHY A. SANDERS,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Timothy A. Sanders,** petitioner, pro se

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

Record Closed: March 29, 1984

Decided: May 14, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Timothy A. Sanders to the Casino Control Commission for a casino employee license permitting him to work in a casino as a blackjack dealer. Notwithstanding a favorable recommendation for licensure from the Division of Gaming Enforcement, the Casino Control Commission informed the petitioner that "there is a substantial possibility" that the Commission would deny his application. The petitioner subsequently requested a hearing and the issues to be determined in this matter are as follows:

1. Whether the petitioner has established, by clear and convincing evidence, his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the Act.
2. Whether the petitioner, with reference to his record of arrests and convictions, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 86b and 90e of the Act.
3. Whether the petitioner, with reference to his record of arrests and convictions, has committed or been convicted of an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the Act.

#### PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated November 18, 1983, the Division of Gaming Enforcement recommended that the petitioner's application for licensure as a casino employee be granted. By letter to the petitioner, dated December 21, 1983, the Commission informed the petitioner that he had the right to request a hearing on his license application. By letter dated December 27, 1983, the petitioner requested a hearing and the Commission thereafter transmitted the matter to the Office of Administrative Law on January 12, 1984, for a 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 25 years old and he resides with his parents in Somers Point, New Jersey. Since March 1983, the petitioner has been employed by Bally's Park Place Casino Hotel in Atlantic City, New Jersey. When his employment started, the petitioner served as a buffet attendant. At the present time, the petitioner works as a bus person in two of the restaurants at Bally's

Park Place Casino Hotel. In February 1983, the petitioner satisfactorily completed a blackjack dealer's course at the Atlantic Community College in Mays Landing, New Jersey.

The petitioner has been arrested on five occasions. The first occurred in November 1976, when the petitioner was arrested for simple assault (Exhibit R-1). According to the petitioner, he and a friend had given some money to Wayne Dull, with the intention that Dull purchase an ounce of marijuana for them. Dull neither purchased the marijuana nor returned the petitioner's money. It was the petitioner's testimony that he and his friend looked for Dull, and upon finding him, struck him with a hockey stick. Both the petitioner and his friend were found guilty of simple assault.

The petitioner was next arrested on December 16, 1976, at which time he was charged with possession of hashish over five grams, contrary to N.J.S.A. 24:21-20c(4), possession of less than 25 grams of marijuana, contrary to N.J.S.A. 24:21-20a(4), and possession of hashish with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). According to the petitioner, this arrest followed the execution of a search warrant by the Ocean City Police Department at an apartment which the petitioner shared with two friends. It was the credible testimony of the petitioner that the illegal drugs were intended for their own use and that they did not intend to sell the drugs (Exhibit R-2). It is undisputed that the petitioner pled guilty to the possession of hashish charge and that he satisfactorily completed his probationary sentence (Exhibit R-1).

On January 1, 1978, the petitioner was arrested and charged with the disorderly person's offense of interfering with a person, contrary to N.J.S.A. 2A:170-29(2)b (Exhibit R-1). According to the petitioner, he had been a passenger in an automobile which was proceeding on Route 9. The driver apparently felt another vehicle had swerved towards him and he retaliated by swinging a small baseball bat at the other vehicle. Subsequently, the petitioner was arrested and charged with the disorderly person's offense. It is undisputed that the charge against him was ultimately dismissed.

The petitioner was next arrested on May 5, 1978, for possession of marijuana under 25 grams, contrary to N.J.S.A. 24:21-20a4. According to the petitioner, this arrest occurred when he and his girlfriend had smoked a marijuana cigarette in his parked car. When the police found the remains of the cigarette outside his car and smelled marijuana smoke, the petitioner was placed under arrest. It was the petitioner's testimony that he  
752 went to court and was directed to pay a small fine (Exhibit R-1).

The petitioner's final arrest occurred on August 12, 1981 (Exhibit R-3), when he was charged with robbery, contrary to N.J.S.A. 2C:15-1. According to the petitioner, he and a friend, Brian Rodriguez, felt that a friend of Rodriguez, Todd Moore, had broken into the petitioner's home and had taken some money. Acknowledging that he should have gone to the police with this information and that he had made the mistake of taking the law into his own hands, the petitioner stated that he and Rodriguez took Moore out drinking and then beat him up by hitting him with their fists and by kicking him. It is undisputed that Moore suffered a broken jaw and cheek bone and a concussion as a result of the attack (Exhibit R-3). The petitioner denied that he had taken any money from Moore. The charge against the petitioner was downgraded to assault, contrary to N.J.S.A. 2C:12-1a, and the petitioner entered a plea of guilty. As a result, the petitioner paid a fine of \$100 and court costs of \$25 (Exhibit R-3).

It is undisputed that the petitioner did not disclose his arrests and convictions in his Personal History Disclosure Form, filed with the Casino Control Commission. The petitioner was contacted by an investigator from the Division of Gaming Enforcement and asked if he had a criminal record. It is undisputed that the petitioner stated that he did not have such a record. However, when he was confronted by the existence of a criminal record, he acknowledged his arrests and convictions. It was the credible testimony of the petitioner that he told the investigator that he had consulted with his attorney concerning his arrests and conviction record. His attorney had agreed to obtain a "rap sheet," which indicated that the petitioner did not have a record. The petitioner and his attorney felt that his arrests and convictions must have been expunged and the petitioner's attorney advised the petitioner that he could answer "No" to a question on his disclosure form which required disclosure of his conviction record.

Frederick A. Jacob, an attorney admitted to practice in the State of New Jersey, testified that he was the petitioner's attorney and that the petitioner consulted with him concerning his application for a dealer license. According to Mr. Jacob, he had represented the petitioner pursuant to some of the criminal matters in which he had been involved. In order to accurately answer the question on the Personal History Disclosure Form concerning arrests and convictions, Mr. Jacob decided to obtain a record of the petitioner's arrests and convictions from the Cumberland County Prosecutor's Office. The note which Mr. Jacob wrote to his partner, Arnold Robinson, Esq., asking that he obtain the requested record from the prosecutor's office, was admitted into evidence as Exhibit R-4. By letter dated January 6, 1983, the prosecutor's office responded with the information that the petitioner had no record of arrests and convictions (Exhibit R-5).

By letter dated January 7, 1983, (Exhibit R-6) Mr. Jacob informed the petitioner that he had no record of arrests and convictions on his adult record sheet. Mr. Jacob further advised the petitioner that "I think you would be safe in answering 'No' to any question on the application that refers to any convictions for either crimes or disorderly person's offense." It was the credible testimony of the petitioner that he had tried his best to answer the question correctly and had sought the assistance of his attorney. It is apparent that the petitioner relied upon the advice of his counsel when he did not disclose his record of arrests and convictions on his personal history disclosure form.

The petitioner testified candidly that he is not proud of his criminal record. He explained that it had taken him "awhile to grow up" and that he would never do such things again. Letters from Food Service Coordinator Mark A. Neely and Sidewalk Cafe Manager Lito Naidas, of Bally's Park Place Casino Hotel were admitted into evidence as Exhibits P-1 and P-2. Both writers describe the petitioner as hardworking, with qualities of good character, honesty and integrity. A letter from Pastor William Britt of the Praise Tabernacle Church in Pleasantville, New Jersey was admitted into evidence as Exhibit P-3. According to Pastor Britt, the petitioner is overcoming his past mistakes by a sincere diligence and honest approach to work.

