

1979

OPINIONS OF THE
CASINO CONTROL
COMMISSION

NAME OF CASE	DOCKET NO.	DATE OF DECISION
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Jimmie Elwood Anderson	79-17	12-11-79
In the Matter of the Application of <u>Atlantic Casino Training Academy, Inc.</u> for a gaming school license	78-CSI-1	3-21-79
In the Matter of the Application of <u>Jeffrey Bacharach</u> for licensure as a casino employee	79-EA-40 OAL CCC 1047-79	10-09-79 12-06-79
In the Matter of the Contract for Operation of the <u>Boardwalk Trams</u> by Resorts International, Inc.	79-CA-1	7-20-79
In the Matter of <u>John J. Carlacci</u>	78-32	6-25-79
In the Matter of <u>Paul Scott Cavalier</u>	78-31	10-29-79
In the Matter of the Application of <u>John T. Daniels, Jr.</u> for a casino employee license (dealer)	78-EA-13	12-13-79
In the Matter of the Application of <u>Douglas Frederick Eiker</u> for a casino employee license (dealer)	79-EA-44 OAL CCC 1048-79	11-15-79
In the Matter of the Application of <u>Karen D. Freney</u> for licensure as a casino employee (alcoholic beverage server)	79-EA-21 OAL CCC 402-79	8-06-79
In the Matter of the Application of <u>Augustine E. Gomez</u> for licensure as a casino and gaming school employee	79-EA-15 OAL CCC 230-79	8-09-79
In the Matter of the Application of <u>Barrie Lee Hanson</u> for a casino employee license	78-EA-2	4-04-79

<u>NAME OF CASE</u>	<u>DOCKET NO.</u>	<u>DATE OF DECISION</u>
In the Matter of the Application of <u>Sterling D. Hunter</u> for a casino employee license (dealer)	79-EA-31 OAL CCC 599-79	12-21-79
In the Matter of the Application of <u>Herman Eugene Johnson</u> for a casino employee license	78-EA-6	4-17-79
In the Matter of the Application of <u>Harry Melvin Maconigal</u> for a casino employee license	78-EA-7	4-30-79
In the Matter of the Application of <u>Anthony P. Pacchiano</u> for gaming school instructor license	78-EA-9	9-24-79
In the Matter of the Application of <u>Juan Antonio Padial</u> for a casino employee license	79-EA-43 OAL CCC 1046-79	9-21-79
In the Matter of the Application of <u>Christine Paul</u> for licensure as a casino employee (dealer)	79-EA-48 OAL CCC 1275-79	10-09-79
In the Matter of the Application of <u>Kenneth W. Probasco</u> as a casino employee (dealer)	79-EA-105 OAL CCC 1047-79	11-15-79
In the Matter of the Application of <u>Resorts International Hotel, Inc.</u> for a casino license	79-CL-1	2-26-79
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Resorts International Hotel, Inc.	78-21	10-22-79
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Resorts International Hotel, Inc.	78-21	3-12-79
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Resorts International Hotel, Inc., Walter S. Rogers and James Carr	78-22 thru 78-30	1-03-79

NAME OF CASE

DOCKET NO.

DATE OF DECISION

In the Matter of the Application of Resorts International Hotel, Inc., a casino licensee, to amend its casino license and its certificate of operation so as to authorize a 60,000 square foot boardwalk casino, the annexation of 168 sleeping unit motel building and the construction of the Broadway site addition.

79-CL-1
(addendum)

9-19-79

In the Matter of the Application of Angelo J. Ruggiero for Licensure as a casino key employee (pit boss)

79-EA-69
OAL CCC 2251-79

12-10-79

In the Matter of the Application of Ricardo E. Saborido for a casino employee license.

79-EA-12
OAL CCC 195-79

7-20-79

In the Matter of the Application of Alan S. Schneider for licensure as a casino employee (dealer)

79-EA-18
OAL CCC 403-79

10-15-79

In the Matter of the Application for Kathryn C. Sheldon for a casino employee license (cocktail server)

78-EA-5

4-23-79

In the Matter of the Application of Gerald Lance Stevenson for licensure as a casino employee (dealer)

78-EA-17

10-29-79

In the Matter of the Application of Andrew Tottenham for licensure as a gaming school instructor in blackjack and roulette

79-EA-71
OAL CCC 2257-79

12-06-79

Kenneth Uston v. Resorts International Hotel, Inc.

79-2

12-31-79

In the Matter of the Application of Albert G. Washington for a casino employee license (bulk coin handler)

78-EA-18

06-28-79

In the Matter of the Application of Thaddeus E. Watley for licensure as a casino employee (floorman)

78-EA-14

10-29-79

<u>NAME OF CASE</u>	<u>DOCKET NO.</u>	<u>DATE OF DECISION</u>
In the Matter of the Application of <u>Robert J. Weinstein</u> for licensure as a casino employee (slot attendant)	79-EA-30 OAL CCC 768-79	09-21-79
In the Matter of the Application of <u>Anthony N. Williams</u> for a casino employee license	78-EA-11	6-28-79
In the Matter of the Application of <u>Gregg Ladell Wilson</u> for licensure as a casino employee (slot mechanic)	79-EA-26 OAL CCC 684-79	08-30-79

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-17

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

ORDER DISMISSING

Charging Party, :

COMPLAINT

v.

JIMMIE ELWOOD ANDERSON, :

Respondent. :

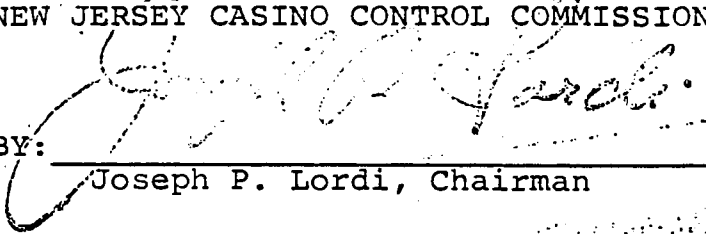
This matter, having been opened to the Commission by way of Complaint, docket number 79-17, filed by the Division of Gaming Enforcement; and it appearing that the criminal charges which gave rise to the said Complaint have been administratively dismissed by the Atlantic County Prosecutor's Office; and the Division of Gaming Enforcement having requested that the Commission dismiss the instant Complaint; and the Commission having carefully considered this matter at its public meeting of December 5, 1979; and good cause appearing,

It is on this 18th day of December, 1979

ORDERED that the Complaint in this matter be and is hereby dismissed; and it is further

ORDERED that a copy of this Order be served upon
Respondent Jimmie Elwood Anderson and the Division of Gaming
Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

Joseph P. Lordi, Chairman

DATED: December 18, 1979

FILED
NEW JERSEY

SEP. 21 1979

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for State of New Jersey
2465 South Broad Street
Box CN 047
Trenton, New Jersey 08625

CASINO CONTROL COMMISSION

By: Guy S. Michael
Deputy Attorney General
(609) 292-0940

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET No. 79-17

In re JIMMIE ELWOOD ANDERSON
A casino employee licensee

STATE OF NEW JERSEY,

Plaintiff,

-vs-

JIMMIE ELWOOD ANDERSON,

Respondent.

COMPLAINT

Plaintiff, State of New Jersey, acting by and through its Division of Gaming Enforcement, having its principal office at 2465 South Broad Street in the Township of Hamilton, County of Mercer and State of New Jersey says:

1. Plaintiff, through its Division of Gaming Enforcement is charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110; N.J.S.A. 5:12-1 et seq.) of enforcing the said act and

and regulations of the Casino Control Commission promulgated thereunder and of prosecuting violations of the said act and regulations before the Casino Control Commission.

2. Respondent, who is presently employed as a dealer by Resorts International Hotel, Inc., at its casino hotel in Atlantic City, New Jersey, is the holder of a valid casino employee license duly issued by the Casino Control Commission on May 25, 1978. The number of said license is 00049-21.

3. On August 4, 1979 Ms. Peggy Klein of 5007 Ventnor Avenue, Ventnor City, New Jersey signed a complaint against this respondent charging him with unlawfully breaking and entering her apartment at the above address and with committing a larceny of items of her clothing of a value in excess of \$200.00 therein.

4. On August 4, 1979, State Trooper Anthony Gatto of the Enforcement Unit of the Division of Gaming Enforcement arrested the respondent pursuant to a warrant issued by the Ventnor Police Department which charged respondent with violations of N.J.S.A. 2A:94-1 and of N.J.S.A. 2A:119-2.

5. N.J.S.A. 2A:94-1 provides that:

"any person who willfully or maliciously breaks and enters, or enters without breaking, any building, structure, room, ship, vessel, car, vehicle or airplane, with intent to kill, kidnap, rob, steal, commit rape, mayhem or battery, is guilty of a high misdemeanor."

6. N.J.S.A. 2A:119-2 provides that:

"Any person who
a. steals any money, goods, chattels or other personal property of another; or
b. digs, pulls, pulls up, picks, gathers, breaks, rips, cuts, severs, roots up, or otherwise destroys or damages, carries away or unlawfully appropriates, with intent to steal, any real or personal property of another, or any part thereof . . . Is guilty of a misdemeanor, if the price or value of such property be under \$200.00 and if the

price or value thereof be \$200.00 or over, such person is guilty of a high misdemeanor."

7. Section 90d of the Casino Control Act provides that the
Casino Control Commission

"shall deny a casino employee license
to any applicant who is disqualified
on the basis of the criteria contained
in section 86 of this act."

8. Section 86c of the Casino Control Act provides that the
Commission shall deny a casino license to any applicant who is disqualified
by virtue of a conviction under

"any of the following sections of
the statutory law: . . .
N.J.S.A. 2A:119-1 to 2A:119-5 . . ."

9. Section 86c of the Casino Control Act provides, in pertinent
part, that the Casino Control Commission shall deny a casino license to
any applicant who has been convicted of

"any . . . offense which indicates that
licensure of the applicant
would be inimical to the policy of this
act and to casino operations."

10. Section 86d of the Casino Control Act provides, in pertinent
part, that the Commission shall deny a casino license on the basis of
"current prosecution or pending charges" for any offense included in
section 86c, except that at the request of the person charged, the
Commission shall defer decision during the pendency of the charge.

11. Section 86g of the Casino Control Act provides that the
Commission shall deny a casino license to an applicant based on

"the commission . . . of any act . . .
which would constitute an offense under
subsection c (of section 86), even
if such conduct has not or may not be
prosecuted under the criminal laws of
this state...."

12. Violation by a casino employee licensee, a casino key employee licensee or by any person required to qualify in accordance with the standards prescribed in the Casino Control Act for a casino employee license or a casino key employee license, of N.J.S.A. 2A:94-1 or N.J.S.A. 2A:119-2, or conduct by a licensee as detailed in paragraphs 3 and 4 of this complaint, supra, is inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey inasmuch as such violations or conduct, that is, a licensee committing an illegal breaking and entry, or an entry without a breaking, with the intent to steal or commit another of the criminal acts enumerated under N.J.S.A. 2A:94-1, supra, or a licensee committing a larceny as described in N.J.S.A. 2A:119-2, supra, would unavoidably tend to erode public trust and confidence in the credibility, integrity and stability of casino operations and in the regulatory framework created by the Casino Control Act.

13. Section 129(1) of the Casino Control Act provides that the Casino Control Commission may, after appropriate hearings and factual determinations,

"revoke the license of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license."

14. Section 129(3) of the Casino Control Act provides that the Casino Control Commission may, after appropriate hearings and factual determinations,

"Suspend the license of any person pending hearing and determination, in any case in which license revocation could result."

WHEREFORE, plaintiff demands the following relief against respondent:

A. Judgment that a violation of N.J.S.A. 2A:94-1 and/or N.J.S.A. 2A:119-2, or conduct by a licensee as detailed in paragraphs 3 and 4 of this complaint, supra, requires disqualification from casino employee licensure and is of such a nature that licensure as a casino employee of a person convicted under N.J.S.A. 2A:94-1 and/or N.J.S.A. 2A:119-2 and engaging in such conduct would be inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey.

B. Judgment revoking the casino employee license of Respondent in the event that, based upon the circumstances that culminated in his aforesaid arrest on August 4, 1979, he is hereafter convicted of a violation of N.J.S.A. 2A:94-1 and/or N.J.S.A. 2A:119-2 and such other offense as the Casino Control Commission may determine is of such a nature that licensure as a casino employee of a person convicted thereof would be inimical to the policy of the Casino Control Act and to casino operations; or in the event that the Commission finds that the respondent engaged in conduct as detailed in paragraphs 3 and 4 of this complaint, supra.

C. The making and entry at the next regularly scheduled meeting of the Casino Control Commission of an Order suspending the casino employee license of respondent pending a license revocation hearing to be held by the Casino Control Commission subsequent to the ultimate disposition of the charges presently pending against respondent, or as such charges may from time to time be amended;

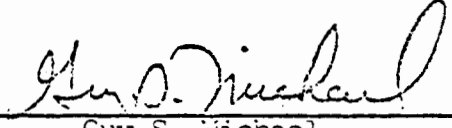
D. Judgment imposing such penalties as the Casino Control

~~Commission may deem just and appropriate under the circumstances, and;~~

E. Judgment for such other and further relief as the
Casino Control Commission may deem just and appropriate under the
circumstances.

JOHN J. DEGNAN.
Attorney General of New Jersey
Attorney for the State of New Jersey

By


Guy S. Michael
Deputy Attorney General

Dated: Trenton, New Jersey
September 1979



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

NOV 20 1979

November 15, 1979

CASINO CONTROL COMMISSION

R. Benjamin Cohen, Esq.
General Counsel
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: State of New Jersey v Jimmie Elwood Anderson
Docket #79-17

Dear Mr. Cohen:

As you may recall, a complaint against Jimmie Elwood Anderson was filed by the Division of Gaming Enforcement on September 21, 1979. That complaint sought the suspension and eventual revocation of Mr. Anderson's Casino Employee License on the basis of his arrest on August 4, 1979 on charges of breaking and entry and larceny.

Subsequent to the filing of that complaint, Division investigation has disclosed that the complainant in the criminal complaint against Mr. Anderson, a Ms. Peggy Klein of Ventnor City, New Jersey, had decided to withdraw that complaint against Mr. Anderson. As a result, the charges against him have been administratively dismissed, due to the absence of additional competent evidence to otherwise support those charges.

Given the present posture of the criminal case against Mr. Anderson, and the situation with regard to the available proofs on the charges, the Division is compelled to withdraw its complaint against Mr. Anderson.

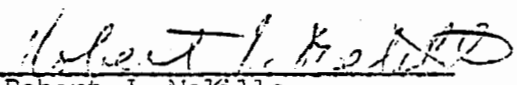
Page 2
R. Benjamin Cohen Esq.
November 15, 1979

However, this entire incident will be reconsidered at the time Mr. Anderson files for the renewal of his casino employee license, if he chooses to do so.

Very truly yours,

RICHARD P. MARTINEZ
DIRECTOR

By


Robert J. Melillo
Deputy Attorney General

RJM:mf

cc: Robert P. Martinez, Director
Peter R. Richards, Deputy Director
Guy S. Michael, Chief, Legal Section
Chief, Anthony Scalzone
Captain, Winters
Jimmie E. Anderson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-COI-1

IN THE MATTER OF THE APPLICATION:

OF ATLANTIC CASINO TRAINING :

ACADEMY, INC. FOR A GAMING : ORDER

SCHOOL LICENSE. :

The New Jersey Casino Control Commission having read and considered the March 6, 1979 Report and Recommendation of Robert J. Genatt, Hearing Examiner, which is attached hereto, and having considered any exceptions or objections to that Report and Recommendation,

It is on this 21st day of March, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Atlantic Casino Training Academy, Inc. for a gaming school license be and hereby is granted; and

It is further ORDERED that a copy of this Order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: Joseph P. Lordi
Joseph P. Lordi, Chairman

IN THE MATTER OF THE APPLICATION :

OF ATLANTIC CASINO TRAINING : REPORT AND RECOMMENDATION
ACADEMY, INC., FOR A GAMING :
SCHOOL LICENSE. :

F. Frederick Perone, Esq., appeared for the Applicant.
Shelley B. Lashman, Esq., appeared for Mr. Anthony Stolfo.
Joan Robinson Gross, Deputy Attorney General, appeared
for the Division of Gaming Enforcement.
Thomas N. Auriemma, Senior Assistant Counsel, appeared for
the Commission staff.

On or about April 3, 1978, Atlantic Casino Training Academy, Inc., [the Applicant] applied for a license to operate a gaming school at 1800 Brigantine Boulevard, Atlantic City. The material constituting that initial submission was forwarded to the Division of Gaming Enforcement [the Division] on or about April 26, 1978 for the appropriate investigation. Since that time, the Applicant has supplied much additional material in support of the application often at the request of the Commission staff.

Upon completion of its investigation, the Division filed with the Commission six letter-reports dated October 23, 1978. One of the letter-reports addressed the qualifications of the Applicant while four of the reports concerned the individual suitability of the four officers, directors and stockholders of the Applicant.¹

1. The sixth letter-report concerned Mr. Robert J. Alois, the proposed resident director. The Division objected to Mr. Alois who was accorded a separate hearing and whose qualifications are under review. As will be seen, the Applicant and its owners do not possess the requisite casino industry experience to operate the gaming school and must rely on a licensed resident director

Those individuals, their corporate position and the monetary and voting percentage of their equity holdings are as follows:

<u>NAME</u>	<u>POSITION</u>	<u>MONETARY</u>	<u>VOTING</u>
Frank Francesco	President	30%	27%
Albert Granieri	Vice-President	15%	16%
Anthony Stolfo	Treasurer	30%	31%
Paul Stolfo	Secretary	25%	26%

In its letter-reports, the Division indicated that the Applicant and its four owner-officer-directors were generally suitable. However, the Division urged that a hearing be conducted to explore certain questions raised by the Division's investigation. Specifically, the Division requested a hearing as to certain real estate transactions between the Applicant's principal investor, Anthony Stolfo, and members of the Cipresso family. The Commission granted this request, but, in the interest of efficiency and completeness, the proceedings were expanded to include all requirements for a gaming school license.²

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2. It must be emphasized that the matters addressed during the hearing process and considered in this report concern only those standards and criteria for the issuance of a gaming school license as opposed to a certificate of operation. In distinguishing between these stages, reliance has been placed upon the March 13, 1978, memorandum entitled "Processing Gaming School Applications" from Joseph A. Fusco, Special Counsel for Licensing to the Chairman.

To expedite the proceedings and to provide the parties with reasonable notice of the matters to be considered at the hearing, I requested Mr. Auriemma of the Commission staff to analyze the materials submitted by the Applicant along with the letter-reports of the Division and to prepare a report setting forth the staff's opinion as to which licensing criteria were satisfied and which required further proof or exploration at the hearing. At the pre-hearing conference, copies of Mr. Auriemma's memorandum, dated November 24, 1978, were distributed to all counsel. After the memorandum was carefully reviewed, counsel were offered an opportunity to object or except to any aspect of it. Since no objection was made, it was agreed that the memorandum would generally chart the course of the hearing. In essence, the hearing would concern the areas noted in the staff memorandum unless additional matters suggested themselves.

With regard to the criteria which were satisfied in the staff's opinion, it was agreed that the hearing examiner would independently review the memorandum and the supporting material to determine whether those particular criteria were met. As part of this procedure, the parties also agreed at the pre-hearing conference to admit into evidence as joint exhibits those items as to which there was no dispute and which formed the basis for the staff memorandum. The pre-hearing conference order (attached here) contains a schedule of these items, marked as J-1 to J-26, which were stipulated into evidence at the conference, including Mr. Auriemma's memorandum (J-24). After independently reviewing the pertinent criteria and the supporting material, I find that J-24

properly concluded that several criteria were met prior to the hearing and, with one addition, correctly indicated those standards and factual issues which were to be addressed at the hearing. For the sake of brevity and clarity, J-24 is attached hereto and is hereby made a part hereof.

As noted, J-24 recited several areas which were to be considered at the hearing. The pre-hearing conference order specifically stated that the factual issues to be determined by the Commission in deciding whether the Applicant and its owners are qualified concern the questions raised in the November 24, 1978, staff memorandum (J-24). In addition, the order required the Applicant to file a properly signed and notarized waiver of liability, consent to inspections, searches and seizures, and release authorization, which documents had apparently not been included in the Applicant's business entity disclosure form, J-12. Therefore, this report will consider only the areas which were the subjects of the hearing. Undisputed matters will not be reconsidered. Rather, reliance is placed upon J-24 and the materials described therein. I recommend that the Commission accept as satisfied those criteria as to which the staff memorandum (J-24) found compliance.

Under section 80 of the Casino Control Act (N.J.S.A. 5:12-80) and the regulations of the Commission relating to Applications (N.J.A.C. 19:41-1 et seq.), each applicant for a gaming school license must properly sign and notarize a waiver of liability, a consent to inspections, searches and seizures, and a release authorization. As mentioned, these documents did not appear in the original business entity disclosure form filed by

this Applicant and the deficiency was noted in the pre-hearing conference order. At the outset of the hearing on December 8, 1978, the Applicant's counsel produced an original of each document signed by all four owner-officers on behalf of the Applicant. Without objection, these were admitted into evidence as A-1. (T15-13 to 16-15).³ I find that this deficiency in the application has been corrected.

With respect to the matters noted in the staff memorandum, J-24, those which pertain to the Applicant itself, rather than the persons to be qualified, will be considered first. On page 4 of that memorandum it is noted that Commission regulation N.J.A.C. 19:44-3.7(d) requires a corporate gaming school to maintain a ledger at its registered office in New Jersey which ledger reflects the current ownership of every class of security issued by the corporation.

At the hearing, the Applicant called as a witness Mr. Joseph L. Petti, Applicant's proposed Director of Admissions and Sales, who has been instrumental in the preparation of the application and who has access to the corporate records. (T93-14 to 94-5). Mr. Petti testified that the corporate records are maintained at 1800 Brigantine Boulevard, Atlantic City and that these records do reflect the proposed stock ownership among the

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3. References to the hearing transcripts will use the following system of notation:

T refers to the transcript for Friday, December 8, 1978;

2T refers to the transcript for the morning of Monday, December 11, 1978;

3T refers to the transcript for the afternoon of Monday, December 11, 1978.

Exhibits and evidence will be prefixed by either an A for Applicant, or D for Division or a J for jointly offered documents.

four owners. However, a separate stock ledger book will be created and maintained at that address as soon as the stock certificates are actually issued upon licensure. (T109-24 to 116-17). Since 1800 Brigantine Boulevard is the address of the proposed school and is also the registered office of the Applicant (see J-22), I find that the Applicant is basically in compliance with the regulation. Future compliance, however, depends on the creation of a separate stock ledger book when the stock is issued, and on maintenance of that ledger to accurately reflect current ownership.

The Applicant is required to establish its financial stability, integrity and responsibility. N.J.S.A. 5:12-92(b) and 89(b)(1); N.J.A.C. 19:44-3.1. In order to better assess the Applicant's financial stability, I requested the Commission's Division of Financial Evaluation and Control to analyze the financial materials submitted by the Applicant and the letter reports of the Division of Gaming Enforcement. (J-6 to 10). In accordance with the pre-hearing conference order, the report prepared by the Division of Financial Evaluation and Control was completed prior to the hearing and made available to the parties.

At the hearing, the report was introduced into evidence as a joint exhibit, J-27, without objection. I advised counsel that I intended to review the report and, unless I disagreed with its reasoning, to accept its findings in the same manner as with the staff report prepared by Mr. Auricemma. (T12-25 to 15-9). The report finds that the Applicant has been adequately capitalized for the organizational phase and that future stability depends on performance. However, the report qualified its finding as being based on the continued participation of Anthony Stolfo, the primary source

of funding for the school in its start-up activities.

As to the financial stability of the Applicant and of Anthony Stolfo, the Division of Gaming Enforcement offered the testimony of one Vincent F. Clemente, an accountant investigator with the Division. Mr. Clemente participated in the financial investigation of Mr. Stolfo. Although Mr. Clemente raised a number of questions as to the basis for the Commission staff's financial evaluation of the Applicant, it developed that Mr. Clemente was not familiar with the information obtained by the Commission staff or the Division regarding the Applicant corporation. (2T20-9 to 23-22; 2T27-2 to 28-18). In fact, after Mr. Clemente's testimony, the Division attorney affirmed that the Division had not intended to raise any question as to the financial stability of either the Applicant or Anthony Stolfo. (3T6-4 to 24).

Based on the Division's position and based on my own review of the financial report prepared by the Commission staff (J-27), I find that the Applicant has exhibited initial financial stability through its capitalization. Although the Applicant now has only a few hundred dollars in cash, the owners, especially Anthony Stolfo, have indicated willingness to extend additional funds until the Applicant is operational. (see 2T72-3 to 24; 2T96-4 to 97-14; 2T98-23 to 101-10). In fact, Mr. Stolfo's company, Stolfo Enterprises, Inc., which sub-leases the school premises to the Applicant, is absorbing all rental and insurance payments until the school is operational. (2T101-11 to 102-6). Moreover, only Robert Alois, the proposed resident director, was still drawing a weekly salary of \$150. Thus, the expenses of the school had been essentially eliminated while awaiting Commission approval.

Although the projected income statements and market demands submitted by the Applicant indicate a strong probability of successful operation and although the Applicant is scheduled to receive at licensing \$20,000 currently being held in escrow by the First National Bank (3T39-2 to 40-16), both the financial evaluation report (J-27) and the staff memorandum prepared by Mr. Auriemma (J-24) recommend that the Applicant be required to post either a surety bond or a letter of credit in an amount sufficient to "guarantee its faithful performance of all agreements and contracts with the students enrolled therein." N.J.A.C. 19:44-11.1 and 11.4.

The Report of the Division of Financial Evaluation and Control (J-27) requests that the surety bond or letter of credit be in the amount of \$100,000. This figure is based upon the Applicant's own estimate of the amount of student tuition which it will receive during one eight week class period. (J-27, pp. 3 and 4) At the hearing, counsel for the Applicant expressly agreed to provide either a surety bond or a letter of credit for \$100,000 prior to enrolling students or accepting tuition. (T95-19 to 97-19). Therefore, in accordance with the regulations of the Commission, I recommend that it be a condition of licensure that no certificate of operation will be effective until the Applicant provides either a surety bond or a letter of credit in the amount of \$100,000 and otherwise acceptable to the Commission to insure the tuition and expenditures of the students. Further, the amount of the bond or letter of credit may be varied by the Commission if the actual experiences of the Applicant reveals that a greater or lesser

amount is sufficient to protect the students.⁴

A gaming school applicant must satisfy the Commission that it has insurance coverage "adequate to protect its financial interests, to maintain its solvency in the case of loss by fire or other causes and to afford it reasonable protection in instances of personal and public liability." N.J.A.C. 19:44-10.1. At the pre-hearing conference, three letters relating to insurance coverage were admitted into evidence as J-23A, B and C. Although these letters indicated that coverage for calamity, liability and worker's compensation would be available in certain amounts, the staff memorandum (J-24) requested clarification as to the carrier, the amounts of coverage and whether the coverage has commenced.

At the hearing, Mr. Petti testified that the Applicant's insurance broker had secured coverage from the Insurance Company of North America. The binder, A-2 in evidence, shows that coverage was effective from December 1, 1978 to February 1, 1979. (T94-6 to 95-17). Mr. Petti asserted that the coverage limits of the policy were recommended by the broker as being adequate to protect the school from a major claim. (T125-12 to 126-2; T140-20 to 142-10). Mr. Anthony Stolfo, the principal investor and stockholder, also testified that the coverage amounts were determined on advice of the Walter-Rogge Insurance Agency and in consideration of additional fire insurance coverage maintained by Stolfo Enterprises, Inc., as part of its lease of the premises. (2T118-3 to 119-5; 3T60-12 to 61-7).

From the foregoing, I find that the amounts of insurance indicated in A-2 are reasonably adequate to protect the financial interests and solvency of the school. However, the binder (A-2)

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4. The Applicant was incorporated on March 22, 1978 (J-18) and, of course, has not been operational as a gaming school. The absence of meaningful activity in fiscal year 1978 renders it unnecessary for the Applicant to provide audited financial statements for that year. See N.J.A.C. 19:44-10.3. Moreover, the Division has verified the financing of the Applicant. (J-6).

has apparently lapsed. Therefore, as a condition of licensure, the Applicant should be required to provide the Commission with proof that adequate coverage is in effect.

The Applicant must establish the sufficiency of its business ability and experience to establish the reasonable likelihood of its success and efficiency as a gaming school. (N.J.S.A. 5:12-92(b) and 89(b)(3) and N.J.A.C. 19:44-3.3. Although the cumulative business experience of the four owner-officer-directors would appear sufficient to provide the general ability required, it is undisputed that none of these individuals possess the prior experience in the casino industry that is required. Rather, there was testimony that the Applicant would rely on a licensed resident director to manage the gaming aspects of the school on a day to day basis. (See 3T192-17 to 21; 3T225-3 to 12). For these reasons, it is recommended that, if a license is issued, no certificate of operation be granted until the Applicant demonstrates that it has employed a licensed resident director.

Under N.J.A.C. 19:44-9.3, if the school facilities are leased, the lease must be reduced to writing and signed between the owner of the school and the owner of the facilities. Further, the lease agreement must relate the length and conditions of the lease and a copy of the agreement must be submitted to the Commission. In the present case, there are two agreements which are pertinent. The school occupies a portion of the Rum Point Inn at 1800 Brigantine Boulevard, Atlantic City. The school premises are leased by the Applicant from Stolfo Enterprises, Inc., under a written lease, dated April, 1978, which was filed with the Commission and admitted into evidence as J-16. That agreement

states that the term of the lease is one year renewable by written notice from month to month until 1980 at a monthly rental of \$1,000.

The second agreement is between Stolfo Enterprises, Inc., and Performance Resorts, Inc. This agreement is both a lease and an option to purchase the entire Rum Point Inn property. Under the lease, Stolfo Enterprises is entitled to occupy the premises for 24 months commencing on May 1, 1978, for \$5,000 per month. In addition, Stolfo Enterprises is required to maintain fire and casualty insurance coverage and to make certain other payments. Under the option, Stolfo Enterprises may by November 1, 1979, pay \$40,000 to Performance Resorts for the right to purchase the property for \$1,500,000 by April 30, 1980. However, Performance Resorts can sell the buyer's option for not less than \$2,750,000 with any amount over \$1,500,000 to be split equally between Stolfo Enterprises and Performance Resorts. In such case, the lessee would have 180 days to relocate. This agreement has been signed by both parties and notarized. It therefore appears that the agreement meets the minimum requirements of N.J.A.C. 19:44-9.3.

Aside from the lease, the staff memorandum (J-24) raised other questions concerning the physical facilities. Although the Division's letter-report (J-6) indicates the general adequacy and suitability of the physical plant, that letter noted that a fire alarm system would probably be required to obtain a certificate of occupancy and that a burglar alarm would be installed to improve the security of the school. At the hearing on Friday, December 8, 1978, counsel for the Applicant offered a certification from Eastern Alarm and Signal Company, dated December 7, 1978, which

indicated that burglar and fire alarm systems would be installed by noon on December 8th. This certification was received into evidence as A-3 without objection. (T97-19 to 98-21).

Mr. Petti testified at the Friday session that a certificate of occupancy could not be obtained from Atlantic City until installation of the burglar and fire alarm systems was completed. (T108-3 to 23). On the following Monday, December 11th, Mr. Petti related that he had telephoned his secretary at the school and had been informed that the city inspectors had just verbally approved the certificate of occupancy. (3T102-9 to 103-12). At my request, Mr. Petti did, subsequent to the hearing, forward a copy of the certificate of occupancy to all counsel and to the hearing examiner. I am satisfied that the certificate of occupancy has been issued and that burglar and fire alarm systems have been installed at the school. The burglar alarm, combined with the locked cabinet for storage of gaming chips and the safe for maintenance of important papers, appear to provide adequate security. (See J-6, p.5; T129-3 to 17). The certificate of occupancy evidences compliance with local building and fire codes.

In order to be acceptable for use as a gaming school, the facilities must reasonably accomodate handicapped employees and students by being "readily accessible to and usable by such handicapped persons." N.J.A.C. 19:53-7(b)(1). The Division's letter report (J-6) observed that: "Consideration to the handicapped has been given with rest room facilities on the first floor and at least one table of each game placed on the first floor." At the hearing, Mr. Petti testified that a certain diagram, A-5 in evidence, accurately described the dimensions and structure of both the 1st and second floor of the school with the exception only that the

door to the library on the first floor had been moved and widened and that certain gaming tables shown in A-5 had been rearranged. However, all games, slot repair and the library were available on the first floor. (T100-9 to 108-1).

Mr. Petti further testified that doorways were designed and placed with the handicapped in mind. The main entrance is three feet wide and a wheelchair could reach any necessary location on the first floor. The slot training area is not accessible from the interior of the rest of the first floor and students must exit by the front door, proceed along the walkway and enter the slot area from a side door. However, Mr. Petti asserted that there are no steps at the doors or on the walkway and that both doors are three feet wide. (T127-12 to 128-3; T134-15 to 136-22). At the request of Applicant's counsel, notice is taken of regulations pertaining to barrier free design for school buildings. (2T3-1 to 4.7). N.J.A.C. 6:22A-5.3 requires that doorways have a "clear opening passageway of no less than 32 inches when the door is open" to accomodate wheelchairs and other appliances. As noted, the diagram of the proposed school indicates such clearance for doorways to all teaching areas. The doorway to the area marked Conference-Lounge-Library has, according to Mr. Petti, been relocated on the right hand wall and is now five or six feet wide. Furthermore, one of the two rest rooms located on the first floor was designed for wheelchair use and appears to conform to the standards required for handicapped toilet facilities for schools as described in N.J.A.C. 6:22A-5.7. (T128-4 to 14). I find that the proposed school has made reasonable accommodations for handicapped students and employees.

To this point, the report has attempted to focus on the qualifications of the Applicant itself, i.e., the corporate entity and its compliance with specific requirements in the regulations. However, this distinction is somewhat artificial since the attributes of this Applicant are in large part derived from those of its four owner-officer-directors. Section 92 of the Casino Control Act (N.J.S.A. 5:12-92), mandates these individuals to qualify to the standards, except residency, established in section 89, N.J.S.A. 5:12-89, for casino key employees. Basically, section 89 requires each such individual to establish by clear and convincing evidence that he has: financial stability, responsibility and integrity; good character, honesty and integrity; and sufficient business ability and experience to indicate the likelihood of success and efficiency in the venture. Additionally, it must not appear that any of the individuals suffers from any of the disqualifying factors set forth in section 86. N.J.S.A. 5:12-86. The Division of Gaming Enforcement filed separate letter-reports on each of the four qualifiers. (J-7 to 10). These letter-reports and the materials submitted to the Commission were reviewed by the staff prior to the hearing and certain questions were raised in the staff's memorandum, J-24. Only those questioned areas were explored at the hearing and only those areas will be discussed and resolved herein. To the extent that no question was raised by either the Division or the staff, I am satisfied that no problem exists. Thus, Mr. Paul Stolfo appears to be qualified and I so find.

With regard to Albert Granieri, the Division did not interpose an objection but noted that Mr. Granieri had apparently been involved in many civil suits between 1954 and 1964 when Mr.

Granieri was self-employed as an electrical contractor. However, Mr. Granieri did not list any of these judgments in response to question 79 of his personal history disclosure form -1 (J-4) which asks whether the individual has "ever been a party to a civil suit." In addition, the Division noted that Mr. Granieri did not disclose that his brother, Fred, had been arrested in 1956 for burglary and that his nephew, Glen Granieri, had been arrested in 1971 for possession of a controlled dangerous substance. (J-7).

At the hearing, Detective Joseph M. Copp testified for the Division that he had searched the records of the Montgomery County Court House in Pennsylvania and had discovered eight judgments against Mr. Granieri between 1954 and 1964. The records also indicated that most of the judgments had been satisfied. (T68-14 to 71-19). Detective Copp also related that he spoke to Mr. Gilbert Kimble of the Middle Department of the Association of Fire Underwriters where Mr. Granieri was employed as an electrical inspector from 1963 to 1972. According to Mr. Kimble, Mr. Granieri was dismissed as incompetent for failure to follow orders and for being too strict in applying the building codes. (T90-1 to 92-9). This last assertion raised an additional question since Mr. Granieri had stated in response to question 37 on his disclosure form that he left "to accept a better position."

Mr. Granieri testified that the eight judgments related by Detective Copp arose from several small bank loans most of which were related to his then business as an electrical contractor. Mr. Granieri stated that in each instance he signed a judgment note as part of the loan application procedure. However, in each case there was a fixed repayment schedule and Mr. Granieri asserted that

he met every payment when due. He flatly denied ever being served with process and further denied ever making a payment as a result of any court action. (3T173-7 to 177-17). With regard to his employment with the Association of Fire Underwriters, Mr. Granieri insisted that he had not been discharged but had decided to leave because of reorganization of the company and a potential lessening of the company's standards for inspection. (3T179-2 to 180-20; 3T188-70 to 190-12). In support of this position, Mr. Granieri produced two letters which were admitted into evidence without objection. One letter (A-16) was written by a Mr. Kurt Voitel, a former Assistant Superintendent for the Association, who praised Mr. Granieri's work and indicated that Mr. Granieri had advised Mr. Voitel of his intention to resign two months in advance. The other letter (A-17) was written by a Mr. Russ McLaughlin, President of the Middle Atlantic Electrical Inspections, Inc., who stated that he was familiar with Mr. Granieri's work for the last 10 years, that it was of the highest quality and that Mr. McLaughlin would welcome Mr. Granieri as an employee of his company. Lastly, as to the arrests of his brother and nephew, Mr. Granieri testified that he was unaware of those incidents until he received the Division's letter-report (J-7). He explained that he did not maintain a close relationship with his brother's family. (3T182-23 to 184-11).

I find that Mr. Granieri's testimony was credible. I accept his explanation as to the nature of the so-called judgments lodged in the Montgomery County Court House records and I find that he properly responded in the negative to question 79 since he had not in fact been involved in any civil suits. I also find that Mr. Granieri voluntarily left the employ of the Association of Fire

Underwriters and that Mr. Kimble's characterization of Mr. Granieri as incompetent is unjustified. In this regard, I note that Mr. Granieri supplied a plausible reason why Mr. Kimble might have had a motive to assail Mr. Granieri in this manner. (3T188-20 to 190-12). Further, I find that Mr. Granieri truthfully stated that he was not aware of alleged arrests of his brother and nephew. Thus, I conclude that Mr. Granieri did not attempt to mislead the Commission or to withhold any material information. See N.J.S.A. 5:12-86(b). Moreover, I find that Mr. Granieri is a man of character and one who possesses significant business ability, based upon his background and employment history.

With regard to Frank Francesco, the Division stated in its letter-report (J-9) that Mr. Francesco did appear to possess "that degree of personal integrity and reputation" demanded for a owner-officer-director of a gaming school. The Division interposed no objection to Mr. Francesco as president of the Applicant and one of the four stockholder-directors. However, the Division noted that Mr. Francesco had been acquainted with one Angelo Bruno, one Peter Maggio and one Mario Maggio whom the Division characterized as having reputed organized crime affiliations. The Division also observed that Mr. Francesco is experiencing financial difficulties. He has been unemployed for some time and has a number of financial obligations outstanding, including the maintenance of monthly payments on a \$70,000 blanket mortgage which was undertaken to consolidate certain debts and to finance Mr. Francesco's investment in the gaming school. In addition to these areas, the Commission staff memorandum (J-24) raised the issue of Mr. Francesco's business experience and ability to serve as president of the Applicant.

As to the alleged associations of Mr. Francesco with undesirable persons, Detective Richard F. Gallo testified for the Division that he thoroughly investigated these allegations. (T22-12 to 19-25). Detective Gallo indicated that Mr. Francesco fully and freely discussed the fact that he was acquainted with Angelo Bruno and the Maggios by virtue of his being raised in South Philadelphia and that he had briefly worked as a trucker for the Maggio Cheese Company in 1967. Mr. Francesco advised Detective Gallo that he first became interested in gaming schools in 1977 when he was approached by Joseph Richards and Robert Weinstein as part of the then proposed Garden State Gaming and Electronics School. Mr. Francesco revealed that Richards and Weinstein initially asked him if he could obtain underworld backing for the school from Angelo Bruno or the Maggios. However, based on his investigation and interviews with Mr. Francesco, Detective Gallo declared that he was satisfied there was nothing more than a neighborhood acquaintance between Mr. Francesco and these individuals. Detective Gallo found no sinister or surreptitious ties between them. (T22-18 to 23-14; T23-15 to 19; T24-22 to 25-6; T36-12 to 25).

Similarly, Detective James M. Vogt investigated an allegation that Mr. Francesco was associated with the Testa family of Philadelphia which family has reputed organized crime connections. Detective Vogt related that he explored an allegation that Mr. Francesco had brought Philip Testa to a meeting of the Garden State organizers. Detective Vogt questioned several people also attending the meeting and showed them a photograph of Mr. Testa. Those people denied that Mr. Testa was present, although someone who resembled Mr. Testa did attend. Mr. Granieri and Mr. Francesco advised Detective Vogt that it was Mr. Granieri whom Mr. Francesco

brought to the meeting. (T50-9 to 52-3).

Detective Vogt also investigated an allegation that Mr. Francesco's aunt, Josephine Greco, was Testa's sister. Although this was not borne out, Mr. Francesco acknowledged that his aunt was acquainted with John and Philip Testa from her neighborhood in Philadelphia. Moreover, Mr. Francesco revealed that he was similarly acquainted with the Testas and that about one year prior to the investigation Mr. Francesco had chanced to meet John Testa on the street while Mr. Francesco was visiting relatives in Philadelphia. At that time, Mr. Francesco spoke to Testa and asked if he could recommend an attorney to help Mr. Francesco with the problems he was encountering in relation to the Garden State School. Mr. Francesco related that Testa did not recommend anyone to him. (T52-4 to 53-14). Detective Vogt concluded that there was no indication of any significant relationship between Mr. Francesco and the Testas. (T53-15 to 27). Further, Detective Vogt stated that Mr. Francesco was cooperative and candid, that he volunteered the information and that there was no reason why Mr. Francesco could not meet the qualification standards. (T53-15 to 22; T56-4 to 15; T64-1 to 16).

As to his acquaintance with reputed crime figures, Mr. Francesco testified at the hearing and repeated the information which he had previously provided to Detectives Gallo and Vogt. Mr. Francesco explained that he had approached Mr. Testa on the street because he was confused and troubled by the developments occurring in the Garden State project and had been seeking help from anyone whom he thought could recommend an attorney or give advice on his legal problems. He indicated that it was a chance meeting and a

spur of the moment decision to speak to John Testa. (3T222-7 to 223-2; 3T235-20 to 238-7). Mr. Francesco further acknowledged that he had met Angelo Bruno on a few occasions and that his aunt, Josephine Greco, knew Mr. Bruno and occasionally visited him. (3T211-14 to 214-11). However, Mr. Francesco asserted that he had never had any substantial conversation with Mr. Bruno, that he had not seen him in eight or nine years and was not sure that Bruno could even recognize him. (3T214-12 to 25; 3T221-18 to 222-6; 3T225-13 to 24; 3T240-14 to 19). Mr. Francesco also testified that he had not seen either Peter or Mario Maggio since he worked at the Maggio Cheese Company in 1967. (3T225-13 to 24).

Based on the evidence before me, I find that Mr. Francesco's contacts with alleged organized crime members are not significant. I find that Mr. Francesco has been honest and forthright in volunteering this information and that these acquaintances neither reflect adversely on his character (N.J.S.A. 5:12-89(b)(2)) nor evidence an association inimical to the policies of the Casino Control Act or to gaming operations. N.J.S.A. 5:12-86(f).

With respect to Mr. Francesco's financial stability and responsibility, Detectives Gallo and Vogt testified that Mr. Francesco was indebted to a number of creditors and, as of October 13, 1978, Mr. Francesco was in arrears by approximately \$11,000. (T25-19 to 27-19; T47-1 to 48-17). These financial difficulties were the result of Mr. Francesco's unemployment since July, 1977 and his subsequent devotion of his efforts to promoting two gaming school proposals. As noted, Mr. Francesco's major long-term financial obligation is the payment of monthly amounts due on a \$70,000 mortgage with the First National Bank, which mortgage was

undertaken to consolidate certain debts and to finance Mr. Francesco's participation in the present proposal. The payments on the mortgage are current. (T48-18 to 49-10). The other significant obligation is the repayment of a \$4,000 personal loan from one Dr. Azzato which Mr. Francesco obtained in relation to the Garden State School project from which, for various reasons, Mr. Francesco disassociated himself.

Significantly, the detectives verified that Mr. Francesco had previously contacted all his creditors and had requested their tolerance until the gaming school was operational. He did not refuse to pay any of his obligations and testified that he intends to repay all his debts. (See 3T209-7 to 21). Even more importantly, Detectives Gallo and Vogt and Investigator Clemente all agreed that if the school is licensed and Mr. Francesco receives his scheduled salary of \$25,000 per annum he will be able to manage his finances and repay his obligations. (T44-16 to 25; T61-21 to 63-21; 2T19-14 to 20-4). The financial evaluation report prepared by the Commission staff (J-27) concurred in this opinion subject to any new information which might arise from Mr. Francesco's testimony. I do not find any such new information which would alter the staff's evaluation.