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

#### CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the Act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

To determine whether a conviction for an offense would render an applicant's licensure inimical to the policies of the Act requires consideration of several factors. The Casino Control Commission set forth in its opinion In the Matter of the Application of Resorts International, Inc. For a Casino License, 79-CL-1 (February 26, 1979) at page 15, the criteria to be applied when such a determination is to be made:

The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would . . . encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The petitioner's convictions involve drug use and assaultive behavior. In 1976, he was found guilty of simple assault arising out of a proposed drug transaction. In that same year, he also pled guilty to possession of hashish over five grams and subsequently completed his probationary sentence. In 1978, the petitioner pled guilty to possession of a small quantity of marijuana. The most serious conduct committed by the petitioner occurred in August 1981, when he was charged with robbery, contrary to N.J.S.A. 2C:15-1. This offense involved his participation in a beating which caused the victim serious injuries. The charges were downgraded to assault, contrary to N.J.S.A. 2C:12-1a, and the petitioner entered a plea of guilty.

The petitioner's first offense occurred when he was approximately 18 years old, and his last offense occurred when he was 22 years old. Since that time, the petitioner has gained maturity and has been successfully employed in the legalized gaming industry. Based upon the foregoing discussion and specific findings of fact, I CONCLUDE that the petitioner has not committed an offense which, when viewed in the light of all the circumstances, is of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. Therefore, I further CONCLUDE that the petitioner has not committed any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations.

Pursuant to section 86b of the Casino Control Act, the Commission shall deny licensure to any applicant who has failed to reveal any facts material to qualification, or who has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria. It is undisputed that the petitioner failed to disclose on his Personal History Disclosure Form his record of arrests and convictions. However, the credible evidence in the record establishes that the petitioner's failure to disclose resulted from his reliance in good faith upon the advise of his counsel. This advise was given after the Cumberland County Prosecutor's Office mistakenly reported that the petitioner has no record of arrests and convictions. Thus, it is clear that the petitioner's failure to disclose resulted from inadvertence, rather than from a conscious disregard of the request for his arrest and conviction record. Accordingly, I must **CONCLUDE** that the petitioner has not intentionally failed to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86d. Based upon the relevant and credible evidence in the record, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he now possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Timothy A. Sanders, for a casino employee license, permitting him to work in a casino as a blackjack dealer be **GRANTED**.

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

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

May 14, 1984  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

14 MAY 1984  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 16 1984  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

**For the Petitioner:**

- P-1 Letter of Recommendation, dated March 15, 1984
- P-2 Letter of Recommendation, dated March 15, 1984
- P-3 Letter of Recommendation, dated March 14, 1984

**For the Respondent:**

- R-1 Answers to Interrogatories, dated March 15, 1984
- R-2 Ocean City Police Report
- R-3 New Jersey State Police Investigation Report
- R-4 Memorandum
- R-5 Letter, dated January 6, 1983
- R-6 Letter, dated January 7, 1983
- R-7 Letter, dated January 26, 1984

WITNESSES

**For the Petitioner:**

Timothy A. Sanders

**For the Respondent:**

Timothy A. Sanders  
Frederick A. Jacob

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
APPLICATION NO. 185-70  
AGENCY DOCKET NO. 82-CSI-11  
OAL DOCKET NO. CCC 7698-82

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IN THE MATTER OF THE APPLICATION  
OF SHREVE-LAZAR TRAVEL SERVICE, INC.  
FOR A CASINO SERVICE INDUSTRY LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 2, 1984, recommending that the application of Shreve-Lazar Travel Service, Inc. for a casino service industry license be granted; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 14, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 29th day of NOVEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Shreve-Lazar Travel Service, Inc. for a casino service industry license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Shreve-Lazar Travel Service, Inc. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7698-82

AGENCY DKT. NO. 82-COI-11

**SHREVE-LAZAR TRAVEL SERVICE, INC.,**

Petitioner,

v.

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

Respondent.

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**Alfred R. Scerni, Jr., Esq.,** for petitioner (Wilson, Scerni and Sapienza, attorney)

**Patricia Wild,** Deputy Attorney General, for respondent (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

Record Closed: September 6, 1984

Decided: October 1, 1984

BEFORE JEFF S. MASIN, ALJ:

Shreve-Lazar Travel Service, Inc. applied to the Casino Control Commission (Commission) for licensure as a casino service industry, pursuant to the requirements of N.J.S.A. 5:12-92. By letter, dated April 27, 1982, the Division of Gaming Enforcement (Division) raised questions concerning whether licensure of the applicant was appropriate. The petitioner requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Following transmittal of the contested case, the matter was made inactive because of the illness of

a principal of the petitioner and remained inactive until the parties requested on April 24, 1984 that the matter be listed for hearing. Thereafter, a prehearing conference was held on May 10, 1984 and a prehearing order was issued on May 17, 1984. A hearing was held at the Pleasantville Municipal Court on September 6, 1984.

As noted in the prehearing order, the Division questioned whether the petitioner was able to demonstrate by clear and convincing evidence that it, and by implication, its principals, possessed the requisite good character, honesty and integrity required by Section 92a, incorporating Section 89b(2) of the Act. The basis for questions concerning the possession of the requisite characteristics resulted from an incident which had occurred in 1978-79. During that time, according to evidence presented at the hearing, and also information stated in the letter of April 27, 1982 from the Division, one Bernard H. Falkow, who was a co-owner of the petitioner along with Rudolph J. Osterman, Jr. and Harold J. Edwards, became involved in a scheme to defraud the American Express Company, for which Shreve-Lazar acted as a franchised representative for the provision of American Express charge card services, travelers checks, and travel packages. Specifically, as presented in the hearing it appears that Mr. Falkow endeavored to add names to lists of persons who had purchased American Express Travelers checks from Shreve-Lazar, in order to obtain additional monies which were paid to the agency by American Express for each separate transaction involving the sale of travelers checks. In its April 27, 1982 letter, the Division questioned whether Shreve-Lazar possessed the requisite qualifications for licensure, raising the issue of whether Osterman and Edwards, who continued to operate the company, had had any knowledge or participation in Falkow's scheme.

Prior to the beginning of testimony in this matter, the parties entered into a stipulation of facts which is repeated herein in full:

1. Shreve-Lazar Travel Service, Inc. was formed on November 6, 1976 by the merger of Shreve Travel Agency and Lazar Travel Agency.
2. On April 30, 1980, Bernard Falkow resigned from his position as President and Director of Shreve-Lazar Travel Service, Inc.
3. On May 13, 1980, the shareholders and directors of Shreve-Lazar Travel Service, Inc. accepted the resignation of Bernard Falkow as President and Director of the corporation. The shareholders and directors also prepared a plan whereby

the shares of stock owned by Bernard Falkow were sold back to the corporation.

4. As of this date, Bernard Falkow was not associated in any way with Shreve-Lazar Travel Service, Inc.

In addition to the stipulation, which facts I FIND to be true, the parties also entered into evidence a criminal accusation in which the Attorney General charged Bernard Falkow with having obtained money by false pretense during the months of May through August 1979.

On February 15, 1983, Falkow entered a plea of guilty to a four count accusation for violating N.J.S.A. 2A:111-1. He was sentenced by Honorable Paul R. Porreca, J.S.C to one year probation and restitution in the amount of \$4,000, with a further requirement that he perform 200 hours of community service.

Harold Edwards, co-owner of Shreve-Lazar since the end of 1974, testified that he had previously worked for Pan American Airways for approximately ten years prior to becoming associated with Shreve-Lazar and had an been ~~airline~~ representative for about 25 years. He has known Mr. Osterman for over 20 years, having become familiar with Osterman during the time when Osterman worked for Fugazy Travel in Philadelphia. Edwards was serving at that time as an outside agent for airlines.