Based on the evidence, I find that Mr. Francesco's financial stability over the last two years has been doubtful. However, Mr. Francesco's problems are understandable in light of his full time efforts to establish a gaming school and his unforeseeable difficulties in that endeavor. Although traditional accounting methods would evaluate stability on historical data, I find that the Casino Control Act would not be offended by assessing

Mr. Francesco's financial condition in light of his now well founded expectation of receiving his promised salary in the immediate future. In light of the unanimity of opinion on the question, I find that Mr. Francesco will be able to regain his financial balance when that salary commences. Further, I find that, despite his problems, Mr. Francesco exhibited financial integrity and responsibility in contacting his creditors, requesting their patience and assuring them of his intention to meet his obligations. See N.J.S.A. 5:12-89(b)(1).

The remaining question regarding Mr. Francesco concerns his previous business experience and ability to serve as president of the Applicant. Mr. Francesco's personal history disclosure form (J-2) and his testimony at the hearing reveal that he held no management or supervisory position until his last employment at Dependable Delivery from September, 1974 to July, 1977. Mr. Francesco related that he began at Dependable Delivery as a truck driver but after six months he was elevated to warehouse manager. In that capacity he was responsible for shipping, receiving, repair orders and customer relations. In this role, he was entrusted with a degree of discretion and responsibility. (3T207-6 to 208-3). He was in charge of six trucks with two employees assigned to each and six or eight warehousemen. Moreover, he was required to evaluate the performance of personnel. (3T230-4 to 232-13).

Since his involvement with the present Applicant, Mr. Francesco has been performing the duties of that office and he expressed his belief that he could competently manage the responsibilities attendant thereto. (3T226-17 to 227-24). Because he has no gaming experience, however, Mr. Francesco indicated that he

would rely on a resident director to handle the technical aspects of running the school. (3T225-3 to 12). Of significance in evaluating Mr. Francesco's competence are the opinions of his fellow investors and associates in the project. Messrs. Granieri, Petti and Anthony Stolfo all declared their satisfaction with Mr. Francesco's efforts and their willingness to retain him as president. Furthermore, these individuals indicated their confidence in Mr. Francesco's ability to learn and to draw upon the collective experience of the other owner-officers when necessary. (3T192-22 to 193-12; 3T56-8 to 57-4; 3T103-14 to 105-23).

Based on the evidence, I find that Mr. Francesco has sufficient experience and ability to serve as president of the Applicant. Although his prior managerial experience is limited his performance in the office to date and the confidence expressed by his fellow investors indicates that he should be given the opportunity to fill this position. Moreover, the importance which might otherwise attach to the presidency of this Applicant is diminished by the fact that a licensed resident director will be in control of the daily running of the school activities and that Mr. Francesco's fellow officers and owners are men who possess a substantial amount of business experience. Further, the students who attend the school will be protected from monetary loss by the posting of the required surety bond or letter of credit. I find therefore that Mr. Francesco is adequately qualified to be the president of the Applicant. See N.J.S.A. 5:12-89(b)(3).

Anthony Stolfo is the principal investor in the present gaming school project. In its letter-report (J-10), the Division asserted that Mr. Stolfo is a person of good character and reputation and that his personal associates are acceptable. Moreover, the

Division characterized Mr. Stolfo as a "man of means" who owns several parcels of property including the supermarket which is his primary business. However, the Division in its letter-report pointed out that Mr. Stolfo has engaged in three real estate transactions with the Cipresso family of Philadelphia. The Division stated that Edward and Leonard Cipresso have been arrested on a number of occasions, that Leonard has five convictions for lottery violations and that Edward has one conviction for lottery and conspiracy. The Division expressed concern that the three real estate transactions would result in Mr. Stolfo having a large amount of mortgages to the Cipresso family. In addition, the Division asserted that either Edward Cipresso or his close friend and associate, Louise Cassidy, have been managing the Golden Dolphin Motel which Mr. Stolfo purchased from Gemma Cipresso, Edward and Leonard's sister in 1974. Although the Division's letter indicated that Mr. Stolfo's cash flow was sufficient to meet his expenses, the Division requested that a hearing be conducted before the Commission decides Mr. Stolfo's qualifications.

At the hearing, Mr. Stolfo testified that he has been engaged in the grocery business for 19 years. He began with the Pioneer Food Market in Philadelphia in 1961. In 1969, he sold that business and moved to Brigantine where he purchased his present business, the Penn Food Market. (2T54-10 to 55-11). The market was obviously successful and in 1974 Mr. Stolfo was seeking other investments. Specifically, he wanted to purchase a motel in the Brigantine area. To this end, he contacted a real estate broker, Mr. Vitale, concerning a possible purchase of the Sandpiper Motel. However, Mr. Stolfo could not meet the downpayment. Subsequently, Mr. Vitale asked Mr. Stolfo if he would be interested in purchasing

the Golden Dolphin Motel for \$500,000. Mr. Stolfo indicated he would be interested if the terms were such that he could make the downpayment. A short time later, Edward Cipresso came to Mr. Stolfo's market and introduced himself as the owner of the Golden Dolphin. This was the first time Mr. Stolfo had ever seen Edward Cipresso. (2T66-25 to 68-18).

After some negotiations, it was agreed that Mr. Stolfo would purchase the stock of the Golden Dolphin Motel Corporation for \$500,000 with an \$80,000 downpayment and a mortgage of \$420,000. On March 14, 1974, the deal was closed. At that time, Mr. Stolfo learned that the Golden Dolphin was actually owned by Gemma Cipresso whom Mr. Stolfo has never met. At the closing, Mr. Stolfo executed a mortgage (A-7) and a bond (A-8) from the corporation to Gemma Cipresso in the amount of \$420,000. The mortgage provided for 8% interest and monthly payments of \$3,513.10. The mortgage contains a clause allowing prepayment without penalty after the third year. (2T58-3 to 62-11).

Mr. Stolfo also testified that, at the closing, he received a letter (A-9) purportedly signed by Gemma Cipresso advising that the mortgage had been assigned to the Aetna Federal Savings and Loan Association of Philadelphia and authorizing the monthly payments to be made to Aetna until further notice. At the same time, Mr. Stolfo signed a letter (A-10) to Aetna which acknowledged the assignment and agreed to mail the payments to Aetna. (2T62-12 to 66-24). However, from the inception, Mr. Stolfo made the monthly mortgage payment checks payable to Gemma Cipresso because he was instructed to do so by Edward Cipresso and Louise Cassidy. (2T74-20 to 75-15). Mr. Stolfo explained that it was his understanding

that the assignment of the mortgage to Aetna was "with recourse" and that the payments were made to Gemma Cipresso to assure that Mr. Stolfo was not in default. Mr. Stolfo added that he usually signed the checks and left them at the motel where Edward Cipresso or Louise Cassidy picked them up. Mr. Stolfo assumed that the money was transmitted to Aetna because he never received notification of any default. (3T25-12 to 27-2; 3T63-1 to 64-6). He insisted that, to the best of his knowledge, the mortgage had been assigned to Aetna. (3T73-25 to 74-16).

Mr. Stolfo related that, at the time of the Golden Dolphin purchase, he reached an understanding that he would have an option to purchase the property adjacent to the motel which would give Mr. Stolfo ownership of the entire block. (3T67-13 to 25). On September 15, 1976, Mr. Stolfo and his wife entered into a written agreement with Gemma Cipresso to memorialize this option. The agreement (A-13) specified that Mr. Stolfo was to pay \$5,000 immediately, \$5,000 on September 15, 1977, \$5,000 on September 15, 1978 and \$5,000 on September 15, 1979. To exercise the option, Mr. Stolfo must pay \$30,000 at settlement and execute a \$250,000 purchase money mortgage to Gemma Cipresso at 8% interest for 20 years. Prepayment of the mortgage is authorized at no penalty after the third year. (2T89-19 to 96-5). Mr. Stolfo stated that he intends to exercise this option since the value of the total property, that is, the Golden Dolphin and the option property, would be

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5. Although Gemma Cipresso's name and signature appear on this and other documents, Mr. Stolfo testified that she never appeared at any closing and that he has never met her. (see 3T27-9 to 29-24).

approximately \$2,000,000 for which he would have paid a total of \$800,000. In fact, Mr. Stolfo indicated that he had already been offered \$750,000 for the Golden Dolphin alone. (2T112-5 to 113-17).

The third transaction noted in the Division's letter-report (J-10) concerns the property at 3004 West Brigantine Avenue, Brigantine. Mr. Stolfo testified that he first became aware of the availability of this property through one Tom Barret, a realtor whose offices are located at that address. Mr. Barret approached Mr. Stolfo and requested him to buy the property so that Mr. Barret could remain there. Mr. Stolfo advised that he did not then have a great deal of cash on hand but authorized Mr. Barret to investigate possible terms. It was only after this conference that Mr. Stolfo learned that Edward Cipresso was the owner of the property. (2T108-17 to 109-19).

Negotiations led to an apparent agreement (A-14) which was dated January 2, 1978. The agreement indicates that the purchase price will be \$140,000 with a downpayment of \$15,000 and a purchase money mortgage to Edward and Catherine Cipresso for \$125,000. The putative mortgage would be for a 20 year term at 9% interest and will provide for prepayment with no penalty after the third year. Despite the apparent agreement, a dispute subsequently arose between the parties as to the continuation of an existing \$70,000 mortgage on the property. As a result, Mr. Stolfo has refused to finalize the sale unless he can assume the existing mortgage and reduce the remaining payment to \$55,000. To this end, Mr. Stolfo and his attorney have contacted the bank which holds the existing mortgage to arrange for the assumption. (2T96-24 to 108-7). Although the transaction has not been completed, both parties have operated on

the assumption that it would be. Thus, Mr. Stolfo has been collecting the rents on the property and has been paying \$1,124.70 a month on the mortgage. (2T109-20 to 111-2; 3T42-5 to 43-23). Mr. Stolfo indicated that he would attempt to complete the transaction since he was recently advised by Mr. Barret that a buyer had offered \$160,000 for the property. (2T111-3 to 12; 3T70-18 to 71-1).

As previously mentioned, the Division's letter-report alleged that Edward Cipresso and Louise Cassidy have been managing the Golden Dolphin since Mr. Stolfo purchased it in 1974. Moreover, the Division asserted that Edward's son, Michael, was on the Golden Dolphin payroll. Mr. Stolfo testified that after purchasing the motel he asked Louise Cassidy, who was then living at the motel with Edward Cipresso, to manage it. Mr. Stolfo explained that he did not have the time to personally manage the operation. Although he made repeated efforts to hire another manager in succeeding years, Mr. Stolfo had little success in finding a qualified person and had to request Louise to return as manager. At the present time, Mr. Stolfo is attempting to have his wife and one Barbara Lehman assume the management. However, Mr. Stolfo denied ever asking Edward Cipresso to manage the motel or authorizing him to take any actions on his behalf. (2T78-18 to 34-1; 2T86-21 to 86-13; 3T33-11 to 34-22). Mr. Stolfo also denied that he was ever requested by Edward Cipresso to retain Louise Cassidy as the manager. (3T76-9 to 77-20).

As to the nature of his relationship with the Cipressos, Mr. Stolfo testified that he had never met Gemma and that he had never heard of Leonard until he received the Division's letter-report. (2T87-20 to 89-14). He declared that his association with Edward Cipresso was solely limited to the business of the property

transactions, that he never socialized with Edward Cipresso, that he had never been to Mr. Cipresso's home and that Mr. Cipresso had been to Stolfo's home on only one or two occasions in connection with business. (3T66-7 to 67-12). Concerning Edward Cipresso's background, Mr. Stolfo related that, sometime during the year after the Golden Dolphin purchase, Mr. Cipresso told him that he had been arrested. However, Mr. Stolfo did not know the details of the arrest or even whether it eventuated in a conviction. (3T45-2 to 10; 3T62-9 to 25). With regard to Michael Cipresso, Mr. Stolfo advised that he had not seen Michael for two or three years. While he could not specifically recall, Mr. Stolfo acknowledged that he may have issued some checks to Michael on the Golden Dolphin account during the first two years after the purchase. (3T20-16 to 21-20; 3T64-15 to 24).

Detective Ronald R. Foster testified that he conducted an exhaustive background investigation on Mr. Stolfo. This investigation included examination of the criminal records, if any, of all persons whose names appeared in any of Mr. Stolfo's records or business dealings. In this regard, Detective Foster acknowledged that both Mr. Stolfo and his wife, Elizabeth, cooperated fully and made all books and records available. (3T107-8 to 108-4; 3T132-5 to 20). As a result of this examination Detective Foster found the Cipressos to be the only questionable persons with whom the Stolfo have dealt. (3T165-6 to 23).

Detective Foster related that Gemma Cipresso had no criminal record but that Edward and Leonard did. The criminal history for Edward (D-2) revealed that he had been arrested five times, three for lottery charges, and had one conviction for lottery and conspiracy in 1950. Edward's last arrest was in 1961

in Philadelphia. No other criminal involvement appears either in Philadelphia or in New Jersey where Edward has apparently resided since the early 1960's. (3T108-5 to 110-12).

Detective Foster advised that he had contacted the Philadelphia Police Department regarding the Cipressos. He was informed that Philadelphia had dormant intelligence files which reflected a surveillance of Edward and Leonard Cipresso in about 1960 in connection with unspecified information that they were the "head of the numbers racket in Philadelphia." (3T110-14 to 111-9; 3T117-4 to 21; 3T141-3 to 142-1; 3T142-24 to 143-18). With respect to Leonard Cipresso, Detective Foster testified that he had seven arrests with five convictions, one of which was for a lottery offense in 1961. Leonard Cipresso's last arrest was in 1962 for non-support. (3T118-2 to 119-2).

In the course of his investigation, Detective Foster examined all of the check ledgers of the Golden Dolphin since Mr. Stolfo's purchase in 1974. This examination revealed regular monthly mortgage payments to Gemma Cipresso. The cancelled checks bore endorsements by either Gemma or by Louise Cassidy or both and were deposited to the New Jersey account of Gemma Cipresso's corporation. Additionally, Detective Foster found a few checks to Edward Cipresso over the years. The largest of these checks was for \$400 and Mrs. Stolfo explained that it was for repair work done for Edward Cipresso in the motel swimming pool. Detective Foster also found checks to Michael Cipresso during the summers of 1974 and 1975. Mrs. Stolfo advised Detective Foster that Michael was then a teenager who worked during those summers at the motel. (3T121-16 to 124-10). Detective Foster did not photocopy the

checks to Michael or Edward Cipresso because he was satisfied by Mrs. Stolfo's explanation and there was no effort to hide these items. (3T139-6 to 140-15).

Detective Foster interviewed Louise Cassidy and Edward Cipresso on August 31, 1978. They corroborated Mr. Stolfo's testimony as to the extent of his relationship with the Cipressos, including the manner in which Mr. Stolfo first met Edward. (3T124-14 to 125-6). Further, Louise Cassidy told the detective that she was the secretary for Gemma's corporation, that she had power of attorney for Gemma, that she had exercised that power in depositing the mortgage checks and paying Gemma's bills, and that Gemma had "a mortgage" with Aetna which Louise paid for Gemma. (3T126-10 to 22).

Based on this interview and other aspects of his investigation, Detective Foster concluded that there was no evidence of any contact between Mr. Stolfo and either Gemma or Leonard Cipresso. Detective Foster also expressed his opinion that Mr. Stolfo's relationship to the Cipressos was limited to the three property transactions described above. (3T135-3 to 15; 3T136-16 to 137-5). Detective Foster found no question as to the authenticity and propriety of these transactions. The only concern which he had was that, if Mr. Stolfo were to encounter a cash flow problem, there might be some potential for economic influence from Edward Cipresso due to the amounts of the mortgages. (3T142-24 to 144-19).

Detective Foster acknowledged that, if Mr. Stolfo was able to sell his food market for \$370,000, then his liquidity would

improve markedly.⁶ In addition, Detective Foster agreed with Mr. Stolfo's estimate that the Golden Dolphin and the adjacent property were worth at least \$1,500,000 at the present time, well in excess of the \$622,000 mortgage liability that would exist. (3T163-13 to 164-14). Detective Foster observed that the financial and credit investigation revealed Mr. Stolfo had always been prompt and current in meeting his obligations. (3T152-23 to 153-12). As to Mr. Stolfo's character and reputation, Detective Foster declared that he was a "very fine man" and the detective had "no qualms" about him personally. Although noting his concern about the amount of the mortgages to the Cipressos,⁷ Detective Foster acknowledged that, in light of the equity in the property, the existence of prepayment clause in the mortgages and Mr. Stolfo's unquestioned integrity, it would be difficult for the Cipressos to exercise any strong influence on Mr. Stolfo. (3T165-24 to 167-23).

-
6. Mr. Stolfo testified that he was in negotiations for the sale of the food market to one Larry Sax who was in the process of raising the money. (3T10-16 to 11-10). The market is subject to a \$25,000 mortgage. (2T113-18 to 114-5).
 7. In discussing these amounts, it was assumed that the mortgage on the Golden Dolphin, currently \$372,000, was still held by Gemma Cipresso rather than the Aetna Federal Savings and Loan Association.

Based on the evidence presented, I find that Mr. Stolfo possesses that high degree of good character, honesty, and integrity required by the Casino Control Act. N.J.S.A. 5:12-89(b)(2). The only issue is whether the existence of the mortgages constitutes an association with an unsuitable person in such manner as to be inimical to the policies of the Casino Control Act and to gaming operations. N.J.S.A. 5:12-86(f). More specifically, the question is whether a real possibility exists that Mr. Stolfo and ultimately, the gaming school might be improperly influenced by an unsuitable individual. See N.J.S.A. 5:12-64.

Assuming for argument's sake that the Cipressos are presently unsuitable persons and assuming that the Golden Dolphin mortgage is held by the Cipressos rather than by Aetna Federal Savings and Loan Association, I find no reason to believe that a real possibility of improper influence exists. This conclusion is based on my finding that the value of the real estate far exceeds the present and proposed mortgages, that Mr. Stolfo may recast his obligations through use of the prepayment right, that Mr. Stolfo currently enjoys a basically sound financial position, and that Mr. Stolfo is a man of character who would not be susceptible to wrongful pressures. My conclusion is reenforced by the fact that, at the conclusion of the hearing, the Division of Gaming Enforcement stated that it did not object to Mr. Stolfo's qualifications. (3T 253-15 to 17).

In the interest of meticulous enforcement and without detracting from any of the foregoing, I would recommend that, as a condition of his qualification, Mr. Stolfo be required to promptly inform the Commission as to any future dealings with the Cipressos

or their agents, including Louise Cassidy. Without limiting this condition, this reporting should encompass the dealings as to 3004 West Brigantine Avenue and any alteration or modification of existing agreements, including any variation from the regular mortgage payment schedules.

SUMMARY

Based on my assessment of the evidence, and my findings of fact and conclusions of law, I recommend that the Atlantic Casino Training Academy, Inc. be granted a gaming school license, subject to the following:

1. that the Applicant assure the Commission that it has employed a licensed resident director;
2. that the Applicant assure the Commission that it has a surety bond or letter of credit acceptable to the Commission initially in the amount of \$100,000;
3. that Anthony Stolfo promptly provide the Commission with information as to any future dealings with the Cipressos or their agents and as to any modifications, alterations or variations regarding prior dealings with those persons;
4. that the Applicant pay all required licensing fees;
5. that the Applicant assure the Commission that adequate insurance coverage is in effect to protect its financial interests, to maintain its solvency in the case of loss by fire or other causes and to afford it reasonable protection in instances of personal and public liability.

Respectfully submitted,

Dated: March 6, 1979

Robert J. Gault
Robert J. Gault, Hearing Examiner



State of New Jersey

CASINO CONTROL COMMISSION

379 WEST STATE STREET
TRENTON, N.J. 08625
PHONE NUMBER 609-292-7730, 7731

ATLANTIC CITY OFFICE
TENNESSEE AND BOARDWALK
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COMMISSIONERS

WILLIAM F. X. BAND
EXECUTIVE SECRETARY

November 24, 1978

MEMORANDUM TO: Members of the Commission

FROM: Thomas N. Auriemma
Assistant Counsel

RE: Report upon application of Atlantic Casino
Training Academy, Inc. for a gaming school
license.

The analysis which follows incorporates my review of the application, of the August 24, 1978, report of Affirmative Action Officer Massie concerning the affirmative action program of Atlantic Casino Training Academy, Inc. /hereinafter the applicant/, and the October 23, 1978, reports of the Division of Gaming Enforcement.

This report is structured to first deal with license considerations relating to "the enterprise" and then address "the persons required to be qualified" as outlined in the March 13, 1978, memorandum of Special Counsel Joseph A. Fusco to Chairman Lordi. It should be noted, however, that the issue under consideration at the present time is whether or not a gaming school license should be issued to the applicant. If the Commission grants such license, the applicant would only be permitted to enroll students and offer courses after the issuance

of a "gaming school certificate of operation."

I. Gaming School License

A. THE ENTERPRISE

1. General Qualifications

A gaming school may be any form of enterprise - corporate, partnership or otherwise. N.J.S.A. 5:12-12,37, and 92. It must maintain an office in New Jersey and designate to the Commission an agent within New Jersey to accept service of process. N.J.A.C. 19:44-3.7 and 3.8. Its name must be approved by the Commission and it must maintain a listed telephone number. N.J.A.C. 19:44-7 and 9.8.

On or about April 3, 1978, an application for a gaming school license was received from Atlantic Casino Training Academy, Inc. wherein it seeks to operate a gaming school at 1800 Brigantine Boulevard, Atlantic City. Thereafter, on or about April 26, 1978, the application was forwarded to the Division of Gaming Enforcement for the appropriate background investigation. Supplemental information has been received periodically since the application was filed.

The applicant, a New Jersey corporation, was incorporated on March 22, 1978. (See copy of certificate of incorporation received with original submission). Its registered agent is Anthony Stolfo, and its registered office is 1800 Brigantine Boulevard, Atlantic City, New Jersey. (See letter dated August 7, 1978, and received by the Commission on August 17, 1978, from Joseph L. Petti).

The by-laws of the corporate-applicant were received by the Commission on August 17, 1978. (See by-laws). On August 25, 1978, the by-laws were amended to provide that upon Commission disapproval of any future transfer of any corporate security of, share of or other interest in the applicant corporation or any holding company, intermediary company or subsidiary thereof, such corporations and companies shall have the absolute obligation to purchase, and the transferee shall have the obligation to sell same. (See August 25, 1978 by-law amendment which was received by the Commission on September 1, 1978). See N.J.A.C. 19:44-3.7(e).

The proposed name of the school is Atlantic Casino Training Academy, Inc. Commission regulation N.J.A.C. 19:44-7.4 provides that:

"The word 'County' or the name of any county of this state shall not be used in the name of a gaming school unless such school is part of a duly authorized county community college of this state."

Additionally, N.J.A.C. 19:44-7.2 provides that:

"Each gaming school shall exercise great care in the selection of its name. It shall not infringe on the name of any other school whatsoever. It shall not use any title, name, label, insignia or designation which can be construed as misleading or deceiving to prospective students with respect to the nature of the school or its accreditation, courses or programs or methods of instruction."

The applicant's name does not appear to infringe on the name of any other school. Nor does the applicant's name mislead or deceive prospective students with respect to the nature of the school. Despite the fact that the word "Atlantic" is part of the applicant's name, it is plain that the proposed

school is not misleading a prospective student into believing that the school is part of a duly authorized county college. The word "Atlantic" is merely generic in nature.

The telephone number of the school is 609-344-5868 and is listed in the Atlantic City telephone directory. (See August 7, 1978 letter of Joseph L. Petti which the Commission received on August 17, 1978).

Commission regulation N.J.A.C. 19:44-3.7(d) requires that a corporate school maintain a ledger in its registered office in this state reflecting the current ownership of every class of security issued by the said corporation. At the present time, Commission staff has no documentation to demonstrate that the above regulation has been complied with. Accordingly, the applicant should establish that it maintains such ledger at 1800 Brigantine Boulevard, Atlantic City, New Jersey.

In all other respects, the applicant appears to comply with the requirements of the laws of this state pertaining to corporations. See N.J.A.C. 19:44-3.7(c).

2. Financial Qualifications

A gaming school must establish its financial stability, integrity and responsibility, a standard identical to that applied to casino key employees. N.J.S.A. 5:12-92(b) and 89(b)(1) and N.J.A.C. 19:44-3.1. It must submit its financial statement for its preceding fiscal year and its proposed income and expenditures budget for its fiscal year to follow. N.J.A.C. 19:44-10.3, 10.2 and 8.2(o). It must further satisfy the Commission that it has insurance coverage "adequate to protect

its financial interests, to maintain its solvency in the case of loss by fire or other causes and afford it reasonable protection in instances of personal and public liability." N.J.A.C. 19:44-10.1. The school must also satisfy the Commission that it has provided "financial assurances which adequately guarantee its faithful performance of all agreements and contracts with the students enrolled therein," be it by the posting of a surety bond or otherwise. N.J.A.C. 19:44-11.1 and 11.4.

In the October 23, 1978, report of the Division of Gaming Enforcement, the financial status of the school is set forth. Additionally, since the filing of the application by Atlantic Casino Training Academy, Inc. members of the Commission Financial Evaluation and Control Section have been reviewing the financial qualifications of the proposed school. A surety bond or other financial assurances are necessary to protect students enrolled therein. Any recommendation for licensure should be contingent upon the school providing to the Commission a surety bond in an amount recommended by Commission staff or other financial assurances satisfactory to the Commission.

With regard to insurance coverage, the Commission staff has in its possession an August 1, 1978, letter from the Charles J. Romano Agency, Inc., and an October 17, 1978 letter from the Walker Rogge Insurance Agency. The insurance coverage which the applicant has should be clarified. It should be indicated with whom the insurance policy is with, the amount thereof, and whether the coverage has commenced.

3. Reputation for Honesty and Integrity

A gaming school must establish its good reputation for honesty and integrity, a standard identical to that applied to casino key employees. N.J.S.A. 5:12-92(b) and 89(b)(2) and 86 N.J.A.C. 19:44-3.2.

As the applicant is a newly formed corporation, it is difficult to assess its reputation for honesty and integrity. Nevertheless, the Division of Gaming Enforcement has completed its investigation and submitted reports to the Commission. Accordingly, the school's reputation for honesty and integrity must, of necessity, be derived from that of its owners.

The four owners of the school and their respective shares is as follows:

Anthony Stolfo - 31 shares - Treasurer

Frank Francesco - 27 shares - President

Paul C. Stolfo - 26 shares - Secretary

Albert Granieri - 16 shares - Vice President

The individual backgrounds of the owners of the school will be discussed below.

* This report is premised on understanding that only the four listed owners and perhaps Robert J. Alois, the proposed resident director, are required to be qualified as a condition of licensure. Prior to the issuance of a certificate of operation, each resident director, instructor, principal employee, and sales representative must be individually licensed under the standards established for casino employees. In this regard, it should be noted that Joseph L. Petti, who appears to be a sales representative will require a license prior to issuance of the certificate of operation.

4. Business Experience

A gaming school must establish the sufficiency of its business ability and experience to adequately establish the reasonable likelihood of its success and efficiency as a gaming school, a standard identical to that applied to casino key employees. N.J.S.A. 5:12-92(b) and 89(b)(3) and N.J.A.C. 19:44-3.3.

Most of the following information is derived from the personal history disclosure forms on file with the Commission:

Anthony Stolfo

Since 1969, Mr. Stolfo has been the owner of Penn Food Market in Brigantine, New Jersey. From 1961 to 1969, Mr. Stolfo was the owner of the Pioneer Food Market in Philadelphia.

Paul C. Stolfo

From 1975 to the present, Mr. Stolfo has been a self-employed funeral director in Philadelphia.

Albert Granieri

From 1973 to the present, Mr. Granieri has been a building inspector for Abington Township, Pennsylvania. He has also been steadily employed since 1944 as an electrician or in a related capacity.

Frank Francesco

From September 1974 to July, 1977, Mr. Francesco was a warehouse manager in Philadelphia. He has also held various other jobs as well. However, as the Division notes in their October 23, 1978, letter report on Mr. Francesco, he is presently unemployed.

In a general sense, the school appears to have sufficient business ability. However, Mr. Francesco is President of the corporate applicant and his background raises some question as to his qualifications to be president of the corporation. This, therefore, is clearly an area that must be further explored.

Additionally, as the Division notes on page 5 of its October 23, 1978, report about the school, none of the owners, officers or directors of the school have prior experience in the casino industry. Thus, casino-related experience must, of necessity, reside in the resident director of the school. It should be noted, however, that the Division has interposed an objection to the licensure of Robert Alois, the proposed resident director.

5. Employment Demands for Graduates

A gaming school must establish the existence of "the reasonable expectation of an adequate employment demand by the gaming industry for its graduates." N.J.A.C. 19:44-3.4 and 8.2(j)

When the applicant filed its application, some projections relative to employment demand were made (See original two page submission). By letter dated October 19, 1978, the applicant supplied the Commission with additional marketing information. (See letter of October 19, 1978 and attachments).

Staff review of the projections suggests that there would be an adequate employment demand for the applicant's graduates.

6. Physical Facilities

A gaming school must establish the adequacy of its physical facilities to safely and effectively accomodate its students and provide them with thorough instruction and training. N.J.A.C. 19:44-3.6 and 9.1. Such facilities must conform to the requirements of state and local law, N.J.A.C. 19:44-9.2, and must, if rented, be the subject of a written lease agreement signed by both the owner of the gaming school and the owner of the premises. N.J.A.C. 19:44-9.3. Adequate security must exist in the facilities for its chips and other gaming equipment. N.J.A.C. 19:44-9.6. The facilities must reasonably accomodate handicapped employees and students by being "readily accessible to and usable by such handicapped persons." N.J.A.C. 19:53-7(b)(1)

The applicant has a written agreement to lease from Anthony H. Stolfo Enterprises, a New Jersey corporation, 5500 square feet of premises fronting on Brigantine Boulevard in Atlantic City. The term of the lease would be for one year and would be renewable by written notice from month to month until April 30, 19⁷⁸~~80~~. The lease would become effective upon the applicant obtaining a gaming school license from the Commission. The annual rent will be \$48,000 to be paid in monthly installments of \$4000. (See lease agreement).

The October 23, 1978, report of the Division, however, indicates that the owner of the property is Edgar Sims and that Anthony Stolfo leases the property from Mr. Sims. This lease, if written, should be presented, and the terms fully explored. (See Division report).

The Division of Gaming Enforcement has inspected the premises and the results of the inspection are contained in the October 23, 1978, report. The premises appear to be able to effectively accomodate students and provide them with a thorough instruction. Renovations are complete and a zoning ^{VARIANCE} ~~certificate~~ has been obtained. (See August 11, 1978 Zoning Board of Adjustment Decision). Evidence of security for the school, including installment of a burglar alarm, should be produced. Also, evidence demonstrating compliance with the Commission's affirmative action regulations relating to accomodations for the handicapped should be presented.

The school should produce a certificate of occupancy to demonstrate compliance with local fire and building codes.

7. Affirmative Action Program

A gaming school must formulate and submit an affirmative action program for approval by the Commission directed at both its employees and its students. N.J.S.A. 5:12-134 and 135, N.J.A.C. 19:41-5 and 19:53-6.

An affirmative action program has been submitted by the applicant. (See affirmative action submission). Affirmative Action Officer Massie has reviewed the submission and found it to be satisfactory. (See August 24, 1978 affirmative action report from Mr. Massie).

B. THE PERSONS REQUIRED TO BE QUALIFIED

All owners, management and supervisory personnel and other principal employees must qualify under standards, except residency, identical to that applied to casino key employees. N.J.S.A. 5:12-92(b) and 89 and N.J.A.C. 19:41-3.2(a) (1) and 44-4.1.

The gaming school must establish that such persons have "financial stability, integrity and responsibility," have "reputation for good character, honesty and integrity" and have "sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved." N.J.S.A. 5:12-89(b)(1), (2), (3) and 86.

The criteria of business ability and casino experience has been discussed previously.

Based upon the Division's reports, Albert Granieri and Paul C. Stolfo appear to meet the criteria as qualifiers. However, the report of the Division regarding Frank Francesco indicates that he is acquainted with three named individuals "all with reputedly organized crime affiliations." Although the Division does not object to Mr. Francesco, the circumstances surrounding these associations should be explored. Moreover, since Mr. Francesco is experiencing financial difficulties according to the Division, this area needs exploration.

The Division's report on Anthony Stolfo notes his financial and business dealings with several individuals from Pennsylvania. The nature and extent of these relationships should be examined in depth before a determination as to Mr. Stolfo's qualifications as a gaming school owner are made.

With regard to the school's finances, it should be noted that the financial stability and integrity of its owners is most important since the applicant corporation is newly formed. Additionally, Commission reserves the right to raise further issues regarding the financial responsibility, stability

or integrity of the corporation or its owners in the event that such issues appear upon further review by the Division of Financial Evaluation and Control.

Respectfully submitted,

Thomas N. Auriemma

Thomas N. Auriemma
Assistant Counsel

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N.B - Mr Granieri should present testimony relating to the ~~fact~~ the omission of question 77 ~~set~~ on the personal history disclosure form.

TNA

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION :
OF ATLANTIC CASINO TRAINING :
ACADEMY, INC., FOR A GAMING : PRE-HEARING
SCHOOL LICENSE. : CONFERENCE
: ORDER

A pre-hearing conference having been held on this matter before the undersigned Hearing Examiner on November 29, 1978 at 11:30 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, F. Frederick Perone, Esq., appearing for the applicant, Shelley B. Lashman, Esq., appearing for Anthony H. Stolfo, a principal owner of the applicant, Joan Robinson Gross, Deputy Attorney General, appearing for the Division of Gaming Enforcement, Thomas N. Auriemma, Assistant Counsel to the Casino Control Commission, appearing for the Commission, and in the presence of the four owners of the applicant (Messrs. Anthony Stolfo, Paul Stolfo, Frank Francesco and Albert Granieri), the following occurred:

A. POTENTIAL CONFLICT OF INTEREST

At the commencement of the conference, the Hearing Examiner inquired of F. Frederick Perone, Esq., whether a possible conflict of interest might arise. Mr. Perone represents both the present corporate applicant for a gaming school license and Mr. Robert J. Alois who has applied to the Commission for a gaming school resident director license and who is the proposed resident

director of the present applicant. The Division has interposed an objection to licensure of Mr. Alois and that matter is scheduled for a hearing. Mr. Perone represented that he had discussed this situation with the owners of the present applicant and that they wished to continue with Mr. Perone as counsel for the applicant. Mr. Perone stated that he could vigorously and fairly represent both clients and that he would advise the Hearing Examiner immediately if any problem arose. Mr. Perone made these statements in the presence of the applicant's four owners and in the presence of Mr. Alois.

B. ISSUES

At the conference, counsel agreed that the factual issues to be decided by the Commission, in determining whether the applicant and its four owners have met their affirmative responsibility of establishing by clear and convincing evidence their individual qualifications and the various prerequisites for licensure of the applicant as a gaming school, concern the questions raised in the November 24, 1978 Commission staff memorandum prepared by Mr. Auricemma which includes the matters noted in the October 23, 1978 letter-reports of the Division. The memorandum and reports have been provided to all counsel and are incorporated herein by reference. In addition, the applicant must file with the Commission a properly signed and notarized waiver of liability consent to inspections, searches and seizures, and release authorization.

C. EVIDENCE

Pursuant to stipulation of counsel, several documents and writings were marked as joint exhibits and were

admitted into evidence. Attached hereto and incorporated herein is a schedule showing those items and their evidentiary markings.

D. DISCOVERY

1. Anthony Stolfo shall provide to all counsel and documentation related to business transactions with members of the Cipresso family or their agents, specifically including all mortgage agreements.
2. Anthony Stolfo shall provide to all counsel adequate documentation as to ownership of all stock in the Golden Dolphin Motel and the Penn Food Market Corporations.
3. Anthony Stolfo shall provide to all counsel a revised, updated balance sheet in the same form as that provided in Mr. Stolfo's personal history disclosure form.
4. The Division shall provide to counsel for the applicant and for the Commission the results of any criminal record, bank and credit checks conducted on the four owners of the applicant, exclusive of any work product. The Division shall provide to Anthony Stolfo's counsel any such material pertaining to Anthony Stolfo.
5. All counsel shall prepare and exchange lists of witnesses showing the name and address of any person who may be called as a witness at the hearing.

6. The Commission shall provide to all counsel a copy of the financial evaluation report to be prepared by the staff of the Commission.

E. SCHEDULE

1. With the exception of Commission staff's financial evaluation report, all discovery shall be completed by December 4, 1978.
2. The financial evaluation report of the Commission staff shall be prepared by December 6, 1978. Upon completion of the report, Commission counsel shall promptly notify all counsel of the report's findings and conclusions and shall provide copies of the report as expeditiously as possible. If any additional issues are raised by the report and if counsel are unable to adequately prepare those matters by the scheduled hearing date, the hearing on such issues may be adjourned or continued on application of counsel or on the Hearing Examiner's own motion. If necessary, requests for additional discovery relevant to any such issues should be made promptly.
3. The hearing in this matter will commence at 12:30 p.m. on December 8, 1978, in the Department of Community Affairs Conference Room, 2nd floor, 329 West State Street ("Delaware Building"), Trenton, New Jersey.

SCHEDULE OF ITEMS ADMITTED INTO
EVIDENCE AT PRE-HEARING CONFERENCE

<u>Evidence Number</u>	<u>Description</u>
J-1	Personal History Disclosure Form: A. Stolfo
J-2	Personal History Disclosure Form: F. Francesco
J-3	Personal History Disclosure Form: P. Stolfo
J-4	Personal History Disclosure Form: A. Granieri
J-5	Personal History Disclosure Form: R. Alois
J-6	Division report, dated 10/23/78, re: Atlantic Casino Training Academy, Inc.
J-7	Division report, dated 10/23/78, re: Albert Granieri
J-8	Division report, dated 10/23/78, re: Paul Stolfo
J-9	Division report, dated 10/23/78, re: Frank Francesco
J-10	Division report, dated 10/23/78, re: Anthony Stolfo
J-11	Division report, dated 10/23/78, re: Robert Alois
J-12	Business Entity Disclosure Form of the

Applicant without appendices

J-13	Statement of Gaming Proposal, without appendices
J-14	Affirmative Action Program of the applicant
J-15	Report of Raymond Massie, Affirmative Action Officer
J-16	Lease dated April, 1978, between Anthony H. Stolfo Enterprises, Inc., and Atlantic Casino Training Academy
J-17	Decision of Atlantic City Zoning Board of Adjustment
J-18	Booklet containing applicant's certificate of incorporation and projected financial statement
J-19A	Original market demand submission
J-19B	Revised market demand submission, dated 10, 5/
J-20	Minutes of applicant's organizational meeting and applicant's by-laws

Evidence NumberDescription

J-21	August 25, 1978 amendment of by-laws
J-22	Letter dated 8/7/78 from Joseph Petti to Thomas N. Auriemma, without referenced attachments
J-23A	Letter dated 10/17/78 from Walker Rogge Insurance Agency
J-23B	Letter dated 8/23/78 from Walter Rogge Insurance Agency
J-23C	Letter dated 10/17/78 from applicant designating insurance agent
J-24	11/24/78 memorandum from Thomas N. Auriemma
J-25	Lease dated 4/18/78 between Performance Reso. Inc., and Anthony H. Stolfo, with exhibits "A", "B", "C", "D" and "E"
J-26A	Agreement for sale of "C" liquor license #205
J-26B	Consent to transfer liquor license
J-26C	Escrow agreement for sale of liquor license

-end-

It is Hereby on this 30th day of November, 1978,
ORDERED that this Pre-Hearing Conference Order be served upon
above-named counsel within two days of its entry.

DATED: November 30, 1978

Robert J. Genatt
Robert J. Genatt
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1047-79
CCC DOCKET NO. 79-EA-40

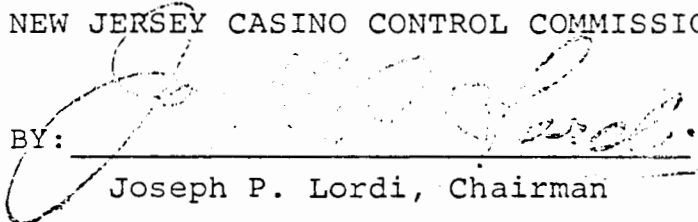
IN THE MATTER OF THE APPLICATION :
OF JEFFREY BACHRACH FOR A : FINAL ORDER
CASINO EMPLOYEE LICENSE (DEALER) :

The Applicant, Jeffrey Bachrach, having applied for licensure as a casino employee, dealer; and the Division of Gaming Enforcement having objected to the Applicant's licensure; and a hearing having been commenced before the Office of Administrative Law on July 19, 1979, but not having been completed; and the Applicant having withdrawn his request for a hearing prior to the completion of said hearing; and the office of Administrative Law having dismissed the hearing by Order of Dismissal dated September 11, 1979; and the Commission having considered and denied the Applicant's request for permission to withdraw his application for licensure pursuant to N.J.A.C.19:41 8.6 by Order dated October 9, 1979; and the Applicant having failed to exercise his right to reopen the hearing before the Office of Administrative Law in accordance with the terms of the Order of the Commission dated October 9, 1979; and the Commission having considered the objection to licensure raised by the Division of Gaming Enforcement and the record of all proceedings; and the Commission having resolved at its Public Meeting on December 5, 1979 to deny licensure of Jeffrey Bachrach as a casino employee, dealer.

It is hereby, ORDERED on this 6th day of December, 1979,
that Jeffrey Bachrach be and hereby is denied licensure as a
casino employee, dealer; and

It is further ORDERED that copies of this Order be served
upon the parties within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

Joseph P. Lordi, Chairman

DATED: December 6, 1979

IN THE MATTER OF THE APPLICATION :
OF JEFFREY BACHRACH FOR LICENSURE:
AS A CASINO EMPLOYEE (DEALER) :

ORDER

A hearing having been conducted in the above-captioned licensing matter before Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law on July 19, 1979, and such hearing having been continued on July 19, 1979; and the applicant thereafter having filed with the Casino Control Commission a written request for withdrawal of his application for licensure in accordance with the provisions of N.J.A.C. 19:41-8.6; and the Administrative Law Judge having entered an Order of Dismissal of the contested case before him based upon such written request for withdrawal of application; and the Division of Gaming Enforcement having filed with the Commission a notice of objections to the request for withdrawal of said application; and the Commission having considered the record of the hearing as it currently exists, the applicant's request for withdrawal, and the Division's objections to such withdrawal; and the Commission having resolved at its public meeting of October 3, 1979, to deny the applicant's request for withdrawal of his application based upon a finding that such withdrawal would not be consistent with the public

interest and the policies of the Casino Control Act.

It is on this 9th day of October, 1979,
ORDERED that the request for the withdrawal of the
application of Jeffrey Bachrach for licensure as a
casino employee be and hereby is denied for the reasons
stated herein; and

It is further ORDERED that the applicant be
given a period of 15 days from the receipt of this Order
to file with the Commission in writing a request that the
hearing in this matter be reopened, should he so desire;
and that failure to file such request within the said 15
days will result in final Commission action on said
application for licensure; and

It is further ORDERED that copies of this Order
be served upon the applicant and the Division of Gaming
Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

Joseph P. Lordi, Chairman

DATED: October 9, 1979

RECEIVED

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NEW JERSEY

CASINO CONTROL COMMISSION

79-CA-48

IN THE MATTER OF THE APPLICATION	)	<u>ORDER OF DISMISSAL</u>
OF JEFFREY BACHRACH FOR A	)	
CASINO EMPLOYEE LICENSE (DEALER)	)	DKT. NO. CCC 1047-79

BEFORE THE HONORABLE R. JACKSON DWYER, ALJ

A hearing was held on Thursday, July 19, 1979, at the Mercer County Court House, Broad and Market Streets, Trenton, New Jersey, on the application of Jeffrey Bachrach for a Casino Employee License (Dealer). The applicant was represented by Jack L. Seelig, Esquire. Patricia J. Arons, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement. David R. Arrajj, Senior Assistant Counsel, appeared on behalf of the Casino Control Commission.

The matter was set down for a continued hearing.

By letter dated August 3, 1979, the applicant's counsel wrote to David Arrajj, Esq., Casino Control Commission, 379 West State Street, Trenton, New Jersey, in pertinent part as follows:

"Please be advised, that on behalf of my client, Jeffrey Bachrach, I would like to withdraw his application to be licensed as a casino employee. I feel, at this time that it would be in the best interest of both Mr. Bachrach and the State of New Jersey to allow him to withdraw his application, and then proceed, if he wishes, at a later date to reapply.***"

I FIND that there is no longer a contested case before me.

It is, therefore, ORDERED that the applicant's hearing for a Casino Employee License (Dealer) be terminated.

It is further ORDERED that the matter be remanded back to the Casino Control Commission for whatever action on the application it deems appropriate pursuant to R.C.A.C. 19-41-8.6.

September 11, 1979
DATE

R. Jackson Dwyer, ALJ
R. JACKSON DWYER, ALJ

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-CA-1

IN THE MATTER OF THE CONTRACT :
FOR OPERATION OF THE BOARDWALK:
TRAMS BY RESORTS INTERNATIONAL:
HOTEL, INC. :

FINAL ORDER

The New Jersey Casino Control Commission having read and considered the Report and Recommendation of Commissioner Kenneth N. MacDonald in this matter; and Resorts International Hotel, Inc. having taken no exception to said Report and Recommendation; and this Commission having voted at its meeting on July 11, 1979 to adopt said Report and Recommendation;

It is on this 20th day of July, 1979, ORDERED that the Report and Recommendation of Commissioner Kenneth N. MacDonald in this matter is hereby adopted by the Commission.

It is further ORDERED that a copy of this Order be served upon Resorts International Hotel, Inc. within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:

JOSEPH P. LORDI, CHAIRMAN

Dated:

IN THE MATTER OF THE CONTRACT :
FOR OPERATION OF THE BOARDWALK :
TRAMS BY RESORTS INTERNATIONAL : REPORT AND RECOMMENDATION
HOTEL, INC. :

Joel H. Sterns, Esq., appeared for Resorts International Hotel, Inc.
David Arrajj, Senior Assistant Counsel, appeared for the Casino
Control Commission staff.

I.

INTRODUCTION

On May 25, 1979, the City of Atlantic City accepted sealed bids for the right to operate electrical or motorized trams on the Atlantic City Boardwalk for the period from July 1, 1979 to July 1, 1982, in accordance with specifications established by the City. (J-1).¹ On that same date, the sealed bids were opened and Resorts International Hotel, Inc., [hereinafter "Resorts"] was the high bidder at \$452,000. The only other bidder, McAllister Fuels, t/a Trams Atlantic, submitted a bid of \$361,100. (J-2). On June 4, 1979, the Commission received a letter, dated May 29, 1979, from

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1. Documents and other materials introduced at the hearing will be identified by either a "C" for Commission staff, an "R" for Resorts International Hotel, Inc., or a "J" for jointly offered items.

References to the transcripts of the June 29, 1979, hearing will use the following notations:

T refers to the transcript for the morning session;
2T refers to the transcript for the afternoon session.

Mr. George T. McAllister, President of McAllister Fuels, in which Mr. McAllister informed the Commission of the Resorts' bid and expressed concern that it would not be in the "best interests of the public" for Resorts, a casino licensee whose licensed premises are located on the Boardwalk, to operate the trams. (See C-4).

At its next public meeting, on June 20, 1979, the Commission was advised that the staff had conducted preliminary inquiries and that, in the opinion of the Chairman, there was good cause for further study by the Commission. Based on that assessment, the Chairman had requested the City of Atlantic City to defer final action on the contract bids until the Commission had an opportunity to develop the facts and analyze the issues presented. The Chairman suggested that "without taking a position one way or the other" the Commission should order a hearing on its own initiative. See N.J.A.C. 19:42-2.2 and 3.2. Thereafter, the Commission voted to conduct such a hearing and to designate the undersigned as Hearing Examiner. The Commission also expressed its intent to have a report and recommendation in time for consideration at the July 11, 1979, public meeting. (See Transcript of 6/30/79 public meeting, pp. 207 to 215).

On June 21, 1979, a notice in the form of a letter was sent by certified mail to Anthony M. Rey, the registered agent for Resorts. On that same date, a copy of that letter-notice was personally served on the law firm of Sterns, Herbert & Weinroth, Esqs., as attorneys for Resorts. The letter related the directive of the Commission that a hearing be held to "assess and review the the proposed contract...whereby Resorts will acquire the sole

right to operate the trams on the Atlantic City Boardwalk." The letter referred to the Commission's authority to review the reasonableness of agreements entered into by casino licensees, N.J.S.A. 5:12-104(b), and the Commission's power and duty to encourage and preserve competition in casino operations in Atlantic City. N.J.S.A. 5:12-1(b)(12). As to scheduling, the letter advised that a pre-hearing conference would be held on Monday, June 25, 1979 and that the hearing itself would be conducted on Friday, June 29, 1979.²

At the pre-hearing conference, the legal issues and factual questions were identified. The resulting Pre-Hearing Conference Order, which is attached hereto and made a part hereof, indicated that the legal issues generally concerned the Commission's jurisdiction vel non to review the proposed contract and the appropriate grounds for any such review. As to the latter, the Order recited the central question as being "whether the operation of the boardwalk trams by Resorts would be contrary to the policy of preserving and fostering competition in the casino operations in Atlantic City and the ancillary industries attendant thereto."

2. In addition to so notifying Resorts, the staff contacted other persons who had previously communicated an opinion or taken a position with regard to the proposed contract. By a separate letter, dated June 21, 1979, the City of Atlantic City was advised of the hearing and was invited to participate.

From the foregoing, it is clear that the scope and purpose of the hearing were strictly limited to resolution of the jurisdiction and competition questions. So that there could be no doubt on this point, I specifically informed the participants and the public at the outset of the hearing that the broader question of undue casino industry domination in Atlantic City was not at issue and that the "Commission reserves the right to pursue that question in the future" with regard to "this contract or any other transaction or acquisition by a casino licensee." (T5-14 to 24).

The reasons for this limitation are obvious. The proceedings were conducted at an accelerated pace to permit the Commission to assess the proposed contract prior to the formal acceptance of a bid by the City of Atlantic City. Section 1(b)(12) of the Casino Control Act [the "Act"], N.J.S.A. 5:12-1(b)(12), expressly establishes the policy of fostering and preserving competition in casino operations, and the operation of the trams by a casino licensee seemed to pose a direct threat to that policy. Moreover, the narrow competition question is capable of fair consideration and determination before the City takes final action. The broader issue of undue casino domination is too complex to fairly evaluate under the present time constraints and should be considered by this Commission in proper course.

II.

JURISDICTION

The Pre-Hearing Conference Order noted the question of the Commission's jurisdiction to review, approve or disapprove the

proposed contract between Resorts and the City of Atlantic City. As more particularly set forth in Part A of the attached order, the jurisdictional question involves interpretation and application of several sections of the Act. Sections 104(b) and 1(b)(12), pertaining to contract approval and casino industry competition, have already been mentioned. However, there are other relevant provisions in the Act, such as Section 75, N.J.S.A. 5:12-75, which vests the Commission with "any proper power or authority necessary to perform the duties assigned to it by law," and Section 133(b), N.J.S.A. 5:12-133(b), which amends, supersedes or repeals any other law or any local governmental action which conflicts with the Act or its policies.

Resorts contends that the Commission is not empowered to approve or disapprove the proposed contract. In its memorandum of law on the question, Resorts acknowledged that Section 104(b) of the Act requires a casino licensee to submit for Commission review "any written or unwritten agreement regarding...any business...with...its casino hotel facility."³

3. N.J.S.A. 5:12-104(b) provides, in pertinent part:

Each casino licensee shall be required to present to the commission any written or unwritten agreement regarding the realty of, or any 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 such 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.

However, Resorts asserted that the proposed contract for operation of the boardwalk trams would not be reviewable at any time under that section. Resorts argued that Section 104(b) is intended to protect the casino hotel operations from improper influences and that the phrase "casino hotel facility" restricts the reach of the section to agreements "which have a direct contact with or impact upon a casino hotel facility itself." (Memorandum of Law, p. 4). Resorts concluded that the proposed contract would not be such an agreement and that, therefore, the Commission would not have the authority to approve the proposed contract now or after its execution.

Although Resorts advanced this argument in its memorandum it appears that the position was abandoned during the hearing. In summation, counsel for Resorts stated:

The Casino Control Commission says and the law says that they will review every contract that is entered into by the casino operator. This is not a contract. Yet if it were, the law would require us to submit it and would require you to review it for reasonableness of terms. So far the City has not entered into that contract and, therefore, it is not before you for review now, although it most assuredly will be, and at that point, you will have the opportunity to consider the reasonableness of terms.
(2T146-20 to 147-8) (emphasis added).

Thus, it appears that Resorts only contests the timing of the Commission's review rather than the exercise of any contract review power in this matter. Nevertheless, to resolve any doubt, both contentions will be considered.

Section 104(b) pertains to agreements relating to business with or on the premises of a "casino hotel facility." As Resorts correctly observes, the quoted term serves to limit the scope of the Commission's mandatory review of agreements so that the Commission is not required to examine contracts totally unrelated to the casino operations of the licensee. However, it can hardly be contended that the acquisition and operation of the boardwalk tram business is unrelated to Resorts casino hotel facility. At the hearing, Resorts' officials testified to the importance of the trams for the boardwalk and for casino hotels on it. (See 2T83-25 to 84-2; 2T91-8 to 24). Moreover, Resorts officials acknowledged the special interest which Resorts had in the operation of an efficient and attractive tram service because of the location of the Resorts casino hotel facility and the distance between the facility and Convention Hall. (2T92-5 to 93-17).

Given the nature of the trams, the location of the Resorts facility on the boardwalk and the evaluation by Resorts' own officials as to the importance of the trams to the Resorts casino hotel operation, there can be no question that the proposed contract would be an agreement by Resorts "regarding ...business... with...its casino hotel facility." To hold otherwise under these circumstances would unnecessarily restrict the authority of the Commission to review and approve agreements which have a direct and significant relationship to casino hotel operations. Such an interpretation would be clearly at odds with the goal of the Act to favor strict regulation and control. See N.J.S.A. 5:12-1(b). Thus, the proposed contract is one that should be subject to review

by the Commission under Section 104(b). However, it must still be determined whether the Commission must abstain from exercising its authority because the contract has not yet been awarded or because the contract was offered by a municipality under the public bidding laws.

At the time of the hearing, Resorts had submitted the high bid to the City of Atlantic City for the exclusive right to operate the boardwalk trams for three years in accordance with the bid specifications established by the City. (J-1 and 2). Since the City has not formally accepted the bid, there is currently no contract extant. Resorts contends that Section 104(b) authorize Commission review of an "agreement" and that until the City enters into the actual contract with Resorts there is no agreement to review. In a somewhat related vein, Resorts observes that the public bidding laws are designed to protect the public interest and that under those laws the highest responsible bidder must be awarded the contract. See N.J.S.A. 40A:11-1 et seq. Resorts apparently believes that any exercise of authority by the Commission at this posture would interfere with the public bidding procedure and would trench upon the right of the City to determine the responsibility of the bidders. (See T10-15 to 11-18; Memorandum of Law, pp. 5,6).

In the usual situation, Commission review of an agreement under Section 104(b) will not occur until the contract has been executed. This must be so if the casino licensees are to conduct their business in the usual fashion without waiting for the Commission to first approve every tentative transaction. Of course

the Commission and the Division of Gaming Enforcement could not afford to squander limited resources reviewing potential agreements which might never be consummated or which might vary materially before final execution.

Yet, there is no reason why the Commission must refrain from any involvement in a particular matter where the principal terms of the ultimate agreement are already determined, where those terms and the nature of the subject matter raise serious concerns under the Act and where the Commission's ability to respond to those concerns will be significantly hindered by the existence of an executed contract. Indeed, there may be instances where the Commission must take action before the completion of the agreement in order to prevent violations of the policies of the Act. As noted above, Section 75 of the Act grants the Commission "any power or authority necessary to perform the duties assigned to it by law." Thus, the Commission is fully authorized to evaluate the proposed contract prior to the final award by the City.

As to the contention that the Commission may not interfere with public bidding procedure or usurp the authority of the City, the simple answer is that the Commission is doing neither. The Commission is charged with implementing the policies of the Act and, to that end, it is given broad powers over casino licensees. The Commission may not enjoin the City from accepting bids from casino licensees nor from awarding a contract to such a licensee. However, the Commission may, upon learning of such proposed action, request the licensee to first obtain Commission

authorization. If the licensee fails to abide by such request, the City is free to award the contract, but the Commission may take any appropriate steps to either sanction the licensee or order termination of the licensee's involvement in the contract or both. In short, the interests of the Commission are different from those of the City in matters of public bidding. To the extent possible, cooperation between the Commission and the City in tending to their respective duties must be the rule. However, where a conflict or inconsistency is unavoidable, Section 133(b) of the Act resolves the dispute in favor of the Commission's authority.⁴

Although the Commission has the right to now review the proposed contract, the permissible scope of such review must be considered. Section 104(b) states that the Commission shall review an agreement "on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualification of the person involved in the agreement with such casino licensee."

4. N.J.S.A. 5:12-133(b) provides:

If any provision of this act is inconsistent with, or contrary to any other provision of law, such provision of this act shall prevail over such other provision and such other provision shall be deemed to be amended, superseded or repealed to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contrary, no local government unit of this State may enact or enforce any ordinance or resolution conflicting with any provision of this act or with any policy of this State expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this act.

Obviously, the qualifications or suitability of the City of Atlantic City are not in question. Rather, the Commission will be concerned with the "reasonableness" of the contract terms. It is necessary to determine whether an assessment of "reasonableness" may include consideration of the competition policy set forth in Section 1(b)(12) of the Act.⁵

Resorts contends that in reviewing the reasonableness of contract terms under Section 104(b), the Commission is limited to considerations related to improper influence and possible wrongdoing. (T9-12 to 10-12). However, this overly restrictive interpretation comports with neither the language of the section nor the clear intent of the Act. As to the language, Section 104(b) create two separate criteria for contract review. Reasonableness of the terms is one distinct criterion while the suitability of the persons involved in the contract is another. While the terms of a contract may indicate the likelihood of corruption or extortion, there is no reason why the Commission's examination must be so confined.

5. N.J.S.A. 5:12-1(b)(12) provides:

Since the economic stability of casino operations is in the public interest and competition in the casino operations in Atlantic City is desirable and necessary to assure the residents of Atlantic City and of this State and other visitors to Atlantic City varied attractions and exceptional facilities, the regulatory and investigatory powers and duties conferred by this act shall include the power and duty to regulate, control and prevent economic concentration in the casino operations and the ancillary industries regulated by this act, and to encourage and preserve competition.

Moreover, the Act evinces an unmistakable legislative intent to continuously monitor and protect competitive conditions in the casino industry. As noted, Section 1(b)(12) explicitly authorizes and obliges the Commission to encourage and preserve competition. Additionally, Section 84(e) of the Act, N.J.S.A. 5:12-84(e), requires each casino license applicant to satisfy the Commission that its casino hotel proposal will not adversely affect "casino operations" or "competitive conditions" before the proposal may be approved. Thus, the Act heavily emphasizes the need for sensitivity to economic concentration and competition. It would be ludicrous to find that the Commission must be insensitive to this major legislative concern when reviewing contract terms to determine their "reasonableness." Indeed, it is likely that anti-competitive conditions will be created or continued through contract clauses and that they will be discovered and corrected through the mechanism of contract review. Therefore, the Commission may now review the proposed contract specifications and may do so in light of the policy mandating healthy competition among casino operations.

III.

COMPETITION

Certain significant factual matters, such as the 1979 bid specifications (J-1), the bids submitted by Resorts and McAllister Fuels (J-2), and the 1976 contract (J-7 and 9) are not disputed. In order to clarify the discussion, it is appropriate to first summarize the major operating conditions which appear in the 1979 bid specifications (J-1) and which must be included in

the proposed contract.

1. The contractor must operate a minimum of seven (7) trams with a seating capacity of 60 to 100 passengers.
2. The minimum 7 trams must be operating at all times called for in the contract.
3. The minimum required hours of operation are 10 A.M. to 5 P.M. year round, except from Memorial Day to September 15th, when the required hours are 10: A.M. to 12 midnight. The contractor may add additional hours if desired.
4. No tram is allowed to remain standing except to pick up and discharge passengers.
5. Trams will pick up and discharge passengers anywhere along the boardwalk, and will operate between Albany Avenue and the Inlet.
6. Trams must operate in the rolling chair lanes, cannot exceed four miles per hour, and may not pass one another.
7. The charge per ride may not exceed \$1.00.
8. No advertisement is permitted on the trams, but the name and address of the owner-operator must be on all trams.
9. The accepted bid covers the right to operate 7 trams over the term of 3 years, and is paid to the City in quarterly installments.
10. The contractor has the option to operate up to a maximum of 12 trams, but must pay the City an increase of 15% of the base amount of the bid per year per tram for each tram operated above the minimum 7.
11. The contract is to be carried out under the direction of the Director of Public Affairs.

12. The City has the option to declare the contract null and void if the operating specifications are not met at any time.

The threshold issue is whether, despite these bid specifications, a real potential nevertheless exists for one casino licensee to gain a competitive advantage over others through operation and control of the trams. At the hearing, this issue was further refined to address two broad categories of operations: regular service to the public and special services such as charters, group ticket rates and discounts. If such potential for competitive advantage is found, in either category of operations, the remaining issue is whether the potential advantage may be eliminated or sufficiently minimized by means short of directing Resorts to withdraw its bid.

At the outset, the nature of the trams and the service they provide must be understood. The 1976-79 contract between the City and McAllister Fuels declares that the trams are an "amusement enterprise." (J-7, p.2). This characterization notwithstanding, the record plainly reveals that the trams, in fact, constitute an important transportation facility. Moreover, the importance of the trams as transportation will increase greatly as more casino hotels appear on the Boardwalk and as the main streets, particularly, Pacific Avenue, grow more congested. In addition, with the implementation of intercept parking projects, visitors to Atlantic City will be forced to rely on conveyances other than the personal automobile.

The witnesses agreed that the Boardwalk is in many

respects the main artery of the City and that the trams will become a major means of transporting visitors, conventioners, hotel guests and sightseers along that artery. Indeed, Resorts Chairman, James M. Crosby, testified that the trams were "critically important to the success of the boardwalk" (2T84-1, 2). He concurred in the opinion expressed by William H. Weidner, Vice President in charge of hotel operations for the Boardwalk Regency Corporation, that "the boardwalk tram is a very important mode of transportation now and...will, in fact, become more important." (2T91-13 to 24; T23-1 to 25). It is thus clear that, if the tram operator can manipulate the trams in its favor, the resultant advantage must be assessed in terms of a key transportation link and not a mere amusement ride.

With regard to the so-called regular service, the bi specifications seem at first blush to largely preclude any substantial possibility of manipulation or advantage. As noted, the specifications establish hours of operation and a minimum number of trams. They also require the trams to be in continuous motion except to discharge or take on passengers. Further, they forbid any advertising except that the name and address of the owner operator must appear on the tram. This last exception would clearly permit Resorts to identify the tram with its casino hotel facility and indirectly advertise for that facility. To avoid this promotional benefit, the Commission should require that Resorts establish a neutral trade name in the same manner as done by McAllister Fuels t/a Trams Atlantic. However, the testimony at the hearing disclosed that there are far more opportunities for

self-serving than would at first appear.

Mr. Weidner of Caesars testified that he could conceive of several ways in which the tram operator could gain an advantage through the regular tram service and he asserted that an imaginative operator could undoubtedly discover many others. Specifically, Mr. Weidner stated that; notwithstanding the prohibition against advertising on the trams, they could be associated with the operator's casino hotel through the painting of the trams in certain colors, the uniforming of the tram personnel, the designing of the tickets, or the playing of tapes which contained greetings or music by entertainers currently appearing at the operator's hotel. Moreover, the operator might restrict or control the flow of people to or from the area of its casino hotel by varying the number of trams serving different areas of the boardwalk, by creating greater or lesser delays or headways between trams and by locating the trams around points or depots near its own hotel facility or away from other such facilities. He noted that if the operation center for the trams were physically located near the operator's hotel, the trams might be more readily available to the hotel's guests or visitors at certain times, such as the beginning of operations for the day or during off hours when the full complement of trams was not in use. (See T30-10 to 33-2).

The testimony of the trams' present operators provided evidence that Mr. Weidner's speculations were more than fanciful. Robert McAllister testified that he is a vice-president of McAllister Fuels and that he has supervised the tram operations for their 6 year existence. Mr. McAllister acknowledged that the contract specifications require the trams to run between Albany

Avenue and "the Inlet." When asked whether the trams do so operate, Mr. McAllister responded that it depends "on where you're looking for the inlet."

Mr. McAllister explained that there is no precise point where the inlet begins, that the Boardwalk is structurally unsound after a certain point but that repairs are now being made. Furthermore, he noted that past Resorts there are now few attractions. For those reasons, the tram's northern terminus and turnaround point has not been constant.⁶ Mr. McAllister testified that the trams now terminate at Connecticut Avenue but that they will proceed to the Garden Pier when it is open or when an event is being held there. He also stated that the trams terminate at Maryland Avenue. (See 2T40-10 to 41-12). This testimony becomes more pertinent when it is recognized that Resorts intends to develop the urban renewal site in that area and that Resorts uses lots in that vicinity to unload its arriving bus passengers during the summer. (2T41-13 to 42-5; 2T137-21 to 139-14).

Robert McAllister's testimony was revealing in other respects. He advised that the trams now operate in two distinct loops. One loop runs from Convention Hall south to Albany Avenue. The second loop runs from Convention Hall north to the inlet. Although most of the trams remain in one loop or the other, some trams proceed directly through. Using his own judgment, and without consulting the City, Mr. McAllister shifts the allocation of trams between the loops when crowd conditions warrant it. (2T39-9

6. In referring to the terminals and directions of trams, it will be considered that the inlet is the northern end and Albany Avenue the southern end.

to 18; 2T29-2 to 30-4).

Both Robert McAllister and his brother, George, the president of McAllister Fuels, acknowledged that the minimum number of trams specified in the contract were not always in operation. They asserted that it was unnecessary and unwise to operate the full minimum number during very slow periods and therefore they adjusted the number accordingly in the winter months. Although this was at variance with the contract, the McAllisters testified that the City never criticized such adjustments and that they did not consider the implementation of common sense variation to be a breach of the terms. (T136-11 to 139-5; 2T11-5 to 18; 2T47-2 to 9).

George McAllister also admitted that the volume of people could be controlled through the allocation of trams between the two areas of the Boardwalk. (2T20-7 to 22; 2T27-13 to 24). However, Mr. McAllister contended that his company had never operated the trams to control the flow despite the fact that the McAllisters own the Steeplechase Pier which would benefit from increased visitor circulation in the area. (2T20-23 to 23-9).

Based on the foregoing, I must conclude that substantial opportunities for competitive advantage exist even with regard to the regular tram service. The existing contract specifications are neither precise nor complete enough to prevent the operator from exercising considerable discretion in providing the service and in establishing an association of the trams to a particular casino hotel. Moreover, the record fairly shows that deviations from the specifications have routinely occurred. Although the deviations

may have been reasonable, the resulting flexibility must be recognized.

Before considering the problems presented by special tram services in general and chartering of trams in particular, it should be noted that the permissibility of such arrangements is unclear. The bid specifications (J-1) and the 1976-79 contract (J-7 and 9) make no reference to operation of the trams in any manner other than regular service to the public. Since the specifications do address many of the requirements for regular service, the absence of any similar specifications for additional service would logically seem to preclude any such additional service.

Furthermore, if the City truly intended to grant those additional operating privileges, it would be likely to obtain a higher bid by clearly advising prospective bidders of the fact that more than routine public service was being offered. Indeed, the silence of the specifications as to charters and the like creates grave doubts as to the legality of the bidding process if such features are granted. Under the public bidding laws, the specifications must be "drafted in a manner to encourage free, open and competitive bidding." N.J.S.A. 40A:11-13. The absence of any specifications regarding charter service would seem to be a material omission which could void a subsequent contract purporting to grant the right to operate such additional service. See Kotter v. Township of East Brunswick, 160 N.J. Super. 462 (App. Div. 1978).

Whether the bid specifications contemplate special services and features or not, the record reveals that such services

have been frequently provided in the past and, for purposes of this report, it will be assumed that they will continue in the future. Robert McAllister testified that his company had chartered trams "many times." (2T43-15 to 19). He explained that, at times when the public demand for regular tram service was low, he would fill requests to provide trams to a specific hotel or group in order to transport a group to a particular location or to allow a private tour of the Boardwalk. Compensation for such charters would be determined either at a "straight" per person charge not exceeding the maximum allowed fare or at a "flat price, so much an hour." (2T51-19 to 54-9). Mr. Weidner related that in February and March, 1979, Caesars had negotiated with the McAllisters to have a tram exclusively dedicated to transporting Caesar's employees or guests from the Boardwalk Regency Hotel to the Caesar's Traymore site which was being used for parking. (2T38-6 to 23).

In addition to charters, the McAllisters indicated that they had made arrangements with various hotels whereby the hotel could issue its own tickets to a guest and the ticket would be accepted for a ride on the tram. Periodically, the McAllisters would collect these tickets and charge the hotel for the tram rides. As part of such arrangements, the hotel would ordinarily be charged a lesser amount than the usual 75 cent fare. In fact, such an agreement is currently in effect with Caesars at a rate of 60 cents per rider. (2T50-15 to 51-7; 2T56-6 to 23).

From even this brief summary, it is apparent that there exists a serious possibility for favoritism and competitive

advantage in the areas of charters and special arrangements. The absence of bid specifications as to these activities leaves the tram operator with virtually unbridled discretion. In view of the fact that there are only a finite number of available trams and that demand for charters during the convention season will undoubtedly often exceed the supply, the ability of even the most fair-minded casino licensee to impartially choose between its own requirements and its competitors will be severely tested. To a lesser extent, the operator might well be tempted to provide its own hotel with tram discounts for individual guests or as part of room packages on better terms than it offers to the competition. Moreover, H. Steven Norton, Vice-President of Resorts International Inc. (the parent company), testified that Resorts does intend to utilize the trams for charter service and to pursue discount rates and inclusion of tram rides in room packages. (2T120-8 to 22; 2T136-17 to 137-20). Thus, on this record, the dangers posed by special arrangements and charters are not hypothetical. In light of this finding, it is necessary to determine whether Resorts should be ordered to withdraw its bid or whether some other, less severe response would be acceptable. Although the first alternative might appear to be a convenient and simple solution, there are strong countervailing factors which must be weighed.

At the hearing, Resorts Chairman Crosby declared that his purpose in obtaining the tram contract was to upgrade the operation and to provide efficient, attractive service throughout the year. He candidly acknowledged that Resorts had the greater interest in quality tram service because of Resorts' location and

the distance from Resorts to Convention Hall. However, he contended that this interest would spur Resorts to achieve a high standard of service not only for the benefit of Resorts but for the entire Boardwalk and, in turn, for the City. (2T87-5 to 11; 2T88-20 to 89-5; 2T92-14 to 94-16; 2T109-9 to 15; 2T110-6 to 21). Mr. Weidner, although opposing operation by any single casino licensee, agreed that the trams should be improved and commended Resorts for its plan to enhance the Boardwalk through first class tram service. (T24-19 to 25). Even the McAllisters acknowledged that the tram operations should be bettered. (T128-17 to 129-3).

I am persuaded that Resorts truly intends to provide attractive, convenient and efficient tram service throughout the year. Resorts has a strong business motive for achieving this objective and has the resources to obtain new trams or to refurbish used ones. I am further convinced that the trams can become a major feature of the Atlantic City Boardwalk and can enhance the overall attraction of the City to tourists and conventioners. Moreover, both Caesars and Resorts indicated their dissatisfaction with the level of present tram operations.

For these reasons, it appears that refusing Resorts an opportunity to operate the trams and to implement the promised improvements should not be ordered if the competition policy of the Act can otherwise be adequately protected. There is some substance in Resorts' contention that it should be allowed to establish a "track record" as the McAllisters have done. However, it is equally clear that competition would be unduly jeopardized if Resorts were permitted to operate the tram under only the

existing bid specifications and with the same degree of flexibility as the current operator exercises. Admittedly, Messrs. Crosby and Norton gave assurances on behalf of Resorts that the trams would be operated as an arms length business and that all services would be offered on an even-handed and uniform basis. These assurances were not lightly made and they are not lightly regarded. Nevertheless, the casino industry, the public and this Commission must be provided more tangible, definite and enforceable measures to allay their reasonable concern that the natural inclination of the good businessmen at Resorts will not insinuate itself into the tram operations.

Resorts itself recognizes that operation under the existing conditions would be offensive to fair competition in the casino industry. In their testimony, Messrs. Crosby and Norton agreed that more precise and complete operating conditions must be incorporated in the proposed contract to reduce the possibility of competitive advantage. (2T114-1 to 8; 2T140-12 to 23). Strict compliance to the terms was promised and any variation would be in writing and authorized by the City. (2T134-8 to 24).

With regard to charters and other special services, Resorts candidly admitted that there was a legitimate concern about favoritism and the ability of one casino licensee to remain neutral in allocating this limited resource. (2T100-24 to 101-2). On its own initiative, Resorts contacted the Atlantic City Convention and Visitors Bureau to arrange a procedure whereby the bureau would administer all charter programs and would accept charter requests in accordance with uniform terms and conditions. Under this procedure, Resorts itself would not be permitted to use any tram

other than in the course of regular public service without requesting a reservation from the bureau. (2T128-11 to 17).

Although the agreement had not yet been formally accepted by the bureau's board of directors, Mr. Norton testified that Mr. Jerry Kauper, the bureau's president, had approved and that he foresaw no problem with obtaining formal acceptance from the directors (2T120-8 to 22).

IV.

CONCLUSION

Having considered the entire record, I find that acquisition of this particular transportation and amusement monopoly by a single casino licensee could pose a real and appreciable threat to the competitive conditions in the casino industry, if a casino licensee were permitted to operate the trams under the existing bid specifications and with the same degree of flexibility as the current operator exercises. However, the public need for first class tram service throughout the year and Resorts' clear interest in such service demand that the Commission consider how and if healthy casino competition could be maintained if the City were to award the contract to Resorts. While no one can predict with certainty, I believe that, with strict adherence to precise and complete contract provisions and with administration of any special services by an acceptable third party, it might be possible to reconcile operation of the trams by a single casino licensee with the competition policy of the Act. It must be emphasized, however, that I am not now making such a determination in this case. That decision will have to await presentation to the Commission of a fully executed contract, if and when the City awards it.

Resorts' unilateral decision to acquire the tram contract, without prior consultation with this Commission and without first exploring alternative means to improve tram service, is disturbing. Nevertheless, given the situation confronting the Commission, Resorts should not now be absolutely prohibited from proving its good intentions to enhance the service for the benefit of the Boardwalk generally and to act in a fair and objective manner. I express no opinion as to the reasonableness of the terms of any contract since no such contract has been drafted, executed and presented to the Commission. However, I recommend that the Commission now resolve to disapprove any contract when and if presented, unless it contains clear, precise and complete provisions which assure that both regular and charter service are conducted with fairness and impartiality. At a minimum, those provisions must address all concerns noted in this report, including the following:

First, the boardwalk tram should not be permitted to be used as a means of direct or indirect advertisement for any casino, including a casino which operates the tram. Accordingly, since the present bid specifications require the tram operator's name to be posted on the trams themselves, a casino operator should adopt a trade name for the purpose of such posting which in no way suggests the name of that casino operator or suggests casino gaming in general. This prohibition should include, but not be limited to any advertising of either a casino operator or any other casino by any means of communication whatsoever. See N.J.A.C. 19:51-1, et seq. The prohibition should be sufficiently comprehensive so as to include the use of any sound or public address system installed on the trams for the purpose of advertising a

casino-operator or any other casino, including the advertising of any other services offered by a casino licensee, such as entertainment. This prohibition should also preclude a casino-operator from decorating the tram with its own colors, from outfitting tram attendants with uniforms displaying the casino-operator's actual name or colors, or from utilizing a ticket design which in any way suggests the casino-operator's facility.

Second, any manipulation of the regularly scheduled component of tram operation in any manner for the purpose of, or causing the effect of, the acquisition by a casino-operator of a competitive advantage over other casinos should be strictly prohibited. This prohibition should include, but not be limited to those specific areas of potential manipulation identified in the record before me. Accordingly, a casino-operator should be prohibited from establishing any tram "turn around" area where tram patrons will necessarily congregate either in front of or in close proximity to that operator's casino facility. A casino-operator must further be prohibited from manipulating "head-way," (the spacing between regularly scheduled trams in service) to provide either more convenient or more frequent service in the areas of its own casino, as opposed to other boardwalk areas. And the terminal points of the scheduled service should be specifically identified.

Third, the casino-operator's discretion in the area of "special arrangements" for use of the tram outside of the regular schedule (such as charters and the like) should be eliminated insofar as possible. To this end, the term "charter" should be defined in the contract as any use of the trams for any purpose whatsoever,

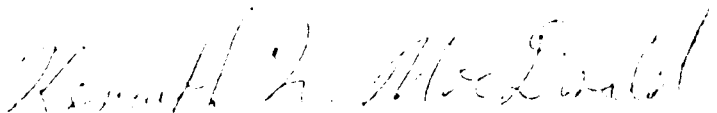
other than the regularly scheduled running of the trams. In addition, and in consonance with Resorts' suggestion at the hearing, the authority to administer arrangements for any and all such charters should be removed from a casino-operator and vested in an independent entity such as the Convention Bureau. The casino-operator should be required to apply for tram charters to such independent charter administrator in exactly the same manner other entities would be required to. Nor should a casino-operator be permitted to use any trams it may have in storage outside the regular schedule without first applying for permission for such use to the independent charter administrator. Implicit in the above is, of course, the requirement that all trams not in use in regularly scheduled runs and not currently disabled must be at the disposal of the independent charter administrator.

Other possible "special arrangements" for tram use in which there inhere the opportunity for discrimination by the casino-operator against its competitors, were identified in the testimony. These include so called "scrip" arrangements or the offering of tram tickets as part of room or convention packages or in exchange for the patronage of other casino-hotel services. The contract should contain restrictive terms requiring a casino-operator to afford all other casinos the opportunity to take advantage of each and every such "special arrangement" utilized by the casino-operator. Moreover, the casino-operator should offer such "special arrangements" at the same price or cost incurred by the operator itself.

Finally, the contract should contain a general clause prohibiting a casino operator from engaging in any practice relating to the operation of the trams which has the purpose of or the effect of the casino-operator's casino obtaining any competitive advantage over other casinos on the boardwalk, which advantage would not accrue if the casino operator did not operate the trams.

To reiterate, I find that the Casino Control Commission has the authority to review all agreements of casino licensees, whether proposed or executed, to determine whether such agreements would deleteriously affect competition in casino operations. I further find from this record that operation of the boardwalk trams by a single casino licensee, subject only to the present bid specifications and with the same degree of flexibility as currently exists, would be inimical to the competition policy of the Casino Control Act. Nevertheless, I recommend that this Commission refrain at this time from approving or disapproving any proposed agreement between Resorts and the City. Resorts may very well enter into a three-year contract with the City for the exclusive right to operate the boardwalk trams, but must do so with the knowledge that this Commission will review that contract and will disapprove it and require its termination unless it contains clear, precise and express conditions which assure that the tram service is conducted with fairness and impartiality as set forth in this opinion.

Respectfully submitted,


KENNETH N. MACDONALD
Hearing Examiner

Dated: July 9, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-CA-1

IN THE MATTER OF THE CONTRACT :
FOR OPERATION OF THE BOARDWALK :
TRAMS BY RESORTS INTERNATIONAL :
HOTEL, INC. : PRE-HEARING CONFERENCE ORDER

A pre-hearing conference was held on this matter before the undersigned, acting on behalf of the Hearing Examiner, Commissioner Kenneth N. MacDonald, on June 25, 1979, at 10:00 a.m. in the Casino Control Commission Offices at 379 West State Street, Trenton, New Jersey and was attended by the following persons:

For Resorts International Hotel, Inc. (Resorts):

Joel H. Sterns, Esq.
Patrick T. McGahn, Jr., Esq.
William J. Bigham, Esq.
H. Stephen Norton

For the Division of Gaming Enforcement:

Stephen C. Becker, Deputy Attorney General

For the Casino Control Commission(Commission) staff:

David Arrajj, Senior Assistant Counsel

As a result of this pre-hearing conference, the following has been determined:

A. LEGAL ISSUES

1. Whether the proposed contract for operation of the boardwalk trams by Resorts is subject to approval by the Commission under Section 104(b) of the Casino Control Act, N.J.S.A.5:12-104(b)
2. Whether the Commission has authority to review proposed contract where the contract is between a casino licensee

and a municipality and where the contract will be awarded after public bidding.

3. Whether in reviewing the reasonableness of a contract under Section 104(b) the Commission may consider the competition policies set forth in Section 1(b)(12) of the Act, N.J.S.A.

5:12-1(b)(12).

4. Whether, aside from Section 104(b) of the Act, the Commission has the authority to approve or disapprove the proposed contract pursuant to other sections of the Act including, but not limited to, Section 1(b)(12), N.J.S.A. 5:12-1(b)(12), relating to competition and economic concentration in casino operations or ancillary industries and Section 75, N.J.S.A. 5:12-75, providing the Commission with all powers necessary to effectuate the policies of the Act.

5. Whether the award of the boardwalk trams contract to Resorts, a casino licensee whose casino hotel facility is located on the Boardwalk, would be contrary to the policy of preserving and fostering competition in the casino operations in Atlantic City and the ancillary industries attendant thereto. See N.J.S.A. 5:12-1(b)(12).

B. FACTUAL QUESTIONS

In determining whether the operation of the boardwalk trams by Resorts would be contrary to the policy of preserving and fostering competition in the casino operations in Atlantic City and the ancillary industries attendant thereto, the Commission may consider any factual matters relevant to the proposed operation, including:

1. The minimum contract specifications established the City of Atlantic City in advertising the contract for public bids;
2. the terms of the previous contracts between the City of Atlantic City and McAllister Fuels, t/a Trams Atlantic;
3. the actual operations of the trams to date and the degree of compliance with the contract terms;
4. the amounts bid by Resorts and McAllister Fuels for the proposed contract and the expected profitability of the tram operation under that contract;
5. the planned operation and use of the trams by Resorts including: the number of trams in continuous service to the public; the use of trams not in service to the public or during off-hours; the chartering or reserving of additional trams for group or special uses; the employment of the trams to transport bus passengers; the offering of tram tickets as part of room packages or at discount rates; the placement of Resorts' name on the trams; and the provision of tram service to particular entities on a contract or continuing basis;
6. the terms and conditions upon which Resorts would provide or offer special tram service or discount tram tickets, and the procedures which Resorts would implement to assure that the tram business would be conducted on an arms-length basis;

7. any terms or restrictions which may be incorporated into the proposed contract to reduce or eliminate any undue competitive advantage which might otherwise accrue to Resorts by virtue of its exclusive right to operate the boardwalk trams.

C. DISCOVERY

1. By Thursday, June 28, 1979, Resorts and the Commission staff shall exchange a list of possible witnesses, which list shall include the name, address and title or position, if any, of each witness.
2. By Thursday, June 28, 1979, Resorts shall provide to the Commission staff copies of correspondence identified during the pre-hearing conference.
3. By Thursday, June 28, 1979, the Commission staff shall provide to Resorts a copy of an investigative memorandum after redaction of any matters other than factual statements relevant to the present hearing.
4. Prior to the hearing, Resorts and the Commission staff shall exchange any documents or exhibits which either party intends to introduce.

D. HEARING

1. As to the order of proofs, the Commission staff shall present any relevant evidence and testimony. After completion of the staff presentation, Resorts shall present its evidence and testimony. Appropriate rebuttal and surrebuttal shall be permitted.
2. No member of the public shall be permitted to participate at the hearing unless called as a witness to testify

under oath and subject to cross-examination.

3. The hearing shall commence at 10:00 a.m. on Friday, June 29, 1979, in the Public Meeting Room of the Commission 2nd floor of the Arcade Building, Tennessee and Boardwalk, Atlantic City, New Jersey.

It is hereby on this 26th day of June, 1979, ORDERED that this Pre-Hearing Conference Order be served upon Resorts, the Commission staff and the Division forthwith.

KENNETH N. MACDONALD, HEARING EXAMINER

BY:

Robert J. Genatt
Robert J. Genatt

Dated:

June 26, 1979

In the Matter of Joseph J. Carlacci :
A Casino Employee Licensee :
STATE OF NEW JERSEY, :
Plaintiff, :
v. :
JOSEPH J. CARLACCI, :
Respondent. : ORDER!

The New Jersey Casino Control Commission having read and considered the June 1, 1979, Report and Recommendation of Commissioner Albert W. Merck, which is attached hereto, at its public meeting of June 20, 1979, and having received no exceptions from the Respondent or the Division of Gaming Enforcement; and having voted to adopt the said Report and Recommendation;

It is on this 25th day of June, 1979 ORDERED that the Report and Recommendation of Commissioner Albert W. Merck be and hereby is adopted by the Commission; and

It is further ORDERED that the casino employee license of Joseph J. Carlacci is suspended for seven consecutive days, two days of which are set aside; and

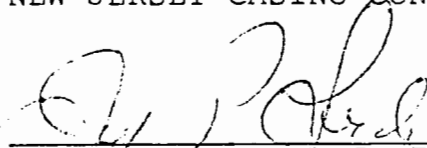
It is further ORDERED that Joseph J. Carlacci is not in any way to be compensated or reimbursed, whether directly or indirectly, by his employer for normal wages and other remuneration which is not received by him as a result of the suspension of his license; and

It is further ORDERED that the effective date of the

license suspension shall be June 28, 1979.

It is further ORDERED that a copy of this Order be served upon counsel for the Respondent and for the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

By: 

JOSEPH P. LORDI, CHAIRMAN

Dated: JUNE 23/1979

IN THE MATTER OF JOSEPH J. CARLACCI, :

A Casino Employee Licensee :

STATE OF NEW JERSEY, :

Plaintiff :

v. :

JOSEPH J. CARLACCI, :

Respondent. :

REPORT AND RECOMMENDATION

*Settlement - suggestion
for 7 days w/o pay*

Stephen C. Becker, Deputy Attorney General
appearing for the Division of Gaming Enforcement
Donald G. Targan, Esq.
appearing for the Respondent, Joseph J. Carlacci.

On October 23, 1978, the Division of Gaming Enforcement filed with the Commission Complaint No. 78-32. The Complaint alleged that Joseph J. Carlacci, a casino employee licensee, who was working in the casino room at Resorts International Hotel, Inc. at 6:10 a.m. on September 23, 1978, was "exercising supervisory authority over the activities of dealers at blackjack table number five" when Commission Inspector John B. Julian approached that blackjack table and orally requested that he be permitted to inspect certain decks of playing cards that were then being examined Mr. Carlacci. (See Paragraph 3 of Complaint No. 78-32). The Complaint then alleged that Mr. Carlacci refused to permit Inspector Julian to inspect the decks of playing cards. (See Paragraph 4 of Complaint 78-32).

It was further alleged that Inspector Julian also requested Mr. Carlacci to produce his casino employee license, but that

the Respondent refused to do so. (See Paragraph 5 of Complaint 78-32). The Complaint then alleged that Mr. Carlacci did produce his license, but that the Respondent grabbed it from Julian's hands. (See Paragraph 6 of Complaint 78-32). It was thereafter alleged that:

Subsequent to the arrival at blackjack table number five of another Commission inspector and a New Jersey State Police detective, defendant threw the said license upon the table and exclaimed in a vulgar and generally contumacious manner, 'Here is the...license,' or words to that effect. (See Paragraph 7 of Complaint 78-32).

Based upon the foregoing allegations, the Division contended that Mr. Carlacci's "failure and refusal to comply with Julian's requests as aforesaid constituted a violation of Section 75 of the Act."¹ (See Paragraph 10 of Complaint 78-32).

-
1. The Division noted in Paragraph 9 of the Complaint that Section 75 of the Act (N.J.S.A. 5:12-75) provided that:

The commission may exercise any proper power or authority necessary to perform the duties assigned to it by law, and no specific enumeration of powers in this act shall be read to limit the authority of the commission to administer this act.

The Division further noted in Paragraph 8 of the Complaint that Section 63(f) of the Act (N.J.S.A. 5:12-63(f)) provided, in pertinent part, that the Commission had the power and the responsibility

To be present through its inspectors and agents at all times during the operation of any casino for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such other investigations into the conduct of the games and the maintenance of the equipment as from time to time the commission may deem necessary and proper;

By certified letter of October 24, 1978, the Commission served upon Mr. Carlacci a copy of Complaint 78-32 and advised him that within 15 days after receipt thereof he could file with the Commission a request for hearing and notice of defense. Through his attorney, Mr. Carlacci filed a request for hearing and an Answer to the Complaint on November 8, 1978.

Thereafter, on November 22, 1978, a pre-hearing conference was held in the Offices of the Commission at 379 West State Street, Trenton, New Jersey. A pre-hearing conference order was subsequently entered on November 30, 1978, and served upon the parties and a hearing date of January 5, 1979, was set. At the request of the Respondent's attorney, the matter was adjourned from January 5, 1979, and was rescheduled for January 22, 1979.

On January 22, 1979, the scheduled date of hearing, I was prepared to hear the matter when Deputy Attorney General Becker stated:

Commissioner Merck, counsel for the defendant, Mr. Targan, and I have discussed prior to the hearing today the possibility of a settlement of this matter, and I have fully examined the facts and circumstances underlying the Complaint in this matter and have come to the conclusion that the proposed settlement that Mr. [Targan] and I have discussed is one that would be a fair and just disposition of the charges.
(T3-13 to 21).²

2. T refers to Transcript of January 22, 1979.

Deputy Attorney General Becker subsequently added:

...I am prepared at this point to make a recommendation to the Hearing Examiner, with which it is my understanding that Mr. Targan would concur, that a proposed settlement be offered to the Hearing Examiner and accepted by him for recommendation to the Commission. (T4-10 to 16).

The proposed stipulation or offer of settlement was as follows:³

...seven consecutive days suspension of the license, with two set aside, with the assurance from the employer that there would be no reimbursement or remuneration paid for those five consecutive working days, and...some evidence from the employer that that was to be followed. (T6-17 to 22).

The offer of settlement was acceptable to the Division of Gaming Enforcement and to Mr. Carlacci. (T7-8 to T8-8).

As Hearing Examiner, I accepted the proposed stipulation and directed the parties to submit for my review and approval a written stipulation setting forth the terms of the settlement.