Edwards was familiar through his work with Mrs. Lazar, who was the owner of the Lazar Travel Agency. She informed him that she was considering selling the business and he contacted Osterman and together they determined to buy the travel agency. They received financing for it and have repaid the debt. Originally, the business was a partnership. Toward the end of 1975, Edwards and Osterman became familiar with one Bernard Falkow. Eventually Falkow contacted them and asked them whether they would wish to form one company from Lazar Travel and Shreve Travel, a company which Falkow owned. The companies were of fairly equal size and strength and the gentlemen determined to consolidate the businesses. Falkow was elected president, Osterman secretary and Edwards treasurer and each was a one-third owner, although in fact 15 shares of the company were owned by one Dr. Dyer. Dyer had no other responsibility in the business.

According to the testimony of Osterman and Edwards, in the course of the expansion of the business they obtained an office in the lobby of Resorts International Hotel. The main business of that office, in the area of approximately 98 percent, consisted of travelers checks. Because Osterman and Edwards were particularly familiar with the travel side of the business and Falkow was not, Falkow became the partner generally responsible for the operations of the Resorts International office and of the travelers check portion of the business. According to both Edwards and Osterman, they made minimal visits to the Resorts International office, engaging in their business operations in Shreve-Lazar's other office which was located at various times in different places in Atlantic City. Falkow hired employees for the Resorts office and Edwards and Osterman only knew them through telephone contact.

According to Edwards, during 1979, American Express charged its customers a one percent service charge on the face value of the travelers checks purchased. From that one percent the franchised agency would receive two-thirds of the service fee. In addition, the agency would receive \$1.50 for each transaction listed on the summary sheet which had to be prepared each day, listing the purchases, the American Express Card number, the type of checks, i.e., personal checks, blank checks or gold card, the amount asked for and approved and the last name of the purchaser and the serial numbers of the checks issued. With respect to the \$1.50 fee, the size of the transaction was irrelevant.

According to Edwards, Falkow engaged in the practice of splitting single transactions into multiple transactions in order to list additional transactions on the logs and therefore obtain additional commissions and service fees. This was discovered in October of 1979, when the North Carolina office of Shreve Lazar, which was located in the Ramada Inn, was robbed. Approximately \$10,000 in cash was stolen from the American Express area of the office. An employee, one Ron McKeon, who was on duty at the time, made a remark to someone at American Express which indicated that Falkow had been adding names to the American Express lists. Falkow heard of this and in a loud voice proclaimed to Edwards and Osterman that McKeon had related this information to American Express. Falkow admitted that he had been adding names, and, according to Edwards and Osterman, became "crazy." He had to be forceably restrained by the police from assaulting McKeon. Later, Falkow indicated that he was adding names in order to generate more income so as to pay the Shreve-Lazar employees at the Resorts office. As a result of this incident, Edwards and Osterman directed Falkow to stop the practice. McKeon disappeared and was never seen again by either Edwards or Osterman. According

to Edwards and Osterman, neither one of them ever directed any one to split transactions or to do anything in order to obtain any money from American Express which the company was not otherwise legitimately entitled to. They were both unaware of Falkow's activities until the robbery and the McKeon revelation. Neither one of them had paid close attention to the American Express portion of the business as they were very busy with the travel service and the American Express business was sufficiently large that it required the attention of one of the partners, who, considering their backgrounds, was most logically the role assigned to Falkow. Edwards testified that it was entirely reasonable from a business standpoint to separate the functions of the American Express and travel services between the partners since they were generally unrelated and the background of Edwards and Osterman related very strongly to the travel agency area.

As a result of the incidents involving Falkow, and after discussions with Jay Bradway, the president of the Guarantee Bank and former Mayor of Atlantic City, Osterman and Edwards determined to get Falkow out the business. Bradway purchased \$10,000 worth of shares and then, following negotiations, Falkow was bought out for \$44,000 dollars, consisting of a \$20,000 front payment and \$1,000 a month for 2 years. As of April 1980, Falkow was removed. Bradway ultimately was bought out for \$12,500, when he indicated that he wanted to own the whole business and Osterman and Edwards determined that they did not wish to relinquish ownership.

Robert Matthews, a certified public accountant who has done work on behalf of Shreve-Lazar since 1979 and was familiar with the procedures for the recordation of travelers check transactions, testified that it would have been impossible to have determined from looking at the records whether improper entries had been made in the logs. When Matthews learned of Falkow's practices in late 1979, as a result of the robbery and the McKeon revelations, he suggested to Osterman and Edwards that they part company with Falkow. Indeed, Falkow himself revealed to Matthews that he was stealing money from the company, by issuing refund checks and cashing them himself.

Judy Fearheller, a travel agent who has worked for the petitioner since August 1979, testified that she originally was sent for an interview by an agency to the Resorts International office of Shreve-Lazar. She met with Falkow, who reviewed her resume and discussed her qualifications and told her that he had no time at the Resorts office to deal in the travel business and that since her background was in that area, that she should go to the other office to speak with Edwards and Osterman. Edwards hired her.

During her time with the company prior to the closing of the Resorts International office, Fearheller did not sell American Express checks. She never saw Falkow in the travel office between her hiring at the end of July and the Christmas party in December of 1979. Osterman and Edwards were in the office, which was located on Tennessee Avenue in Atlantic City, on a daily basis.

The Division presented no evidence or testimony.

### DISCUSSION

Having heard the testimony and examined the exhibits, I have **CONCLUDED** without any hesitation that neither Harold Edwards nor Rudolph Osterman was at all aware of the shenanigans engaged in by Falkow in connection with the American Express business. It seems abundantly clear that Falkow took advantage of his position as the partner in charge of the travelers check segment of the business to attempt to defraud American Express without having revealed his intentions or his actions in any way to his partners. The testimony of Edwards and Osterman was entirely believable and I **FIND** that their actions in connection with the conduct of the business, that is, their concentration on the travel bureau end as compared to the travelers check business, was fully consistent with a reasonable and sensible method of apportioning responsibility. In view of the nature of the manipulations by Falkow, there is no reasonable likelihood that Osterman and Edwards would have discovered Falkow's practices had he not revealed them and McKeon not made his statements.

In addition to the credibility of the testimony of Osterman and Edwards, who by themselves were sufficiently convincing to carry their burden of proving their good character, honesty and integrity, I was particularly impressed with the testimony of the character witnesses on their behalf, including H. Paxson Keates, a funeral director of longstanding in the Atlantic City community and former president of the Rotary Club; Daniel Davidson, former treasurer of Kiwanis and a former officer of the Atlantic City Retail Merchants Association; David Gardner, acting director of the Atlantic City Casino-Hotel Association and a member of the Board of the Jewish Family Service and the New Jersey Alliance for Action, Arnold R. Orsatti, a well-known restaurateur and business leader, and Walter J. Murphy, a public relations and marketing consultant and previously the executive director of the Atlantic City Chamber of Commerce. Each of these witnesses testified that both Edwards and Osterman had extremely high reputations for

honesty and integrity and that in their own individual opinions the gentlemen were of the highest quality. In addition, they had each used the travel services of the company and found it to be conducted in the most professional manner.

CONCLUSION

Having concluded that Bernard Falkow's scheme was his sole responsibility and that neither Edwards nor Osterman had any knowledge of the matters prior to their revelation and that they took steps to sever Falkow's relationship and eliminate the improper actions as soon as they determined their existence, and having further concluded that both gentlemen are of the highest character and possess all of the requisite qualities for licensure, it is hereby **ORDERED** that Shreve-Lazar be licensed as a casino service industry.