-
3. N.J.A.C. 19:42-2.5 provides that: "In the discretion of the commission, informal disposition may be made of any contested case by stipulation, agreed settlement or consent order."

On April 10, 1979, the parties submitted to me a proposed written stipulation. I reviewed the stipulation of settlement and indicated to the parties that I would accept it provided that the language contained in Paragraph 10 that "it is understood that the aforesaid Stipulation of Settlement does not constitute an admission of guilt on the part of Joseph J. Carlacci" was deleted. By letter dated April 27, 1979, which I received on May 9, 1979, Deputy Attorney General Becker indicated that he was "amenable to the modification proposed." Moreover, on May 1, 1979, Donald Targan, Esq., counsel for Mr. Carlacci, telephoned Commission Attorney, Thomas N. Auriemma and advised him that he agreed to the deletion of the above-quoted language.⁴

The parties acknowledged in Paragraph 4 of the Stipulation that they have "amicably disposed of all issues relating to the allegations in the Complaint filed by the Division of Gaming Enforcement and the answer filed by the defendant, Joseph J. Carlacci, and agree that an Order is to be entered pursuant to the provisions of the Stipulation of Settlement provided herein."

4. Paragraph 10 of the Stipulation now reads as follows:

The parties agree that the Stipulation of Settlement has been entered into by the parties as a result of a settlement of the issues existing between the parties, and without a trial and hearing on the merits of the allegations of the Complaint and the answer filed by the defendant.

The parties agreed, in consideration of the Stipulation of Settlement:

that the casino employee license of Joseph J. Carlacci shall be suspended for seven consecutive days with the provision that the suspension for two of these days be set aside after the entry of the Stipulation of Settlement and after Joseph J. Carlacci has complied with all provisions of the terms herein at the conclusion of a 120 day period. See Paragraph 8 of the Stipulation.

The parties further agreed,

that Joseph J. Carlacci shall demonstrate to the reasonable satisfaction of the Division of Gaming, that he has not been, or will not be, as the case may be, compensated or otherwise reimbursed, whether directly or indirectly, by his employer for normal wages and other remuneration lost by him as a result of the said suspension. See Paragraph 9 of the Stipulation.

Based upon the foregoing, I recommend that the Commission accept the Stipulation of Settlement, which is attached hereto, and which has been modified in Paragraph 10. I further recommend, in accordance with the provisions of the Stipulation, that the casino employee license (Number 00452-21) of Mr. Joseph J. Carlacci be suspended by the Casino Control Commission for seven consecutive days; provided, however, that two days of the suspension be set aside. Moreover, Mr. Carlacci is not in any way to be compensated or reimbursed, whether directly or indirectly, by his employer for normal wages and other remuneration which is not received by him as a result of the suspension of his license.

Lastly, if the Commission accepts this Report and Recommendation, I urge the Commission to designate an effective date for the commencement of the suspension.

Respectfully submitted,

Albert W. Merck by *SNA.*

Albert W. Merck
Hearing Examiner

Dated June 1, 1979

FILED
NEW JERSEY

OCT 23 1978

CASINO CONTROL COMM.

JOHN J. DEGNAN
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By: Stephen C. Becker
Deputy Attorney General
(609) 292-0940

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

In re JOSEPH J. CARLACCI,
a Casino Employee Licensee.

STATE OF NEW JERSEY,
Plaintiff.

v.

JOSEPH J. CARLACCI,
Defendant.

DOCKET NO.

78-32

COMPLAINT

Plaintiff, State of New Jersey, acting by and through its
Division of Gaming Enforcement, having its principal office at 2465
South Broad Street in the Township of Hamilton, County of Mercer and

State of New Jersey, on information and belief except as to paragraphs 1, 6 and 7 hereof which are on knowledge, says:

1. Plaintiff, through its Division of Gaming Enforcement, is charged with the responsibility pursuant to the Casino Control Act (P. L. 1977, c.110; N.J.S.A. §5:12-1 et seq.) (hereinafter called "the Act") of enforcing the Act and regulations thereunder before the Casino Control Commission (hereinafter called "the Commission").

2. Defendant, who is presently employed as a pit boss by Resorts International Hotel, Inc. at its casino hotel in Atlantic City, New Jersey, is the holder of a valid casino employee license duly issued by the Commission on May 25, 1978. The number of the said license is 00452-21.

3. At approximately 6:10 a.m., prevailing time, on September 23, 1978, defendant was working as a pit boss and, in such capacity, was exercising supervisory authority over the activities of dealers at blackjack table number five in the said Resorts International casino. At that time, John B. Julian (hereinafter called "Julian"), who was then and is now an inspector employed by the Commission, approached blackjack table number five in the course and scope of his duties and requested orally that defendant allow him to inspect certain decks of playing cards that were then being examined by defendant.

4. Defendant, having heard and understood Julian's request, failed and refused to allow him to inspect the said decks of playing cards.

5. Immediately thereafter, Julian requested orally that defendant produce for Julian's inspection his casino employee license, whereupon

defendant, having heard and understood this request, failed and refused to produce the said license in a timely manner.

6. Defendant eventually produced the said license, which Julian then inspected. Defendant, however, grabbed the license from Julian's hands and stated to him "You're not writing nothing," or words to that effect.

7. Subsequent to the arrival at blackjack table number five of another Commission inspector and a New Jersey State Police detective, defendant threw the said license upon the table and exclaimed in a vulgar and generally contumacious manner, "Here is the ... license," or words to that effect.

8. Section 63f. of the Act provides, in pertinent part, that the Commission shall have the power

"To be present through its inspectors and agents at all time during the operation of any casino for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such other investigations into the conduct of the games and the maintenance of the equipment as from time to time the commission may deem necessary and proper;"

9. Section 75 of the Act provides as follows:

"The commission may exercise any proper power or authority necessary to perform the duties assigned to it by law, and no specific enumeration of powers in this act shall be read to limit the authority of the commission to administer this act."

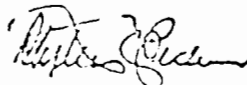
10. Defendant's failure and refusal to comply in a timely manner with Julian's requests as aforesaid constituted a violation of Section 75 of the Act.

WHEREFORE, plaintiff demands judgment

A. Imposing such penalties as the Commission may deem just and appropriate under the circumstances, and

B. For such other and further relief as the Commission may deem just and appropriate under the circumstances.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey

By 
Stephen C. Becker
Deputy Attorney General

Dated: Trenton, New Jersey
October 23, 1978

RECEIVED
NOV 6 1978

ASSOCIATE
CAROL HEDDER

CASINO CONTROL COMMISSION

LAW OFFICES

DONALD G. TARGAN
A PROFESSIONAL CORPORATION
1 NEW YORK AVENUE
SUITE 212
ATLANTIC CITY, NEW JERSEY 08401

TELEPHONE 346-1106
AREA CODE 609
NEW JERSEY

November 6, 1978

NOV 3 1978

CASINO CONTROL COMMISSION

Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

ATTENTION: R. Benjamin Cohen, General Counsel

Re: State vs. Carlacci

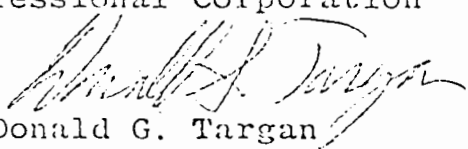
Dear Mr. Cohen:

Enclosed please find the Answer to the Complaint in the above entitled matter.

The undersigned requests a full hearing in the above entitled matter. Please advise the undersigned when a pre-hearing conference can be held in this matter.

Very truly yours,

DONALD G. TARGAN, ESQUIRE
A Professional Corporation


By: Donald G. Targan

DGT:mp

Enc.

CC: Stephen C. Becker,
Deputy Attorney General

FILED
NEW JERSEY

NOV 3 1978

CASINO CONTROL COMMISSION

DONALD G. TARGAN, ESQUIRE, A PROFESSIONAL CORPORATION
ONE NEW YORK AVENUE
ATLANTIC CITY, NEW JERSEY 08401
(609) 348-1106
ATTORNEY FOR Defendant

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

Plaintiff In re JOSEPH J. CARLACCI,
a Casino Employee Licensee.
STATE OF NEW JERSEY,

vs.

Defendant

JOSEPH J. CARLACCI.

Docket No. 78-32

CIVIL ACTION

ANSWER

The defendant, Joseph J. Carlacci, answering the Complaint of the plaintiff, says:

1. Denied.

2. Admitted.

3. It is admitted that at approximately 6:10 A.M., prevailing time on September 23, 1978, the defendant was working as a pi boss; and, in such capacity, was exercising supervisory authority over the activities of dealers at blackjack table No. 5 in said Resorts Casino Hotel. As to the remaining allegations of Paragra

JUL 12 1963
CASINO CONTROL COMMISSION

3, the defendant does neither admit nor deny, but leaves the plaintiff to the proof thereof.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. This defendant admits that Paragraph 63F of the Act states, as listed in Paragraph 8, but denies that such section is applicable to the allegations alleged in the Complaint.

9. This defendant admits that Paragraph 75 of the Act states, as listed in Paragraph 9, but denies that such section is applicable to the allegations alleged in the Complaint.

10. Denied.

FIRST SEPARATE DEFENSE

All actions taken by the defendant, Joseph L. Carlacci, were in full compliance with the statutes of the State of New Jersey and the regulations of the Casino Control Commission.

SECOND SEPARATE DEFENSE

The actions of John B. Julian, an employee of the Casino Control Commission, were unauthorized, arbitrary and capricious and beyond the scope of his authority.

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THIRD SEPARATE DEFENSE

CASINO CONTROL COMMISSION

The allegations of the Complaint fail to state a cause of action, and the defendant moves for the Complaint to be dismissed.

FOURTH SEPARATE DEFENSE

The actions of John B. Julian, an agent, servant and/or employee of the Casino Control Commission were unreasonable and arbitrary, and said agent failed to abide by the regulations of the Casino Control Commission.

FIFTH SEPARATE DEFENSE

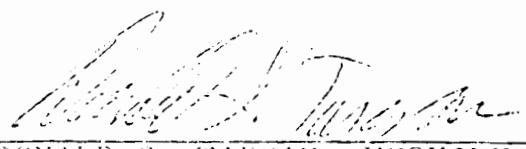
The aforesaid actions are in violation of the constitutional provisions of the United States and New Jersey constitutions.

SIXTH SEPARATE DEFENSE

The aforesaid actions are in excess of the statutory authority and jurisdiction of the Commission.

SEVENTH SEPARATE DEFENSE

The actions of John B. Julian were arbitrary and capricious and otherwise not in accordance with law.


DONALD G. TARGAN, ESQUIRE
Attorney for Defendant

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 78-32

IN THE MATTER OF JOSEPH J. CARLACCI,)
a Casino Employee Licensee.)
STATE OF NEW JERSEY,)
Plaintiff)
v.)
JOSEPH J. CARLACCI,)
Defendant.)

PRE-HEARING
CONFERENCE
ORDER

A pre-hearing conference having been held in this matter before the undersigned Hearing Examiner on November 22, 19 at 10:10 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, Donald G. Targan, appearing on behalf of the defendant, Stephen Becker, Deputy Attorney General, appearing for the Division of Gaming Enforcement and in the presence of Thomas N. Auriemma, Assistant Counsel, the following matters were decided:

A. DISCOVERY

1. The Division and the defendant shall exchange all documentary evidence in their possession, relevant to the issues, exclusive of work product.
2. The Division and the defendant shall exchange a list of witnesses which each party intends to call at the hearing. This list shall include the name and address of each witness and a short summary of the subject matter as

- to which each witness will testify. Any written statements taken of these witnesses shall also be provided by way of discovery.
3. The Division shall provide the defendant with a copy of a Casino Control Commission Inspection Manual and memoranda furnished to supervisory casino personnel and dealers of Resorts International Hotel, Inc. regarding requests for information by Commission Inspectors.
 4. The defendant shall provide the Division with any manuals, handbooks, or memoranda supplied by Resorts International Hotel, Inc. to its supervisory personnel and dealers.
 5. The parties shall have the right to propound written interrogatories no later than November 30, 1978.
 6. The interrogatories shall be answered no later than December 14, 1978.
 7. The parties shall provide each other with the discovery set forth above no later than December 14, 1978.
 8. Any request for additional interrogatories or depositions shall be made no later than December 20, 1978.
 9. Any request for additional discovery after December 20, 1978, shall be made by motion to the Hearing Examiner stating in detail the reasons for such request.

B. STIPULATIONS AND ADMISSIONS

1. It is stipulated that the Division of Game Enforcement is charged with the responsibility pursuant to the Casino Control Act of prosecuting the present matter before the Commission.
2. It is admitted by the defendant that he is presently employed as a pit boss by Resorts International Hotel, Inc. in its casino room and is the holder of a casino employee license (00452-21) issued by the Commission on May 25, 1978.
3. It is admitted by the defendant that at approximately 6:10 a.m. on September 23, 1978 the defendant was working as a pit boss in the casino room of Resorts International Hotel, Inc. and was exercising supervisory authority over the activities of dealers at blackjack table number five (5).

C. ISSUES

1. The factual issues to be decided by the Commission concern those matters set forth in the Division's complaint, Docket Number 78-31 filed on October 23, 1978.
2. The defenses asserted by the defendant in his Answer are preserved and may be advanced at the hearing.

D. DATE

A date for the hearing in this matter is set for

January 5, 1979, at 10:00 a.m. in the Department of
Community Affairs Conference Room, 2nd floor,
329 West State Street, Trenton, New Jersey.

It is hereby on this th30 day of November, 1978,

ORDERED that this Pre-Hearing Conference Order be
served upon the defendant and the Division of Gaming Enforcement
within three days of its entry.

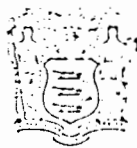
Albert W. Merck

Albert W. Merck
Hearing Examiner

Dated: November 30, 1978

by:

Thomas N. Auriemma
Thomas N. Auriemma
Assistant Counsel



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RECEIVED

JOHN J. BIGNARD
ATTORNEY GENERAL

APR 10 1979

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

NEW JERSEY
CASINO CONTROL COMMISSION

(609) 292-0940

March 28, 1979

Thomas N. Auriemma, Esquire
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: State v. Carlacci
Docket No. 78-32

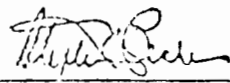
Dear Mr. Auriemma:

Herewith two duplicate copies of a STIPULATION OF SETTLEMENT ORDER with regard to the above-designated matter that have been executed by Mr. Targan and me. It would be appreciated if you could transmit the ORDER to Commissioner Merck for his consideration and execution.

In the event that Commissioner Merck executes the ORDER, kindly return a conformed copy to me in order that both Mr. Targan and I may have conformed copies for our files.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By 
Stephen C. Becker
Deputy Attorney General

SCP/ems
Attachments
cc: Donald G. Targan (w/o att.)



State of New Jersey

CASINO CONTROL COMMISSION

379 WEST STATE STREET
TRENTON, N.J. 08625
PHONE NUMBER 609-292-7730, 7731

JOS. L. LORDI
CHAIRMAN

KENNETH N. MACDONALD
VICE-CHAIRMAN

ALBERT W. MERCK
ALICE D. CONSEY
PROSPERO DEBONA, JR.
COMMISSIONERS

WILLIAM F. X. BAND
EXECUTIVE SECRETARY

ATLANTIC CITY OFFICE
TENNESSEE AND BOARDW.
PHONE NUMBER: 609-348-3

April 24, 1979

Donald G. Targan
1 New York Avenue
Suite 212
Atlantic City, N.J. 08401

Stephen Becker
Deputy Attorney General
Division of Gaming Enforcement
Independence Mall
Trenton, New Jersey 08625

RE: State v. Carlacci
Docket Number 78-32

Dear Counsel:

I have received Mr. Becker's letter and the proposed stipulation on the above-captioned matter. I have reviewed the proposed stipulation and will accept it and recommend that the Commission accept it provided that the language contained in paragraph 10 that "it is understood that the aforesaid Stipulation of Settlement does not constitute an admission of guilt on the part of Joseph J. Carlacci" is deleted.

I direct counsel to advise Commission attorney Thomas N. Auriemma by Tuesday, May 1, 1979, concerning their acceptance of the proposed stipulation.

Failure to timely advise Mr. Auriemma as to the deletion will result in a peremptory hearing date being set.

Very truly yours,

/s/ Albert W. Merck

Albert W. Merck
Hearing Examiner

ceh

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MAY 1 1979



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

(609) 292-0940

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

April 27, 1979

Thomas N. Auriemma, Esquire
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: State vs. Carlacci, Docket No. 78-32

Dear Mr. Auriemma:

This is in response to the direction of Commissioner Merck in his letter of April 24 that I advise you of my thoughts with regard to the modification to the Stipulation of Settlement Order that he indicated he would require prior to acceptance by him of the said Stipulation.

The State of New Jersey is amenable to the modification proposed by Commissioner Merck. I have discussed this proposed modification with Mr. Targan, and it is my understanding that he will communicate his thoughts with regard to this matter directly to you.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By 
Stephen C. Beckor
Deputy Attorney General

SCB:ci

cc: Donald G. Targan

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APR 10 1979

NEW JERSEY
JOHN J. DEGNAN
Attorney General
New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
Box CN-047
Trenton, New Jersey 08625

By: Stephen C. Becker
Deputy Attorney General
(609) 292-0940

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

_____)
In re JOSEPH J. CARLACCI,
A Casino Employee Licensee.)

Docket No. 78-32

STATE OF NEW JERSEY,)

Plaintiff)

vs.)

STIPULATION OF SETTLEMENT
ORDER

JOSEPH J. CARLACCI,)

Defendant.)
_____)

This matter having been opened to the Commission, acting
by and through its duly designated and serving Hearing Examiner,
by John J. Degnan, Attorney General of New Jersey and attorney
for plaintiff, Stephen C. Becker, Deputy Attorney General,
appearing, in the presence of Donald G. Targan, Esquire, attorney

for defendant, and both counsel having consented to the entry of this Stipulation of Settlement Order, the Hearing Examiner being otherwise duly advised in the premises and for good cause shown, it is, therefore,

STIPULATED AND ORDERED on this day of
1979, as follows:

1. Defendant, who is presently employed as a pit boss by Resorts International Hotel, Inc. at its casino hotel in Atlantic City, New Jersey, is the holder of a valid casino employee license duly issued by the Commission on May 25, 1978. The number of the said license is 00452-21.

2. At approximately 6:10 A.M., prevailing time, on September 23, 1978, defendant was working as a pit boss and, in such capacity, was exercising supervisory authority over the activities of dealers at blackjack table number five in the said Resorts International Casino. At that time, John B. Julian (hereinafter called "Julian"), who was then an inspector employed by the Commission, approached blackjack table number five in the course and scope of his duties and requested orally that defendant allow him to inspect certain decks of playing cards that were then being examined by defendant.

3. On October 23, 1978, the Division of Gaming filed a Complaint against Joseph J. Carlacci, charging violations of the Casino Control Act and the Regulations of the Casino Control Commission, in that Joseph J. Carlacci failed to comply in a timely manner to inspect decks of playing cards, and failed and refused to produce in a timely fashion the said license required to be in the possession of casino employees.

4. The parties, have amicably disposed of all issues relating to the allegations in the Complaint filed by the Division of Gaming, and the answer filed by the defendant, Joseph J. Carlacci, and agree that an Order is to be entered pursuant to the provisions of the Stipulation of Settlement provided herein.

5. The defendant, Joseph J. Carlacci, acknowledges and agrees that, at the request of inspectors of the Casino Control Commission, he, as a casino employee, is immediately required to allow the inspection of decks of cards and other playing paraphernalia; and Joseph J. Carlacci agrees to abide by the Casino Control Commission rules in this respect at any time such a request is made.

6. Joseph J. Carlacci acknowledges under the Casino Commission Rules that he, as a casino employee, shall, upon request, produce his license in a timely manner, and the defendant agrees to comply fully with any such request to show his license.

7. The defendant, Joseph J. Carlacci, hereby agrees at all times in the future to fully comply with any and all rules and regulations of the Casino Control Commission and the requirements of the Casino Control Act.

8. The parties agree, in consideration of the Stipulation of Settlement, that the casino employee license of Joseph J. Carlacci shall be suspended for seven consecutive days with the provision that the suspension for two of these days be set aside after the entry of the Stipulation of Settlement and after Joseph J. Carlacci has complied with all provisions of the terms herein at the conclusion of a 120 day period.

9. The parties further agree that Joseph J. Carlacci shall demonstrate to the reasonable satisfaction of the Division of Gaming that he has not been, or will not be, as the case may be, compensated or otherwise reimbursed, whether directly or indirectly, by his employer for normal wages and other remuneration lost by him as a result of the said suspension.

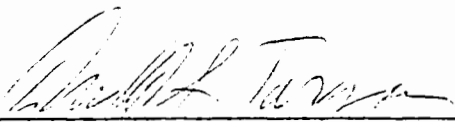
10. The parties agree that the Stipulation of Settlement has been entered into by the parties as a result of a settlement of the issues existing between the parties, and without a trial and hearing on the merits of the allegations of the Complaint and the answer filed by the defendant,

~~--and it is understood that the aforesaid Stipulation of~~
~~--Settlement does not constitute an admission of guilt on the~~
~~--part of Joseph J. Carlacci.~~

ALBERT W. MERCK
Hearing Examiner

We hereby consent to the entry of the
Stipulation of Settlement Order.

DONALD G. TARGAN, P.A.
Attorney for Defendant

By: 
Donald G. Targan

Dated: Atlantic City, New Jersey
March 22, 1979

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff

By: 
Stephen C. Becker
Deputy Attorney General

Dated: Trenton, New Jersey
MARCH 26, 1979

IN THE MATTER OF PAUL SCOTT CAVALIER, :

A Casino Employee Licensee :

STATE OF NEW JERSEY, :

Plaintiff : FINAL ORDER

v. :

PAUL SCOTT CAVALIER, :

Respondent. :

The New Jersey Casino Control Commission having read and considered the Report and Recommendation in this matter of Commissioner Albert Merck, Hearing Examiner, dated September 10, 1979, and having read and considered the written exceptions and objections and cross-exceptions and objections filed by the parties herein, and having carefully considered the record of the hearing herein, and having heard and considered the oral arguments for the parties at its public meeting of October 24, 1979 and having voted at that meeting to adopt the said Report and Recommendation with the modification that the penalty to be imposed upon Respondent Paul Scott Cavalier be limited to suspension of his casino employee license for a period of six months from the date hereof:

It is on this *29th* day of October, 1979, ORDERED that the Report and Recommendation of Commissioner Albert W. Merck in this matter dated September 10, 1979 be and is hereby adopted by the Commission and incorporated herein by reference except insofar as

it recommends the sanction of revocation of the Respondent's casino employee license; and

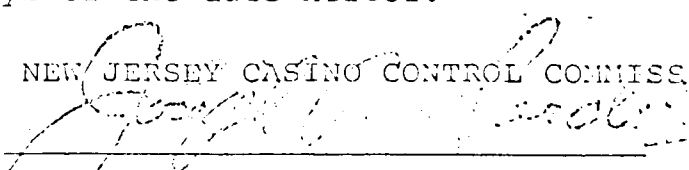
It is further ORDERED that the casino employee license of Respondent Paul Scott Cavalier be and is hereby suspended for a period of six consecutive months from the date hereof; and

It is further ORDERED that the imposition of the foregoing suspension be stayed pending disposition of an appeal of this matter to the Superior Court of New Jersey, Appellate Division; and

It is further ORDERED that such stay is specifically conditioned upon the filing by Respondent of his Notice of Appeal in the Superior Court, Appellate Division no later than ten (10) days from the date hereof, and further, upon the prompt filing by Respondent of a Motion to accelerate the appellate schedule upon said appeal pursuant to R. 2:9-2; and

It is further ORDERED that copies of this Order be served upon Counsel for the Respondent and the Division of Gaming Enforcement within five (5) days of the date hereof.

THE NEW JERSEY CASINO CONTROL COMMISSION

By: 

Joseph P. Lordi,
Chairman

Dated: October 29, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-31

IN THE MATTER OF PAUL SCOTT CAVALIER, :

A Casino Employee Licensee :

STATE OF NEW JERSEY, :

Plaintiff :

v. :

PAUL SCOTT CAVALIER, :

Respondent. :

REPORT AND RECOMMENDATION

Stephen C. Becker, Deputy Attorney General, appearing for the
Division of Gaming Enforcement

Stephen Hankin, Esq., appearing for the Respondent, Paul Scott
Cavalier

On October 6, 1978, the Division of Gaming Enforcement
filed with the Commission Complaint No. 78-31. The Complaint
alleged that Paul Scott Cavalier, [also referred to as the
Respondent] a casino employee licensee, who was employed as a
dealer by Resorts International Hotel, Inc. was arrested on
September 8, 1978, by the Atlantic City Police Department and
charged with a violation of N.J.S.A. 2A:112-1 (illegal gaming).¹

1. N.J.S.A. 2A:112-1 provides that:

Any person playing for money or other valuable thing at cards,
dice or other game, with one or more dice, or with any other
instrument, engine or device in the nature of dice, having
one or more figures or numbers, or at billiards, pool, tennis,
bowls or shuffleboard, or A.B.C. or E.O. table, or other
tables, or at faro bank, or other bank of a like nature by
whatever name known, or with any slot machine or device in
the nature of a slot machine, or with any other instrument,
engine, apparatus or device having one or more figures or
numbers thereon, is guilty of a misdemeanor.

(See Paragraph 4 of Complaint No. 78-31). The Complaint further alleged that the arrest was precipitated by a search by the Atlantic City Police Department of Apartment A-4 located in the Antoinette Apartments, 140 South Virginia Avenue, Atlantic City, New Jersey. The Atlantic City Police allegedly found "card tables covered with green cloth, folding chairs, gaming chips marked in one-dollar and five-dollar denominations, playing cards, and markers at the said premises." (See Paragraph 3 of Complaint No. 78-31). It was also alleged in the Division's Complaint that the Atlantic City Police Department had established that Mr. Cavalier, over a two-month period, had access to Apartment A-4 in the Antoinette Apartments, and that he had been seen entering and exiting the premises. Additionally, it was alleged that well-dressed males also were observed entering and exiting the apartment. (See Paragraph 4 of Complaint No. 78-31).

Based upon the allegations contained in the Complaint, the Division requested the following:

Judgment that violation of N.J.S.A. §2A:112-1, or conduct by a licensee as detailed in Paragraphs 3 and 4 of this complaint, supra, is of such a nature that licensure as a casino employee of a person convicted under N.J.S.A. 2A:112-1 or engaging in such conduct would be inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey. [See paragraph A of Complaint No. 78-31].

Also requested by the Division was a

Judgment revoking the casino employee license of defendant in the event that, based upon the circumstances that culminated in his aforesaid arrest on September 8, 1978, he is hereafter convicted of violation of N.J.S.A. §2A:112-1 or such other offense that the Casino Control Commission may determine is of such a nature that licensure as a casino employee of a person

convicted thereof would be inimical to the policy of the Casino Control Act and to casino operations; or in the event that the Commission finds that the defendant engaged in conduct as detailed in Paragraphs 3 and 4 of the complaint, supra. [See Paragraph B of Complaint No. 78-31].

Lastly requested by the Division was

Judgment imposing such penalties as the Casino Control Commission may deem just and appropriate under the circumstances***[See Paragraph D of Complaint No. 78-31].

and

Judgment for such other and further relief as the Casino Control Commission may deem just and appropriate under the circumstances. [See Paragraph E in Complaint No. 78-31].

By certified letter the Commission served upon Mr. Cavalier a copy of Complaint 78-31 and advised him that within 30 days after receipt thereof he could file with the Commission a request for hearing and notice of defense. Through his attorney, Mr. Cavalier filed a request for hearing and an Answer to the Complaint on October 27, 1978.

In his Answer, Mr. Cavalier set forth, among other things, an affirmative defense that the Atlantic County Prosecutor's Office had administratively dismissed the criminal complaint against him wherein he had been charged with a violation of N.J.S.A. 2A:112-1. (See Answer, paragraph 2 in section entitled "Affirmative Defenses.")

On October 30, 1978, the Division submitted a Reply to Mr. Cavalier's Answer wherein it was admitted that the Atlantic County Prosecutor's Office had dismissed the criminal complaint against Mr. Cavalier. (See Paragraph 2 of Division's Reply).

In its Complaint, the Division had requested that the Commission enter an order suspending the casino employee license of Mr. Cavalier "pending a license revocation hearing to be held by the Casino Control Commission subsequent to the ultimate disposition of the charges presently pending against defendant, or as such charges may from time to time be amended." (See Paragraph C of Complaint No. 78-31). Accordingly, as a result of the Division's request the Commission entered an Emergency Order on October 26, 1978, pursuant to the authority of N.J.S.A. 5:12-109 suspending the casino employee license of Mr. Cavalier. However, it was subsequently brought to the Commission's attention that the Atlantic County Prosecutor's Office had administratively dismissed the criminal complaint against Mr. Cavalier. Thereafter, the Commission entered an Order on November 21, 1978, wherein the October 26, 1978, Emergency Order was vacated. Thus, pending a hearing and resolution of the Division's complaint, Mr. Cavalier's casino employee license was restored to him.²

-
2. The Commission's records indicate Mr. Cavalier's casino employee license was renewed by the Commission at its public meeting of June 20, 1979. The Division, by letter dated May 29, 1979, did not object to the renewal. They stated, however, that the outcome of this administrative hearing could put Mr. Cavalier's "license in jeopardy." [See May 29, 1979, letter of Division of Gaming Enforcement].

At its public meeting of July 11, 1979, the Commission granted a position change to Mr. Cavalier and licensed him as a floorperson in the game of roulette.

On December 6, 1978, a pre-hearing conference was held in the Offices of the Commission at 379 West State Street, Trenton, New Jersey. A Pre-Hearing Conference Order was subsequently entered on December 12, 1978, and served upon the parties. A hearing date of January 4, 1979, was set. The hearing was adjourned from this date, but was held on February 15, 1979 (in Atlantic City) and concluded on March 5, 1979 (in Trenton).³

The hearing commenced on February 15, 1979.⁴ Neither the Division nor the Respondent had any motions at that time. (T5-8 to 12). Both parties waived opening statements. (T5-13 to 19).

-
3. By letter dated January 24, 1979, from Counsel for Mr. Cavalier, it was alleged that the Division of Gaming Enforcement had not supplied certified Answers to interrogatories propounded by the Respondent. It was urged that the January 24 letter be considered a motion to dismiss the complaint for failure to abide by the Pre-Hearing Conference Order and as a motion to forward to the Respondent certified Answers to his interrogatories.

By letter dated January 26, 1979, from Deputy Attorney General Becker it was indicated that certified Answers were hand-delivered to counsel for Mr. Cavalier on that date and he offered an explanation as to the reason for the failure to earlier transmit certified Answers.

I thus ruled that Mr. Cavalier's motion to compel the Division to supply him with certified Answers was moot. I also denied the motion to dismiss the Complaint because I perceived no prejudice in the brief delay of the Division in forwarding certified Answers to Mr. Cavalier's counsel.

4. T refers to Transcript of February 15, 1979.

2T refers to Transcript of March 5, 1979.

The sole witness to testify for the Division was Sergeant Claude M. Brower of the Atlantic City Police Department. He related that he was in charge of the Special Investigations Bureau and that during the summer of 1978 he had conducted surveillances of the Antoinette Apartments at 140 South Virginia Avenue, Atlantic City. (T10-7 to T10-23; T14-15 to 21; T17-24 to T18-4). Seven surveillances were conducted. (T36-21 to T37-2). They were always conducted alone. (T95-25 to T96-5). It was suspected that illegal gambling was occurring on those premises. (T17-10 to 20).

Sergeant Brower testified that he conducted his first surveillance on July 14, 1978. (T18-5 to 6; T19-11 to 12). He stated that as a preliminary measure he made an initial inspection of 140 South Virginia Avenue as well as determining who owned that building. (T19-14 to 22). He related that the second floor of building was occupied, but that the first floor was unoccupied. (T19-25 to T20-2).

The Sergeant testified that on July 14, 1978, he arrived at 140 South Virginia Avenue in an unmarked police vehicle at approximately 7:00 p.m. He parked the car on the opposite side of the street about fifteen feet from the apartment house. (T20-12 to 23; T21-2 to 14). Sergeant Brower stated that he exited his vehicle and positioned himself in a parking lot adjacent to the building. (T21-15 to 24; T23-7 to 16). He observed Mr. Cavalier walk from the area of Resorts International Hotel on Pennsylvania Avenue and enter the side door of the Antoinette Apartments. (T23-24 to T24-4; T25-7 to 11). He stated that he had previously obtained a description of Mr. Cavalier, that is, that he wore

"a tux, he wore glasses and also he walked with a limp." (T24-17 to 21). Thus, Brower indicated that when he observed a person entering the Antoinette Apartments on July 14, 1978, he knew that it was Paul Scott Cavalier. He then testified that the Respondent was the person he viewed entering the Antoinette Apartments. (T24-25 to 25-6).

Sergeant Brower stated that after he saw Cavalier enter the side entrance of the apartment building he (Brower) went around to the front of the building and that he "went inside the doors" and observed Cavalier unlock the padlocked door of an apartment he subsequently determined was A-4. (T25-23 to T26-4; T26-10 to 24; T27-10 to T27-20). Brower testified that he then returned to the parking lot area to continue the surveillance. (T28-3 to 11). He observed the apartment house from 7:00 p.m. until midnight. (T-28-5 to 6). During the surveillance he saw several males enter the side entrance of the Antoinette Apartments. (T34-4 to T35-9). As they entered the apartment building, Brower indicated that he would go inside the front door of the building and watch them as they proceeded to enter Apartment A-4. (T35-11 to 17). Brower subsequently observed the men leave the building. Cavalier was the last man to leave; he would lock the apartment door and get in his automobile and drive away. (T36-1 to 12). Sergeant Brower reiterated that there was no doubt in his mind that the person he saw entering and exiting Apartment A-4 was Paul Scott Cavalier. (T36-13 to 16).

Sergeant Brower further testified that the next surveillance of the Antoinette Apartments was the following evening,

July 15, 1978. (T-37-18 to 20). Brower was sitting in an unmarked van across the street from the Antoinette Apartments when he observed Mr. Cavalier get into his automobile, drive away, and then subsequently return. (T38-2 to 10). Cavalier was wearing a tuxedo and eyeglasses, and was walking with a limp. (T38-16 to 18). Brower stated that Cavalier entered the side entrance of the Antoinette Apartments and unlocked the padlock on Apartment A-4 and then entered that apartment. (T38-24 to T40-7). Ten or fifteen minutes later Brower saw several males enter the side entrance of the Antoinette Apartments and go into Apartment A-4. (T40-13 to 23). These individuals stayed several hours and then left. Cavalier was the last individual to leave, and he locked the padlock on Apartment A-4 before departing. (T41-4 to 10).

Sergeant Brower emphasized that neither during the surveillance of July 15, 1978, nor during any of the other surveillances did he enter Apartment A-4. (T41-11 to 17).

Sergeant Brower testified that he next conducted a surveillance on July 21, 1978. (T41-18 to 20). He observed Mr. Cavalier enter Apartment A-4; subsequently several other males entered the apartment. (T41-23 to 25). He related that he went into the hallway of the Antoinette Apartments and positioned himself directly in front of the door to Apartment A-4. (T42-11 to 24). He remained there for five to ten minutes. (T46-9 to 12). While outside the apartment door, Sergeant Brower stated that he heard talking and laughter. (T43-4 to 5; T44-11 to 12; T44-16 to 17). He also testified that he heard a "clinking sound" which he described as "chips rattling." (T45-3 to 5; T45-16).

Sergeant Brower further testified that with regard to the investigation at the Antoinette Apartments, he had spoken with an undisclosed informant with whom he had dealt with in the past on approximately 12 occasions. (T55-6 to T56-19). Brower stated that he instructed the informant to knock on the door of Apartment A-4 and say that "Paul sent you." (T57-2 to 7). This was advised, stated Sergeant Brower, because it was the only way for an individual to gain access to Apartment A-4. (T57-9 to 11).

Subsequently, the informant related to Sergeant Brower that he was present in Apartment A-4 on July 22, 1978. (T58-3 to 9). The informant described one of the males in the apartment as a tall, white male with glasses who was wearing a bow tie, white shirt, and black pants. (T59-4 to 15). The following day the informant came to Sergeant Brower's office where Brower showed him an Intertel photograph of Mr. Cavalier. The informant indicated to Brower that Cavalier was the individual who was dealing cards in Apartment A-4 of the Antoinette Apartments on the previous evening. (T-60-14 to T62-14).

Sergeant Brower also related that on July 22, 1978, he had observed Mr. Cavalier enter the Antoinette Apartments. He also stated that he saw the informant enter the building on that date, too. (T59-16 to T60-2).⁵

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5. I admitted the evidence relating to the undisclosed informant over the objection of the Respondent. (T46-16 to T52-21). The Respondent requested that the name of the informant be disclosed to him or that any testimony as to the observations of the informant be precluded.

The Division asserted that the identity of the informer need not be disclosed because of the privilege created by New Jersey Evidence Rule 36. That Rule provides:

FOOTNOTE CONTINUED

A witness has a privilege to refuse to disclose the identity of a who has furnished information purporting to disclose a violation of a provision of the laws of this State or of the United States to a representative of the State or of the United States or a governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that (a) the identity of the person furnishing the information has already been otherwise disclosed or (b) disclosure of his identity is essential to assure a fair determination of the issues.

I note that Section 108(a) (6) of the Casino Control Act provides in any proceeding against a licensee that:

The hearing need 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...[N.J.S.A. 5:12-108(a) (6)].

While I permitted the testimony at that time, I stated:

I'm going to admit this with the clear understanding that the Hearing Examiner, myself and other members of the Commission have to be assumed to have a certain sophistication as to the amount of weight which we will give to an undisclosed individual who cannot be subjected to cross-examination. (T52-12 to 20).

The parties submitted briefs on the question of the undisclosed informant testimony. Just prior to summations, I denied respondent's motion to strike the testimony of Sergeant Brower regarding the undisclosed informant. (2T2-9 to 19). With regard to the weight the Commission should give to the testimony of the observations of the undisclosed informant, see my recommendation, infra.

According to Sergeant Brower, he conducted further surveillances of the Antoinette Apartments on July 28, August 27, and September 2, 1978. (T62-13 to 17). He indicated that he observed on those dates the same pattern of activity that he saw on the previous surveillance dates. (T62-18 to 24).

Brower stated that he subsequently received information that the gambling operation would be moved out of Apartment A-4 because the individuals involved had become aware that the police were investigating. (T63-6 to 9). A search warrant was thereafter obtained and a search of Apartment A-4 was conducted on September 8, 1978. (T63-10 to T64-5). Participating in the search were Sergeant Brower, and other Atlantic City Police officers, as well as New Jersey State Police officers. (T64-6 to 11).

Brower testified that they removed the lock on the door and entered the apartment where they discovered two tables which were green in color and eight chairs. Also in the apartment were 40 \$5.00 chips, 56 \$1.00 chips, two boxes of playing cards, three markers, and three ashtrays. (T64-15 to T65-2). At the hearing, Brower identified exhibits D-1, D-2, D-3, and D-4 as photographs of the gaming equipment that was found in Apartment A-4. (T65-3 to 8).

Brower stated that there was no furniture or living utensils in the apartment, although there was an exhaust fan and a "long cable which ran to the pavement to supply electricity to that apartment." (T65-9 to 21). After conducting the search of the apartment, Sergeant Brower went to the casino room of Resorts International Hotel, Inc. and arrested the Respondent. (T66-1 to 9).

Following the testimony of Sergeant Brower, the Division rested its case. The Respondent's first witness was Stuart Whiffen, a clerk for the Atlantic City Electric Company. (T148-17 to 18). He stated that there were 18 individual electrical units in the Antoinette Apartments in addition to a house electrical meter. (T151-25 to T152-8). He was not familiar with the Antoinette Apartments or the layouts of the individual apartment units. (T151-19 to 24). Mr. Whiffen related that the electric company's records showed that the house electric meter for the Antoinette Apartments was listed under the name of Anna Cavalier. One of the apartment units (A-1) was also listed in her name. (T149-16 to 19; T153-20).

Whiffen further testified that electrical service to Apartment A-4 was disconnected on June 6, 1978, and that the last tenant of that apartment was Ethyl Hayes. (T149-20 to 24; T150-13 to 19). Electrical service to Apartments A-1 and A-2 was disconnected on September 25, 1978; service to A-3 was disconnected on October 26, 1978; service to A-5 was disconnected on July 18, 1978; and service to A-6 was disconnected in January 1978. (T149-25 to T150-19; T153-21 to T154-1). The electrical service to the house meter was disconnected on October 12, 1978. (T153-17 to 19). Electrical service to the other apartments in the complex was terminated at varying times from December 1977 until October 26, 1978. (T150-20 to T151-13; T153-21 to T154-12).

The next witness to testify was Louis Schwartz, a private detective, who inspected the premises of the Antoinette Apartments between 1:00 p.m. and 2:30 p.m. on September 12, 1978, at the

request of the Respondent's attorney. (T155-6 to T156-12; T166-11 to 17). He related that he had taken photographs of the premises (R-1 and R-2 in evidence). He examined Apartment A-4 on that date and discovered that its door was removed from its hinges and that there was no electricity being supplied to it. (T156-13 to 22; T163-25). While he did not see any candles in the apartment, he did observe a "cord hanging from a ceiling." (T156-24; T157-9 to 10). Mr. Schwartz further related that an individual who was standing inside the front doors of the Antoinette Apartments could view someone entering Apartment A-4. (T160-13 to T161-15; T167-24 to T168-6).

The next witness was Mollie Scarpa, the payroll clerk for the Atlantic City Police Department. (T169-6 to 8). She testified from police department time records that were not prepared by her. (T180-6 to 25). Moreover, she did not have knowledge as to how a particular bureau in the Atlantic City Police Department prepared its time sheets. (T184-13 to 16).

The time sheets indicated, nevertheless, that Sergeant Brower worked from 9:00 a.m. until 5:00 p.m. on July 14, 1978. Overtime hours for that date were listed from 10:00 a.m. until 9:00 p.m. (T173-6 to 22).

Ms. Scarpa related that the time sheets showed that July 15, 1978, was Sergeant Brower's day off. (T173-23 to T181-6). They also revealed that on July 21, 1978, Sergeant Brower worked from 9:00 a.m. to 5:00 p.m. with no overtime hours. (T181-7 to 13).

Ms. Scarpa further testified that the time sheets also showed that July 22, 1978, was Sergeant Brower's day off, although

five hours of overtime were listed - 1:00 p.m. to 6:00 p.m. (T182-14 to T182-4).

The records further showed that Sergeant Brower worked from 9:00 a.m. until 5:00 p.m. on July 28, 1978, and that on August 27, 1978, and September 2, 1978, Sergeant Brower did not work at all. No overtime was listed for any of those days. (T182-5 to 19).

The next witness, Anna Cavalier, was the grandmother of the Respondent. (T191-1 to 4). She stated that she was the owner of the Antoinette Apartments at 140 South Virginia Avenue, Atlantic City, New Jersey, and that the apartment building was demolished in December 1978. (T190-19 to 25; T191-5 to 11).

She testified that she did not go into the apartment house but that the Respondent managed it and collected the rent (T191-12 to 25; T196-20). She also related that the Respondent parked his car at the Antoinette Apartments. (T192-6 to 19).

The final witness to testify was the Respondent, Paul Scott Cavalier. He stated that he was 23 years old and employed as a roulette dealer at Resorts International Hotel, Inc. (T197-23 to T198-7). He testified that he parked his automobile at a lot near the Antoinette Apartments, but he denied conducting or participating in any card game at that address. (T197-15 to 19; T201-15 to 16). He also stated that he did not recall going into the Antoinette Apartments after completing his work schedule at Resorts. (T201-21 to 24).

Mr. Cavalier could not recall his exact whereabouts on the dates of July 14, 15, 21, 22, 23, August 27, and September 2,

1978. (T198-21 to T199-4). He did, however, testify as to his work schedule on those days. (T199-7 to 15). His testimony revealed that he worked from either 9:30 or 10:00 a.m. until 8:00 or 8:15 p.m. on the foregoing dates. (T199-13 to T201-11; T206-13 to 23).

Mr. Cavalier further testified that he did not know if there was a padlock on Apartment A-4, but that he did remember observing locks on the second floor of the apartment building. (T202-4 to 11; T203-16 to 21).

He also admitted that he wore glasses, although during the hearing he was wearing contact lenses. (T204-15 to 18). He further stated that during the summer of 1978 he did not wear glasses. (T204-23 to T205-1). His Intertel photograph was taken, however, while he was wearing glasses. (T205-11 to 16).

Mr. Cavalier, although licensed as a roulette dealer, had received some training in blackjack techniques from Alfred Henderson, who was living in Apartment A-3 in the Antoinette Apartments during the summer of 1978. Mr. Cavalier admitted visiting that apartment and stated that it was directly across the hall from Apartment A-4. (T210-8 to T211-25; T225-19 to 20). Mr. Cavalier further stated that he came from a wealthy family, that he owned a condominium and that he was financially secure. (T218-13 to T220-13).

Lastly, the Respondent denied being in Apartment A-4 on the dates specified by Sergeant Brower and asserted that he was unaware of the existence of any gambling paraphernalia in the Antoinette Apartments. (T225-8 to T226-18).

During the course of the hearing the following exhibits were admitted into evidence:

D-1 to D-4 - Four photographs of gaming equipment

R-1 and R-2 - Two photographs of Antoinette Apartments
at 140 South Virginia Avenue, Atlantic City

R-3 - 17 affidavits from employees of Resorts International Hotel, Inc. attesting to the character and competence of Mr. Cavalier

R-4 - Two-page report of Detective Michael W. McLaughlin, dated September 12, 1978.

R-5 - Search warrant and affidavit of Claude Brower

R-6 - Sketch of interior of 140 South Virginia Avenue

R-7 - Supplemental Answers to Interrogatories

Based upon the foregoing testimony and the exhibits admitted into evidence, I make the following findings of fact and conclusions of law. I have carefully considered the credibility of the witnesses in this case, especially the credibility of Sergeant Claude Brower and Paul Scott Cavalier. After listening to the testimony, and examining the records and exhibits I conclude that the testimony of Sergeant Claude Brower is credible and true and that I disbelieve the testimony of Paul Scott Cavalier.

More specifically, I find that during the summer of 1978, Sergeant Brower conducted seven surveillances of the Antoinette Apartments at 140 South Virginia Avenue, Atlantic City, on July 14, 15, 21, 22, 28, August 27, and September 2. I find that he conducted these surveillances alone and during the evening hours. I further find that on those occasions he observed Mr. Cavalier enter the side door of the Antoinette Apartments and subsequently unlock

the padlock on Apartment A-4. I find credible his subsequent testimony that he observed several males enter the building through the side entrance of the Antoinette Apartments and then enter Apartment A-4. I find that Sergeant Brower made the observations of individuals entering Apartment A-4 from his position inside the front doors of the building, where other testimony, especially that of Louis Schwartz, corroborates that an individual could view Apartment A-4 if physically inside the building.

Additionally, I find that Sergeant Brower subsequently observed males leaving the building and that Mr. Cavalier would always be the last man to leave and lock Apartment A-4.

I further find that Sergeant Brower neither fabricated his testimony nor was he mistaken in the identification of Paul Scott Cavalier as the person who on seven occasions locked and unlocked Apartment A-4.

Moreover, I find that on July 21, 1978, while conducting a surveillance, Sergeant Brower observed Mr. Cavalier enter Apartment A-4 and that he subsequently observed other males entering that apartment. I find that Sergeant Brower went into the hallway of the Antoinette Apartments and that he positioned himself directly in front of the door to Apartment A-4. I find he remained there for several minutes and, while there, heard laughter and a "clinking sound" which appeared to be the rattling of chips.

I also find that during the seven surveillances of Apartment A-4 that Sergeant Brower did not at any time enter the apartment. With regard to Sergeant Brower's testimony concerning

the observations of the undisclosed informant I find as follows. As I noted earlier I admitted this testimony over the objection of Respondent's counsel. The name of this informant was not disclosed to the Respondent. Accordingly, the Respondent did not have the opportunity to confront the informant nor test the credibility of the informant. Therefore, at this time, I am making it clear that I am totally disregarding Sergeant Brower's testimony concerning the unnamed informant. This testimony forms no basis for my findings or recommendation in this matter and I urge the Commission to also disregard this testimony.

I next find that Sergeant Brower received information that the gambling operation would be moved from Apartment A-4 and that, as a result, he obtained a search warrant and conducted a search of Apartment A-4 on September 8, 1978. I find that the search uncovered two tables which were green in color, eight chairs, 40 \$5.00 chips, 56 \$1.00 chips, two boxes of playing cards, three markers, and three ashtrays.⁶

6. During the course of the hearing, defense counsel questioned the date of the notarization on the search warrant affidavit. It is unclear whether defense counsel was attacking the sufficiency of the search warrant or only attempting to impeach the credibility of Sergeant Brower. In any event, I note that the constitutional question of whether or not a search is valid is a matter which falls outside the scope of this agency's allotted jurisdiction. See, e.g. - Rubin v. Glaser, 166 N.J. Super. 258, 261 (App. Div. 1979). Accordingly, I express no opinion thereon.

The testimony of Stuart Whiffen of the Atlantic City Electric Company indicated that electrical service to Apartment A-4 had been terminated on June 6, 1978 and I so find this to be the case. Nevertheless, I find that there was electrical service to other apartments in the vicinity of A-4 during the summer of 1978. Additionally, there was electrical service to the house meter. More importantly, Sergeant Brower testified that on September 8, 1978, he observed in the apartment a "long cable which ran to the pavement" and which he characterized as supplying electricity to the apartment. Thus, I find, contrary to Respondent contention, that gambling activity could have occurred during the evening hours of July and August because of the ability of the individuals utilizing Apartment A-4 to have sufficient lighting.

During the course of the hearing, Respondent sought to impeach the credibility of Sergeant Brower. While there are some lingering questions regarding, for example, the Sergeant's time sheets, these records are only indicative of inefficient book-keeping and therefore insignificant concerning the present matter. Moreover, with regard to the search warrant affidavit, the discrepancies therein are also insignificant and do not give rise to doubt about the Sergeant's credibility. Considering the entirety of Sergeant Brower's testimony, he is plainly a very credible witness without motive for fabrication.

Prior to the commencement of the hearing, the parties stipulated that the Atlantic County Prosecutor's Office had administratively dismissed the criminal complaint against the Respondent which arose out of his arrest on September 8, 1978. (See page 2, pre-hearing conference order). I have considered

the actions of the Atlantic County Prosecutor, but without knowing the reasons behind the dismissal, I must conclude that the dismissal of the criminal charges does not compel a similar result by this administrative body.

As noted earlier in this report and recommendation, the Division in its complaint focused upon a violation of N.J.S.A. 2A:112-1. The pre-hearing conference order, however, specifically enumerated the factual issues. That order further stated that: "The Division alleges and the defendant denies that the commission of the foregoing acts constitute the commission of a criminal act, even if such conduct has not been prosecuted under the criminal laws of this State." (See pages 3 and 4 of Pre-Hearing Conference Order).

During the course of the hearing the factual content of the Division remained virtually unchanged from those contained in the Complaint and Pre-Hearing Conference Order. However, during the early part of the hearing the theory of the Division's case was fairly evident when counsel for the Division stated during legal argument concerning the undisclosed informant that:

***we are prepared to establish through otherwise competent evidence that other offenses were taking place, specifically violations of N.J.S.A. 111-37 which is the maintenance of a gaming resort. (T51-20 to 24).

7. The proper citation for this criminal offense is N.J.S.A. 2A:112-3.

Additionally, at the close of summations of counsel, the Division's attorney, in response to my question as to what statutory violations were being alleged, responded:

I would state, Commissioner, that the offense of maintaining a gaming resort is one which could be supported on the facts that we have alleged.*** (2T37-11 to 18).

At that point, counsel for the respondent remarked: "Commissioner, I don't believe that was alleged in the complaint by the Division." (2T37-24 to 25). After making such statement the matter was not, however, pursued any further. In any event, it is plain that the Respondent had notice of the allegations against him. The facts alleged were enumerated in the Complaint and the Pre-Hearing Conference Order. Moreover, early in the hearing, Respondent's counsel should have been aware that the specific criminal statute allegedly violated was the one which prohibited the maintenance of a gaming resort. Indeed, even assuming he were not aware of such fact, it cannot be said that any prejudice to Respondent resulted because the testimony in the case related to the same factual allegations and because the Respondent denied being aware that any illegal gambling was occurring in the Antoinette Apartments.

N.J.S.A. 2A:112-3 provides that:

Any person who, habitually or otherwise, buys or sells what is commonly known as a pool, or any interest or share therein, or makes or takes what is commonly known as a book, upon the running, pacing or trotting, either within or without this state, of any horse, mare or gelding, or conducts the practices commonly known as bookmaking or pool selling, or keeps a place to which persons may resort for engaging in any such practices, or for betting upon the event of any horse race or other race

or contest, either within or without this state, or for gambling in any form, is guilty of a misdemeanor, and shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment in the state prison for not less than 1 year nor more than 5 years, or both.***

The above-cited crime of keeping a gambling place is composed of the elements of (1) knowingly keeping a place where persons might and should resort for the purpose of gambling, (2) with intent that persons might and should resort there for such purpose. See State v. Costa, 11 N.J. 239, 255 (1953).

In the instant case, the evidence is plain that the Respondent had control over the locked Apartment A-4 and that he permitted individuals to enter that apartment in his presence. It further appears by virtue of the cards, tables, chairs, chips, and markers found in that apartment and considering Sergeant Brower's observations that the only logical inference that may be drawn is that the individuals therein were engaged in gaming. By virtue of the fact that he had control over the apartment there can be no question that the Respondent intended that persons should resort there for gaming.

The Casino Control Act requires that the Commission shall:

assure that licenses, certificates, or permits shall not be issued to nor held by, nor shall there be any material involvement, directly or indirectly, with the licensed casino operation or the ownership thereof by, unqualified or disqualified persons or unsuitable persons, or persons whose operations are conducted in a manner not conforming with the provisions of this act. For the purposes of this section, "unqualified person," "disqualified person," or "unsuitable person" shall mean any person who is found by the commission to be disqualified pursuant to the criteria set forth in Section 86 c., e., f., g., and h., or to lack the financial responsibility

and capability specified in the provisions of section 84. In enforcing the provisions of this act, the commission shall have the power and authority to deny any application; limit or restrict any certificate, permit or approval; suspend or revoke any license, certificate, permit or approval***
[N.J.S.A. 5:12-64].

Additionally, Section 90(e) of the Casino Control Act requires the Commission to "deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of this act." N.J.S.A. 5:12-90(e).

Section 86(c) of the Casino Control Act requires the Commission to automatically deny the license application of any individual who has been convicted of certain offenses. See N.J.S.A. 5:12-86(c). The offense of keeping a gambling resort is not one of those automatic disqualifiers. However, Section 86(c) further requires the Commission to deny the license application of any individual if he has been convicted of an offense which indicates that licensure would be "inimical to the policy of this act and to casino operations.

Moreover, the Commission is required to deny the license application of any individual who has committed an act or acts which would constitute any offense under Section 86(c) of the Casino Control Act, "even if such conduct has not or may not be prosecuted under the criminal laws of this State." N.J.S.A. 5:12-86(g).

Lastly, it should be noted that the Commission shall, after appropriate hearings and factual determinations, have the authority to:

revoke the license of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding a license. [N.J.S.A. 5:12-129(1)].

On the record before me, and for the reasons stated herein, I find that the Respondent's acts constituted a violation of N.J.S.A. 2A:112-3, even though this conduct has not been prosecuted under the criminal laws of this State. See N.J.S.A. 5:12-86(c) and (g).

The Commission should be aware, however, that on September 1, 1979, the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-1 et seq.) became effective. The Code repealed many of the criminal laws of this State and replaced them with a comprehensive statutory scheme embodying procedural and substantive changes in the area of the criminal law. To a certain extent, the new criminal code effects certain changes in gambling offenses.⁸ On the record before me, it may not be possible to determine the severity of the Respondent's acts under the new Code. However, it does appear from the instant record that even under the Code of Criminal Justice, the Respondent's behavior would, at a minimum, constitute the disorderly persons offense of promoting gambling.⁹ See N.J.S.A. 2C:37-2(a) and (b).

8. The Code of Criminal Justice punishes entrepreneurial gambling and seeks to decriminalize "the Saturday night poker game."

9. A person is guilty of promoting gambling when he knowingly:

Engages in conduct, which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.

Therefore, it is clear that even if I incorporated the new Code of Criminal Justice into this decision, and even if the Respondent is afforded the benefit of the definitions of the proscribed gambling offenses enunciated in such Code, I am still compelled to find that the Respondent is guilty of committing an "offense," albeit perhaps a disorderly persons offense.

The question though is whether the offense is, in light of the Code of Criminal Justice, inimical to the policy of the Casino Control Act. Whether an offense is inimical is a decision reserved for this Commission, and while consideration may be given to legislative action, such action does not, in this instance, foreclose Commission determination.

Moreover, whether an offense is "inimical" to the Casino Control Act and to legalized gaming is a question which can only be resolved by reviewing the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. The notion of what is "inimical" 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 gaming operations or would create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming.

The Respondent's acts were committed within several months after this Commission licensed him as a casino employee.

Indeed, they were committed in Atlantic City within the shadow of a licensed casino establishment. Such behavior by a Commission licensee cannot be tolerated. I thus conclude that whether the Respondent's actions be viewed as a misdemeanor pursuant to N.J.S.A. 2A:112-3 or as an offense under the subsequently enacted Code of Criminal Justice, that his conduct is inimical to the regulatory policies of the Casino Control Act. I find, therefore, that the Respondent is disqualified from holding a license from this Commission.¹⁰

I further find that the integrity and character of the Respondent have been adversely affected by his insistence that he was not in Apartment A-4 nor aware of the existence of any gambling paraphernalia therein during July and August 1978. The record plainly indicates that he was on the premises and that he was present in Apartment A-4. It is quite clear that at the time the Respondent committed the acts that they were unquestionably illegal. Respondent knew or should have known that his conduct was violative of the criminal law. In order to be issued and to hold a license from this Commission, an individual must possess

10. As of the date of the writing of this report and recommendation, Assembly Bill No. 3485 is pending before the New Jersey State Legislature. This bill, if it becomes law, will amend various sections of the Casino Control Act. One of the sections that will be amended is Section 86(c). A review of the proposed amendments reveals, however, that Section 86, even in its proposed form, would retain the concept of offenses which are inimical to the policy of the Casino Control Act.

at all times good character, honesty, and integrity. See e.g., N.J.S.A. 5:12-90(b) and 89(b). When one or more of these qualification criteria is absent or called into question, the licensure, or the continued licensure, as the case may be, of an individual, by this Commission may not be countenanced.

In view of this Commission's statutory mandate to assure that licenses are not held by unsuitable persons, I recommend that the appropriate penalty is the revocation of the casino employee license currently held by Paul Scott Cavalier.

Accordingly, I urge this Commission to adopt this report and recommendation and enter an Order revoking Mr. Cavalier's casino employee license.

Respectfully submitted,

Albert W. Merck

Albert W. Merck
Hearing Examiner

DATED: September 10, 1977

LIST OF ATTACHMENTS

The following items are attached hereto:

1. Complaint 78-31 of the Division of Gaming Enforcement.
2. Answer of Paul Scott Cavalier to Complaint 78-31.
3. Reply of the Division of Gaming Enforcement to Answer of Paul Scott Cavalier.
4. Emergency Order Suspending Casino Employee License of Paul Scott Cavalier.
5. Order vacating Emergency Order suspending casino employee license of Paul Scott Cavalier.
6. Pre-Hearing Conference Order on Complaint 78-31.
7. Letter dated Jan. 24, 1979 from Stephen Hankin, counsel for Paul Scott Cavalier.
8. Letter dated Jan. 26, 1979, from Deputy Attorney General Stephen C. Becker.
9. Letter of Hearing Examiner dated Feb. 7, 1979.
10. Letter of Division of Gaming Enforcement dated May 29, 1979.

RECEIVED

NEW JERSEY

OCT 6 1978

CASINO CONTROL COMMISSION

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
Box CN-047
Trenton, New Jersey 08625

FILED
NEW JERSEY

OCT 6 1978

By: Stephen C. Becker
Deputy Attorney General
(609) 292-0940

CASINO CONTROL COMMISSION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 78-31

In re PAUL SCOTT CAVALIER,
A Casino Employee Licensee.

STATE OF NEW JERSEY,
Plaintiff.

v.

PAUL SCOTT CAVALIER,
Defendant.

COMPLAINT

Plaintiff, State of New Jersey, acting by and through its Division of Gaming Enforcement, having its principal office at 2465 South Broad Street in the Township of Hamilton, County of Mercer and State of New Jersey, says:

1. Plaintiff, through its Division of Gaming Enforcement is charged with the responsibility pursuant to the Casino Control Act (P. L. 1977, c. 110; N.J.S.A. 13:12-1 et seq.) of enforcing

the said act and regulations of the Casino Control Commission promulgated thereunder and of prosecuting violations of the said act and regulations before the Casino Control Commission.

2. Defendant, who is presently employed as a dealer by Resorts International Hotel, Inc. at its casino hotel in Atlantic City, New Jersey, is the holder of a valid casino employee license duly issued by the Casino Control Commission on May 25, 1978. The number of the said license is 00529-21.

3. On September 8, 1978, the Atlantic City Police Department, acting pursuant to a valid and duly issued search warrant, conducted a search of Apartment A-4, Antoinette Apartments, located at 140 South Virginia Avenue, Atlantic City, New Jersey. The Atlantic City Police Department found card tables covered with green cloth, folding chairs, gaming chips marked in one-dollar and five-dollar denominations, playing cards, and markers at the said premises. The said premises had no living quarters.

4. On September 8, 1978, subsequent to the previously-described search, defendant was arrested by the Atlantic City Police Department and charged with violation of N.J.S.A. 2A:112-1, gaming. The aforesaid statute is a misdemeanor and prohibits "playing for money or other valuable thing at cards..." An investigation by the Atlantic City Police Department had established that defendant, over an approximate two-month period, had access to the locked and boarded-up apartment, and on various occasions entered and exited the premises. Various well-dressed males also were observed entering and exiting the apartment during the week and on weekends.

5. Section 90d of the Casino Control Act provides that the Casino Control Commission

"(s)hall 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.

6. Section 86c of the Casino Control Act provides, in pertinent part, that the Casino Control Commission shall deny a casino license to any applicant that or who has been convicted of

"(a)ny ... offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations;"

7. Section 86d of the Casino Control Act provides, in pertinent part, that the Commission shall deny a casino license on the basis of "current prosecution or pending charges" for any offense included in Section 86c, except that at the request of the person charged, the Commission shall defer decision during the pendency of the charge.

8. Section 86g of the Casino Control Act provides that the Commission shall deny a casino license to an applicant based on "the commission ... of any act ... which would constitute any offense under subsection C (of Section 86), even if such conduct has not or may not be prosecuted under the criminal laws of this State..."

9. Violation by a casino employee licensee, a casino key employee licensee or by any person required to qualify in accordance with the standards prescribed in the Casino Control Act for a casino employee license or a casino key employee license, of

N.J.S.A. §2A:112-1, or conduct by a licensee as detailed in Paragraphs 3 and 4 of this complaint, supra, is inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey inasmuch as such violation or conduct, that is, a licensee becoming involved in illegal or unlicensed gaming, would unavoidably tend to erode public trust and confidence in the credibility, integrity and stability of casino operations and in the regulatory framework created by the Casino Control Act.

10. Section 129(1) of the Casino Control Act provides that the Casino Control Commission may, after appropriate hearings and factual determinations,

"Revoke the license of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license;"

11. Section 129(3) of the Casino Control Act provides that the Casino Control Commission may, after appropriate hearings and factual determinations,

"Suspend the license of any person pending hearing and determination, in any case in which license revocation could result;"

WHEREFORE, plaintiff demands the following relief against defendant:

A. Judgment that violation of N.J.S.A. §2A:112-1, or conduct by a licensee as detailed in Paragraphs 3 and 4 of this complaint, supra, is of such a nature that licensure as a casino employee of a person convicted under N.J.S.A. 2A:112-1 or engaging

in such conduct would be inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey;

B. Judgment revoking the casino employee license of defendant in the event that, based upon the circumstances that culminated in his aforesaid arrest on September 8, 1978, he is hereafter convicted of violation of N.J.S.A. §2A:112-1 or such other offense that the Casino Control Commission may determine is of such a nature that licensure as a casino employee of a person convicted thereof would be inimical to the policy of the Casino Control Act and to casino operations; or in the event that the Commission finds that the defendant engaged in conduct as detailed in Paragraphs 3 and 4 of this complaint, supra.

C. The making and entry at the next regularly scheduled meeting of the Casino Control Commission of an order suspending the casino employee license of defendant pending a license revocation hearing to be held by the Casino Control Commission subsequent to the ultimate disposition of the charges presently pending against defendant, or as such charges may from time to time be amended;

D. Judgment imposing such penalties as the Casino Control Commission may deem just and appropriate under the circumstances, and

E. Judgment for such other and further relief as the Casino Control Commission may deem just and appropriate under the circumstances.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey

By



Stephen C. Becker
Deputy Attorney General

Dated: Trenton, New Jersey
October 4, 1978

RECEIVED

OCT 27 1978

NEW JERSEY

CLERK OF COURT

HANKIN & D'AMATO

COUNSELLORS-AT-LAW

A PROFESSIONAL CORPORATION

1 SOUTH NEW YORK AVE./SUITE 308

ATLANTIC CITY, N. J. 08401

(609) 344-5161

ATTORNEYS FOR

Defendant

In re PAUL SCOTT CAVALIER,
A Casino Employee Licensee.

STATE OF NEW JERSEY,
Plaintiff,

vs.

PAUL SCOTT CAVALIER,
Defendant.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

DOCKET NO. 78-31

Civil Action
ANSWER

Defendant, Paul Scott Cavalier, residing at 7504 Atlantic Avenue, Margate, Atlantic County, New Jersey, by way of answer to plaintiff's complaint, says:

1. Admitted.
2. Admitted.
3. Denied.
4. Admitted relative to the defendant Paul Scott Cavalier being arrested; however, the remainder of Paragraph Four (4) and the plaintiff's complaint is denied.
5. Admitted.

5. Admitted.
7. Admitted.
8. Admitted.
9. Denied.
10. Admitted.
11. Admitted.

AFFIRMATIVE DEFENSES

1. The plaintiff has failed to state a cause of action upon which relief can be granted.

2. The Atlantic County Prosecutor's Office has administratively dismissed the criminal complaint (Summons No. W-DB7375) arising out of the Atlantic City Municipal Court, Court Code No. 00132 caption^{ed} State of New Jersey vs. Paul Scott Cavalier, defendant alleging a violation of N.J.S.A. 2A:112-1.

3. Plaintiff's complaint constitutes a violation of defendant's constitutional rights pursuant to the New Jersey Constitution of the United States Constitution, and is a flagrant violation of substantive and procedural due process.

WHEREFORE, defendant, Paul Scott Cavalier, demands judgment against the plaintiff, dismissing the complaint with prejudice, immediate reinstatement as an employee of Resorts International Hotel, Inc., and any and all other legal and equitable relief the Casino Control Commission may deem appropriate and necessary.

HANKIN & D'AMATO, Counsellors at Law
A Professional Corporation

By: /s/ Paul R. D'Amato
Paul R. D'Amato
Attorneys for Defendant



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

October 27, 1978

Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Attention: R. Benjamin Cohen, Esquire
General Counsel

Re: State v. Cavalier
Docket No. 78-31

FILED

NEW JERSEY

OCT 30 1978

CASINO CONTROL COMMISSION

Gentlemen:

Herewith for filing an original and one copy of plaintiff's
reply to the answer of defendant in the above-designated matter. Kindly
return one copy of the filed reply to us.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By *Stephen C. Becker*
Stephen C. Becker
Deputy Attorney General

SCB/ems
Attachment
cc: Paul R. D'Amato, Esquire (w/att.)

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
Box CN-047
Trenton, New Jersey 08625

By: Stephen C. Becker
Deputy Attorney General
(609) 292-0940

FILED

NEW JERSEY

OCT 30 1978

CASINO CONTROL COMMISSION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 78-31

In re-PAUL SCOTT CAVALIER,	)
A Casino Employee Licensee.	)
STATE OF NEW JERSEY,	)
Plaintiff..	)
v.	)
PAUL SCOTT CAVALIER,	)
Defendant.	)

REPLY

TO: Casino Control Commission

Plaintiff, State of New Jersey, acting by and through its
Division of Gaming Enforcement, having its principal office at 2465
South Broad Street in the Township of Hamilton, County of Mercer and

State of New Jersey, in reply to the affirmative defenses of the answer of defendant, says:

1. It denies the allegations of paragraphs 1 and 3 of the affirmative defenses of the answer.

2. It admits the allegations of paragraph 2 of the affirmative defenses of the complaint.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey

By 

Stephen C. Becker
Deputy Attorney General

Dated: Trenton, New Jersey
October 27, 1978

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-31

In re PAUL SCOTT CAVALIER,)

A Casino Employee Licensee.)

STATE OF NEW JERSEY,)

Plaintiff.)

v.

EMERGENCY ORDER

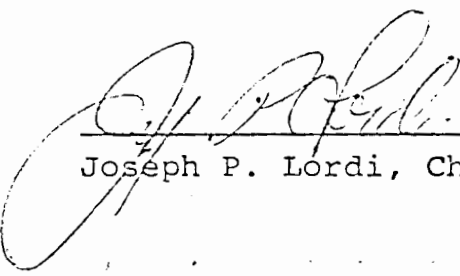
PAUL SCOTT CAVALIER,)

Defendant.)

This matter having been brought before the Commission upon the attached Complaint which was filed by the Division of Gaming Enforcement on October 6, 1978, and it appearing that the defendant is presently employed as a dealer by Resorts International Hotel, Inc. at its casino hotel in Atlantic City, New Jersey and it further appearing that defendant is the holder of a valid casino employee license (No. 00529-21) duly issued by this Commission on May 25, 1978, and it further appearing that there has been charged against the defendant on September 8, 1978, a violation of N.J.S.A. 2A:112-1 (gaming) of the criminal laws of this State as more particularly set forth in the attached complaint and it further appearing that suspension of the defendant's casino employee license pending any license revocation proceeding conducted subsequent to the disposition of the criminal charges presently lodged against defendant is necessary to preserve the public policies declared by the New Jersey Casino Control Act, it is therefore on this 26th day of October, 1978,

ORDERED that defendant's casino employee license be and hereby is suspended pending any license revocation proceeding conducted subsequent to the disposition of the criminal charges presently lodged against the defendant or until further order of this Commission, and it is further ORDERED that a copy of this Order and attached Complaint be served upon the defendant within five (5) days of its entry; and it is further

ORDERED that a copy of this Order be served upon Resorts International Hotel, Inc. within five (5) days of its entry.



Joseph P. Lordi, Chairman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-31

In re Paul Scott Cavalier,)
A Casino Employee Licensee.

State of New Jersey,)

Plaintiff.)

v.

ORDER VACATING EMERGENCY ORDER

Paul Scott Cavalier,)

Defendant.)

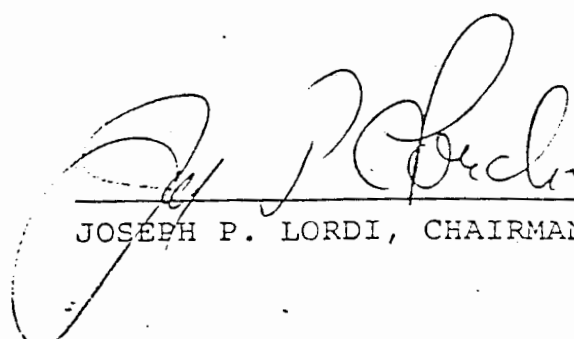
This matter having been brought before the Commission upon the motion of Stephen Hankin, Esq., Counsel for defendant Paul Scott Cavalier, to vacate the Emergency Order entered on October 26, 1978, suspending defendant's casino employee license (No. 005 29-21) pending a license revocation hearing on a criminal charge lodged against the defendant on September 8, 1978, for a violation of N.J.S.A. 2A:112-1 (gaming), and it appearing that such criminal charge having been administratively dismissed on October 23, 1978 by the Atlantic County Prosecutor's Office and the Commission having considered the matter on November 8, 1978 and voted to vacate the Emergency Order, it is therefore on this 21st day of November, 1978

ORDERED that the Emergency Order entered on October 26 1978, suspending the casino employee license of Paul Scott Cavalier is hereby vacated and further

ORDERED that a hearing regarding Complaint No. 78-31 be expeditiously conducted; and it is further

ORDERED that a copy of this Order be served upon the defendant within five days (5) days of its entry; and it is further

ORDERED that a copy of this Order be served upon Resorts International Hotel, Inc. within five (5) days of its entry.



JOSEPH P. LORDI, CHAIRMAN

IN THE MATTER OF PAUL SCOTT CAVALIER,)
A Casino Employee Licensee.

STATE OF NEW JERSEY,)

Plaintiff)

v.)

PAUL SCOTT CAVALIER,)

Defendant.)

PRE-HEARING CONFERENCE
ORDER

A pre-hearing conference having been held in this matter before the undersigned Hearing Examiner on December 6, 1978, at 9:20 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, Stephen Hankin, Esc appearing on behalf of the defendant, Stephen Becker, Deputy Attorney General, appearing for the Division of Gaming Enforcement, and in the presence of Thomas N. Auriemma, Assistant Counsel, the following matters were decided:

A. DISCOVERY

1. The Division and the defendant shall exchange all documentary evidence in their possession, relevant to the issues, exclusive of work product.
2. The Division and the defendant shall exchange a list of witnesses which each party intends to call at the hearing. This list shall include the name and address of each witness and a short summary of the subject matter as to which

each witness will testify.

3. Any written statements taken of any individual with regard to the present matter, whether or not he/she is intended to be called as a witness, shall also be provided by way of discovery.
4. The parties shall provide each other with the discovery set forth above no later than December 18, 1978.
5. The parties shall have the right to propound interrogatories which shall be answered within five (5) days after receipt thereof.

B. STIPULATIONS AND ADMISSIONS

1. It is admitted by the defendant that he is presently employed as a dealer by Resorts International Hotel, Inc. at its casino hotel in Atlantic City, New Jersey, and that he is the holder of a valid casino employee license (no. 00529-21) which was issued by the Casino Control Commission on May 25, 1978.
2. It is admitted by the defendant that on September 8, 1978, that defendant was arrested by the Atlantic City Police Department and charged with a violation of N.J.S.A. 2A:112-1.
3. It is stipulated by the parties that the Atlantic County Prosecutor's Office has administratively dismissed the criminal complaint which arose out of the arrest of the

defendant on September 8, 1978.

C. ISSUES

1. The factual issues to be decided by the Commission concern those matters set forth in the Division's complaint, Docket Number 78-31, filed with the Commission on October 6, 1978.
 - (a) More specifically, the Division alleges and the defendant denies that in a lawful search of Apartment A-4, Antoinette Apartments, located at 140 South Virginia Avenue, Atlantic City, New Jersey, the Atlantic City Police Department found card tables covered with green cloth, folding chairs, gaming chips marked in one-dollar and five-dollar denominations, playing cards, and numbers and that the said premises had no living quarters.
 - (b) The Division further alleges and defendant denies that defendant over a two month period, had access to the locked and boarded up apartment and on various occasions entered and exited the premises. Various well-dressed males were also observed entering and exiting the apartment.
 - (c) The Division alleges and the defendant denies that the commission of the foregoing acts constitute the commission of a

criminal act, even if such conduct has not been prosecuted under the criminal laws of this State.

2. The defenses asserted by the defendant in his Answer are preserved and may be advanced at the hearing.

D. DATE

A date for the hearing in this matter is set for Thursday, January 4, 1979 at 10:00 a.m. in the Department of Community Affairs' Conference Room, 2nd floor, 329 West State Street, Trenton, New Jersey.

It is hereby this 12th day of December, 1978,

ORDERED that this Pre-Hearing Conference Order be served upon the defendant and the Division of Gaming Enforcement within three days of its entry.

Albert W. Merck

Albert W. Merck
Hearing Examiner

DATED: December 12, 1978

by: Thomas N. Auricenna
Thomas N. Auricenna
Assistant Counsel

HANKIN & D'AMATO

COUNSELLORS AT LAW
A Professional Corporation

One South New York Avenue—Suite 100
Atlantic City, N. J. 08401
Telephone: 609/344-5101

Stephen Hankin
Member of New Jersey
and District of Columbia Bars

Paul R. D'Amato

RECEIVED

JAN 26 1979

NEW JERSEY
CASINO CONTROL COMMISSION

January 24, 1979

Thomas N. Auriemma, Esquire
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: State v. Paul Scott Cavalier
Docket No. 78-31

Dear Mr. Auriemma:

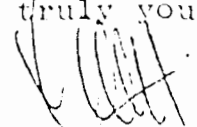
There is a Discovery Order which mandates that I receive certain discovery by December 18, 1978. It also provides that the parties may propound Interrogatories. I did propound Interrogatories and these were received by the State on December 19, 1978.

Late in the afternoon of January 2, 1979, I received the enclosed "Answers" with the enclosed covering letter from Stephen Becker. Based upon Mr. Becker's letter, it is not possible for me to place any degree of reliance on the Answers to Interrogatories since Mr. Becker states that his client was unable to review or certify as to the accuracy of the Answers and that they have been forwarded with the understanding that certain additions, deletions or modifications may be required.

He therein promised to forward me a fully certified copy of the Answers. I have not received these to date and I am requesting that the Commission accept this letter as a Motion to Dismiss the Complaint for failure to abide by the pre-hearing Order and, in the alternative, as a Motion to forward to me certified Answers.

I will need at least ten (10) days to prepare my case after receiving the fully certified and responsive Answers.

Very truly yours,


STEPHEN HANKIN

SH/mg

Encls.

CC to: Stephen Becker, Esq.
Hon. Albert W. Merck

HANKIN & D'AMATO
COUNSELLORS-AT-LAW
A Professional Corporation
One South New York Avenue
Atlantic City, New Jersey 08401
(609) 344-5161
Attorneys for Defendant

IN THE MATTER OF PAUL SCOTT CAVALIER:
A Casino Employee Licensee.

STATE OF NEW JERSEY,

Plaintiff,

- v.

PAUL SCOTT CAVALIER,

Defendant.

INTERROGATORIES

TO: Stephen C. Becker, Esq.
For the State of New Jersey

PLEASE TAKE NOTICE that the defendant requires of the plaintiff answers under oath, to the following Interrogatories within the time prescribed by law:

1. State: (a) all dates and times that you contend the defendant was in premises known as 140 South Virginia Avenue, Atlantic City, New Jersey, (b) the names and addresses of all persons who were present therein with him, (c) the names and addresses of all persons who saw the defendant in the premises in question on the aforesaid dates and times, (d) what the defendant was wearing and/or the color of his clothing at all of the aforesaid dates and times, (e) a description of all persons who accompanied the defendant on the aforesaid dates and times.
- A.(a) 1. July 14, 1978, approximately 10 p.m. - 2 a.m.;
2. July 15, 1978, approximately 10 p.m. - 2 a.m.;
3. August 27, 1978, approximately 10 p.m. - 2 a.m.;
4. September 2, 1978, approximately 10 p.m. - 2 a.m.;

- (b) Unknown (except perhaps by confidential police informant);
- (c) Unknown (except perhaps by confidential police informant);
- (d) Dinner jacket on occasions, casual clothing on other occasions;
- (e) Unknown.

2. State: (a) the dates and times of all surveillances of 140 South Virginia Avenue, Atlantic City, N.J. and the length of each surveillance, (b) the names and addresses of all persons who conducted all surveillances and (c) the physical position and/or location of all those persons who conducted said surveillances and what was observed from said observation points.

A.(a) See answer to question 1 (a) herein;

(b) Detective Sgt. Claude Brower, Atlantic City Police Department, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08404;

(c) Detective Sgt. Brower was variously positioned on the sidewalk of Virginia Avenue in front of the Antoinette Apartments and in the parking lot adjacent to the Antoinette Apartments on Pennsylvania Avenue. On these occasions, he saw defendant and unknown individuals enter and exit the Antoinette Apartments on the dates set forth in the answer to question 1 (a) herein. Furthermore, on several of these dates, Detective Sgt. Brower entered the hallway of the Antoinette Apartments and heard on those occasions laughter, talking and what was presumed by him to be the sound of clicking chips, all emanating from the vicinity of Apartment A-4.

3. Explain in detail exactly what each surveillant at each time and date of surveillance saw and/or heard at each point of surveillance.

A. See answer to question 2 (c) herein. In addition, on each of those dates set forth in the answer to question 1 (a) herein, Detective Sgt. Brower observed defendant enter Apartment A-4 of the Antoinette Apartments. On several of these occasions, Detective Sgt. Brower observed defendant unlock the front door to Apartment A-4.

CERTIFICATION

I hereby certify that the copies of the written reports or complete summaries of any oral reports of treating physicians or expert witnesses, annexed hereto, are exact copies of the entire written report or reports or complete summaries of any oral report or reports rendered by them; that the existence of other reports of treating physicians or expert witnesses, either written or oral, are unknown to me; and that if such reports become later known or available, I shall serve them promptly upon the propounding party, but in no case later than the time prescribed by the court rules.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: 19

Service of the within (Interrogatories) (Answers) is hereby acknowledged:
on 19 on 19

Attorney(s) for Plaintiff

Attorney(s) for Defendant



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

TRENTON, NEW JERSEY 08625

(609) 292-0940

DELIVERED BY HAND

JOHN J. DEGNAN
ATTORNEY GENERAL

ROBERT P. MARTINEZ
DIRECTOR

January 2, 1979

Stephen Hankin, Esquire
Messrs. Hankin & D'Amato, P.C.
1 South New York Avenue
Suite 308
Atlantic City, New Jersey 08401

Re: State v. Cavalier
Docket No. 78-31

Dear Mr. Hankin:

Herewith one duplicate original of answers to your interrogatories that were received by us on December 21, 1978.

Detective Sergeant Brower is presently on vacation and unavailable to review or certify as to the accuracy of these answers, and, accordingly, they are forwarded to you with the understanding that certain additions, deletions or modifications of which only he would have knowledge, may be required. I shall forward a fully executed copy of the answers as soon as I am able to do so.

Very truly yours,

ROBERT P. MARTINEZ
Director

By

Stephen C. Becker

Stephen C. Becker
Deputy Attorney General

per KO

Attachment



100-100000
2/2/79 CCL

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

(609) 292-0940

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

January 26, 1979

Thomas N. Auriemma, Esquire
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: State v. Cavalier
Docket No. 78-31

Dear Mr. Auriemma:

This letter is in response to Mr. Hankin's letter to you, a copy of which was furnished to me, dated January 22, 1979 with regard to the above-designated matter. As Mr. Hankin indicated to you in his letter, interrogatories propounded by him dated December 18, 1978 were received by us on December 21, 1978. Paragraph A(5) of the Pre-Hearing Conference Order in this matter dated December 12, 1978 specified that each party was to answer propounded interrogatories within five days of receipt thereof which, in this case, would have been January 12, 1979, excluding from the five-day period, as we have, weekend days and also Christmas and New Year's Day. Mr. Hankin has acknowledged that our answers were received by him on January 2, 1979, albeit with the qualification in our transmittal letter dated January 2, 1979 that was necessitated by the fact that Sergeant Claude Brower, the only person who was capable of certifying the accuracy of the answers, was then unavailable. We did, in fact, forward and hand deliver to Mr. Hankin on January 26, 1979 fully certified answers. This was the earliest date when fully certified answers were made available to us by Sergeant Brower. For the foregoing reasons, we submit that there has been substantial compliance by us with Paragraph A(5) of the Pre-Hearing Conference Order and, for that reason, Mr. Hankin's Motion to Dismiss should be denied.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By

Stephen G. Shanker
Deputy Attorney General

JCH:ms

cc: Stephen Hankin, Esquire
Albert W. Morok

February 7, 1979

CERTIFIED MAIL

Stephen Hankin, Esq.
1 South New York Avenue
Suite 308
Atlantic City, New Jersey 08401

Stephen Becker
Deputy Attorney General
Independence Hall
Trenton, New Jersey 08625

RE: State of New Jersey v. Paul Scott
Cavalier
Casino Control Commission
Docket Number 78-31

Dear Counsel:

On January 26, 1979, I received a letter from Stephen Hankin (attorney for defendant Cavalier) wherein it was alleged that the Division of Gaming Enforcement had not supplied certified Answers to interrogatories propounded by defendant. It was urged by defendant that the above-mentioned letter be considered as a motion to dismiss the Complaint for failure to abide by the pre-hearing conference Order and as a motion to forward to the defendant certified Answers to his interrogatories.

On February 2, 1979, I received a letter from Deputy Attorney General Becker in response to Mr. Hankin's letter. Mr. Becker indicated that certified Answers were hand-delivered to Mr. Hankin on January 26, 1979. The letter further explained that the reason for the failure to earlier transmit certified Answers was because of the unavailability of one Sergeant Brower.

Accordingly, defendant's motion to compel the Division to supply him with certified Answers is moot. Additionally, as I perceive no prejudice to defendant by virtue of the brief delay of the Division in forwarding certified Answers, the defendant's motion to dismiss the complaint is denied.

Therefore, please be advised that the hearing in this matter is scheduled for 4:30 p.m. on Thursday, February 15, 1979, at the Commission's office in Atlantic City (Arcade Building, Tennessee and Boardwalk). Any request for an adjournment must be made directly to me at the Commission's Atlantic City office by telephone no later than 12:00 p.m. on Tuesday, February 13, 1979.

Very truly yours,

/s/ Albert W. Merck

Albert W. Merck
Hearing Examiner

ceh

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

6/20/79
CCC
ROBERT P. MARTIN
DIRECTOR

PETER R. P. ROS
DEPUTY DIRECTOR

HAND DELIVERED

May 29, 1979

Hon. Joseph P. Lordi, Chairman
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Re: Paul S. Cavalier, applicant for renewal of a casino
employee license

Dear Chairman Lordi:

The above individual has applied to the Casino Control Commission for renewal as a casino employee. He was licensed as a Dealer in May 1978. As mandated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder, the Division of Gaming Enforcement conducted an investigation into his background.

The applicant is 23 years old and a resident of New Jersey.

Based upon the information received and the personal history disclosure form filed by this applicant, the Division does not interpose an objection to this individual's renewal for licensure as a Casino employee.

The decision of this office notwithstanding, the Commission should be aware of certain other information to aid it in reaching a final decision relative to this application. More particularly, Mr. Cavalier was suspended without pay from Resorts International Hotel from November 1, 1978 to May 9, 1979. The suspension of this applicant was the result of an arrest by the Atlantic City Police Department on September 8, 1979 for allegedly running a blackjack game in his apartment. The charges against the applicant were dismissed and the applicant was allowed to return to work.

Mr. Cavalier was also the subject of a complaint filed with the Casino Control Commission stemming from his gaming related arrest. A decision has not been rendered in this matter as of this date. At this point, the Division would not object to Mr. Cavalier's renewal of his casino employee license. The outcome of the hearing could put this applicant's license in jeopardy.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By *Fredric E. Gushin*
Fredric E. Gushin
Deputy Attorney General

FEG/br

cc: Members of the Commission
Joseph A. Fusco, Esq.
Christopher Storcella
Paul S. Cavalier
Sunset Harbor #1406
Ventnor Heights, NJ

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-13

IN THE MATTER OF THE APPLICATION :
OF JOHN T. DANIELS, JR., FOR A :
CASINO EMPLOYEE LICENSE (DEALER)..: FINAL ORDER

A hearing having been conducted in the above-captioned matter before Senior Assistant Counsel Robert J. Genatt, acting as Hearing Examiner by designation of this Commission, on March 1, 1979, and the Commission having carefully considered the entire record in this proceeding, and the Report and Recommendation of the Hearing Examiner, and the written exceptions to said Report and Recommendation filed by the Applicant, and the Commission having heard and considered the oral arguments of counsel for the parties at its public meeting of December 5, 1979, and the Commission having resolved at that meeting to adopt the Report and Recommendation of the Hearing Examiner and to deny the application for licensure herein;

It is on this 13th day of December, 1979,

ORDERED, that the Report and Recommendation of the Hearing Examiner be and is hereby adopted by the Commission; and it is further

ORDERED that the application of John T. Daniels for licensure as a casino employee be and is hereby denied; and it is further

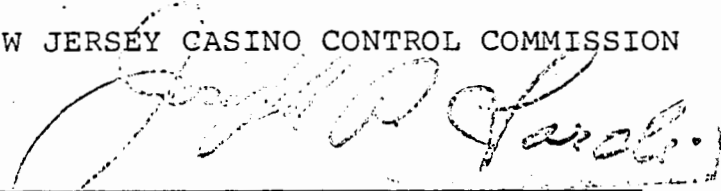
ORDERED that John T. Daniels be permitted to reapply for licensure as a casino employee upon the expiration of a period of

one year from the date hereof; and it is further

ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

DATED: December 13, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-31

In re Paul Scott Cavalier,)
A Casino Employee Licensee.

State of New Jersey,)
Plaintiff.)

v.

ORDER VACATING EMERGENCY ORDER

Paul Scott Cavalier,)
Defendant.)

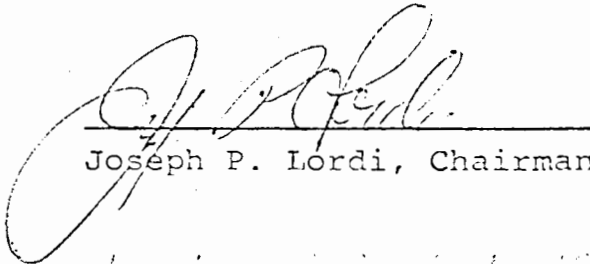
This matter having been brought before the Commission upon the motion of Stephen Hankin, Esq., Counsel for defendant Paul Scott Cavalier, to vacate the Emergency Order entered on October 26, 1978, suspending defendant's casino employee license (No. 005 29-21) pending a license revocation hearing on a criminal charge lodged against the defendant on September 8, 1978, for a violation of N.J.S.A. 2A:112-1 (gaming), and it appearing that such criminal charge having been administratively dismissed on October 23, 1978 by the Atlantic County Prosecutor's Office and the Commission having considered the matter on November 8, 1978 and voted to vacate the Emergency Order, it is therefore on this 21st day of November, 1978

ORDERED that the Emergency Order entered on October 26 1978, suspending the casino employee license of Paul Scott Cavalier is hereby vacated and further

ORDERED that a hearing regarding Complaint No. 78-31 be expeditiously conducted; and it is further

ORDERED that defendant's casino employee license be and hereby is suspended pending any license revocation proceeding conducted subsequent to the disposition of the criminal charges presently lodged against the defendant or until further order of this Commission, and it is further ORDERED that a copy of this Order and attached Complaint be served upon the defendant within five (5) days of its entry; and it is further

ORDERED that a copy of this Order be served upon Resorts International Hotel, Inc. within five (5) days of its entry.