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, 1984  
DATE

[Signature]  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

\_\_\_\_\_  
DATE

[Signature]  
CASINO CONTROL COMMISSION  
William McDowell  
Principal Legal Analyst

Mailed to Parties:

OCT 04 1984  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

Joint exhibits:

- J-1 Stipulation of Facts
- J-2 Certified Judgment of Conviction, In the Matter of State v. Falkow,  
Accusation No. DCJ-C-5-83
- J-3 Accusation, In the Matter of State of New Jersey v. Bernard Falkow
- J-4 Transcript of entry of guilty plea before Honorable Paul R. Porreca,  
J.S.C., February 15, 1983

JT 9-6-84

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Respondent  
Division of Gaming Enforcement  
Richard Hughes Justice Complex  
CN-047  
25 Market Street  
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By: Patricia M. Wild  
Deputy Attorney General  
(609) 984-2480

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 82-CSI-11  
OAL DOCKET NO. 82-CCC-7698-22

Shreve-Lazar Travel Service, Inc.	)	
	)	
Petitioner,	)	Civil Action
	)	
v.	)	
	)	
State of New Jersey, Department of	)	STIPULATIONS
Law and Public Safety, Division	)	
of Gaming Enforcement,	)	
	)	
Respondent.	)	

Petitioner, Shreve-Lazar Travel Service, Inc., and Respondent, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, hereby stipulate as follows:

1. Shreve-Lazar Travel Service, Inc. was formed on November 6, 1976 by the merger of Shreve Travel Agency and Lazar Travel Agency.
2. On April 30, 1980, Bernard Falkow resigned from his position as President and Director of Shreve-Lazar Travel Service, Inc.
3. On May 13, 1980, the shareholders and directors of Shreve-Lazar Travel Service, Inc. accepted the resignation of Bernard Falkow as President and Director of the corporation. The shareholders and directors also prepared a plan whereby the shares of stock owned by Bernard Falkow were sold back to the corporation.

4. As of this date, Bernard Falkow is not associated in any way with Shreve-Lazar Travel Service, Inc.

Respectively submitted,

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
for Respondent Division of Gaming  
Enforcement

By Patricia M. Wild  
Patricia M. Wild  
Deputy Attorney General

Wilson, Jacobson, Winkelstein &  
Scerni

By Alfred R. Scerni, Jr.  
Alfred R. Scerni, Jr.  
for Petitioner Shreve-Lazar  
Travel Service, Inc.

DATED: September 6, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-85  
OAL DOCKET NO. CCC 7429-83  
APP. NO. 43820-21

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IN THE MATTER OF THE APPLICATION  
OF LEONORA S. TENNANT (nee  
TAYLOR) FOR LICENSURE  
AS A CASINO EMPLOYEE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 26, 1984, recommending that the application of Leonora S. Tennant (nee Taylor) for a casino employee license be denied; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on September 5, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 25<sup>th</sup> day of September 1984 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and


IT IS FURTHER ORDERED that the casino employee license application of Leonora S. Tennant (nee Taylor) be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7429-83

AGENCY DKT. NO. 83-EA-85

**LEONORA S. TAYLOR,**

Petitioner,

v.

**STATE OF NEW JERSEY,**

**DEPARTMENT OF LAW AND**

**PUBLIC SAFETY, DIVISION**

**OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Leonora S. Taylor, petitioner, pro se**

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

Record Closed: June 11, 1984

Decided: July 26, 1984

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

The Division of Gaming Enforcement objected to Leonora S. Taylor's application for a casino employee license. Ms. Taylor 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 11, 1984, at the Northfield Municipal Court before Administrative Law Judge Jeff S. Masin. The issue for consideration is whether Ms. Taylor failed to disclose correct information or provided false information concerning her record of arrest and convictions in connection with her Personal History Disclosure

Form. If she did, she violated N.J.S.A. 5:12-86b, a section of the Casino Control Act. The failure to provide accurate information relevant to the licensing process is grounds for denial of the license.

Agent Jim Minniti of the Division of Gaming Enforcement testified that he had conducted the background investigation in connection with Ms. Taylor's application. He had reviewed a state police criminal record sheet which showed that Ms. Taylor had been arrested on September 3, 1982, for larceny and possession of dangerous drugs in Egg Harbor Township. An investigation of the incident indicated that she had been accused of shoplifting a \$60 jacket from a Sears Store and that at the time she had been searched and one pill had been found in her purse which had been identified as a controlled dangerous substance. On the Personal History Disclosure Form which Ms. Taylor filed with the Casino Control Commission on December 9, 1982, she answered Question No. 16, which asked whether or not Ms. Taylor had been "arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly person's offense, juvenile offense or other offense . . . in New Jersey . . .?" with "~~DOES NOT APPLY~~". The Egg Harbor arrest had occurred on September 3, 1982, prior to the filing of her Personal History Disclosure Form. Although the form bears a date stamp of December 9, 1982, indicating receipt by the Commissioner on that date, the document was signed by Ms. Taylor before a notary on November 11, 1982.

According to Agent Minniti, on November 15, 1982, Ms. Taylor entered a plea of guilty to the municipal court charges of shoplifting and possession of a prescription legend drug, N.J.S.A. 2C:20-11b and N.J.S.A. 2A:170-77.8, respectively, and was fined \$250, of which \$150 was suspended and a \$25 court fee was required.

Agent Minniti testified that he spoke with Ms. Taylor by telephone on March 4, 1983, at which time he read Question No. 16 to her. She claimed that she had not been arrested and he read the question again and she said she had one arrest. She said that she had not listed the arrest because she believed that the question only required her to put down convictions and at the time she filled out the Personal History Disclosure Form she did not know what the outcome of her arrest would be and did not want to put down the wrong information.

Ms. Taylor testified on her own behalf and stated that she had not been convicted at the time she had filled out the Personal History Disclosure Form and did not list her arrest because she did not understand that she had to list only one arrest.

Ms. Taylor denied that Agent Minniti had had to ask her twice whether she had been arrested, claiming that she had told him about the arrest the first time he asked. She also claimed that Minniti had called her a second time and that her mother had gotten on the phone at that time. During the second conversation she also spoke to Minniti and told him again that she had been arrested.

On cross-examination, Ms. Taylor agreed that she had graduated from high school in 1982 and that she knew how to read. She claimed that she and her mother had gone over the questions together, but that she had only read the second paragraph of question No. 16. She did not believe that she had read the first paragraph of the question which, among other things, defines the word "arrest" as "includes any detaining, holding or taking into custody by any police or law enforcements authorities in order to answer to the alleged performance of any 'offense' in this or any other state or foreign country; . . ."

#### DISCUSSION

I am unable to believe Ms. Taylor's story. The question which she was required to answer is extremely clear. Even if one had not read the first paragraph of Question No. 16, the second paragraph specifically states that the question is whether the applicant has ever been arrested or charged, "even if not convicted, . . ." I fail to see how anyone could read this question and not realize that an arrest had to be listed, even if a conviction had not yet occurred. Indeed, the phrase is underlined to emphasize its importance. Ms. Taylor contends that she did not wish to put down false information, however, the proper answer to the question would have required nothing more than the listing of the arrest and the statement that the case was pending or that she had not yet gone to court for the hearing. It does not appear that such an answer would require a high level of legal competence. I suggest that Ms. Taylor did not list the arrest in the hope that the Commission would not learn of it.

For the reasons set forth, I **FIND** that Ms. Taylor did intentionally withhold from the Commissioner material information with respect to licensure. Such action constitutes a violation of N.J.S.A. 5:12-86b. Given the circumstances, a license cannot be issued.

It is **ORDERED** that the license application of Leonora S. Taylor 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 26, 1984  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 27, 1984  
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 31 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW / *phb*

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EVIDENCE LIST

On behalf of the petitioner:

None

On behalf of the respondent:

R-1 Personal History Disclosure Form-2A

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-178  
OAL DOCKET NO. CCC 8493-83  
APP. NO. 00352-11

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

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 21, 1984, recommending that application of Michael A. Tompis for renewal of his casino key employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on July 5, 1984, to which Mr. Tompis filed a reply on August 23, 1984; and the Commission, after considering the entire record of these proceedings having resolved at its public meeting on September 12, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 25th day of SEPTEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Casino Control Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 8493-83**

**AGENCY DKT. NO. 83-EA-178**

**MICHAEL A. TOMPIS,**

Petitioner,

v.

**DIVISION OF  
GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Donald G. Targan, Esq.,** for petitioner (Targan & Higbee, attorneys)

**John J. Sheehy,** Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: May 7, 1984

Decided: June 20, 1984

**BEFORE NORMAN D. SMITH, ALJ:**

This case arises by virtue of the application of Michael Tompis for relicensure as a casino key employee following the expiration of an initial license. The Division of Gaming Enforcement did not object to the application, but did express reservations and recommended that a hearing be held. The Casino Control Commission concurred that a hearing should be held and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

The stated reasons for the expression of concern about the relicensure of Mr. Tompis are set forth on pages two and three of a letter, dated September 8, 1983, from the Division of Gaming Enforcement to the Commission and are incorporated by reference

in the Prehearing Order entered in this case on December 29, 1983. In brief, the narrow issue framed by the Division's letter and the Prehearing Order in this case was whether Mr. Tompis, as manager of Bally's Park Place Casino, knew or should have known that information he had received from a subordinate had been illicitly obtained from the files of the Division of Gaming Enforcement.

At the outset of the hearing, the Deputy Attorney General advised me that there was no evidence in his possession which could establish knowledge on the part of Mr. Tompis that the information had been illicitly obtained by others. Therefore, I struck that issue from the record in this case. Seemingly then, no issue remained to be heard. However, the Deputy Attorney General moved, which motion I granted, to amend the Prehearing Order in order to include two new issues:

- A. Did the use of the information by Mr. Tompis indicate a lack of good character, honesty and integrity required by N.J.S.A. 5:12-91?
- B. Did Mr. Tompis lie to the Division of Gaming Enforcement during previous interviews concerning the method in which the information was used?

The evidence regarding the background of Mr. Tompis was credible and uncontradicted. There was, however, substantial disagreement among the witnesses concerning the events of a certain meeting in which Mr. Tompis allegedly used the information in question. I made extensive findings of fact on the record at the conclusion of the hearing. At that time, I set forth at length my reasons for making the findings that I did make. I will not recount all of those reasons here. Where the evidence was disputed, I relied heavily on the credibility of the witnesses, as I set forth on the record. Further, where witnesses on opposite sides both agreed on certain events, I accepted that as a test of the truthfulness and accuracy of the description of those events. Based upon all of the evidence and the reasons which I set forth on the record, I hereby make the following **FINDINGS OF FACT:**

Michael Tompis is 44 years of age and has 18 years of experience in the casino industry, beginning in Nevada. He has never been arrested for any criminal or disorderly persons offense. After graduating from high school in 1958, he volunteered for the United States Marine Corp, where he served for three years, and was honorably discharged in

1961. He worked his way up from dealer to supervisor of blackjack and baccarat and ultimately to casino manager in 1982. He received a key employee license from the State of New Jersey in November 1979. No complaint concerning his performance of his duties had been brought against him during that period. He has an outstanding reputation among his community of workers for good character, honesty and integrity. He is trusted and respected by his superiors and his subordinates.

During May and early June 1982, there was a campaign in progress at Bally's to unionize casino employees. The election was scheduled to take place on June 8, 1982, and as the election date neared the campaign became more heated both among management and labor. Bally's had retained special labor counsel in the person of one Sanford Pollock, Esq., to advise on labor law issues. Pursuant to Mr. Pollock's advice, Mr. Tompiss, as casino manager, proceeded to meet the dealers in groups of 40 for the purpose of expressing management's position that the dealers should vote against unionization. At one such meeting, it became clear that a dealer named Edward Alvarez was a very vocal leader of the pro-unionization movement. Following that meeting, Mr. Tompiss ordered an employment check on Mr. Alvarez from Bally's chief of security. Mr. Tompiss desired to know more about Mr. Alvarez in order to aid in the negotiations. The security chief presented Mr. Alvarez's background to Mr. Tompiss, who, in turn, presented it to a management team, including Mr. Pollock, at a strategy session. The information included the fact that Mr. Alvarez had received a dishonorable discharge from the United States Navy, having served time in the "brig," for being AWOL. (The description of the discharge as "dishonorable" turned out to be inaccurate, although the inaccuracy appeared in the records of the Division of Gaming Enforcement. The discharge was actually a "bad conduct" discharge.)

Mr. Tompiss expressed reservations about using personal information against Mr. Alvarez. Nevertheless, Mr. Pollock forcefully instructed Mr. Tompiss that the use of such information was not only lawful but was a necessary part of management's strategy. Thus, Mr. Tompiss entered a meeting of dealers on June 5, 1982, just three days before the scheduled election, with the information against Mr. Alvarez in his possession.

At that meeting, Mr. Tompiss began listing reasons why the dealers should not vote for unionization, including benefits that Mr. Tompiss had achieved on behalf of the dealers without a union. When Mr. Tompiss made note that the employees could now receive steak in the cafeteria on weekends and holidays, Mr. Alvarez testily rejoined that

he feeds steak to his dogs. Mr. Tompiss asked Mr. Alvarez if he would be on the negotiating committee if there were a union and Mr. Alvarez said yes. Mr. Tompiss asked what Alvarez's qualifications were to negotiate for others, to lead others. Mr. Alvarez returned the question by asking what Mr. Tompiss thought his qualifications were. Mr. Tompiss said that he had 17 years in the industry, "What about you?" Mr. Alvarez responded, "I've had three years of being screwed." Mr. Alvarez became more heated. Mr. Tompiss said, "Will you run if things get tough?" Alvarez said, "What do you mean?" Tompiss said, "Well, you've run before when things got tough. Will you run again now?" Alvarez responded in a still louder voice, "If you're referring to my bad conduct discharge, you scumbag, let's get it all out on the table. I served time in the brig." Mr. Tompiss, irate that he had been called a scumbag in front of the other dealers and the executives in the room, now raised his voice and said to the other dealers, "Is this the kind of man you want to lead you, an ex-con?" Alvarez then jumped across the table and attempted to punch Tompiss. He was pulled back by his waist by his friend Ms. Gordiello. Someone suggested that the name calling stop, and the meeting ended a few moments later. Mr. Tompiss and Mr. Alvarez shook each other's hand. Tompiss said, "Eddie, we'll get you to think management yet. I hope we'll hear from you." Alvarez responded, "You'll hear from my lawyers."

When Mr. Tompiss was deposed by Mr. Sheehy in preparation for this hearing, he denied having been the first to disclose the military history of Mr. Alvarez. The Deputy Attorney General alleges that the denial was a lie.

I CONCLUDE that the denial was not a lie. Mr. Tompiss was not the first to reveal the bad conduct discharge of Mr. Alvarez, although he did bait Mr. Alvarez into disclosing it himself. Furthermore, I FIND no negative inferences arising from Mr. Tompiss' use of the information concerning Mr. Alvarez in the manner which I have described. Mr. Tompiss had reason to believe that the information was true. He was advised by his attorney, a labor law specialist, that it was lawful and appropriate to use the information as part of the election campaign. In fact he was instructed by his attorney to so use it. Even so, in hopes that he could avoid actually using it, he hinted at it to Mr. Alvarez in the presence of the others. Mr. Alvarez, rather than back off, made the complete disclosure.

I **CONCLUDE** that Mr. Tompis acted lawfully and honorably throughout the entire transaction.