Joseph P. Lordi, Chairman

IN THE MATTER OF THE APPLICATION :
OF JOHN T. DANIELS, JR., FOR A : REPORT AND RECOMMENDATION
CASINO EMPLOYEE LICENSE (DEALER) .:

Robert F. Dunlap, Esq., and Gary D. Wodlinger, Esq., appeared for the Applicant.

Fredric E. Gushin, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On July 17, 1978, an application for licensure as a casino employee (dealer) was filed with the New Jersey Casino Control Commission on behalf of John T. Daniels, Jr., [the Applicant]. In accordance with N.J.S.A. 5:12-76, the application was forwarded to the Division of Gaming Enforcement [the Division] for the appropriate investigation.

By letter dated November 28, 1978, the Division apprised the Chairman of the Commission of its objection to the licensure of the Applicant as a casino employee. The Division cited, as its bases for objection, the Applicant's failure to completely disclose information pertaining to his arrest record and use of marijuana and the Applicant's "less than candid" replies made during a telephonic interview with a Division investigator. (T4-6 to 17).¹

1. T refers to the transcript of the hearing. Exhibits and documents introduced at the hearing are identified by use of either a "C" for Commission, an "A" for Applicant or a "D" for Division.

Upon receipt of the Division's letter-report, the Commission notified the Applicant, by letter dated December 11, 1978, of his right to a hearing on this matter. The Applicant requested that a hearing be held, and the matter was scheduled for a pre-hearing conference on January 26, 1979. The pre-hearing conference order, filed on January 30, 1979, set forth the applicable legal standards, N.J.S.A. 5:12-86(a) and (b), 89(b) and 90, and outlined the factual issues that required resolution so that the Commission could determine whether the Applicant had satisfactorily established that he possessed the qualifications necessary for licensure. See Pre-Hearing Conference Order attached hereto.

This report will address the issues framed by the submitted personal history disclosure form and the subsequent investigation of the Applicant. The first issue presented is whether the Applicant's responses to questions 46 and 49 of the PHDF-2 (A-4) were so incomplete as to result in a failure to provide information required by the Act or requested by the Commission. N.J.S.A. 5:12-86(b). The second issue is whether certain of the Applicant's responses to questions 46 and 49 were so inaccurate as to be untrue or misleading as to facts material to qualification. N.J.S.A. 5:12-86(b). The third issue is whether the substance of the Applicant's arrest record and his failure to provide the Division and Commission with complete information as to his criminal history and drug use reflect adversely on his reputation for honesty, integrity and good character.

I. Failure to provide information required by the Act or requested by the Commission.

At the hearing, the Applicant gave direct testimony about his arrest record and the information provided in his application (A-4). He testified that he was arrested on December 3, 1968, for possession of marijuana. The arrest occurred when the Applicant and two friends drove to Ventnor to visit the Applicant's cousin. The Applicant left his companions in the car while he went into the apartment building where his cousin resided. Shortly thereafter, the Applicant saw the flashing lights of a police car stopped next to his own vehicle. When he returned to the car, the police officer informed him that one of the passengers had thrown a small bag of marijuana out of the Applicant's car. The Applicant and his associates were arrested and charged with possession of marijuana. Although the Applicant attended a preliminary hearing on this charge, the case was not prosecuted and nothing further occurred.

On direct examination, the Applicant stated that in 1973 he learned of an expungement obtained by one of the two individuals arrested with the Applicant in Ventnor. He further testified that this information led him to believe that his involvement with the police in the 1968 incident was also expunged from all records. The Applicant stated that he was unaware of the necessity of taking any legal steps to obtain an expungement. He assumed that arrest records were expunged due to the passage of time. (T15-12 to 24). For this reason, he did not believe that the Ventnor matter had to be listed in response to question 46.²

Detective John Russell testified that he interviewed the Applicant by telephone on August 10, 1978, and that the

2. Question 46 inquires whether the applicant has "ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense."

Applicant did not offer this explanation when he was given the opportunity. (Tl57-2 to 9; Tl68-22 to Tl69-7). He merely stated that the 1968 arrest had "slipped his mind." (Tl37-12 to 23). The Applicant agreed that he did use that phrase in explaining why this information was not on the form. (T44-5 to 22). At another point in his testimony, the Applicant asserted that he told Detective Russell that the 1968 arrest had been "dismissed" as opposed to "expunged." The Applicant acknowledged that he understood there to be a difference, with legal significance, between these terms. (Tl84-2 to Tl85-7).

In light of the testimony given by the Applicant and Detective Russell, and the concessions made by the Applicant, I am not persuaded that the Applicant thought that the December 3, 1968, arrest was expunged. The Applicant's testimony was unconvincing. He admitted telling Detective Russell that the reason for omission of this incident was that it "slipped his mind." Such a statement is plainly inconsistent with his claimed belief that the matter had been expunged. Although he attempted to reconcile these statements on rebuttal, he admitted that he probably used the term "dismissed" rather than "expunged" during the August 10th telephone interview. I find that the Applicant did not believe the 1968 arrest to have been expunged and further that he purposely chose to omit that information from the form.

The Applicant disclosed an arrest on April 26, 1969, for possession of marijuana. As a result of that arrest, he was found guilty as a user of marijuana, a disorderly persons offense, and received a six month suspended sentence. The Applicant did

not reveal a charge of attempted assault and battery on a police officer which charge apparently arose out of the same incident. The Applicant testified that he was driving his automobile with several passengers, when a motorcycle police officer pulled along side and ordered the Applicant to stop. Because he knew that he was in possession of marijuana and he had been smoking marijuana, the Applicant drove away at a high rate of speed. The Applicant was later apprehended by the police and taken to Atlantic City where he was charged with possession of marijuana. (T92-2 to 14). While the Applicant was being held in the Atlantic City Jail, before bail arrangements had been made, he was advised that the motorcycle officer, Joseph Riffis, was charging the Applicant with attempted assault and battery on a police officer because he had allegedly tried to run the police officer over with his car. (T92-2 to 21). The United States Department of Justice, Federal Bureau of Identification, Identification Division Report (Exhibit A-3 in evidence) reflects that the Applicant was so charged.

The Applicant testified that it was his belief that the assault and battery charge was dropped at the preliminary hearing. (T93-1 to 7). He stated that he was never tried on that charge. The Applicant further testified that Officer Riffis, an acquaintance and neighbor of some 20 years, preferred the charges out of anger. The officer wanted to teach the Applicant a lesson because of the Applicant's apparent lack of respect for his authority (T93-4 to 7). Additionally, the Applicant asserted that the officer was neither in the path of Applicant's vehicle, nor was the officer holding on to the vehicle (T93-8 to 17).

The Applicant offered his explanation for omitting this arrest from question 46 of his application. He stated that he was never formally charged or arraigned for the attempted assault and battery, (T95-17 to 23) and that he was made aware of the charge while being held pursuant to the arrest for possession of marijuana. He further testified that both charges, possession of marijuana and attempted assault and battery, arose out of the same set of facts.

Notwithstanding the fact that the events of April 26, 1969, may have transpired while the Applicant was under the influence of marijuana, that there existed a personal relationship between the Applicant and Officer Riffis, and that the Applicant did disclose an arrest for possession of marijuana on the same date and in the same location, I find that the Applicant should have included the assault and battery charge in response to question 46. The Applicant maintained that no formal charge or arrest occurred but he acknowledged that the matter was reviewed by the municipal court judge at the arraignment. This prompted the Applicant to state, "So evidently I was charged with it." (T94-1 to 22). While the Applicant may have rationalized that no "formal" charge had been lodged and for that reason no mention need be made in the disclosure form regarding this allegation, I find that the Applicant's omission of this information reflects the calculating and grudging attitude which he brought to the application process.

Question 49 on the disclosure form requests information regarding use, possession or distribution of controlled dangerous

substances.³ The Applicant answered the question in the negative without any further written explanation. (See A-4). The Applicant testified that he responded negatively because he had already indicated his 1969 disorderly persons offense for possession of marijuana in response to question 46. The Applicant also testified that he did not have access to the statutes cited in question 49 which list specific substances, that he was not sure whether marijuana was included therein, and that he had never used any drug other than marijuana. (T37-22 to T39-15). However, the Applicant admitted that, when Detective Russell asked about his negative response to question 49 during the course of the August 10, 1978 telephone interview, he responded that he was "giving [him]self the benefit of the doubt." (T46-16 to 21). He also told Detective Russell that he did not want to actually admit using marijuana. (T77-21 to 78-2). The Applicant further testified that he did not want the Commission to think that he was a drug addict and that disclosing the requested information would "make his character less than what it is." (T111-21 to T113-1). He

3. Question 49 inquires as follows:

Have you ever used, distributed or possessed any narcotic, hallucinogenic, drug, barbiturate, amphetamine, or any other substance that is listed in Schedule I through V of N.J.S.A. 24: 21-20 during the past ten year period other than pursuant to a valid prescription issued by a licensed physician? Yes___ No___. If yes, state whether you used, possessed or distributed the substance, the name of each substance involved and the dates of each such possession, use or distribution.

acknowledged that a positive response to question 49 would have required him to supply information in addition to that contained in question 46 and that the Commission might have formed a different impression. (T104-3 to 106-19).

Based on the testimony of the Applicant and Detective Russell, I find that the Applicant understood question 49 at the time he completed the form. Moreover, the Applicant then realized the difference between questions 46 and 49. It was precisely because of this realization and the knowledge that a proper response to question 49 could have affected the Commission's review that the Applicant deliberately chose to answer "No" to question 49 to avoid admission of the fact that he had used marijuana extensively prior to 1972. (T73-13 to 75-24; T77-21 to 78-2). Thus, I find that the Applicant purposely and knowingly withheld information requested by the Commission in question 49.

Testimony was heard from the Applicant and Detective Russell as to the Applicant's failure to provide information requested in question 52 of the form. This question requests that an applicant provide information about any citation, charge or arrest for violation of a statute, regulation or code of any state, county, municipal or federal government, other than a criminal, disorderly persons or motor vehicle violation. The Applicant testified that he was issued a summons on April 15, 1977, for making noise in Margate, New Jersey. The Applicant further testified that the facts underlying the citation related to a domestic quarrel. The Applicant asserted that he did not under-

stand that such a citation would be information that should be listed in question 52. (T107-2 to 21).

The propriety of the Applicant's response to question 52 was not specifically mentioned in either the Division's letter-report or the Pre-Hearing Conference Order. It is thus unnecessary to determine whether the Applicant knowingly omitted reference to the Margate ordinance violation. However, taken in conjunction with the Applicant's other omissions and explanations, his failure to provide the appropriate information requested by question 52 is further indication that the Applicant did not exert his best efforts in supplying requested information in the form.

Based on all of the foregoing and on my observation of the Applicant's demeanor throughout the hearing, I find that the Applicant knowingly and intentionally failed to provide information required by the Act or requested by this Commission. The Applicant's own explanations for his inadequate responses evinced a pattern of result-oriented deliberations as to what information to include or exclude, and the effects thereof. The Applicant made conscious decisions to withhold from the Commission information which he felt might unfavorably affect his application for licensure.

It is the statutory duty of the Commission, not the Applicant, to make such determinations. The Casino Control Commission is charged with the responsibility of strictly regulating all persons related to the operation of licensed casinos (N.J.S.A. 5:12-1(b)(6)) and of maintaining public trust and confidence in the efficacy of the regulatory process. To that end,

the Division is obligated to investigate each applicant and provide the Commission with information necessary for licensing decisions. See N.J.S.A. 5:12-76. Intentionally withholding information formally requested by the Commission may well obstruct the Commission and the Division in their efforts to carry out their statutory duties. Such conduct by an applicant amounts to a disqualification requiring denial of licensure pursuant to N.J.S.A. 5:12-86(b).⁴

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- * 4. N.J.S.A. 5:12-86 provides, in pertinent part, that the Commission "shall deny" a license to any applicant who is disqualified on the basis of any of the following criteria:

* * *

- (b) Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria.
(Emphasis added).

Comparison of the underlined phrase with the other phrases in subsection (b) reveals that, where the Commission itself requests information, failure to comply constitutes disqualification regardless whether the undisclosed information is "material." Of course, mere inadvertent or ignorant failure to provide requested information should not be deemed such a disqualifying event. However, in the present matter, it has been found that the Applicant purposely and knowingly determined not to provide certain requested information.

II. Supplying Information Which is Untrue or Misleading as to Material Facts.

A "material" fact is one which would be relevant to a qualification criterion and which would ordinarily be deemed significant or important in the evaluation of those qualifications. The qualification criteria for licensure as a casino employee (dealer) are set out in §90(b) of the Act (N.J.S.A. 5:12-90(b)) which incorporates §89(b) (N.J.S.A. 5:12-89(b)) by reference.

Those qualifications upon which this inquiry will focus are contained specifically in §89(b)(2). This section relates to the burden on the Applicant to produce information which establishes by clear and convincing evidence the Applicant's reputation for good character, honesty and integrity. The section lists, as examples, some informational data which it deems to have an impact on the Applicant's ability to establish the required qualifications. That statutory list includes the Applicant's habits and criminal and arrest record. See N.J.S.A. 5:12-89(b)(2).

In the context of this application, material facts to qualification would be those surrounding the Applicant's arrest and criminal record, and the Applicant's use of any drug, including marijuana. Supplying untrue or misleading information relating to the Applicant's arrest record and drug use may be a disqualification pursuant to N.J.S.A. 5:12-86(b). However, merely inadvertent or unintentional omissions or inaccuracies will not result in disqualification and denial. All facts relevant to the disclosure will be reviewed so that a determination can be made as to whether the Applicant acted willfully or in bad faith in omitting or misstating such material information.

The Applicant's failure to provide certain information in response to question 46 on the disclosure form has already been addressed. At issue now is whether the information which the Applicant did provide was misleading or untrue. The Applicant indicated on the form (A-4) that he was arrested on September 3, 1977. He listed the nature of the charge or conviction as "Disorderly person." He also listed the disposition as "Domestic Matter, Dismissed."

The Applicant testified as to the facts which gave rise to this arrest. He stated that he was separated from his wife, but that they were then attempting to re-establish their relationship. During that time, he happened to visit his estranged wife when she was entertaining a male guest. The ensuing confrontation became violent. As a result, the other individual sustained injuries was rendered unconscious. The testimony indicated that the individual's injuries included a broken nose. Thereafter, the Applicant was arrested and charged with atrocious assault and battery. (T23-7 to 21; T57-12 to 20).

The Applicant testified that he appeared in municipal court within a few weeks of the arrest. At that appearance, the victim requested that the charges against the Applicant be dismissed since the victim and the Applicant were friends and the victim thought the matter should be resolved informally. The Applicant stated the charges were not dismissed but were reduced from atrocious assault and battery, a criminal offense, to a disorderly persons charge. Thereupon, the Applicant pleaded guilty to the reduced charge. The Applicant was fined \$50 and placed on probation. The only condition of the probation was that the

Applicant make restitution to the victim for any medical expenses incurred. (T24-19 to T26-8; T60-6 to T61-23).

Although the circumstances surrounding the physical attack which precipitated the Applicant's arrest may have been of a matrimonial or domestic nature, the ultimate disposition of this encounter by the judicial system was not a dismissal. The original charge was reduced to a disorderly persons offense. The Applicant admitted that the matter was not dismissed, and that his characterization of it as a dismissal in question 46 was incorrect, (T24-10 to T24-5; T56-2 to 16; T58-8 to T59-12; T60-11 to T61-23; T99-12 to T101-5; T115-20 to T117-21).

I find that the Applicant misrepresented a material fact on his application. In answer to question 46, the Applicant wrote that the disposition of this arrest was "Domestic Matter, Dismissed." In his testimony at the hearing, however, the Applicant exhibited a detailed recollection of the events surrounding this matter and a clear understanding of the judicial actions which resulted. He admitted that he actually pleaded guilty to a disorderly persons offense for which he was fined and placed on probation. He was able to offer no reasonable explanation for his untrue and misleading answer in the form. Moreover, he acknowledged that it would require independent investigation by the Division to determine the correct information. (T99-12 to 100-6). The material of this information is plain. The nature and disposition of a recent arrest for an act of violence would certainly be of substantial importance to a thorough evaluation where that evaluation

relates to the Applicant's reputation for good character, honesty and integrity. Purposely supplying misleading information as to a material fact constitutes a disqualifying event which requires denial of an application for a license. See N.J.S.A. 5:12-86(b).

As noted in Part I. of this report, the Applicant answered in the negative to question 49 which requires information regarding use, possession or distribution of controlled dangerous substances during the preceding ten years. For the reasons previously stated, I find that the Applicant's improper response not only deprived the Commission of material information but also tended to create a misleading presentation. Simply put, the Applicant did not merely omit facts. By answering "No" to the question he provided untrue information, to wit, that he had not actually possessed or used marijuana. The record now reveals that he used marijuana extensively while in the Armed Forces and after his discharge in 1968 until at least 1972, when the Applicant claimed he last used the substance. I therefore find that the Applicant attempted to mislead the Commission as to a material fact.

III. Reputation for Good Character, Honesty and Integrity.

To qualify for licensure as a casino employee, the Applicant must establish by clear and convincing evidence his reputation for good character, honesty and integrity. See N.J.S.A. 5:12-89(b)(2) and 90(b). At the hearing, the Applicant submitted 17 affidavits (A-8a thru 8q) from persons in the Atlantic City area who have known him for varying lengths of time. The

affiants generally lauded the Applicant's responsibility, good character, determination, integrity, dependability and honesty. The Applicant produced a copy of the Award of the Army Commendation Medal for Heroism (A-1) which he received during his tour of duty in Viet Nam. Two witnesses testified in support of the Applicant's honesty and integrity and his devotion as a parent. (T121-22 to 131-10).

In addition to this positive character evidence, the record reveals certain negative information, which has already been discussed in this report. Briefly, the Applicant was arrested in 1968 for possession of marijuana. That charge was apparently dismissed. In 1969, the Applicant was again arrested for possession of marijuana. That arrest culminated in a conviction for the disorderly persons offense of using marijuana. With regard to marijuana usage, the Applicant admitted that he did use that substance extensively while in the Armed Services and after his discharge in 1968. He asserted that he had not used marijuana since 1972.

The Applicant was also charged with attempted assault and battery on a police officer at the time of the 1969 marijuana arrest. The assault charge stemmed from the fact that, when the officer ordered the Applicant to stop his automobile, the Applicant refused and drove off at high speed. This charge was apparently dismissed at the municipal court level. The Applicant testified that he did not actually touch or endanger the officer and that he did not intend to do so. In 1977, the Applicant was arrested and

charged with atrocious assault and battery, a criminal offense, for beating an individual who was visiting the Applicant's estranged wife. The charge was reduced to simple assault and battery, a disorderly persons offense, to which the Applicant pleaded guilty and for which he was fined, placed on probation and ordered to pay the victim's medical expenses.

If the record contained no other derogatory material, it might be found that the Applicant had met his burden of clearly and convincingly demonstrating the requisite character. A disorderly persons offense is statutorily defined as a "petty offense" which ordinarily carries maximum punishment of six months incarceration or a \$500 fine or both. N.J.S.A. 2A:169-4. Use of marijuana and possession for that purpose are illegal acts, and repeated or extensive illegality is always cause for concern. However, our Legislature and our Courts have recognized that marijuana offenses incident to personal use are to be treated more leniently than other drug violations, especially where youthful offenders are involved. See N.J.S.A. 24:21-20, 27 and 28; State v. Ward, 57 N.J. 75 (1970); State v. Brennan, 115 N.J. Super. 400 (App. Div. 1971). Given the Applicant's explanation that he became a heavy marijuana user in Viet Nam and his assertion that he last used the substance in 1972, it may be concluded that he has successfully overcome his attraction for marijuana.

Potentially more troublesome is the Applicant's admission that he disobeyed the order of a motorcycle police officer and that he drove away at high speed in an unsuccessful effort to escape arrest for marijuana possession. In fairness to the Applicant, this event occurred in 1969 when the Applicant was 21

years old. However, the Applicant was arrested in 1977 for assaulting a man who had been visiting the Applicant's estranged wife. These events might indicate an unacceptable degree of hostility and intemperance. However, it is unnecessary to dwell on this possibility since there are more serious issues of character presented.

Based on the evidence and findings set forth in Parts I and II of this report, it is clear that the Applicant purposely falsified or omitted information requested in the disclosure form. To compound this misconduct, he told a Division investigator that certain information had "slipped his mind" but offered a different, inconsistent explanation at the hearing. He did acknowledge to the investigator and at the hearing that he answered question 49 incorrectly to avoid admitting his prior, extensive use of marijuana. Moreover, at the hearing, I observed the Applicant to possess a relatively high degree of intelligence, a clear recollection of all relevant events, and an accurate understanding of the judicial actions in which he was involved. Nevertheless, I found that the Applicant evaded questions and became uncertain when the examination turned to potentially damaging matters. Only after repeated and specific inquiries did he provide responsive answers.

The Applicant's behavior in filling out the disclosure form, speaking to the investigator and testifying at this hearing is hardly consistent with the image provided by the affidavits and character testimony introduced on his behalf. It may be understandable that an otherwise honest and decent citizen would be

loathe to reveal information which, in his opinion, does not accurately reflect his true character. However, when confronted with a question on an application form adopted by the Commission, an honest person would respond honestly. If the individual wished to challenge the legality or propriety of the question, there are acceptable ways to proceed. Purposely supplying inadequate or misleading information blunts much of the thrust of the favorable character evidence presented. While the question is close, it must be concluded that, on this record, the Applicant has not sustained his affirmative burden to establish good character, honesty and integrity clearly and convincingly.

IV. Summary

The Applicant filed a personal history disclosure form-2 in support of his application for a casino employee lice (dealer). Examination of that form (A-4), review of the record and observation of the Applicant's demeanor at the hearing compel me to conclude that the Applicant purposely and knowingly refused to supply complete and accurate information requested by the Commission.⁵ An intentional failure to supply information in response to a Commission request constitutes a disqualification under N.J.S.A. 5:12-86(b).

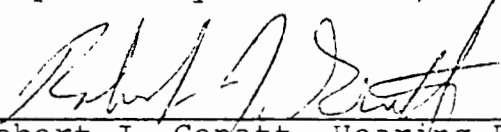
5. The Commission may take notice of the fact that the personal history disclosure forms were adopted by formal regulation pursuant to the requirement of N.J.S.A. 5:12-70(a).

Beyond failure to supply complete and accurate information as requested, the Applicant affirmatively provided information which was misleading or untrue. Specifically, he misstated the disposition of his 1977 arrest for atrocious assault and battery as "Domestic Matter, Dismissed." He also responded "No" to question 49 which requests information regarding drug use, possession or distribution within the previous 10 years. Applicant's own testimony at the hearing leaves no doubt that he knowingly and purposely misrepresented those facts. Furthermore, I find that information pertaining to a recent arrest for a physical attack and the use of illicit substances would be a matter of significant concern in evaluating an Applicant's qualifications. Such information is "material" to the qualification criteria. Intentionally supplying untrue or misleading information as to a material fact pertaining to qualification constitutes a disqualification under N.J.S.A. 5:12-86(b).

The Applicant's good character, honesty and integrity must be proven by clear and convincing evidence. N.J.S.A. 5:12-89 (b)(2) and 90(b). Although the record does contain substantial evidence attesting to these attributes, the Applicant's misconduct in completing the disclosure form, responding deceptively to the inquiries of a Division investigator and testifying evasively at the hearing undercuts the favorable evidence. On this record, it cannot be said that the Applicant has met his affirmative burden.

For the foregoing reasons, I must recommend that the application of John T. Daniels, Jr., for a casino employee license (dealer) be denied.

Respectfully submitted,


Robert J. Genatt, Hearing Examiner

Dated: July 23, 1979

IN THE MATTER OF THE APPLICATION :
OF JOHN T. DANIELS, JR., FOR A :
CASINO EMPLOYEE LICENSE (DEALER) :

PRE-HEARING CONFERENCE ORDER

A pre-hearing conference having been held in this matter before the undersigned Hearing Examiner on January 26, 1979, at 11:00 a.m. in the offices of the Casino Control Commission at 479 West State Street, Trenton, New Jersey, Gary D. Wodlinger, Esq., appearing for the Applicant, and Fredric E. Gushin, Deputy Attorney General, appearing for the Division of Gaming Enforcement, the following was decided:

A. LICENSING REQUIREMENTS

The standards to be satisfied by the Applicant in order to obtain a casino employee (dealer) license are those set forth in section 90 of the Casino Control Act, N.J.S.A. 5:12-90.

1. Under section 90(b), the Applicant must establish by clear and convincing evidence that he meets the following criteria which are contained in section 89(b), N.J.S.A. 5:12-89(b):
 - (a) financial stability, integrity and responsibility;
 - (b) reputation for good character, honesty and integrity;
 - (c) sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in

the particular position involved; provide that this requirement may be satisfied by successful completion of a course of study at a license school in an approved curriculum.

2. Under section 90(d), the Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the following criteria contained in section 86, N.J.S.A.

5:12-86:

- (a) failure to provide all information required by the Act or requested by the Commission;
- (b) failure to reveal any fact material to qualification;
- (c) supplying any information which is untrue or misleading as to any material fact pertaining to qualification;
- (d) conviction of the Applicant of any offense which under present New Jersey law would be one of the disqualifying offenses in section 86(c);
- (e) current prosecution of the Applicant for any disqualifying offense under section 86(c);
- (f) pursuit by the Applicant of economic gain in an occupational manner or context violative of the criminal or civil public policies of this State where such pursuit

creates a reasonable belief that participation by the Applicant in casino or gaming operations would be inimical to the policies of the Act or to legalized gaming in this State;

- (g) identification of the Applicant as a "career offender" or member of a "career offender cartel" as those terms are defined in section 86(f);
- (h) identification of the Applicant as an associate of a career offender or a career offender cartel where there is reason to believe that the association is of such a nature as to be inimical to the policy of the Act and to gaming operations;
- (i) commission by the Applicant of any disqualifying offense under section 86(c) whether prosecuted for such conduct or not;
- (j) contumacious defiance by the Applicant of any official investigatory body where such body is engaged in investigating crimes related to gaming, official corruption or organized crime activity.

B. ISSUES

The factual issues to be resolved by the Commission in determining whether the Applicant has met the qualifications for licensure as a casino employee (dealer) concern the following:

- (a) The factual allegations set forth in the Division's letter-report of November 28, 1978, which allegations include:
1. Failure to disclose all previous arrests and charges in response to question 46 on the personal history disclosure form-2;
 2. Failure to disclose use or possession of marijuana in response to question 49 of the personal history disclosure form-2.
- (b) The several arrests and charges listed in the Division's letter-report of November 28, 1978, the circumstances underlying those arrests and charges, and the Applicant's overall conduct during the period spanned by these events.

C. DISCOVERY

1. The Applicant and the Division shall exchange lists of witnesses to be called at the hearing. The lists shall contain the name and address of each witness and a brief indication of the nature of his or her testimony.
2. The Applicant and the Division shall exchange any exhibits or documents to be introduced at the hearing.
3. The Applicant and the Division shall exchange any statements or memorialization of any statement, exclusive of work product, of any witness to be called at the hearing.
4. The Division shall provide to the Applicant a copy of any criminal history concerning the

Applicant in the Division's possession.

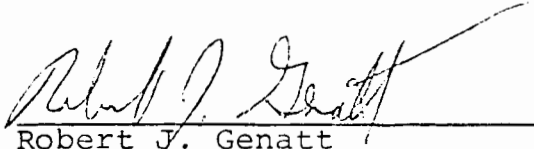
5. Discovery shall be completed by Tuesday, February 13, 1979, provided that the parties shall be under a continuing duty to promptly provide any subsequently obtained discoverable material.

D. HEARING

The hearing in this matter shall commence at 11:00 a.m. on Monday, February 26, 1979, in the Commission offices at 379 West State Street, Trenton, New Jersey.

It is hereby on this 30th day of January, 1979 ORDERED that this Pre-Hearing Conference Order be served upon the Applicant and the Division within two days of its entry.

DATE: 1/30/79


Robert J. Genatt
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-44
OAL DOCKET NO. CCC 1048-79

IN THE MATTER OF THE APPLICATION :
OF DOUGLAS FREDERICK EIKER FOR :
LICENSURE AS CASINO EMPLOYEE : FINAL ORDER
(DEALER) :

A hearing having been conducted in the above-captioned matter on July 25, 1979 before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and Patricia Arons, Deputy Attorney General, having appeared on behalf of the Division of Gaming Enforcement, Greg G. Mordas, Esq., having appeared for the Applicant, and Denise A. Cobham, Assistant Counsel, having appeared on behalf of the Casino Control Commission; and the Commission having carefully read and considered the record of said hearing, the Initial Decision of the Administrative Law Judge and any exceptions or objections having been filed thereto; and the Commission having resolved at its public meeting of November 14, 1979 to adopt the Initial Decision of the Administrative Law Judge as supplemented herein, and grant the application for licensure;

It is on this 15th day of November, 1979, ORDERED that the findings of fact and conclusions of law contained in the Initial Decision be and hereby are adopted by the Commission;
and

It is further ORDERED that the findings of fact and the conclusions of law contained in the Initial Decision be supplemented as follows:

1. It was not demonstrated by a fair preponderance of the evidence in the record as a whole that the Applicant possessed certain controlled dangerous substances within the meaning of and in violation of the criminal laws of this State.

2. Therefore, the Applicant is not disqualified from licensure pursuant to N.J.S.A. 5:12-86(g) by reason of the commission of acts which would constitute high misdemeanors under New Jersey law; and

It is further ORDERED that the application of Douglas Frederick Eiker for licensure be and hereby is granted based upon the findings of fact and conclusions of law enumerated in the Administrative Law Judge's Initial Decision as supplemented herein, and further reflected in the record of the above-mentioned hearing and the evidence adduced therein, and as is more fully stated in the formal opinion issued in conjunction herewith by the Chairman on behalf of the Commission; and

It is further ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:

JOSEPH P. LORDI, CHAIRMAN

DATED: Nov. 15, 1977

was proven to have committed the possessory drug offenses described above. Upon review of the record in this matter, the Commission finds that the credible proofs in the whole record do not indicate the commission by the Applicant of the aforescribed disqualifying offenses by a fair preponderance of the evidence.

As support for its allegation that the Applicant had committed the crimes of possession of heroin, cocaine and L.S.D., the Division introduced exhibit DG-7 in evidence, a Trenton Psychiatric Hospital Report in which a physician states that the Applicant admitted his past use of the drugs in question. The physician executing that report did not appear at the hearing and was not, of course, cross-examined with respect to it.

The Applicant, on the other hand, specifically denied under oath at the hearing that he had ever used cocaine or heroin (T33-17 to T34-13)². He further testified that he did not recall admitting the use of those drugs or L.S.D. to the reporting physician and that at the time of his interview with the physician, he was under the influence of alcohol (T49-1 to 25), such being the reason for his admission to the hospital.

² "T" refers to the transcript of the hearing herein held on July 25, 1979.

Furthermore, Mr. Peter Krawiec, a Mercer County Pre-trial Intervention Program counsellor who monitored the Applicant's progress in that program, testified that he believed Applicant was candid with him, and that the Applicant had never indicated that he had used cocaine or heroin (T107-21 to T108-19). The A.L.J. had the opportunity during the hearing to observe the Applicant's demeanor and to make an evaluation of his credibility, and that of this witness. We are not persuaded that the A.L.J.'s positive assessment of the Applicant's credibility was unjustified. Accordingly, we find that whatever probative force which may fairly be ascribed to DG-7 with regard to the Applicant's possession of cocaine or heroin was effectively neutralized by the live testimony described above.

With regard to L.S.D., however, in addition to DG-7, the Applicant himself testified that he had used that drug while in the Army (T34-4 to 21). He stated essentially that he had been given what he thought was L.S.D. and "tried it out" a few times during a period in his life when he was more or less constantly under the influence of alcohol (See Id. T52-14 to 22).³ Notwithstanding this apparent admission, the record is devoid of any evidence of repeated use of L.S.D. by the Applicant such as would justify the conclusion that he was familiar enough with

³ The history of the Applicant's alcohol abuse problem and his successful efforts to deal with it are detailed in the A.L.J.'s Initial Decision and need not be iterated here.

the effects of the drug to be certain that L.S.D. was in fact the substance he ingested at the time. The basis for the Applicant's belief that he was using L.S.D. at the time, e.g., the effect the drug had on him, was not explored by the Division at the hearing.

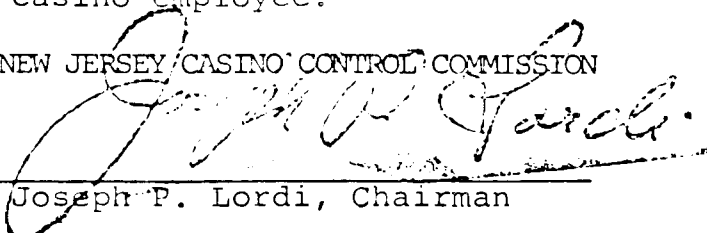
The absence from the record of evidence corroborating the Applicant's belief, coupled with his state of alcoholic intoxication at the time of these episodes, in our view substantially undercuts the reliability of his impression that he was using L.S.D. In light of all of the above circumstances, we find that the record herein with regard to the Applicant's possession of L.S.D. is equivocal at best.

For these reasons, the Commission finds that the credible proofs in the record as a whole cannot be held to have established by a preponderance of the evidence that the Applicant committed the offenses of possession of cocaine, heroin or L.S.D. We have, of course, previously held that a §86 disqualification must be established by a preponderance of the evidence in the record as a whole. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1, 12-13 (1979).

In light of this finding and in light of the findings and conclusions stated in the Initial Decision herein which we have adopted, the Commission is satisfied that the Applicant is qualified for licensure as a casino employee.

THE NEW JERSEY CASINO CONTROL COMMISSION

By:


Joseph P. Lordi, Chairman

DATED: Nov 15, 1979

IN THE MATTER OF)
THE APPLICATION OF DOUGLAS FREDERICK)
EIKER FOR LICENSURE AS A CASINO)
EMPLOYEE (DEALER))

INITIAL DECISION

OAL DKT. NO. CCC 1048-79

APPEARANCES:

Turp, Coates, Essl and Driggers, Esquires
By: Greg G. Mordas, Esquire
for the Applicant, Douglas Frederick Eiker

John J. Degnan, Attorney General
By: Patricia J. Arons, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
By: Denise A. Cobham, Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

In October, 1978, Douglas Frederick Eiker (applicant) filed an application, including a personal history disclosure form, with the Casino Control Commission (Commission) for licensure to work in a casino as a dealer. Applicant was advised by letter from the Commission's General Counsel, dated April 9, 1979, that based upon information received by letter from the Division of Gaming Enforcement (Division) dated March 21, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

Applicant 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 hearing was held on July 25, 1979 at the Lawrence Township Municipal Court, and the final brief was received on August 10, 1979, which is deemed to be the concluding date of the hearing.

At issue is whether applicant should be disqualified from licensure as a casino dealer on the grounds that his conviction for, or commission of, certain drug or alcohol related offenses indicates that licensure

would be inimical to the policy of the Casino Control Act and to casino operations. If not so disqualified, the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining issue of whether applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act relied upon by the Division of Gaming Enforcement in its opposition to applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the applicant shall show by "clear and convincing evidence the applicant's reputation for good character, honesty and integrity". Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86c provides that the Commission shall deny licensure to any applicant disqualified on the basis of a conviction for an offense which indicates that licensure would be inimical to the policy of the Act and to casino operations. N.J.S.A. 5:12-86g provides that the Commission shall deny licensure to any applicant disqualified on the basis of the commission of any act which would constitute any offense under subsection c of section 86, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Before proceeding with testimony at the hearing, the parties stipulated to the admission of police reports (Exhibits DG-1 through DG-5) pertaining to applicant's five arrests for commission of glue sniffing or alcohol related disorderly persons offenses. Applicant did not dispute the accuracy of the reports. The first arrest indicated by the reports, which resulted in applicant's only conviction, was on September 11, 1976, for creating a disturbance while under the influence of alcohol, N.J.S.A. 2A:170-30. Applicant was arrested on January 21, 1977, June 10, 1977 and September 15, 1977 for glue sniffing, N.J.S.A. 2A:170-25.10. Finally applicant was arrested on September 16, 1977 for assault and battery, N.J.S.A. 2A:170-26. The disposition of the final four charges was dismissal through the Pretrial Intervention Program.

Applicant testified that he successfully completed a blackjack dealers course at East Coast Gaming and Electronics, Inc., and finished near the top of his class. Applicant is presently receiving Workers' Compensation for a ruptured disc suffered during his employment with Coca Cola, which commenced in mid April of 1979. Prior to applicant's attendance at dealers school, he was employed in 1978 for several months as a baker's helper and for approximately two months as a press operator at a tool company.

Applicant testified with candor and sincerity, on both direct and cross examination, concerning his commission of the aforementioned drug and alcohol related offenses, and his subsequent efforts to overcome his drug and alcohol problem. Applicant's alcoholism began while he was still in high school. His drug problem consisted for the most part of his abuse of glue and pills which were prescribed by doctors treating his alcoholism. He also acknowledged that he had used marijuana occasionally and had tried LSD while serving in the Army.

Applicant currently attends meetings of Alcoholics Anonymous on virtually a daily basis. Applicant testified that his alcoholism had formerly caused him to feel depressed, guilty and lacking in self respect. Since obtaining professional help at Alcoholics Anonymous, applicant now has gained self confidence and self respect and has goals that he wants to accomplish. Stating that he had not had an alcoholic beverage since September 21, 1977, applicant testified that he did not want to drink, and that his efforts to maintain sobriety would not interfere with his duties as a dealer, even though alcohol would be readily available.

Applicant testified at length on cross examination concerning his license application and personal history disclosure form (Exhibit DG-6). He acknowledged the accuracy of the information contained therein, including his record of several juvenile offenses and his undesirable discharge from the Army. Applicant also disclosed his use of marijuana and various pills and chemicals between 1973 and September 1977, when he started his alcohol and drug rehabilitation programs at Project Return and Alcoholics Anonymous. In his testimony, applicant acknowledged that he had been hospitalized on several occasions between 1973 and September 1977 for problems arising from his drug and alcohol abuse. Applicant denied that he had ever used cocaine or heroin. No objection to licensure was raised by the Division concerning any failure by applicant to disclose a material fact on his personal history disclosure form.

Lawrence William Archer, Sr., Hightstown Borough Chief of Police, testified on behalf of the applicant. According to Chief Archer, he took a personal interest in applicant after applicant's arrest in September 1977 on the disorderly person charge of assault and battery. Chief Archer counseled applicant at that time concerning overcoming his problems with drinking and sniffing glue. It was Chief Archer's testimony that the subsequent change in applicant has been like night and day, in that applicant now takes pride in himself, dresses and carries himself well, and is now an asset to the community of Hightstown.

Peter J. Krawiec, formerly a court liaison for the Mercer County Pretrial Intervention Program, also testified on behalf of applicant. According to Mr. Krawiec, when applicant first entered the Pretrial Intervention Program he was chronically depressed, had no career goals, and low motivation. During the course of the Pretrial Intervention Program, Mr. Krawiec monitored applicant's behavior and observed a shift in applicant's attitude toward the future from pessimism to optimism, with a tremendous increase in his motivation to accomplish goals. It was Mr. Krawiec's testimony that applicant was one of the most honest and sincere participants in the Pretrial Intervention Program that he had ever met. Observing that applicant had confided in him, Mr. Krawiec stated that applicant had never mentioned the use of heroin or cocaine. Mr. Krawiec testified that applicant wanted very badly to become a dealer. He did not feel that the atmosphere and environment of the casino would have a detrimental effect on applicant's behavior.

William R. Stender, Administrative Coordinator of Ambulatory Service at Monmouth Medical Center, testified on behalf of applicant. Among other

duties at the Medical Center, Mr. Stender is responsible for the Alcoholism Treatment Program, and he is also a member of Alcoholics Anonymous. Stating that he became applicant's sponsor in the Alcoholics Anonymous Program, Mr. Stender testified that the change in applicant's mental outlook since March 1978 was like night and day. Mr. Stender explained that one measure of the progress of a person going through recovery of alcoholism is the ability to concentrate on a school program on a regular basis, which was demonstrated by applicant's completion of dealers school, which required that applicant travel by bus from Toms River to Atlantic City five nights a week for several weeks.

Mr. Stender testified that the people he knows in the Toms River area that know applicant think extremely highly of him. According to Mr. Stender, applicant has a very good reputation in the Alcoholics Anonymous Program, and because of confidence in applicant's sobriety, members of the program have felt comfortable in referring new people to applicant as a member of the program. Stating that there are people in the Alcoholics Anonymous Program who are bartenders, Mr. Stender testified that he saw no harm in having someone with good sobriety working around alcohol.

Trooper Thomas R. Spivey testified on behalf of Division of Gaming Enforcement concerning his investigation of applicant. Trooper Spivey explained that he interviewed applicant in December 1978, at which time applicant told the trooper about his drug and alcohol abuse problem as well as his various juvenile and disorderly person arrests related to his glue sniffing and alcohol problems. Applicant also advised him that he had received four Article number 15's in the Army for being drunk and disorderly. According to the trooper, applicant also disclosed to him his hospitalization on several occasions as a result of his alcohol problem, as well as two attempts to commit suicide, the latest being in July of 1977. The trooper very candidly testified on cross-examination that his investigation of applicant had not revealed any problems with the law or any other derogatory information concerning applicant, since September 1977.

Police Officer James E. Hennon, of the East Windsor Township Police Department, also testified on behalf of the Division. Officer Hennon had arrested applicant on September 11, 1976 on the disorderly person charge of creating a disturbance while under the influence of alcohol. According to Officer Hennon, applicant had a reputation in the East Windsor Police Department during 1976 and 1977 for being a glue sniffer and for being intoxicated in public. The officer stated that applicant was loud, boisterous, and using profanity at the time of his September 11, 1976 arrest. Officer Hennon testified that applicant appeared to be a totally different person at the time of the hearing than he had been at the time of his arrest in 1976.

The relevant facts in this matter are not in dispute. At issue is not whether applicant has demonstrated his rehabilitation, as that concept appears at Section 9ld of the Casino Control Act, since that provision applies only to a conviction of one of the specifically enumerated offenses under Section 86c of the Act, and may only be demonstrated by an appl

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The relevant facts in this matter are not in dispute. At issue is not whether applicant has demonstrated his rehabilitation, as that concept appears at Section 9ld of the Casino Control Act, since that provision applies only to a conviction of one of the specifically enumerated offenses under Section 86c of the Act, and may only be demonstrated by an appl.

for a casino hotel employee license. In the instant matter, there has not been a conviction of any of the enumerated offenses under section 86c. The issue, therefore, is whether the offenses committed by applicant would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. To make this determination it is necessary to examine, inter alia, the nature of the offenses, remoteness of the offenses in time and the offender's conduct since the offense to the present. Applicant very candidly discussed his drug and alcohol abuse problem and the disorderly person offenses related thereto, during the period from 1972 to September 1977. That applicant has accomplished a remarkable turnaround by his efforts to overcome his alcoholism and alcohol related drug use is clear. By his abstention from the use of alcohol, applicant has been able to maintain his sobriety for the last two years. Applicant has thereby regained his self confidence and self respect, and can now achieve positive goals while contributing to society in a constructive manner.

The credible proofs in the whole record fail to indicate that licensure of applicant 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. Licensure of applicant would not, therefore, be inimical to the policy of the Casino Control Act and to casino operations. Furthermore, the credible proofs in the whole record establish by clear and convincing evidence the applicant's present reputation for good character, honesty and integrity.

After consideration of the entire record, I find:

1. Applicant has applied for a license to permit him to work in a Casino as a Dealer.
2. Applicant has successfully completed a course in black-jack dealing.
3. Applicant completed his personal history disclosure form in good faith and no objection has been raised concerning a failure to disclose a material fact.
4. Applicant had one disorderly person conviction and four other disorderly person arrests during the period of September 1976 through September 1977.
5. Each of applicant's admitted offenses resulted from his alcohol or alcohol related drug abuse problems.
6. Applicant has not had any arrests and has maintained his sobriety since September 1977.
7. When viewed in light of all the circumstances, applicant's offenses do not indicate that licensure of applicant would be inimical to the policy of the Casino Control Act and to Casino operations, within the meaning of the disqualification criteria of Section 86c of the Casino Control Act.
8. Applicant presently maintains a reputation for good character, honesty and integrity.

9. It appears likely, if Petitioner is licensed, that he will make an honest and trustworthy Casino employee.

Based upon the facts ADDUCED at the hearing and the applicable statutory provisions, I CONCLUDE that applicant should not be disqualified from receiving a Casino employee license to work as a dealer, and that applicant has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure. It is therefore ORDERED that a Casino employee license, permitting applicant to work as a dealer, be granted to applicant.