Based upon the outstanding background of Mr. Tompis, and the total lack of any evidence of bad character, I **CONCLUDE** by clear and convincing evidence that Mr. Tompis has the requisite good character, honesty and integrity to be a casino key employee.

For the foregoing reasons, it is hereby **ORDERED** that the key employee license of Michael A. Tompis be and is hereby renewed, effective on the date of the final decision in this case.

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.

6/20/84  
DATE

  
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

June 21, 1984  
DATE

  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 25 1984  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-203  
APPLICATION NO. 43875-21  
OAL DOCKET NO. CCC 264-84

---

IN THE MATTER OF THE APPLICATION :  
OF OLGA WATTS FOR A CASINO :  
EMPLOYEE LICENSE : FINAL ORDER

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This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on June 14, 1984, recommending that the application of Olga Watts for a casino employee license be denied; and no exceptions or objections having been filed thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on July 25, 1984, to modify the said Initial Decision and to deny the application,

IT IS on this 27th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. While the Administrative Law Judge concludes that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policies of the Casino Control Act and to casino operations, he fails to characterize which of petitioner's offenses is inimical. The Commission finds that the petitioner engaged in conduct on July 26, 1981, constituting the offenses of theft by deception,

contrary to N.J.S.A. 2C:20-4 and forgery, contrary to N.J.S.A. 2C:21-1 and unlawful use of a credit card, contrary to N.J.S.A. 2C:21-6, each of which constitutes an offense which renders her continued licensure inimical to the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

2. While the record is silent on the issue of rehabilitation, the Commission finds that based upon the entire record that the respondent has failed to demonstrate her rehabilitation from the disqualifying offenses set forth above.

IT IS FURTHER ORDERED that the application of Olga Watts for a casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 264-84

AGENCY DKT. NO. 83-EA-203

**OLGA WATTS,**  
Petitioner,

v.

**DIVISION OF GAMING  
ENFORCEMENT,**  
Respondent.

---

**APPEARANCES:**

**Paul J. Gallagher, Esq.,** for petitioner (Michael M. Land, attorney)

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

Record Closed: April 30, 1984

Decided: June 14, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of Olga Watts to the Casino Control Commission for a casino employee license permitting her to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner has established, by clear and convincing evidence, her reputation for good character, honesty and integrity, within the

meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the act.

2. Whether the petitioner has established, by clear and convincing evidence, her financial stability, integrity and responsibility, within the meaning of sections 89b(1) and 90 of the act.
3. Whether the petitioner, with specific reference to her record of arrests, has committed an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act.

#### PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated November 22, 1983, the Division of Gaming Enforcement interposed its objections to the licensure of the petitioner. By letter dated December 29, 1983, the petitioner requested a hearing on her license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on January 12, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 30-year-old resident of Atlantic City, New Jersey. She was awarded a Bachelor of Fine Arts Degree in Illustration by the Philadelphia College of Art in June 1976. It is undisputed that the petitioner successfully completed a 240-hour craps dealer course at Casino Schools, Inc., in February 1983.

Since April 1984, the petitioner has been employed as a cashier and preparation person at a pasta store in the Ocean I Mall in Atlantic City. She also receives additional income by doing free-lance art work. Since 1975, the petitioner has received income from seasonal work as a portrait artist on the boardwalk.

The Division of Gaming Enforcement has questioned the financial stability, integrity and responsibility of the petitioner, as a result of her delinquency on repayment of a loan from the Pennsylvania Higher Education Authority. According to the petitioner, she and her father had cosigned on a student loan which permitted her to continue to attend the Philadelphia College of Fine Arts. It was her understanding that her father would repay the loan and her first knowledge that the account was delinquent occurred when the situation was described in the Division's letter of objection, dated November 22, 1983. Since that time, the petitioner has repayed \$150 on the outstanding balance and she has agreed to pay \$100 per month (Exhibits P-2 and P-3).

The Division of Gaming Enforcement has also questioned the petitioner's suitability for licensure because of two incidents which led to the petitioner's arrest. The petitioner's first arrest occurred on April 12, 1980, when she was charged by the Atlantic City Police Department with a threat to kill, contrary to N.J.S.A. 2C:12-3 and possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4. The petitioner explained that this arrest followed an incident involving a tenant to whom she had recently rented an apartment which she owned. According to the petitioner, the tenant and a companion had started an electrical fire in the apartment which caused her significant concern. She approached the tenant, returned the rent money, and asked the tenant and his companion to leave the premises. An argument ensued and the petitioner then fired a pistol once or twice into the ceiling of the apartment.

It was the testimony of the petitioner that she felt the tenant was jeopardizing the apartment and that she didn't feel she was doing anything wrong. In fact, it was the testimony of the petitioner that she thought she was being practical.

It is undisputed that the charges against the petitioner were subsequently dismissed at the request of the prosecutor. According to the petitioner, she had a permit for her weapon, which was seized by the police, and she would like to petition for its return.

On July 26, 1981, the petitioner was arrested by the Division of Gaming Enforcement and charged with theft by deception, contrary to N.J.S.A. 2C:20-4; forgery, contrary to N.J.S.A. 2C:21-1; and unlawful use of a credit card, contrary to N.J.S.A. 2C:21-6. In addition, the Sands Casino Hotel Security Department was a complainant against the petitioner for criminal attempt, contrary to N.J.S.A. 2C:5-1. This arrest of

the petitioner followed her use and attempted use of a credit card, which did not belong to her, at two licensed casino hotels. Explaining the incident, the petitioner testified that she met a man named "Ritchie" on the boardwalk near the Golden Nugget Casino. According to the petitioner, "Ritchie" said that he had a credit card which was issued in a woman's name and he asked if the petitioner would agree to sign for a purchase using the card. The petitioner then purchased something for "Ritchie" and a gold-plated necklace for herself at the Golden Nugget Casino Gift Shop, using the credit card. According to the petitioner, "Ritchie" left to use the bathroom and never returned. Later the same day, the petitioner attempted to purchase sunglasses and chewing gum at the gift shop in the Sands Casino Hotel, but security personnel were summoned and the petitioner was subsequently arrested.

It is undisputed that the petitioner was subsequently indicted on the aforementioned charges. It is also undisputed that the petitioner was admitted to and successfully completed the Atlantic County Pretrial Intervention Program and the criminal charges against her were dismissed. When asked to explain her conduct, the petitioner testified that she was naive, having never owned a credit card, and that she had no knowledge that there was anything wrong with the card. Testifying on behalf of the Division of Gaming Enforcement, Investigator Thomas Seidler stated that he had been summoned to the Sands Casino Hotel, where he arrested the petitioner for her attempted use of a stolen credit card. According to Investigator Seidler, the petitioner's testimony at the hearing concerning the incident conformed with her explanation on the day of her arrest.

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

#### CONCLUSIONS OF LAW

Pursuant to sections 89 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity, as well as his financial stability, integrity and responsibility. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be

inimical to the policy of the act and to casino operations. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

To determine whether the commission of an offense would render an applicant's licensure inimical to the policies of the act requires consideration of several factors. The Casino Control Commission set forth in its opinion In the Matter of the Application of Resorts International, Inc. for a Casino License, 79-CL-1 (February 26, 1979) at page 15, the criteria to be applied when such a determination is to be made:

The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or to gaming, it would . . . encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The petitioner's first arrest occurred in April 1980, and it concerned her use of a firearm to attempt to resolve a dispute with her tenant. This conduct, which the petitioner curiously described as "practical," did not result in a conviction.