This Decision shall become final forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

September 20, 1979
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Sept 24, 1979
DATE

Receipt Acknowledged:

[Signature]
AGENCY HEAD
R. BENTHAM COHEN

Oct 26, 1979
DATE

Mailed to Parties:

[Signature]
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION:

OF KAREN D. FRENEY FOR LICENSURE:

AS A CASINO EMPLOYEE (ALCOHOLIC :

FINAL ORDER

BEVERAGE SERVER). :

A hearing having been conducted in the above-captioned matter by an Administrative Law Judge of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions and objections filed by the Division of Gaming Enforcement, and the Commission having determined at its public meeting of August 1, 1979, to reject the Initial Decision and to deny the application for licensure,

It is on this 6th day of August, 1979, ORDERED that the Initial Decision filed by the Office of Administrative Law is rejected by the Commission because the Applicant has failed to clearly and convincingly prove her good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90, because the Administrative Law Judge did not properly apply the statutory requirements to the record before him and because the recommendation of the Administrative Law Judge is not supported by ample, credible evidence in the hearing record; and

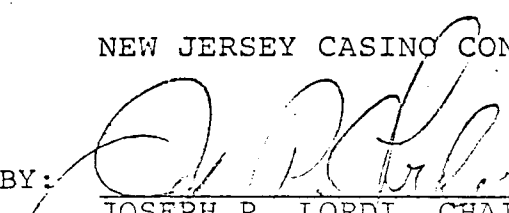
It is further ORDERED that the application of Karen D. Freney for a casino employee license be and hereby is denied based

on the findings of fact and conclusions of law stated by the Commission in the record of its August 1, 1979, public meeting and to be more fully stated in a formal opinion to be issued forthwith by the Chairman on behalf of the Commission; and

It is further ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

Dated:

August 6, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-21
OAL DOCKET NO. CCC 402-79

IN THE MATTER OF THE APPLICATION :
KAREN DAWN FRENEY FOR LICENSURE :
AS A CASINO ALCOHOLIC BEVERAGE : FINAL COMMISSION DECISION
EMPLOYEE. :

Jerry Friedman, Esq., appeared for the Applicant.
Fredric E. Gushin, Esq., Deputy Attorney General, appeared for
the Division of Gaming Enforcement.

On August 3, 1978, Karen Dawn Freney [hereinafter the
"Applicant"] submitted Personal History Disclosure Form number
[hereinafter PHDF-2] to the Casino Control Commission [hereinafter
the "Commission"] in support of her application for licensure as
a casino employee, cocktail server. Upon receipt of the
application, the Division of Gaming Enforcement [hereinafter the
"Division"] conducted the requisite investigation into the
Applicant's background. Thereafter, the Division submitted to the
Commission a letter-report dated February 5, 1979, interposing an
objection to the licensure of the Applicant. Specifically, the
Division objected to licensure on the basis of four shoplifting
convictions. The Division was of the view that the four conviction
evidenced a "pattern of behavior" which reflected adversely on the
Applicant's character and integrity. The Applicant was advised
by the Commission, in a letter dated February 13, 1979, that based
on the Division's report, "there is a substantial possibility that

the Commission will deny your application." She was also apprised of her right to request a hearing before the Commission acted upon her license application. The Applicant exercised the right and, in accordance with N.J.S.A. 52:14F-1 et seq., the case was transmitted to the Office of Administrative Law.

A prehearing conference was held on April 10, 1979, from which a prehearing order resulted. The prehearing order indicated that the issue for administrative determination was whether the Applicant should be disqualified from licensure as a casino employee, cocktail server, "because of shoplifting convictions and action related to past employment." The hearing itself was held in Atlantic City on May 4, 1979, before the Honorable Eugene Ginley, A.L.J. Thereafter, Judge Ginley prepared an Initial Decision which was filed with this Commission on June 8, 1979. The Initial Decision recommended that the Applicant be licensed by this Commission. It is appended hereto at A1 to 5. In accordance with N.J.S.A. 52:14B-10(c), the parties were afforded an opportunity to file written exceptions or objections to the Initial Decision with the Commission. The Division subsequently did file such exceptions by way of a letter to the Commission dated July 13, 1979 in which the Division contended that the Applicant had not demonstrated her good character, honesty and integrity by clear and convincing evidence. See N.J.S.A. 5:12-89(b)(2) and 90(b).

In his Initial Decision, the Administrative Law Judge concluded "that it appears likely, if petitioner is licensed, that she will make an honest and trustworthy casino employee." He based

this conclusion upon testimony of the Applicant regarding extenuating and mitigating circumstances which allegedly existed during the two year period in which the Applicant's four shoplifting offenses occurred. In particular, the Judge noted the Applicant's separation from her husband, her efforts to support herself and her young son without contributions from her husband and her simultaneous state of emotional distress. Based upon these circumstances, he found that any negative implications from the four shoplifting convictions had been effectively neutralized and that the Applicant did possess the requisite good character, honesty and integrity.

We disagree and hold that the findings of the Administrative Law Judge were not supported by the evidence in the record as a whole. For the reasons which follow, the Commission rejects the Initial Decision of the Administrative Law Judge and denies Karen Dawn Freney's application for licensure as a casino employee.

The Legislature in enacting the Casino Control Act [hereinafter the "Act"] clearly set forth the public policy of the State of New Jersey with regard to the creation and continued operation of casino gaming. See N.J.S.A. 5:12-1(b). An integral part of this policy is public confidence resulting from strict enforcement of the Act. N.J.S.A. 5:12-1(b)(6) provides in pertinent part:

(6) An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations.

To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided....

So as to maintain public confidence in the regulatory process and casino operations the Legislature deemed it of primary importance to exclude certain types of persons from positions of authority or responsibility in casino gaming operations. N.J.S.A.

5:12-1(b) (7) provides:

(7) Legalized casino gaming in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations, and the exclusion or removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto.

In order to implement the aforescribed policies, standards for both affirmative qualification and disqualification criteria for employee licenses were developed. See generally N.J.S.A. 5:12-89, -90 and -91 with respect to affirmative criteria and N.J.S.A. 5:12-86 with respect to disqualification criteria.

Pursuant to the prehearing order, the sole issue for administrative determination was whether the Applicant had demon-

strated her reputation for good character, honesty and integrity by clear and convincing evidence in satisfaction of N.J.S.A. 5:12-89(b)(2). This issue was brought into focus by reason of the fact that the Applicant had been convicted of four shoplifting offenses which were disclosed in response to question 45 on the PHDF-2.¹

Critical to the affirmative burden upon the Applicant to establish by clear and convincing evidence her reputation for good character, honesty and integrity were the issues of alleged mitigating and extenuating circumstances concerning the Applicant's conviction of four shoplifting offenses within a two-year period commencing August, 1975, and terminating August, 1977. The first offense occurred on August 28, 1975, and involved the taking of two sweaters, two towels and two face cloths from a Strawbridge and Clothier store in Voorhees Township, New Jersey. The second offense occurred on October 19, 1975, when the Applicant stole parts for a child's game from a K-Mart store in Mantua, New Jersey. The third offense occurred on October 16, 1976 when the Applicant stole a child's shirt and sweater from a store in Deptford Township, New Jersey. The fourth offense, which occurred on August 14, 1977, involved the taking of four packages of cigarettes.²

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1. It is to be noted that the information submitted in response to question 45 on the PHDF-2 should have been provided in response to question 46. The Commission assumes that this error was inadvertent and not in violation of N.J.S.A. 5:12-86(b).
 2. The Applicant denied having committed the August 14, 1977 shoplifting offense (T29-15 to 25) for which she was found guilty after trial. (T refers to the Transcript of the hearing. Exhibits and documents introduced at the hearing are identified by use of either a "C" for Commission, and "A" for Applicant or a "D" for Division)

At the hearing, the Applicant testified as to her reasons for commission of the three offenses to which she admitted. The Applicant attempted to negate the adverse inference to be drawn from such conduct with regard to the issue of her honesty, integrity and good character by emphasizing the financial and emotional strain of raising a child without the aid of her then spouse (T25-3 to 12; T26-23 to T27-12; T28-13 to 25, and T32-16 to 25). She further testified that she was separated from her husband in November, 1973, and that she retained custody of her son who is now aged 6. She asserted that her husband made no support payments from 1973 to May, 1977, when a divorce was obtained. The assertion was also made that the Applicant had been allegedly unemployed and without means of support at the time the shoplifting offenses occurred.

Documentary evidence was introduced at trial in the form of affidavits from three attorneys who knew and worked with the Applicant (Exhibits A-1, 2 and 3). Each affidavit asserts, inter alia, that the Applicant had overcome the emotional and financial stress she was apparently laboring under at the time of commission of the aforescribed shoplifting offenses. Furthermore, the affiants aver to the Applicant's trustworthiness and honesty. None of the affiants were produced to testify at the hearing, thereby denying the Division the opportunity to cross-examine. Although the admission of affidavits is permissible pursuant to N.J.S.A. 5:12-108(a)(6), the weight to be afforded such evidence must be tempered by the lack of opportunity afforded the Division to confront and cross-examine the source of the information. See In the Matter of the Application

of Resorts International Hotel, Inc. for a Casino License,
Docket No. 79-CL-1, at 4 (1979).

A review of the entire record reveals ample reason to doubt the credibility of the Applicant's testimony. Her assertion that she was under financial duress when she committed the offenses is belied by her own statements at the hearing and the information which she provided in response to question 37 on the PHDF-2.

As to the latter, the information provided therein indicates that the Applicant was employed as a legal secretary at the time of the August, 1975, October, 1975, and August, 1977 offenses. At the hearing, the Applicant first stated she was unemployed at the time of the August, 1975 and October, 1975 offenses (T20-18 to 21-4; T25-12 to 26-4). However, she later testified that she was employed as a receptionist for a law firm from September to December, 1975 (T48-3 to 15). When questioned about the October, 1975 offense, she claimed a failure of recollection as to her employment status at that time (T49-11 to 19). In any event, it ultimately appeared clear that she was employed when at least two of the offenses occurred and that she was collecting unemployment compensation when the October, 1976 offense was committed (See T51-21 to T52-7).

The Applicant's employment during a substantial portion of the two year span from August, 1975 to August, 1977 seriously dilutes her claim of economic duress. Moreover, the

Applicant produced evidence to show that she was a competent and skilled secretary who had worked at three law firms. In addition, the Applicant had registered for the Fall, 1976 semester at Glassboro State College, but left the school in mid-semester so as not to lose her unemployment benefits. In the aggregate, these facts hardly present the picture of an emotionally distraught, financially destitute woman driven to steal in spite of her true character and integrity.

Even if the Applicant's testimony is accepted as true, there is simply no basis for the conclusion that the Applicant has demonstrated her good character, honesty and integrity by clear and convincing evidence. N.J.S.A.

5:12-89(b)(2) and 90(b). The Applicant's financial difficulties may well have provided a motive for her offenses. Surely, though, economic problems cannot excuse or justify outright theft. So, too, the Applicant's bland assertion, that she was under emotional strain, does not persuade us that her two-year period of misbehavior was aberrational. In finding that these strained and inadequate explanations satisfied the statutory criteria, the Administrative Law Judge ignored the policy of strict regulation and disregarded the heavy affirmative burden which the Legislature has placed on the Applicant. The Commission cannot permit such severe dilution of the statutory standards. Simply stated, there is no clear and convincing assurance in the record that this Applicant is able to resist the temptation to appropriate

chips, cash or other valuable items which are readily accessible to a cocktail waitress who is authorized to enter the pits and other restricted areas of the casino. Instead, the record clearly demonstrates that the Applicant persisted in a continuing course of larcenous behavior spanning a two-year period, and this in the face of repeated arrests and convictions. We so find.

During the hearing, the attorney for the Division attempted to query the Applicant as to whether she had ever taken other merchandise out of a store without paying for it. The Administrative Law Judge sustained the Applicant's objection on the ground of relevance (T54-12 to 20). This ruling was clearly improper. First, whether the Applicant had engaged in a course of larcenous conduct apart from the offenses for which she was convicted is clearly essential to the issue of her character, honesty and integrity. Secondly, the Commission cannot ignore the severe problem posed to retail merchants because of the difficulty inherent in apprehending and prosecuting shoplifters. Many such thefts go undetected. It was, therefore, not unreasonable for the Division to question whether the Applicant was in the habit of unlawfully removing merchandise from stores at times other than when she was apprehended. Her refusal to offer any testimony in this regard is totally at odds with her affirmative burden of demonstrating her good character, honesty and integrity clearly and convincingly.

One other matter deserves comment here. The Initial Decision does not address a significant issue which emerges from facts in the record, i.e., whether the Applicant is disqualified for failure to disclose an involuntary employment termination in response to question 33 in her PHDF-2. N.J.S.A. 5:12-86(b). This issue was not clearly joined at the hearing or in preliminary proceedings.

The Applicant testified that she had been telephoned by her employer, a law firm, in November, 1977, and told not to bother returning to work. The Applicant asserted and the Judge found that this dismissal was due to a personality conflict (T34-12 to T35-10; T42-4 to 8). When asked why she had not indicated this dismissal in response to question 33 on the PHDF-2, the Applicant said it was an "oversight." However, the Applicant admitted that she knew she had been dismissed from the law firm when she answered "No" to question 33, and also listed her employment with the firm in response to question 31. In light of these facts, we find that the Applicant's explanation is not credible.

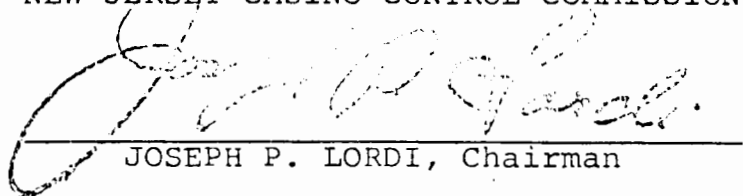
In the interest of fair notice to the Applicant, as well as because resolution of this issue is unnecessary to the result reached herein, the Commission will not determine whether the Applicant is disqualified for intentionally failing to disclose her employment termination pursuant to N.J.S.A. 5:12-86(b). However, we do find that the evidence in the record on this point reflects negatively upon the

Applicant's good character, honesty and integrity. N.J.S.A. 5:12-89(b) and 90(b). For the same reasons, the Commission will not consider the obvious issue, not raised below, of whether the Applicant is disqualified for commission of offenses rendering her licensure inimical to the policy of the Casino Control Act. N.J.S.A. 5:12-86(c).

In his Initial Decision, Judge Ginley states:

"The issue then is really one of policy to be made by the Commission in interpreting the criteria of character, honesty and integrity ..." On the contrary, the Commission is bound to obey the Legislature's determination that the Applicant must affirmatively demonstrate her reputation for character, honesty and integrity by clear and convincing evidence. This the Applicant has failed to do for the reasons stated above. The Initial Decision of the Administrative Law Judge is unfounded, contrary to the record and is therefore rejected. The licensure of Karen Dawn Freney as a casino employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION


JOSEPH P. LORDI, Chairman

DATED:

January 10, 1980



STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
744 BROAD STREET, ROOM 410
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

INITIAL DECISION

OAL DKT # CCC 402 - 79

THE PETITION OF
MS. KAREN DAWN FRENEY,
FOR LICENSURE AS A
CASINO EMPLOYEE AS AN
ALCOHOLIC BEVERAGE
EMPLOYEE

APPEARANCES:

Gerry Friedman, Esq., Blackwood, New Jersey,
for petitioner.

Frederic E. Gushin, Esq., Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety,
Trenton, New Jersey.

BEFORE THE HONORABLE EUGENE GINLEY, ALJ c/b:

The petitioner, Ms. Karen Dawn Freney, filed an application, including the personal history disclosure form with the Casino Control Commission for licensure to work in a casino as an alcoholic beverage employee. Petitioner received a letter, dated February 15, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, "there is a substantial possibility that the Commission will deny your application". Based upon that letter the petitioner exercised her right to request a hearing on her application. The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq.

A pre-hearing conference was held on April 10, 1979, from which a pre-hearing order was issued. A public hearing was then held in Atlantic City on May 4, 1979.

At issue is the Administrative determination as to whether

petitioner should be disqualified from receiving a license to work as an alcoholic beverage employee in a Casino because of past shoplifting convictions. The relevant statute relied on by the Division of Gaming Enforcement in its opposition to the issuance of a license is N.J.S.A., 5:12-90. That statute incorporates criteria set out in section 89 of the Act which includes that the applicant shall show by clear and convincing evidence "the applicant's reputation for good character, honesty, and integrity".

Petitioner admits to four disorderly person convictions for shoplifting. These convictions, represented by exhibits DG-2, 3, 4, and 5, are from the period August 1975 through August 1977. Petitioner denies having committed the last of the four offenses, but does admit to all four convictions. The values of the merchandise that was shoplifted were all relatively minor, the most having been represented by a retail value of \$42.50.

Basically, the position of the petitioner is that she had committed the offenses, that is three of the four of them, but that they were committed because of unusual and mitigating circumstances. She does not suggest that such conduct was proper. The surrounding circumstances were such that petitioner was separated from her husband since November of 1973, in custody of her child and unemployed. She has since been divorced in May of 1977.

Petitioner testified that she received no support from her husband for herself or her child, which resulted in her being in an extreme emotional state. She alleges that the hardship of her financial situation is what caused her to take the items relating to the shoplifting convictions. The first conviction was for taking two sweaters, two towels, and two face cloths, the second for parts of a child's game, the third for some child's clothing, and the fourth which is the one petitioner denies, for four packages of cigarettes.

Petitioner worked as a legal secretary for the firm of Maresa and Wade during the period of March 1977 through November 1977. The Division of Gaming Enforcement has brought into issue the fact that petitioner was allegedly fired from this job. Petitioner admitted that she was called on the telephone by Mr. Wade and asked not to return to work, but claims she was never given a reason for this. She believes that it was because of a personality conflict between herself and Mr. Wade's secretary. Such was confirmed by affidavits of three attorneys, (exhibits P-1, 2, and 3) who knew and worked with petitioner.

In Exhibit P-1, Richard Ferreri, Esq., states:

"In having known Ms. Frenay over the past four years, I have no doubt that she has overcome the financial and emotional strain

that she had been under when we first met. I would most strongly recommend that the petition for licensure as a casino employee be granted."

In Exhibit P-2, Ronald N. Manos, Esq., states:

"I am aware that she has been convicted of several disorderly person violations, however, I believe that these violations were committed as a result of the emotional and financial strain which she was under at the time...I know that Ms. Freney has successfully overcome her previous minor difficulties and would be an honest and trustworthy employee."

Mr. Manos also stated as regards to her employment with the law firm:

"During her employment, Ms. Freney was a capable employee and often volunteered to assist my secretary in the preparation of pleadings and legal papers. To the best of my knowledge, she did not cause any problems within the office, except that there was a personality conflict between herself and Muriel Mansmann, secretary and office manager. During the course of her employment, Ms. Freney was under financial and emotional strain, as she was in the process of obtaining a divorce and raising her child without the benefit of adequate support payments from her husband."

And, in Exhibit P-3, Thomas J. Kenney, III, Esq., stated that petitioner was assigned as his personal secretary, and that:

"I met and came to know Ms. Freney during a time in her life that saw the resolution of what I considered to be extremely taxing emotional and financial hardships...I am aware of Ms. Freney's present application for licensure as a casino employee and her pending hearing pursuant to same. Ms. Freney would be an honest and trustworthy employee as she has been in my experience in the past."

He also added that he firmly believes that she did not commit the last of the four offenses of which she was convicted.

In May of 1978, petitioner became employed by Resorts International, from when it opened May 25 until July 12, when all employees who did not at that time have a license were removed from the floors of the casino. In this regard, a Ms. Elaine Margaret Thomas testified for petitioner. She stated that she supervised the petitioner during that period of time at Resorts and that she had no complaints about plaintiff's conduct.

Gilbert Miller, III, State Police Officer, testified for the Division of Gaming Enforcement. He explained that he had conducted the investigation of the petitioner and he testified to the validity of the four convictions, Exhibits DG - 2, 3, 4, and 5. He explained that during his investigation he interviewed several people concerning petitioner's past employment, and that Ms. Mansmann had made adverse comments about petitioner's work. However, he conceded that several other persons had stated to him that petitioner was a good employee.

Generally speaking, the facts in this matter are not particularly in issue. For example, petitioner admits the four shoplifting convictions, but attempts also to show circumstances that mitigate their severity. As to her past employment at the law firm of Maressa and Wade, the worst that can be said is that she had a personality conflict with the secretary for one of the partners for the firm. Other attorneys employed at that firm had refuted any adverse inferences that may be drawn from the situation. The issue then is really one of policy to be made by the Commission in interpreting the criteria of character, honesty and integrity for a person involved in these specific circumstances.

In arriving at that policy, the Commission must weigh various factors. Adverse to the petitioner are the four shoplifting convictions which are bad not only in and of themselves, but in evidence of a pattern of conduct. On the other hand, it is necessary to give consideration to the emotional state of petitioner, including her surrounding personal circumstances and the relatively minor value of the items stolen. Also, to be taken into account is the nature of the employment license sought by petitioner, i.e., a license to work as an alcoholic beverage employee, i.e., a cocktail waitress.

In conclusion, I believe that the intent of the Act is that most conduct, excluding convictions for those offenses listed in section 86C of the Act, is not to be treated in and of itself as a disqualification to licensure as a casino employee. Rather, all of the surrounding circumstances must be taken into account. In this instance, I do not believe that a reasonable interpretation of the Act requires a permanent disqualification of petitioner because of previous misconduct. Accordingly, I believe that such misconduct should be weighed against the circumstances which existed at that time and the present attitude of petitioner, which included her forthrightness and genuine desire not to repeat her past mistakes.

Therefore, based upon the entire record, I FIND that:

1. Petitioner has applied for a license to permit her to work as a cocktail waitress in a casino.

2. That she completed the personal disclosure form in good faith.

3. That she has four disorderly person convictions for shoplifting, during the period August, 1975 through August, 1977.

4. That there were extenuating circumstances with regards to those convictions with relation to this application.

5. That there is nothing in petitioner's past employment history from which any adverse inferences should be drawn.

6. Petitioner presently maintains a reputation for good character and honesty and integrity.

7. That it appears likely, if petitioner is licensed, that she will make an honest and trustworthy casino employee.

Based upon the facts abduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE, that petitioner should not be disqualified from receiving a casino employee license to work as an alcoholic beverage employee based upon the reasons advanced by the Division of Gaming Enforcement in this proceeding. I, therefore, ORDER that the casino employee license, alcoholic beverage employee license, be granted to the petitioner. This license, however, may be conditioned so as to provide for its immediate revocation in the event of any substantial future misconduct on petitioner's part.

This decision does not become final until forty-five (45) days from agency receipt of this order unless the agency head acts to affirm, modify, or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I hereby file with the designee of the Casino Control Commission, Robert J. Genatt, Esq., Senior Assistant Counsel, my Initial Decision in this matter and the record in these proceedings.

May 31, 1979
Date

June 8, 1979
Date

June 25, 1979
Date

Eugene Ginely
EUGENE GINELY, ALJ g/d
Receipt Acknowledged:

Thomas N. Auremme
AGENCY HEAD Senior Assistant Counsel
Mailed to Parties:

Ronald L. [Signature]
FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 79-EA-15

IN THE MATTER OF THE APPLICATION OF :
AUGUSTINE E. GOMEZ FOR LICENSURE AS : ORDER
A CASINO AND GAMING SCHOOL EMPLOYEE. :

The New Jersey Casino Control Commission having read and considered the Initial Decision of Administrative Law Judge Richard McGill of the Office of Administrative Law in this matter which concludes that the Applicant's request to withdraw his application for licensure should be granted with the provision that he be disallowed from reapplying therefor for a period of one year, and the Commission having further read and considered the Applicant's written request for withdrawal of his application for a period of three months only, as well as the Division of Gaming Enforcement's letter in opposition to that application, and the Commission having determined at its public meeting of August 1, 1979 to reject the Initial Decision and to deny the Applicant's request for withdrawal of his application for licensure,

It is on this 9th day of August, 1979, ORDERED that the Initial Decision filed by the Office of Administrative Law in this matter is hereby rejected on the ground that the Administrative Law Judge had no jurisdiction to consider the

Applicant's request for withdrawal, such jurisdiction reposing solely in this Commission in the first instance pursuant to N.J.A.C. 19:41-8.6 and 19:41-8.7; and

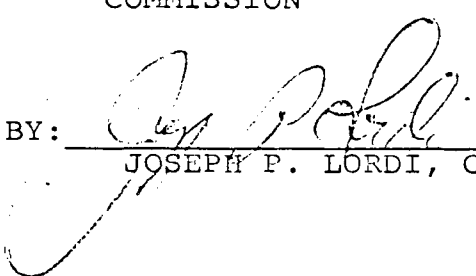
It is further ORDERED that the Applicant's request to withdraw his application for licensure for a period of three months be and is hereby denied; and

It is further ORDERED that final action by this Commission upon the application of Augustine E. Gomez for licensure shall be deferred until November 1, 1979 or thereafter; and

It is further ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five(5) days of the date hereof.

THE NEW JERSEY CASINO CONTROL
COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

DATED: August 9, 1979

IN THE MATTER OF
THE APPLICATION OF AUGUSTINE
E. GOMEZ FOR LICENSURE AS A
SLOT MECHANIC AND GAMING
SCHOOL INSTRUCTOR AS SLOT
MECHANIC INSTRUCTOR -
#79-PA-15

APPEARANCES:

Leo B. Schoffer, Esq., Pleasantville, N.J., for
Augustine E. Gomez

Fredric E. Gushin, Esq., Deputy Attorney General,
Trenton, N.J., for the Division of Gaming
Enforcement

Thomas N. Auremma, Esq., Trenton, New Jersey, for
the Casino Control Commission

BEFORE THE HONORABLE RICHARD MCGILL, A.L.J.:

On September 27, 1978, Augustine E. Gomez (applicant) filed an application for a license as a slot mechanic and as a gaming school instructor as slot mechanic instructor. On February 2, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Gomez on the basis of Mr. Gomez's alleged conviction for an offense that is a statutory disqualifier under Section 86(c) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and other circumstances which reflect unfavorably upon the applicant's reputation for good character, honesty and integrity. Mr. Gomez was advised by letter dated February 13, 1979, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

On February 17, 1979, 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. After appropriate notice, the matter was brought to hearing on June 4, 1979, at Mercer County Community College, before Administrative Law Judge Richard McGill.

At the hearing, the applicant expressed the intention to seek permission to withdraw his application without prejudice. The hearing was adjourned to give the applicant an opportunity to submit his request in writing and to give the other parties the opportunity to respond.

The applicant bases his request for withdrawal on a possible change in the Casino Control Act that would give the Commission discretion in considering the applications of individuals who have been convicted of statutory disqualifiers under Section 86(c) of the Act. The applicant also stresses the fact that he is a member of a minority group and that as such he will be able to encourage other minority individuals to consider a career as a slot mechanic, consistent with the policies of the Act. The applicant requests permission to reapply within three (3) months.

The Division of Gaming Enforcement opposes the request for withdrawal on the grounds that the Division would object to approval of the application even if the change in legislation to which the applicant refers were enacted into law. The Division believes that the law should be enforced as it now stands and that administrative efficiency would be served if the request for permission to withdraw without prejudice were denied. The Division maintains that if the request for permission to withdraw without prejudice is granted, the applicant should not be allowed to reapply for twelve (12) months.

Under the circumstances of this case, if the request for permission to withdraw without prejudice were granted, no policy of the Casino Control Act would be contravened since the applicant would not be working in the casino industry. With respect to administrative efficiency, the impact on the applicant of a possible denial because of an alleged conviction for a statutory disqualifier appears to outweigh the burden on the State of perhaps having to process the application a second time. The burden on the State of processing applications, however, is not a light one, and it is appropriate that applicants be discouraged from requesting permission to withdraw except for substantial reasons. Accordingly, the applicant will not be allowed to reapply for twelve months as provided in N.J.A.C. 19:41-8.6.

Therefore, it is HEREBY ORDERED that the request for permission to withdraw without prejudice pursuant to N.J.A.C. 19:41-8.6 be GRANTED, and it is FURTHER ORDERED that the applicant not reapply for twelve months from the date of this Order.

This action cannot be effected prior to the effective date of this Order, which is forty-five (45) days from the date of agency receipt of this Order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission my Initial Decision in this matter and the record of these proceedings.

July 12, 1979
DATE

Richard McGill
RICHARD MCGILL, A.L.J.

July 15, 1979
DATE

Receipt Acknowledged:

[Signature]
AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF :
BARRIE LEE HANSON FOR A CASINO :
EMPLOYEE LICENSE. : ORDER

The New Jersey Casino Control Commission having read and considered the March 2, 1979 Report and Recommendation of R. Benjamin Cohen, Hearing Examiner, which is attached hereto, having considered the written exceptions and objections of the Division of Gaming Enforcement to that Report and Recommendation, and having heard the oral arguments of both the Division of Gaming Enforcement and the applicant, and the Commission being of the opinion that the applicant was less than completely candid in disclosing his prior criminal involvement on his personal history disclosure form;

It is on this 4th day of April, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is modified by the Commission; and

It is further ORDERED that the application of Barrie Lee Hanson a casino employee license be and hereby is deferred for a period of three months from the date of entry of this Order;

It is further ORDERED that a copy of this Order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
Joseph P. Lordi, Chairman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-2

IN THE MATTER OF THE APPLICATION :

OF BARRIE LEE HANSON FOR A :

CASINO EMPLOYEE LICENSE. :

REPORT AND RECOMMENDATION

Barrie Lee Hanson, pro se.
Joan Robinson Gross, Deputy Attorney General
Division of Gaming Enforcement

On April 13, 1978, the applicant, Barrie Lee Hanson, submitted to the Commission personal history disclosure form number 2 in support of his application for licensure as a casino employee. Subsequently, a certificate dated May 22, 1978, from Resorts International Dealers School, Inc. was submitted attesting that the applicant had successfully completed the prescribed course of study and practice as a casino dealer specializing in blackjack.

After conducting the requisite investigation into the background of the applicant, the Division of Gaming Enforcement submitted a letter report to the Commission dated August 11, 1978, interposing an objection to the licensure of the applicant, and specifying the underlying factual basis for this objection. More particularly the Division indicated in its letter report:

"Information obtained relative to this applicant raises question /sic/ as to his integrity. In answer to question number 46, Mr. Hanson answered "no." His record reveals that he has in fact been arrested on four different occasions. When asked about his failure to disclose his criminal record, Mr. Hanson stated that he forgot about them."

After outlining its information concerning the applicant's four arrests, the Division concluded:

"Based upon the foregoing, more particularly the failure of the applicant to properly answer question #46 and question #49 relative to his use of drugs, the Division of Gaming Enforcement interposes an objection to the licensure of Mr. Hanson. It is the position of this office that Mr. Hanson's explanation that he forgot about all of the offenses is not credible."

On September 18, 1978 a hearing was held in this matter before the undersigned Hearing Examiner. At the hearing, questions emerged relevant to this license application concerning: (1) whether in light of his criminal record, the applicant had met his affirmative responsibility of establishing by clear and convincing evidence his good character, honesty and integrity; and (2) whether in light of his answers to questions 46 and 49 on personal history disclosure form no. 2, the applicant intentionally failed to reveal any fact material to his qualification or intentionally supplied information which was untrue or misleading as to a material fact pertaining to his qualification.

In its above-referenced letter report, the Division stated that on May 27, 1972, the applicant was arrested in Maryland for disorderly conduct, specifically the use of loud and abusive language. At the hearing, Detective Gregory B. Wallack of the New Jersey State Police, assigned to the Division of Gaming Enforcement, testified that he ascertained, from speaking to the authorities in Prince Georges County, Maryland, that the applicant had been arrested for using loud and abusive language in public. The corresponding New Jersey statute would be the disorderly persons offense, N.J.S.A. 2A:170-29.

The applicant testified that this offense resulted from an incident in which he interceded when he saw a man (who turned

out to be a security guard) dragging a young child out of a store. The applicant had some words with the security guard; a policeman arrived on the scene, and issued a summons to the applicant. There was no arrest. The applicant appeared in court on the return date of the summons and the complaint was dismissed because the complaining witness failed to show up. The applicant stated that he had completely forgotten about this 1972 incident, and that was why he did not list it on his personal history disclosure form.

Based on the record before me I find that, on or about May 27, 1972, the applicant was charged in Maryland with using loud and abusive language in public, the equivalent in New Jersey of a disorderly persons offense. The applicant was not arrested, but was issued a summons. The charges were dismissed when the complaining witness failed to appear and testify. I further find that the applicant's explanation as to why he did not list this offense in response to question number 46 on personal history disclosure form number 2 is credible.

In its letter report the Division stated that on March 13, 1973 the applicant was arrested for assault and battery on a charge brought by his second wife. (The applicant has since been divorced and has re-married for the third time). This matter did not result in a conviction, and the applicant was given the equivalent of what in New Jersey is called a conditional discharge.

The applicant testified that this charge resulted from an incident in which he had poured a coke on the head of his wife during the course of an argument. He was not arrested on this

charge, but was notified of it at his place of work. On the return date his wife did not appear in court and when the applicant told the judge what had happened, the judge gave the applicant the equivalent of conditional discharge. At the hearing the applicant produced a letter dated August 27, 1978 signed by his ex-wife and notarized, corroborating the applicant's version of the incident and indicating that in filing the complaint she had "over-reacted very dramatically." (A-1, in evidence). The applicant stated that he had forgotten about this incident when he was filling out his personal history disclosure form.

Based on the record before me I find that on or about March 13, 1973, the applicant was charged in Maryland with the equivalent in New Jersey of simple assault and battery, a disorderly persons offense. The applicant was not arrested and was not convicted, but was given the equivalent of a conditional discharge. I find that this charged stemmed from a minor domestic dispute. I further find that the applicant's explanation as to why he did not list this offense in response to question number 46 on personal history disclosure form number 2 is credible.

In its letter report the Division stated that on August 26, 1975 the applicant was arrested on charges of drunken driving and assault and battery on a police officer. He was found not guilty on the assault and battery charge, and the Division was unable to determine the disposition of the motor vehicle offense.

The applicant testified that he was arrested for driving while intoxicated. While the arresting officer was preparing the papers at the station, the applicant had words with a second officer which led to a physical scuffle between the applicant and

this second officer. The applicant claimed that he was defending himself. The assault and battery charges which arose from this incident were later dismissed. According to the court records before me (D-3 in evidence) the applicant was found not guilty on this charge on October 8, 1975, as the State presented no evidence. At the hearing before me the applicant testified that he was in fact guilty of driving while intoxicated, that he had pleaded guilty to that offense and had had his driver's license suspended for two years. The applicant stated that he had not forgotten about these two related charges when he filled out his personal history disclosure form. However, he testified that he did not think question number 46 applied to traffic violations. And he did not list the assault and battery charge because he did not think that charge was on his record. He said that he had called the records bureau and had been unable to obtain any information concerning this charge.

Based on the record before me I find that, On August 26, 1975, the applicant was charged in Maryland with driving while intoxicated and with assault and battery on a police officer. The applicant pleaded guilty to the motor vehicle offense, for which his driver's license was suspended for two years, and was found not guilty on the assault and battery charge. I further find that the applicant's explanation as to why he did not list these offenses in response to question number 46 on personal history disclosure form number 2 is credible.

In its letter report the Division stated that on May 13, 1974, the applicant was arrested in Maryland and charged with possession of barbiturates, marijuana and other controlled

dangerous substances. On April 15, 1975, the State's Attorney for Prince George's County, Maryland agreed that the verdict should be not guilty as to these charges, and so the prosecutor "confessed," which appears to be the equivalent of moving for a dismissal of the charges.¹ The applicant apparently confused this matter in his mind with the following incident.

According to records submitted subsequent to the hearing before me, the accuracy of which records have been established by the Division, the applicant was charged on June 5, 1974 with possession of marijuana. These records indicate that on September 19, 1974 the applicant entered a plea of guilty to simple possession of marijuana. On October 21, 1974 the applicant was sentenced to a one-year term, which was suspended, a fine of \$250.00 and one year on probation. Three days later, on October 24, 1974 the charges were dismissed as to Jean Sigmon, the applicant's girlfriend.

At the hearing before me the applicant testified that he had in fact been convicted, following a plea of guilty, of possession of controlled dangerous substances. He explained that he had not listed this offense in response to question number 46 on personal history disclosure form number 2 because he had been

1. At the hearing before me, the term "confessed" appearing on the Maryland court records was mistakenly construed as a plea of guilty to these charges. However, after the hearing the applicant supplied letters and court records establishing that these charges had in fact resulted in a not guilty verdict. Subsequent investigation by the Division has corroborated this fact.

told that it was a "misdemeanor" and question number 46 seeks information concerning arrests, indictments, charges or convictions for "criminal or disorderly persons offenses." He stated that he was aware of this conviction on his record at the time he completed the form, but he did not think that a "misdemeanor" was a "criminal or disorderly persons offense."²

As to the circumstances of the offense, the applicant testified that on the night of his arrest he had rented a motel room for a pool party involving himself and four others. The applicant's girlfriend, Jean Sigmon, had some pills and marijuana. When the police entered the motel room the applicant was asleep and his girlfriend and a girlfriend of hers were present. Some marijuana and the pills were on the dresser. There was also some marijuana in a bag on the floor. The applicant's girlfriend had been smoking it. The applicant testified that all of the drugs belonged to his girlfriend.

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2. Under Maryland law (Article 27, Section 287(e) of the Maryland Code) Possession of these controlled dangerous substances is a "misdemeanor" which, in that state is a criminal offense, punishable by imprisonment for up to 4 years, a fine of up to \$25,000.00 or both (except that possession of Marijuana is punishable by imprisonment for up to 1 year, a fine of up to \$1,000.00 or both).

According to the applicant's Maryland attorney, "simple possession of Marijuana in the State of Maryland is based on the possession of a quantity of marijuana which one would normally consider to be used for one's own consumption." The maximum penalty for this offense in Maryland would appear to make it the rough equivalent of the disorderly persons offense in New Jersey for possession of 25 grams or less of marijuana pursuant to N.J.S.A. 24:21-20(a)(4).

The police arrested the applicant and the two women and charged the applicant and Jean Sigmon with possession of controlled dangerous substances. The applicant initially entered a plea of not guilty. However, after his attorney (who represented both defendants) engaged in plea negotiation with the District Attorney, the applicant agreed to enter a plea of guilty and the charges were dismissed as to the applicant's girlfriend. The applicant's stated reasons for "taking the weight" were that his girlfriend would have lost her government job if she had been found guilty, and she had promised him that she would stop using drugs altogether if he would take the blame this time.

In essence, then, the applicant in his testimony before me admitted to the conviction for possession of Marijuana but denied that he had in fact used or possessed it. He further stated that this was why he had answered in the negative question number 49 concerning his use or possession of controlled dangerous substances.

Based on the record before me, I find that charges of possession of controlled dangerous substances were brought against the applicant on May 13, 1974 in Prince Georges County Maryland, but were disposed of by not guilty verdicts on April 15, 1975. However, as a result of charges brought against the applicant on June 5, 1974, he entered a guilty plea to simple possession of Marijuana on September 19, 1974 and was sentenced on October 21, 1974 to a one-year suspended term, a fine of \$250.00 and one year on probation.

Although the applicant's explanation as to why he did not list these matters in response to question number 46 on his

personal history disclosure form is not entirely credible, I cannot conclude that the applicant has failed to reveal a fact material to his qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria. The applicant testified that he had been told that the marijuana offense was a "misdemeanor," and hence he did not believe that he had been charged with or convicted of a "criminal or disorderly persons offense."³ While the applicant's arrest, charge, guilty plea and sentence on the marijuana offense create a doubt in my mind as to the applicant's complete candor in his response to question number 46, I am unable to conclude that he was intentionally untruthful or misleading as to a material fact pertaining to the qualification criteria. I am not unmindful of the fact that question number 46 has been clarified by an addendum to the personal history disclosure form due to its misinterpretation by numerous applicants for licensure.

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3. Question number 46 on the applicant's personal history disclosure form 2 read as follows:

"Have you or 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 in any other jurisdiction?"

Since the time applicant completed his personal history disclosure form, an addendum has been added to question number 46 to clarify the question.

I base this conclusion on the gravity of the marijuana offense and on my overall assessment of this applicant's credibility. I find first that the marijuana offense itself is not of such import, in light of all of the circumstances, as to adversely reflect on the applicant's good character, honesty and integrity. The materiality of information supplied by the applicant concerning this offense must be viewed in this context. Second, based upon my opportunity to observe the demeanor and credibility of the applicant when he testified at the hearing, I find him generally to be a truthful person.

In light of the above factual findings, I conclude that:

- (1) the applicant has met his affirmative burden of establishing by clear and convincing evidence his good character, honesty and integrity; and
- (2) the applicant has not intentionally failed to reveal any fact material to his qualification or intentionally supplied information which was untrue or misleading as to a material fact pertaining to his qualification.

Accordingly, I recommend that the Commission grant the application of Barrie Lee Hanson for a casino employee license.⁴

Respectfully submitted

Dated: March 2, 1979

R. Benjamin Cohen, Hearing Examiner

4. The exhibits admitted in evidence include, in addition to the applicant's personal history disclosure form number 2, the certificate of the applicant's graduation from Resorts International Dealers School, Inc. and the letter reports of the Division of Gaming Enforcement dated August 11, 1978 and February 16, 1979.
- D-1 Court records from Prince Georges County, Maryland #17896, re: Barrie Lee Hanson
 - D-2 Court records from Prince Georges County, Maryland #1492, re: Barrie Lee Hanson
 - D-3 Court records from Prince Georges County, Maryland #36428, re: Barrie Lee Hanson
 - A-1 Notarized letter from Debra Benton; formerly Debra Lee Hanson, dated August 27, 1978.
 - A-2 Letter from the National Headquarters of the Selective Service System to the applicant, dated June 28, 1976, with one page attachment.
- Additionally, I have considered the following material submitted by the applicant subsequent to the hearing, supplied to the Division and corroborated by a supplemental investigation conducted by the Division:
- A-3 Letter on behalf of the applicant dated November 30, 1978 from Louis J. Martucci, Esq. an attorney practicing in Maryland.
 - A-4 Letter from Honorable James M. Rea, Administrative Judge, District Court of Maryland, re: Barrie Lee Hanson.
 - A-5 Certified records of the Clerk's Office, Circuit Court of Prince Georges County, Maryland, re: Barrie Lee Hanson.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-31
OAL DOCKET NO. CCC 599-79

IN THE MATTER OF THE APPLICATION :

OF STERLING D. HUNTER FOR A :

FINAL ORDER

CASINO EMPLOYEE LICENSE (DEALER)..:

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Eugene D. Ginley, of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the exceptions and objections filed by the Division of Gaming Enforcement and the Commission having resolved at its public meeting of December 19, 1979, to adopt the Initial Decision of the Administrative Law Judge as modified herein and to deny the application for licensure,

It is on this ~~14th~~ day of December, 1979,

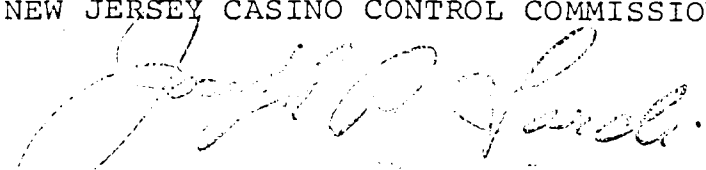
ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby adopted by the Commission as modified and supplemented in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and it is further

ORDERED that the application of Sterling D. Hunter for a casino employee license be and is hereby denied; and it is further

ORDERED that copies of this Order and of the Final Commission Decision be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:



JOSEPH P. LORDI, CHAIRMAN

DATED:

December 21, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-31
OAL DOCKET NO. CCC 599-79

IN THE MATTER OF THE APPLICATION :
OF STERLING D. HUNTER FOR LICENSURE : FINAL
AS A CASINO EMPLOYEE (DEALER) : COMMISSION DECISION

Edward G. Goldstein, Esq.
appeared on behalf of Sterling D. Hunter.

Patricia Arons, Deputy Attorney General,
appeared on behalf of the Division of
Gaming Enforcement.

On August 16, 1978, Sterling D. Hunter [hereinafter the "Applicant"] applied to the Commission for licensure as a casino employee (dealer). Thereafter, the Division of Gaming Enforcement [hereinafter "Division"] conducted the requisite investigation and interposed an objection to licensure by letter dated February 5, 1979. On March 12, 1979, the Applicant was informed by the Commission that there was a "substantial possibility that the Commission will deny [his] application". On April 13, 1979, the Applicant exercised his right to request a hearing in accordance with N.J.S.A. 52:14B-10. This matter was then transmitted to the Office of Administrative Law as a contested case.

A prehearing conference was held before Eugene D. Ginley, Administrative Law Judge, on May 22, 1979. The Prehearing Order sets forth the issues to be addressed in an unclear, conclusory

manner. Nevertheless, the Commission deems the following issue to have been fairly raised during the proceedings before the Administrative Law Judge:

1. Whether the Applicant is disqualified for failure to disclose an arrest for possession of marijuana and a subsequent plea of guilty to a disorderly persons offense arising therefrom. N.J.S.A. 5:12-86(b).
2. Whether the Applicant is disqualified for failure to disclose a 1978 indictment against him for fraudulent collection of unemployment benefits in 1975 and his resulting plea to a disorderly persons offense. N.J.S.A. 5:12-86(b).
3. Whether the Applicant's offense of fraudulent collection of unemployment benefits constitutes a disqualifying event pursuant to N.J.S.A. 5:12-86(c) and (g).
4. Whether the Applicant's offenses of possession of in excess of 25 grams of marijuana on two occasions constitute disqualifying events pursuant to N.J.S. 5:12-86 (c) and (g).
5. Whether the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence. N.J.S.A. 5:12-89(b)(2) and 90 (b).