The petitioner's other arrest occurred in July 1981, when she used and attempted to use a credit card, which did not belong to her, to make purchases at two casino hotel gift shops. Because of her satisfactory completion of the Atlantic County Pretrial Intervention Program, the charges against her resulting from this offense were dismissed. The petitioner has no other arrests. However, only slightly more than two years have passed since her completion of the Pretrial Intervention Program and the dismissal of the charges arising from her use of the stolen credit card.

The petitioner's use of a firearm to attempt to resolve a dispute with her tenant appears to be a lapse in good judgment which the petitioner, as yet, does not fully understand. Her use of a credit card belonging to another, under the undisputed circumstances, was an attempt by the petitioner to "get something for nothing." Even if

she had no experience with credit cards, she knew that the card which she was using was not hers and that she would be obtaining merchandise at someone else's expense. Such conduct is evidence of dishonesty, which has occurred in the relatively recent past. In addition, it is significant that this dishonest conduct occurred on the premises of and involved two licensed casinos.

Based upon the foregoing discussion and specific findings of fact, I **CONCLUDE** that the petitioner has committed an offense which, when viewed in the light of all the circumstances, is of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. Therefore, I further **CONCLUDE** that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policy of the Casino Control Act and to casino operations. I further **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that she possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90 of the Casino Control Act.

The final issue to be addressed concerns the petitioner's delinquent account with the Pennsylvania Higher Education Authority. The petitioner has begun to repay this loan, following her becoming aware that it was in arrears. She has also made arrangements to continue to repay the loan on a regular basis. Accordingly, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her financial stability, integrity and responsibility. However, having concluded that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policy of the Casino Control Act and to casino operations, and having concluded that the petitioner has failed to establish her good character, honesty and integrity, I must further **CONCLUDE** that the petitioner's application for licensure should be **DENIED**.

#### ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Olga Watts, for a casino employee license, permitting her to work in a casino as a craps dealer, be **DENIED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

OAL DKT. NO. CCC 264-84

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

June 14, 1984  
DATE

14 JUN 1984  
DATE

JUN 18 1984  
DATE

ml

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Letter, dated March 2, 1984
- P-2 Copy of a check, dated March 31, 1984
- P-3 Copy of a money order

FOR THE RESPONDENT:

- R-1 Personal History Disclosure Form

WITNESSES

FOR THE PETITIONER:

Olga Watts

FOR THE RESPONDENT:

Thomas Seidler

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 81-EA-288  
OAL DOCKET NO. CCC 4886-83;  
CCC 11155-82 (ON REMAND)  
APPLICATION NO. 15900-21

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IN THE MATTER OF THE APPLICATION  
OF RICCARDO A. WHITTINGTON FOR A  
CASINO EMPLOYEE LICENSE

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on March 26, 1984, recommending that the application of Riccardo A. Whittington for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of May 16, 1984, by a vote of 3-1 (Chairman Read dissenting and Commissioner Jacobson not participating) to reject certain conclusions of law contained in the said Initial Decision and to grant the application,

IT IS on this *10th* day of JULY 1984, ORDERED that the following conclusions contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected:

1. Mr. Whittington has not established by clear and convincing evidence rehabilitation from his disqualifying offense. [Initial Decision at 5].
2. Mr. Whittington has failed to establish by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b). [Initial Decision at 3].
3. The application of Riccardo A. Whittington for a casino employee license be denied. [Initial Decision at 3].

IT IS FURTHER ORDERED that the following conclusion contained in the Initial Decision be modified as follows:

1. The Administrative Law Judge's finding that "in September 1979, [Mr. Whittington] was again convicted for possession with intent to distribute, a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c)" is modified to reflect that he pled guilty to the offense on December 19, 1979, resulting in a conviction on March 7, 1980, [R-1 in evidence]. Further, such conviction constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(3).

IT IS FURTHER ORDERED that the application of Riccardo A. Whittington be and hereby is granted 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 further upon the following findings:

1. Mr. Whittington has adequately demonstrated rehabilitation from his disqualification considering: (a) the passage of more than five years since he committed the disqualifying offense; (b) the applicant has avoided contact with the criminal justice system since his September 1979 arrest and resultant March 1980 conviction; (c) his

employment record over the past 10 years; (d) his pursuit of additional education and successful completion of a course of study in the game of craps at Casino Career Institute; and (e) his testimony that he has discontinued his involvement with any controlled dangerous substance since his arrest for the disqualifying offense in September 1979.

2. There being no other bases for disqualification, Mr. Whittington has demonstrated his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that, as a result of amendments to N.J.A.C. 19:41-9.14, Mr. Whittington pay an additional \$150 in application fees, which sum is due and payable prior to the issuance of a casino employee license.

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4886-83

AGENCY DKT. NO. 81-EA-288

**RICCARDO A. WHITTINGTON,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**APPEARANCES:**

**Riccardo A. Whittington, petitioner, pro se**

**Ralph Fusco, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

Record Closed: February 9, 1984

Decided: March 23, 1984

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

This matter concerns petitioner's request for hearing to contest respondent's complaint filed with the Casino Control Commission opposing his application for a casino employee license, pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The basic facts are undisputed. In June 1978, petitioner was convicted of possession of a controlled dangerous substance, marijuana, and received nine months probation. In September 1979, he was again convicted of possession of marijuana with intent to distribute, a statutory disqualifier pursuant to N.J.S.A. 5:12-86.c. He received a suspended sentence and one year probation.

The question presented is whether petitioner can affirmatively establish that he has been rehabilitated pursuant to N.J.S.A. 5:12-90h.

Petitioner is 25 years old. He testified that the 1979 conviction for distribution was for an amount under 25 grams. His 1978 conviction for possession involved an amount under one ounce. He testified that he had sold small amounts of marijuana for a few extra dollars during this period and that this was so common in his neighborhood that he hadn't quite understood it was wrong. He has not sold drugs or been involved with drugs since his 1979 conviction and now more fully appreciates the consequences of such acts.

Petitioner moved to Atlantic City in 1970. After graduating from high school in 1976, he enlisted in the Air Force. He was in the Air Force from March to November 1977 and was discharged for possession of marijuana and disobeying a non-commissioned officer. His discharge, however, was a "general discharge under honorable conditions". After returning to Atlantic City, he held what he thought were about ten jobs in succession for varying periods from a few weeks to a year. He could not recall them all. In 1978 he worked at Resorts for a short period and was terminated for taking a lunch break in a lounge where he shouldn't have been. He then worked as a busboy at Caesars for approximately a year and was let go. Sometime during 1979 he also worked for the Atlantic City Press. He and a coworker used a company truck which they were unauthorized to use to deliver papers. They were involved in an accident and petitioner, who does not have a license, was driving. He informed the Press that he had not been the driver. When the truth came out he was fired. Petitioner's license was apparently suspended because of an out-of-state speeding ticket which has not been paid. At the present time petitioner works part-time as a hot dog vender when he can get the work.

This is the substance of the record. I do not believe that it establishes rehabilitation. Petitioner was fairly young when he committed these crimes; the possession and distribution charge involved small amounts of marijuana; he has satisfied his probationary period and has had no subsequent difficulties with the law. That does meet some of the statutory criteria. Additionally, he was a credible and sympathetic witness and I accept as a fact his testimony that he grew up with this kind of activity all around him, and did not fully appreciate that it was wrong. The difficulty, however, is that the record provides no affirmative evidence of good character or conduct. It is not enough to have stayed out of trouble for a time. One must show through indicia like

employment history, community service, counseling or schooling that the situation has truly changed. Absent such a showing, I cannot find that he has met his burden by clear and convincing evidence. It is **ORDERED** that his application for a casino license be and hereby 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.

3/23/84  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

\_\_\_\_\_  
DATE

Receipt Acknowledged:  
*[Signature]*  
CASINO CONTROL COMMISSION

March 28, 1984  
DATE

Mailed to Parties:  
*Ronald J. Parkes*  
OFFICE OF ADMINISTRATIVE LAW

bm

EXHIBITS

R-1 Indictment, possession W/I to distribute; distribution; Judgment of conviction

R-2 Arrest Warrant

R-2a Judgment of conviction

WITNESS

Petitioner

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-EA-89  
APPLICATION NO. 51090-21  
REGISTRATION NO. 49970-40  
OAL DOCKET NO. CCC 4359-84

---

IN THE MATTER OF THE APPLICATION  
OF JACQUELINE WILSON  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 16, 1984, recommending that the application of Jacqueline Wilson for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of December 19, 1984, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 27th day of DECEMBER 1984, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

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

IT IS FURTHER ORDERED that, Jacqueline Wilson 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 application shall not prevent Jacqueline Wilson from retaining her casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4359-84

AGENCY DKT. NO. 84-EA-89

**JACQUELINE WILSON,**

Petitioner,

v.

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

Respondent.

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**Jacqueline Wilson, pro se**

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

Record Closed: October 5, 1984

Decided: November 15, 1984

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

Jacqueline Wilson applied to the Casino Control Commission for licensure as a casino employee with a position designation as craps dealer. The Division of Gaming Enforcement (Division) opposed her licensure in a letter to the Commission on May 1, 1984. The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 23, 1984 and a Prehearing Order was issued on August 1, 1984. Thereafter, a hearing was held at the Absecon City Hall on October 5, 1984 before Administrative Law Judge Jeff S. Masin.

THE ISSUES

The Division objects to Ms. Wilson's licensure on the grounds that she failed to disclose information material to the licensing determination, in violation of N.J.S.A. 5:12-86(b), the Casino Control Act (Act), and, in addition, that she does not have the requisite good character, honesty and integrity required for licensure as a casino employee. Specifically, the Division contends that Wilson failed to disclose arrests which occurred in June of 1980 and January of 1982 in Pittsburgh, Pennsylvania.

THE EVIDENCE

Ms. Wilson testified on her own behalf and agreed that she failed to disclose the arrests. The applicant, who is 25 years old, and has an 8 year old child for whom she receives no support, testified that she had no excuse for her failure to disclose her arrests. She did not do so because she had been denied other jobs which she had applied for when she disclosed her criminal record. She felt that the opportunity for employment in the casino industry was her "last hope" and was "something that she could do." She had worried about her actions for months after filing the disclosure form. When she received a telephone call from Division Detective James Barber on April 18, 1984 she panicked. She "took a chance" and "lied," sticking with her story that she had not been arrested "on impulse." After first denying that she had been arrested, she agreed that indeed she had.

According to police reports submitted in evidence by the Division, Ms. Wilson was first arrested on June 25, 1980 for receiving stolen property and retail theft. This incident arose out of her having been found in possession of three stolen credit cards. She had attempted to purchase \$59.92 in clothing with one of the cards. She was ultimately found guilty of retail theft and made restitution in open court. The matter was then discharged.

According to a complaint filed with respect to the second arrest on January 28, 1982, Ms. Wilson was charged with shoplifting of a \$2.19 anti-perspirant. According to information contained in the Division's letter of May 1, 1984, she was fined \$50 plus court costs and was placed on two years probation.

Ms. Wilson testified that she has been involved with working with the Atlantic City Mayor's Youth Program since December of 1984. She is now laid off from that

position. She had a job with Resorts as a cocktail waitress during February and March of 1984, but was terminated as a result of a dispute with her supervisors. She also worked at Harrah's Marina Hotel-Casino in October and November 1983, but after the first weekend was told that the other girls did not like her. The next weekend a discrepancy developed between herself and a cashier and she was let go. According to Detective Barber's investigation, as noted in his testimony at the hearing, the Harrah's personnel file, while giving no specifics, indicates that Wilson was terminated on November 14, 1983 and was not to be rehired. The Resorts' personnel file shows termination on March 11, 1984, with an unsatisfactory work performance and a "do not hire" notation.

Several character witnesses testified on Ms. Wilson's behalf. Joseph S. Brown, assistant administrator to the Director of the Department of Public Works in Atlantic City and vice president of the Atlantic City NAACP, testified that he has known Ms. Wilson as one who is willing to get involved, whereas many others are not. She works days and holidays with youth, something which many will not do. He has known Ms. Brown for a couple of years and when she first met him, she told him that she had been in trouble. Ms. Wilson has also been active in the NAACP's voter registration drive, of which Mr. Brown is chairperson.

Edward D. Coursey, a casino supervisor at Bally's, testified that he met Ms. Wilson two years ago through a mutual friend. He has found her to be quite responsible and very helpful to his mother, who is unable to get around on her own. He trusts Ms. Wilson completely. He also commented that her son had been "brought up right."

Officer Pedro Alexander of the Atlantic City Police Department testified that he is a friend of Ms. Wilson's and associates with her "often." He does not believe that Ms. Wilson could be dishonest at anytime. He has known her for seven years and was shocked to hear that she had been in any trouble, having first learned of her difficulties when she asked him whether he would testify as a character witness for her in connection with this matter.

Detective James Barber of the Division of Gaming Enforcement testified that when he interviewed Ms. Wilson she initially said that she had not been arrested, but then indicated that she had. She explained her 1980 arrest as a "dumb thing" which she did not disclose because she thought it would prevent her from getting licensed.

Detective Barber noted that in connection with the shoplifting offense in January of 1982, Ms. Wilson said that she had pled guilty even though she was not the one who had actually committed the offense.

#### DISCUSSION

This case presents the situation of one who, by her own admission, knowingly and intentionally lied to the Casino Control Commission in order to obtain licensure. While offering explanations, and character evidence to support the fact that she is of some worth to the community, Ms. Wilson has done little to give any real basis for concluding that she is a proper risk in terms of licensure. The very purpose of the Casino Control Act is to assure that those who work in the industry can be relied upon for their honesty, integrity and for their cooperation in the overall regulatory scheme. Licensing individuals who with complete knowledge of what they are doing voluntarily lie to the regulatory agency itself in the context of such a fundamental matter as the licensing process would be entirely inconsistent with the goals of the Casino Control Act.

#### FINDINGS AND CONCLUSIONS

I **FIND** that the applicant intentionally failed to disclose information concerning her arrests and convictions to the Commission. I **CONCLUDE** that the information withheld was essential and material to the licensing process. I **CONCLUDE** that the Act requires the denial of Ms. Wilson's application, pursuant to N.J.S.A. 5:12-86(b). Finally, I **CONCLUDE** that the actions of the applicant reflect adversely upon her good character, honesty and integrity and that she has failed to prove that she possesses these attributes by clear and convincing evidence, as required by N.J.S.A. 5:12-90.6 and 89b(2).

It is **ORDERED** that the application be **DENIED**.

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

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

November 15, 1984  
DATE

Jeff S. Masin  
**JEFF S. MASIN, ALJ**

Receipt Acknowledged:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**CASINO CONTROL COMMISSION**

Mailed to Parties:

NOV 20 1984  
DATE

Ronald J. Parker  
**OFFICE OF ADMINISTRATIVE LAW**

bc

EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of October 2, 1984 from Umar B. Salahuddin

On behalf of respondent:

R-1 Personal History Disclosure Form 2A, dated December 12, 1983

R-2 Arrest Report, Re: June 25, 1980 Arrest (3 pages)

R-3 Complaint No. 133190, Commonwealth of Pennsylvania v. Jacqueline E. Wilson, 1982

R-4 Probation card

R-5 Letter of July 31, 1984 from Honorable Donald Turner, Magistrate, Pittsburgh City Court