Hearings were held on July 17 and September 20, 1979. Thereafter, Judge Ginley prepared an Initial Decision which was filed with this Commission on November 20, 1979, and a copy of which is appended hereto at A1 to 6. In accordance with N.J.S.A. 52:14B-10(c), the parties were afforded the opportunity to file written exceptions or objections to the Initial Decision with this Commission. The Division filed exceptions on December 12, 1979. The issues raised therein will be addressed infra.

The Division contended below that the Applicant should be disqualified from licensure under N.J.S.A. 5:12-86(b). This section of the Casino Control Act provides that the Commission shall

deny a casino license to any applicant who is disqualified on the basis of:

***failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to material fact pertaining to the qualification criteria.

The Administrative Law Judge concluded that the Applicant here should be denied licensure based upon his failure to disclose a 1974 arrest for possession of marijuana as well as a 1978 arrest and indictment for fraudulent collection of unemployment benefits in response to question #46 on his Personal History Disclosure Form-II [hereinafter "PHDF-II"].

Of course, a merely inadvertent ignorant failure to disclose information requested in the PHDF should not ordinarily result in the severe response of disqualification. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, at 13 (1979). However, such a response is certainly appropriate where failures to disclose are willful or where they evince a conscious disregard for the regulatory process. Id. Here, the Applicant's explanations for his failures to disclose the arrests in question, as detailed in the Initial Decision (A-3), simply do not serve to excuse those failures to disclose under the foregoing standards. Accordingly, the Administrative Law Judge's findings and conclusions on these issues are adopted by the Commission. In addition, based upon a review of the Applicant's PHDF-II, and the entire record herein,

the Commission finds that the Applicant deliberately and intentionally failed to disclose the two criminal charges in question.

Accordingly, the Applicant is disqualified for licensure on this ground alone, without more. N.J.S.A. 5:12-86(b). Nevertheless, the Commission is of the view that other issues raised in this matter require further discussion.

An additional basis for licensure disqualification addressed but not clearly decided, by the Administrative Law Judge was whether the Applicant, although not convicted, had engaged in conduct violative of an offense enumerated in N.J.S.A. 5:12-86(c), which is incorporated by reference in N.J.S.A. 5:12-86(g). The Commission is empowered to deny licensure on the basis of the following:

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State.

The Division argued that the Applicant had engaged in conduct contrary to N.J.S.A. 2A:111-1 which provides:

Any person who, knowingly or designedly, with intent to cheat or defraud any other person, obtains any money, property, security, gain, benefit, advantage or other thing of value by means of false promises, statements, representations, tokens, writings or pretenses, is guilty of a misdemeanor.

N.J.S.A. 2A:111-1 is an offense listed in N.J.S.A. 5:12-86(c).

Although the Judge commented in his Initial Decision on this is (see A-4), the Decision is not entirely clear as to whether the

Applicant is disqualified for having committed an act proscribed by N.J.S.A. 2A:111-1. This Commission concludes that the Division's reliance upon N.J.S.A. 2A:111-1 was misplaced and that the Applicant is not disqualified on this basis.

Chapter 111 of the now repealed Title 2A of N.J.S.A. addresses the general subject of frauds and cheats. N.J.S.A. 2A:111-1 is the "catch-all" provision of Chapter 111, and is customarily relied upon when more specific sections of Chapter 111 are inapplicable. In the instant matter, the Applicant fraudulently obtained unemployment benefits. N.J.S.A. 2A:111-2 clearly addresses such conduct. It provides:

2A:111-2. Obtaining money or property by falsely pretending to be poor or unemployed.

Any person who, knowingly or designedly, by means of any false statement made orally or in writing, or by means of concealing or failing to disclose a material fact which it is his duty to reveal, obtains for himself or for any other person from any agency of the State or from any county or municipality, or from any agency of such county or municipality, or from any private or charitable organization or association of any kind, under pretense that he or such other person is poor and needy or out of employment, any money, property or other thing of value, is guilty of a misdemeanor.

We believe the general language of N.J.S.A. 2A:111-1 must yield to the specific conduct proscribed by N.J.S.A. 2A:111-2. This distinction is more than academic. N.J.S.A. 2A:111-1 is a listed offense under N.J.S.A. 5:12-86(c) while N.J.S.A. 2A:111-2 is not. Conduct which constitutes neither an enumerated offense under N.J.S.A. 5:12-86(c) nor a high misdemeanor (assuming such conduct would not render licensure inimical to the policy of the Casino Control Act

or casino operations) is not a ground for per se disqualification under N.J.S.A. 5:12-86(g).

For the foregoing reasons, the Commission does not adopt that portion of the Initial Decision which apparently concludes that the Applicant is disqualified pursuant to N.J.S.A. 5:12-86(c) and (g) for having committed acts violative of N.J.S.A. 2A:111-1. However, the Commission hereby specifically finds that the Applicant's commission of the offense of fraudulent collection of unemployment benefits in 1975 is established in the record herein by a clear preponderance of the evidence and that such an offense is proscribed by N.J.S.A. 2A:111-2. The record clearly demonstrates, and the Administrative Law Judge found that from August 24, 1975 to October 27, 1975, the Applicant, although employed, collected unemployment benefits from the State. As a result of this conduct the Applicant was, in 1978, arrested and indicted for unemployment fraud. After making restitution, the Applicant, by way of a plea bargain, pled guilty to a violation of N.J.S.A. 2A:170-43, a disorderly persons offense. These factual findings are adopted by the Commission.

In its written exceptions to the Initial Decision, the Division now admits that the Applicant's fraudulent collection of unemployment benefits is not an offense proscribed by N.J.S.A. 2A:111-1, but rather by N.J.S.A. 2A:111-2, which is not listed in N.J.S.A. 5:12-86(c). The Division also urges that, even though this offense on the Applicant's part does not constitute an automatic disqualification by reason of specific listing in N.J.S.A. 5:12-86(c), the Commission should find that the Applicant's

commission of this offense renders his licensure "inimical to the policy" of the Casino Control Act, N.J.S.A. 5:12-86(c). We decline to so find on the record before us.

This issue was never clearly joined between the parties in these proceedings according to our review of the record. There is not a single reference in the record to the "inimical clause" of N.J.S.A. 5:12-86(c). Under these circumstances, we do not believe it would be fair to the Applicant to determine this issue at this level of the proceedings and without further hearings, especially in light of the standards we have previously set forth with regard to the "inimical clause:"

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

In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra at 15.

In our view, the record before us is insufficient to determine the issue in question with confidence according to the foregoing standards. Accordingly, we cannot say that the Applicant's commission of the offense of fraudulent collection of unemployment benefits in 1975 alone renders his licensure inimical to the policies of the Casino Control Act.

With regard to the remaining matters at issue relating to the Applicant's criminal history, the Administrative Law Judge found that the Applicant had on two occasions, once in 1972 and again in 1974, been arrested and charged with possession of more than 25 grams of marijuana. See N.J.S.A. 24:21-20(a)(4). However, the Judge never specifically found, pursuant to N.J.S.A. 5:12-86(g) whether the Applicant had actually committed the offenses charged as opposed to the downgraded disorderly persons offenses to which he eventually entered pleas of guilty. Our independent review of the entire record indicates to us the existence therein of ample credible evidence establishing that the Applicant did in fact commit the offense of possession of more than 25 grams of marijuana on the two occasions referred to above. These offenses are high misdemeanors under New Jersey law. N.J.S.A. 24:12-20(a)(4).

However, we decline to now determine whether these offenses in and of themselves disqualify the Applicant pursuant to N.J.S.A. 5:12-86(c) and (g). We see no compelling need to now address this issue in light of our conclusion, set forth above, that the Applicant is in any event disqualified for failure to disclose information with regard to his criminal history requested in the PHDF-II.

Finally, the Commission adopts as its own the Administrative Law Judge's conclusion that the Applicant here has failed to demonstrate his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).

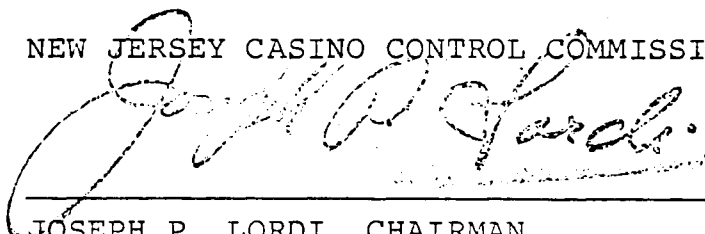
We have already held above that the Applicant here intentionally failed to disclose pertinent information requested in his PHDF-II. Such non-disclosure, obviously evincing dishonesty and a lack of integrity, must be taken to weigh heavily against the Applicant in his endeavor to carry his affirmative burden under N.J.S.A. 5:12-89(b)(2) and 90(b). Similarly, our foregoing findings that the Applicant, though not convicted, actually committed the misdemeanor of fraudulent collection of unemployment benefits (N.J.S.A. 2A:111-2) and the high misdemeanor of possession of more than 25 grams of marijuana (N.J.S.A. 24:21-20(a)(4)) on two separate occasions must also be weighed heavily against him in this regard.

In this context, it is appropriate to note that all of these offenses are relatively recent, occurring during the period from 1972 through late in 1975. Further, we must recognize, as the Division urges in its written exceptions to the Initial Decision, that the elements of the 1975 offense committed by the Applicant and proscribed by N.J.S.A. 2A:111-2 are nearly identical to the offense defined in N.J.S.A. 2A:111-1. As noted above, the Legislature has mandated that commission by an applicant of an offense violative of N.J.S.A. 2A:111-1 must result in disqualification. Both of the statutes in question define fraud-type criminal offenses, the commission of which, in our view, seriously impugns

the good character, honesty and integrity of the applicant involved

For these reasons, the findings and conclusions contained in the Initial Decision (A1 to A6) are adopted in part, rejected in part and supplemented in part in accordance with the foregoing. The application of Sterling D. Hunter for licensure as a casino employee is therefore denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI, CHAIRMAN

Dated: December 26, 1979



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF THE APPLICATION	)	<u>INITIAL DECISION</u>
OF STERLING D. HUNTER FOR LICEN-	)	<u>AND ORDER</u>
SURE AS A CASINO EMPLOYEE - DEALER	)	

O.A.L. DKT. NO. C.C.C. 599-79

APPEARANCES:

Edward G. Goldstein, Esq., Atlantic City, New Jersey
for Petitioner

Patricia Arons, Esq., Deputy Attorney General, for the
Division of Gaming Enforcement, Department of Law and
Public Safety

David Arrajj, Esq., Senior Assistant Counsel, for the
Casino Control Commission

BEFORE THE HONORABLE EUGENE D. GINLEY, A.L.J.:

The petitioner, Mr. Sterling D. Hunter, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a dealer. Petitioner received a letter dated March 12, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, "there is a substantial possibility that the Commission will deny your application." Based upon that letter, the petitioner exercised his right to request a hearing on his application. The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A public hearing was held in Atlantic City, New Jersey on July 17 and September 20, 1979. Counsel for petitioner requested time to determine whether or not he intended to present rebuttal testimony. This request was granted and counsel was given until October 4, 1979, at which time the record in this matter was closed. Apparently counsel determined not to pursue the taking of rebuttal testimony for no such additional request was received.

The applicant, Mr. Hunter, is a twenty-nine (29) year old resident of Atlantic City, New Jersey. He testified that he is currently employed as a Supervising Cashier at Resorts International with approximately 150 to 200 cashiers working under him. The applicant attended the casino school at Atlantic Community College where he completed a course to learn to become a dealer in the game of craps. His participation in this course was by means of a grant allegedly given by the Casino Control Commission through Resorts International for the purpose of recruiting minority employees. According to Mr. Hunter, he was then guaranteed a job upon completion of the course and receipt of his license.

The case against Mr. Hunter, as presented by the Division of Gaming Enforcement, consists of the argument that Mr. Hunter should be automatically disqualified from receiving a license, under the provisions of the Casino Control Act, for two reasons: first, failure of the applicant to reveal a fact material to qualification; and, second, the commission by the applicant of an act which would constitute an offense under section 86c of the Act even though said conduct was not prosecuted as such. The Division presented evidence of the fact that the applicant had twice been arrested, in 1972 and 1974, for possession of Marijuana. In both cases, the amount confiscated was over 100 grams (Exhibit DG-9 and 13). However, in both instances, the applicant was permitted to plead guilty to downgraded charges for possession of under 25 grams, disorderly person offenses. Also, in 1978 the applicant was arrested and indicted for unemployment fraud. It appears that the applicant had been receiving unemployment benefits from the State during the period August 24 through October 27, 1975, when, in fact, the applicant was employed. Mr. Hunter then made restitution to the State in the amount of \$799, which consisted of \$639 of benefits to which he was not entitled and \$160 in penalties. Mr. Hunter did then plead guilty on July 5, 1978 (Exhibit DG-5) to the offense of being a disorderly person in violation of N.J.S.A. 2A:170-43 (obtaining valuable thing from State . . . by false statement). This plea was the result of a plea bargain agreement through which the State agreed to move for dismissal of the indictment of the applicant in regard to this offense. The Division maintains that the facts of this latter offense, which are admitted by the applicant, constitute an admission of a violation of N.J.S.A. 2A:111-1 which is an automatic disqualifier under Section 86c of the Act.

In the Commission's Personal History Disclosure Form - 2 (Exhibit P-1), Question No. 46 asks the applicant if he or any member of his immediate family has ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction. In response to that question, the applicant listed only one offense - possession of Marijuana in 1973 downgraded to a disorderly person.

The applicant testified that he did not purposely intend to conceal anything from the Commission. He stated that he "didn't realize that they wanted the amount of times and whatever". Regarding the charge for unemployment fraud, the applicant stated that when he filled out the Disclosure Form, he knew about the arrest, but didn't record it because he hadn't yet been sentenced. However, it should be noted that the Disclosure Form (Exhibit P-1) was received by the Commission on August 16, 1978, was dated by the applicant July 19, 1978 and was notarized under the same date. Exhibit DG-5, a transcript of the plea and sentencing on the unemployment fraud disorderly person offense indicates that such plea and sentence took place on July 5, 1978, which would be two (2) weeks prior to the date of signature on Mr. Hunter's Disclosure Form.

The Division also questioned the applicant about his answers to question No. 24 on the Disclosure Form. His answer indicates receipt of a diploma from Atlantic Community College; however, he admitted that he had not received such a diploma and explained that he would have received a diploma if he had continued his studies at the school.

Petitioner testified that prior to attending Atlantic Community College in 1977-78, he worked for one year for NARCO, as a drug rehabilitation counselor. Again, it should be noted that such employment was not listed on the Disclosure Form. In April 1978, he left college to go to work at Resorts as a Food and Beverage Cashier. He has since been promoted to his present position, Supervising Cashier.

Applicant's counsel did not call any witnesses other than the applicant himself. Two (2) letters were introduced and admitted on behalf of the applicant. Exhibit P-3 is a letter from applicant's supervisor, a Mr. Gil Hawn, stating that applicant had performed well as a cashier and had been promoted to supervisor on May 14, 1979. Exhibit P-4 is a letter from Mr. Robert Goudie, Dean of Administration at Atlantic Community College, which indicates that the applicant is a young man of great potential.

The Division presented three (3) witnesses in support of its case against Mr. Hunter's application for licensure.. Detective Ronald Foster of the Division of Gaming Enforcement testified that he conducted the investigation of the applicant. The witness stated that he asked the applicant how many times he had been arrested, to which the applicant responded "once". The witness pursued this question with the applicant since the witness had in his possession a document from the FBI (Exhibit DG-4), indicating the other arrests and convictions to which the applicant has subsequently admitted. The applicant responded that he thought he had disclosed it at the time.

Ms. Priscilla Carrano, an employee of the State of New Jersey, Division of Unemployment Compensation, testified that she conducted the

investigation that led to the charges against the applicant regarding the unemployment payments.

Detective James Barber, Jr. of the Atlantic County Prosecutors Office testified that he spent 13 years employed by the Atlantic City Police Department. It was this witness that was involved with the two arrests of the applicant for possession of Marijuana in 1972 and 1974. He stated that he made the latter arrest because he had received information that the applicant was still involved with narcotics activity. This detective added that from his experience that where more than 100 grams is involved, packaged in the manner in which it was found in these instances, usually the possessor is involved in selling. For example, Exhibit DG-9 indicates that part of the Marijuana confiscated was contained in 19 envelopes. The applicant denied that he was involved in selling of Marijuana, and indicated that it was only for he and his friends.

Section 90 of the Act requires that an applicant shall establish by clear and convincing evidence his reputation for good character, honesty and integrity. Also, in order to receive a license, such applicant cannot be disqualified under section 86 of the Act. In this instance, I believe that the applicant has failed the criteria on both grounds.

N.J.S.A. 2A:111-1 is an automatic disqualifier under section 86c of the Act. It states that:

Any person who, knowingly or designedly, with intent to cheat or defraud any other person, obtains any money, property, security, gain, benefit, advantage or other thing of value by means of false promises, statements, representations, tokens, writings or pretenses, is guilty of a misdemeanor.

The applicant has admitted to this conduct as regards his fraudulent receiving of unemployment benefits for which he pled guilty to a disorderly person offense. Section 86g of the Act makes such conduct an automatic disqualification even though not prosecuted under the criminal laws of the State, i.e., N.J.S.A. 2A:111-1. The only reservation in this regard is the use of the word "person" in the statute as the victim of the crime. However, the applicant must also be disqualified under sections 86b of the Act for failure to reveal facts material to qualification, and in supplying of information which is misleading through inaction on his part. Specifically, this includes the failure to list the second arrest for possession of Marijuana and the arrest and indictment for the fraudulent collection of unemployment benefits. Furthermore, even

if applicant was not disqualified for these two reasons, I could not find that he has met the affirmative burdens placed upon him by the Act.

Accordingly, based upon the entire record, I FIND that:

1. Applicant has applied for a license permitting him to work as a dealer in a casino.
2. He was arrested in 1972 and in 1974 for possession of Marijuana and in both instances pled guilty to a disorderly persons offense for possession of under 25 grams although, in fact, in each instance the actual amount was over 100 grams.
3. Applicant intentionally defrauded the State of \$639.00 in unemployment benefits in 1975 for which he was indicted in 1978 and to which he pled guilty to a downgraded disorderly persons offense as the result of a plea bargain.
4. Applicant listed neither the second Marijuana charge nor the unemployment fraud charge in response to a direct question in the Personal History Disclosure Form - 2.
5. There is a lack of clear and convincing evidence that applicant maintains a reputation of good character, honesty and integrity.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE that applicant is disqualified from receiving an employee license to work as a dealer based upon the issues which were litigated during this proceeding.

I, THEREFORE ORDER, that the casino employee license (Dealer), not be granted to applicant.

This action cannot be effected prior to the effective date of this Order which is forty-five (45) days from the date of agency receipt of this Order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) days period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

DATE

11/15/79

EUGENE D. GINLEY, A.L.J.

Eugene D. Ginley

Receipt Acknowledged:

DATE

11/20/79

FOR CASINO CONTROL COMMISSION

Joseph P. Gardi

Mailed to Parties:

DATE

Nov. 26, 1979

FOR OFFICE OF ADMINISTRATIVE LAW

Elizabeth J. Lanza, Esq.

EDG/mdr

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-6

IN THE MATTER OF THE APPLICATION :
OF HERMAN EUGENE JOHNSON FOR A : ORDER
CASINO EMPLOYEE LICENSE. :

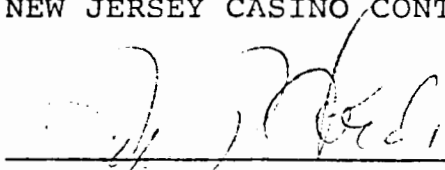
The New Jersey Casino Control Commission having read and considered the March 19, 1979, Report and Recommendation of R. Benjamin Cohen, Hearing Examiner, at its public meeting of April 6, 1979, and having received no exceptions or objections from the Applicant or the Division of Gaming Enforcement; and having voted unanimously to adopt the said Report and Recommendation;

It is on this 17th day of April, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the Application of Herman Eugene Johnson for a casino employee license is denied; and

It is further ORDERED that a copy of this Order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI, CHAIRMAN

Dated: April 17, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 78-EA-6

IN THE MATTER OF THE APPLICATION :

OF HERMAN EUGENE JOHNSON, JR., :

FOR A CASINO EMPLOYEE LICENSE. :

REPORT AND RECOMMENDATION

Joan Robinson Gross, Deputy Attorney General appearing for the
Division of Gaming Enforcement

Herman Eugene Johnson, Jr. did not appear at the hearing.

The applicant, Herman Eugene Johnson, Jr., seeks to be licensed by the New Jersey Casino Control Commission as a casino employee in security. In support of his application he filed with the Commission personal history disclosure form number 2. The Division of Gaming Enforcement conducted an investigation into the applicant's background. This investigation culminated with the Division filing a two page letter report with the Commission dated June 27, 1978. (D-2). In this report the Division did not interpose an objection to Mr. Johnson's license application. However, the Division indicated that the "Commission should be aware of certain other information to aid it in reaching a final decision relative to this application." The Division, thereafter, outlined in the report the results of its investigation. The Commission, after considering the Division's letter in a closed session, determined that a notice of intended Commission action should be sent to Mr. Johnson advising him of his right to a hearing on his license application. Such notice was sent and Mr. Johnson requested a hearing.

At the outset it should be noted that the Casino Control Act provides that:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications....
[N.J.S.A. 5:12-80(a)].

Moreover, for the purposes of licensure, "casino security employee shall be considered casino employees and must, in addition to any requirements under other laws, be licensed in accordance with the provisions of this act." N.J.S.A. 5:12-90(f).

A hearing in this matter was originally scheduled for Monday, September 25, 1978. At the request of the Division, however, the matter was adjourned. Both the applicant and the Division were advised by my letter of September 22, 1978, that the hearing was rescheduled for 10:00 a.m. on Friday, October 6, 1978. (T3-9 to 16).¹ On the morning of October 6, 1978, immediately prior to 10:00 a.m., I was advised that Mr. Johnson had contacted the staff of the Commission and indicated that he would be unable to attend the hearing due to a death in his family. (T3-17 to 22). The Division was prepared to proceed with the matter at that time. Nevertheless, I adjourned the hearing and rescheduled it for 10:00 a.m. on Friday, October 20, 1978.

1. T refers to transcript of hearing conducted on October 20, 1978.

Additionally, on October 6, 1978, I sent a letter by certified mail, return receipt requested, to Mr. Johnson at his 633 Church Street, Pleasantville, New Jersey, 08232 address. The letter indicated that the October 6, 1978, hearing was adjourned due to a death in Mr. Johnson's family and that the hearing was rescheduled for 10:00 a.m. on October 20, 1978. The Post Office returned the return receipt card to me, and it revealed that Mr. Johnson had received my October 6th letter on October 7, 1978, and that he had signed for it. (T4-16 to 19).

At 10:00 a.m. on October 20, 1978, I was prepared to hear the matter. The Division was also ready to proceed. Mr. Johnson, however, did not appear for the hearing. I had my secretary telephone Mr. Johnson's home and she was informed that Mr. Johnson had not been home for four or five days. (T4-20 to 24). Accordingly at 10:40 a.m. I commenced the hearing and permitted the Division to present its evidence. Mr. Johnson has not subsequently communicated with me regarding his failure to appear at the hearing.

The only witness to testify was Adolph Villafana, a management consultant for Intertel and Director of Security for the hotel portion of Resorts International Hotel, Inc. Mr. Villafana testified that Mr. Johnson commenced work as a security officer in the hotel on May 8, 1978. (T6-7 to 21). Subsequently, on August 4, 1978, Mr. Johnson submitted his resignation (D-1-C) at the request of Mr. Villafana. (T6-22 to T7-4; T11-6 to 8). Villafana remarked that if Johnson had not resigned he would have been discharged anyway. (T19-15 to 21).

Mr. Villafana indicated that there were several reasons why he requested Johnson's resignation. In one instance, Mr. Johnson was imbibing alcoholic beverages while on duty and while assigned to the star's dressing room in the Superstar Theater. (T8-2 to 7; T8-18 to 22). That same evening, while off duty, Mr. Johnson was observed by John Mearns, a supervisor of security, sitting on the steps of the Oyster Bar in an intoxicated condition (T8-7 to 16; T9-4 to 12). Johnson was asked to leave the premises due to his intoxicated condition. (T9-8 to 9).

Mr. Villafana further testified that another reason which prompted him to ask for Johnson's resignation concerned an incident with David Belisle, Vice President of Intertel and Inspector General for Resorts International Hotel, Inc. Mr. Villafana related that Mr. Belisle called Mr. Johnson on July 28, 1978, and asked him to come to Belisle's office and bring his casino employee license with him. (T9-13 to 19; T10-21 to 22). Although Mr. Johnson stated that he would go to Mr. Belisle's office, he failed to appear. A short time later, Mr. Belisle placed another call to Mr. Johnson and he subsequently appeared with security supervisor Steve Budney. (T9-21 to 25). Mr. Johnson then told Mr. Belisle that he did not have a casino license and that he had never indicated to Belisle that he did have one. Mr. Johnson was apparently under the influence of alcohol during this meeting with Belisle. (T10-1 to 7). Villafana indicated that Johnson had initially lied to Belisle about possessing a casino employee license. (T10-8 to 14). Exhibit D-1-N corroborates the testimony of Villafana regarding Mr. Johnson's incident with Mr. Belisle.

Mr. Villafana described Mr. Johnson's work habits as "Fair." (T11-13 to 16). He testified that while working for Resorts Johnson would leave his post without requesting permission and without advising anyone that he was leaving. (T11-18 to 23). Mr. Villafana stated that he would not re-hire Mr. Johnson. (T11-24 to T12-1).

On this record I find the testimony of Mr. Villafana credible. I further find that the resignation of Mr. Johnson from his position at Resorts was due to the fact that Mr. Villafana had requested it. I also find that the reason for requesting Johnson's resignation stemmed from his poor work habits and unsatisfactory performance as a security guard. I thus find that Mr. Johnson lacks sufficient business ability to be licensed as a security officer.

The Division's letter report of June 27, 1978, (D-2) reveals that Mr. Johnson incorrectly answered "No" to Question Number 46 of Personal History Disclosure Form Number 2. Question Number 46 asks, in pertinent part, if the applicant has ever been arrested, indicted or charged with or convicted of a criminal or disorderly persons offense. The Division notes that Mr. Johnson was arrested on September 10, 1977, for molesting and interfering. The charge stemmed from a domestic dispute. Mr. Johnson pled guilty and was fined \$25 plus \$25 in court costs. He indicated to the Division that he forgot about this arrest. (D-2).

On this record, I find that there has not been a satisfactory explanation by Mr. Johnson for his failure to disclose this arrest which is of such recent vintage. I thus find that his

failure to disclose information to the Commission and his 1977 arrest and conviction adversely affects his reputation for good character, honesty and integrity.

The Division's letter report (D-2) further notes that Mr. Johnson incorrectly answered "No" to Question Number 33 on Personal History Disclosure Form 2. That Question inquires of an applicant if he has ever been discharged or asked to resign from employment. The Division notes that he was terminated by Atlantic Community College from his position of Assistant Superintendent of Buildings and Grounds after being drunk while at work and failing to report to work. Exhibit D-1-C, a letter of Kenneth E. Thorpe, Director of Personnel Services for Atlantic Community College, to Edward Mullin, Vice President of Intertel, verifies that Mr. Johnson was terminated by the college because he "was an unsatisfactory employee."

On this record, I find that the failure of Mr. Johnson to disclose that he was terminated by Atlantic Community College adversely affects his reputation for good character, honesty and integrity. Additionally, I find that the fact of his termination adversely affects his reputation for good character.

The Division's letter report (D-2) also notes that Mr. Johnson did not reveal, in answer to Question Number 33 of Personal History Disclosure Form Number 2, that he was terminated from his job at Union Avenue School in Margate "for failure to report to work, poor quality of work and leaving the job without permission. Exhibit D-1-J, a reference sheet for Mr. Johnson, reveals that the principal of the Union Avenue School characterized Mr. Johnson as

undependable and dishonest.

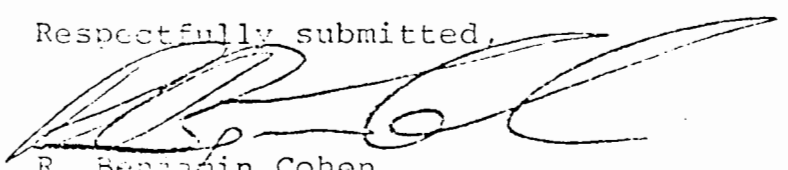
On this record, I find that Mr. Johnson was terminate from his job at the Union Avenue School in Margate and that his failure to disclose this termination, as well as the termination itself, adversely affects his reputation for good character, hones and integrity and detracts from his suitability to be a security officer.

The Division in its letter report of June 27, 1978 (D-2) did not interpose an objection to Mr. Johnson's licensure. However after all the evidence had been presented at the hearing, the Division took the position that the application of Mr. Johnson should be denied. (T20-10 to T21-1).

As I noted previously, Mr. Johnson did not appear at the hearing and has not subsequently communicated with this Hearing Examiner to explain his failure to appear. Accordingly, I conclude that these facts show a lack of good character and integrity by Mr. Johnson.

On the basis of the record before me, I conclude that Herman Eugene Johnson, Jr. has not met his affirmative responsibility of establishing by clear and convincing evidence his individual qualifications for licensure as a casino employee for the position of casino security. I recommend, therefore, that the New Jersey Casino Control Commission deny the license application of Mr. Johnson.

Respectfully submitted,



R. Benjamin Cohen
Hearing Examiner

DATED: March 19, 1979

APPENDIX

LIST OF EXHIBITS ADMITTED AS EVIDENCE

Division Exhibits

- D-1-A - Nine page application of Herman Johnson for position at Resorts dated 3/8/78
- D-1-B - Villafana notes dated 3/31/78 regarding interview of Johnson
- D-1-C - Letter from Atlantic Community College to Mr. Mullin dated 5/12/78
- D-1-D - Copy of Intertel routing slip dated 5/17/78
- D-1-E - Copy of April 17, 1978 letter to Atlantic Community College from Edward Mullin
- D-1-F - Letter dated 4/11/78 from Mullin to Herman Johnson
- D-1-G - Letter dated 5/8/78 from Mullin to Yuille
- D-1-H - Letter dated 6/7/78 to Herman Johnson from Villafana
- D-1-I - Memo of 6/16/78 from Mullin to payroll
- D-1-J - Reference sheet for Herman Johnson dated 5/11/78
- D-1-K - Letter dated 7/21/78 to Herman Johnson from Smith
- D-1-L - One page employee status sheet dated 7/22/78 concerning Herman Johnson
- D-1-M - Evaluation sheet for Johnson dated 7/28/78
- D-1-N - Two page memo dated 7/29/78 from Belisle to Villafana
- D-1-O - Handwritten letter of resignation from Johnson to Villafana dated 8/4/78
- D-1-P - Memo dated 8/7/78 from Villafana to Belisle concerning Johnson resignation
- D-1-Q - Employee status sheet dated 8/11/78 concerning Johnson
- D-1-R - Slip of paper with notation dated 7/4/78
- D-2- - Two page letter dated 6/27/78 from Division of Gaming Enforcement to Chairman Lordi

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-7

IN THE MATTER OF THE APPLICATION :
OF HARRY MELVIN MAGONIGAL FOR A :
CASINO EMPLOYEE LICENSE. :

ORDER

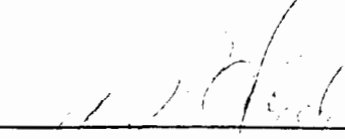
The New Jersey Casino Control Commission having read and considered the April 9, 1979, Report and Recommendation of R. Benjamin Cohen, Hearing Examiner, which is attached hereto, at its public meeting of April 20, 1979, and having received no exceptions or objections from the Applicant or the Division of Gaming Enforcement; and having voted to adopt the said Report and Recommendation;

It is on this 30th day of April, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Harry Melvin Magonigal for a casino employee license be and hereby is denied; and

It is further ORDERED that a copy of this Order be served upon counsel for the Applicant and for the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

By: 
JOSEPH P. LORDI, CHAIRMAN

IN THE MATTER OF THE APPLICATION OF :
HARRY MELVIN MAGONIGAL FOR A CASINO :
EMPLOYEE LICENSE. :

REPORT AND RECOMMENDATION

Fredric E. Gushin, Deputy Attorney General appearing for the
Division of Gaming Enforcement
Harry Melvin Magonigal did not appear for the hearing.

The Applicant, Harry Melvin Magonigal, seeks to be licensed by the New Jersey Casino Control Commission as a casino employee in the category of alcoholic beverage control employee. In support of his application he filed with the Commission personal history disclosure form number 2. The Division of Gaming Enforcement conducted an investigation into the Applicant's background. This investigation culminated with the Division filing a two page letter report with the Commission dated September 5, 1978. (D-2). In this report the Division objected to the licensure of Mr. Magonigal based "upon the statutory disqualification of receiving stolen goods." The Commission, after considering the Division's letter in a closed session, determined that a notice of intended Commission action should be sent to Mr. Magonigal advising him of his right to a hearing on his license application. Such notice was sent and Mr. Magonigal requested a hearing.

At the outset it should be noted that the Casino Control Act provides that:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications....

N.J.S.A. 5:12-20(a), 7

Additionally, Section 90 of the Casino Control Act sets forth the licensing criteria for casino employees. (N.J.S.A. 5:12-90).

A hearing in this matter was originally scheduled for November 17, 1978. The matter, however, was adjourned and re-scheduled for 1:30 p.m. on Friday, December 1, 1978, in Trenton.

In advising the Applicant and the Division of the December 1st hearing date, I sent a letter dated November 16, 1978, by certified mail return receipt requested, to Mr. Magonigal at his 2029 Mifflin Street, Philadelphia, Pennsylvania, 19145 address. The Post Office returned the return receipt card to me, and it revealed that it had been received at the Applicant's address on November 21, 1978. (T3-18 to T4-6).¹

At 1:30 p.m. on December 1, 1978, I was prepared to hear this matter. The Division was also ready to proceed. Mr. Magonigal, however, did not appear for the hearing. On the morning of December 1, 1978, I had instructed my secretary to telephone Mr. Magonigal's home to confirm the time and date of the hearing. She was informed that Mr. Magonigal was not at home and that no one knew where he was. (T4-7 to 13). Accordingly, at 2:00 p.m. I commenced the hearing and permitted the Division to present its evidence. Mr. Magonigal has not subsequently communicated with me regarding his failure to appear at the hearing.

1. "T" refers to transcript of hearing conducted on December 1, 1978.

The only witness to testify was Detective James M. Vogt of the New Jersey State Police. He indicated that he had conducted the background investigation of Mr. Magonigal. (T5-24 to T6-10)

In its letter report of September 5, 1978 (D-2) the Division noted that Mr. Magonigal incorrectly answered "no" to Question 49 on personal history disclosure form 2. That Question inquires of the Applicant if he ever used, distributed or possessed any narcotic, hallucinogenic, drug, barbiturate, amphetamine, or any other controlled dangerous substance other than pursuant to a valid prescription. In D-2, the Division stated that the "investigation revealed and Mr. Magonigal confirmed that up until approximately six years ago, he was a heroin addict."

Additionally, Detective Vogt testified that when he had questioned Mr. Magonigal about his drug addiction Magonigal admitted being a heroin addict previously, and indicated that he had entered a program at Eagleville Hospital in Pennsylvania which was a "drying out process." (T22-23 to T23-6; T23-15 to T24-3). The length of Magonigal's heroin addiction was not established. (T23-18 to 20). Detective Vogt further testified that Magonigal answered Question 49 incorrectly because he "wanted to explain /it/ to the officer or to the investigating officer." (T22-11 to 14).

On this record I find that Mr. Magonigal was previously a heroin addict and that he has not satisfactorily explained the circumstances surrounding his addiction, I also find that Mr. Magonigal did not disclose his use of heroin in answer to Question 49 on his application form. (D-1). I find that his explanation to Detective Vogt is not credible. I conclude, therefore, that the

fact of the heroin addiction, as well as the failure to disclose such addiction, adversely affects Mr. Magonigal's reputation for good character, honesty and integrity.

Detective Vogt further testified that his investigation revealed that Mr. Magonigal was arrested on August 4, 1972, in the State of Pennsylvania for the offense of indecent assault and battery. (T7-4 to 9). See also D-1. As a result of this charge, Mr. Magonigal was found guilty and sentenced to a probationary term of two to three years. (T7-9 to 11). See also D-1. During a telephone interview with Mr. Magonigal on June 21, 1978, Magonigal admitted this conviction to Detective Vogt. (T7-13 to 17).

The Division in its letter report of September 5, 1978, D-2 notes that Mr. Magonigal did not indicate the conviction for indecent assault and battery in answer to Question 46 on personal history disclosure form 2 (D-1). That Question inquires of an applicant, among other things, if he has ever been convicted of a crime or disorderly persons offense. Detective Vogt also related that Magonigal told him that he failed to correctly answer Question 46 because "he wanted to explain the arrest to the investigating officer." (T8-4 to 7).

On this record I find that Mr. Magonigal was convicted of indecent assault and battery in Pennsylvania and that his conviction adversely affects his reputation for good character, honesty and integrity. I find that his explanation for failing to reveal the conviction on his application form is unsatisfactory and that the failure to disclose the conviction also adversely affects his reputation for good character, honesty and integrity.

The Division in its letter report of September 5, 1978 (D-2) objected to the licensure of Mr. Magonigal because he was convicted of the offense of receiving stolen property in Pennsylvania and sentenced to a probationary term of two to three years. The Division alleged that conviction of this offense requires the automatic disqualification of an applicant pursuant to N.J.S.A. 5:12-90(e) and 86(c).

Detective Vogt testified that Magonigal had been convicted in Pennsylvania of receiving stolen property and that he had confirmed the conviction by speaking to Officer O'Reilly of the Philadelphia Police Department (T6-14 to T7-3). Mr. Magonigal also admitted this conviction to Detective Vogt during a telephone conversation on June 21, 1978. (T7-12 to 17; T12-15 to 18).

Detective Vogt further noted that, while Mr. Magonigal did reveal the conviction for receiving stolen property on his application form (D-1), that he improperly listed the conviction in answer to Question 45 which inquires if an applicant has ever been arrested or charged with a juvenile offense. (T8-7 to 12; T9-2 to 12). The Applicant did not list the conviction in answer to Question 46.

On this record I find that Mr. Magonigal was convicted in Pennsylvania for receiving stolen property. I also find that he disclosed this conviction on his application form, although not in answer to the proper question. I conclude that the incorrect placement of his conviction in Question 45 rather than Question 46 was inadvertent.

The Division maintains that Mr. Magonigal's conviction for receiving stolen property requires automatic disqualification and licensure pursuant to N.J.S.A. 5:12-86(c).

Section 90 of the Casino Control Act (N.J.S.A. 5:12-90) sets forth the licensing criteria for casino employees. More particularly, Section 90(e) states 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 this act.

Section 86(c) of the Casino Control Act (N.J.S.A. 5:12-86(c)) requires the Commission to deny the license application of an individual who has been convicted of "any offense in any jurisdiction which would be under New Jersey law at the time of application...a misdemeanor" under an enumerated list of offenses.

N.J.S.A. 2A:139-1, i.e., buying or receiving stolen property over \$200 is one of the enumerated offenses in Section 86(c) of the Act. It provides in pertinent part that:

Any person who receives or buys any goods or chattels, or chases in action, or other thing of value stolen from any other person or taken from him by robbery or otherwise unlawfully or fraudulently obtained, or converted contrary to law, whether the stealing or robbery was committed either in or out of this State, and whether the property was received or bought from the thief or robber, or from another person, or who receives, harbors or conceals any thief or robber knowing him to be so, is guilty of a high misdemeanor if the price or value of the property received or bought is \$500.00 or more, and is guilty of a misdemeanor if the price or value of such property is in excess of \$200.00 but less than \$500.00.

As can be readily seen from the language of N.J.S.A. 2A:139-1, to constitute a misdemeanor, the value of the stolen property must be in excess of \$200.00.

In the instant case Detective Vogt was not able to ascertain the nature of the goods in question or their value. (T14-2 to 21). He did not obtain any records relating to this conviction. (T12-5 to 8).

On this record I cannot presume that the value of the goods in question was in excess of \$200.00 as there has been no evidence as to value. Accordingly, I conclude that Mr. Magonigal is not automatically disqualified for licensure on the basis of N.J.S.A. 5:12-36(c). However, I do find that a conviction for receiving stolen property is a serious offense and I note that Mr. Magonigal did not appear at the hearing to explain the circumstances surrounding the conviction. In view of these factors, I conclude that the conviction of this offense indicates that licensure of the Applicant would be inimical to the policies of the Casino Control Act and to casino operations.

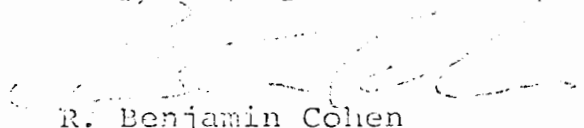
As noted previously, the Division objected to the licensure of Mr. Magonigal based "upon the statutory disqualification of receiving stolen goods." (D-2). At the conclusion of the hearing, however, the Division expanded its basis for objection to licensure to include the Applicant's conviction for indecent assault and battery, his heroin addiction, as well as his failure to disclose such information on his personal history disclosure form. (T27-15 to 25).

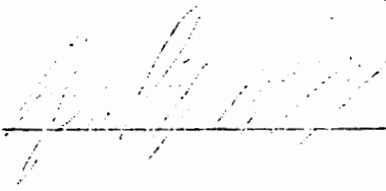
As I indicated at the outset, Mr. Magonigal did not appear at the hearing and has not subsequently communicated with this Hearing Examiner to explain his failure to appear. I conclude, therefore, that these facts show a lack of good character and integrity by Mr. Magonigal.

On the basis of the record before me, I conclude that Harry Melvin Magonigal has not met his affirmative responsibility of establishing by clear and convincing evidence his individual qualifications for licensure as a casino employee in the category

of Alcoholic Beverage Control Employee. I thus recommend that the New Jersey Casino Control Commission deny the license application of Mr. Magenikal for the reasons set forth herein.

Respectfully submitted,


R. Benjamin Cohen
Hearing Examiner

Dated: 

APPENDIX

LIST OF EXHIBITS
ADMITTED AS EVIDENCE

Division Exhibits

- D-1 Personal History Disclosure Form of Harry Melvin Magonigal
- D-2 Two page letter report of the Division of Gaming Enforcement
dated September 5, 1978

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 78-EA-9

IN THE MATTER OF THE APPLICATION :
OF ANTHONY P. PACCHIANO FOR A : ORDER
GAMING SCHOOL INSTRUCTOR LICENSE :

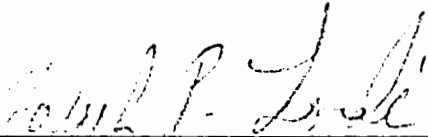
The New Jersey Casino Control Commission having read and considered the August 24, 1979 Report and Recommendation of Robert J. Genatt, Hearing Examiner, which is attached hereto, at its public meeting of September 19, 1979, and having considered the exceptions and objections filed on behalf of the Division of Gaming Enforcement, and having voted to adopt the said Report and Recommendation;

It is on this 24/11 day of September, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Anthony P. Pacchiano for a gaming school instructor license be and hereby is granted; provided, however, that such license shall be expressly restricted to teaching the dealing of the games of blackjack, craps and roulette and provided further that Anthony P. Pacchiano not be permitted to instruct in the area of internal control regulations unless and until he demonstrates his knowledge and familiarity with such controls and regulations to the satisfaction of the Commission; and

It is further ORDERED that a copy of this Order be served upon counsel for the Applicant and for the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL
COMMISSION



JOSEPH P. LORDI, CHAIRMAN *WJB*

Dated:

IN THE MATTER OF THE APPLICATION:

OF ANTHONY P. PACCHIANO FOR A :

REPORT AND RECOMMENDATION

GAMING SCHOOL INSTRUCTOR LICENSE :

Joseph T. Wilkins, Esq., appeared for the Applicant.
Fredric E. Gushin, Deputy Attorney General, appeared for the
Division of Gaming Enforcement

I. INTRODUCTION

On or about April 14, 1978, Anthony P. Pacchiano [the Applicant] filed an application for licensure as a gaming school instructor with the New Jersey Casino Control Commission [the Commission]. Persons seeking licensure as gaming school instructors are required to establish their qualifications in accordance with the standards set out for casino employee. See N.J.S.A. 5:12-92(b), 90, 89(b). As mandated by N.J.S.A. 5:12-76 the application was duly forwarded to the Division of Gaming Enforcement [the Division] for the appropriate investigation.

By letter-report dated September 5, 1978, the Division interposed an objection to licensure based on the Applicant's alleged conduct as a pit supervisor in the South Point Nevada Club Casino. (Hereinafter referred to as the Nevada Club). In that letter-report, the Division contended that the Applicant's conduct, which was the subject of two allegations in a complaint brought against the Nevada Club Casino by the Nevada Gaming Control Board, raised questions about the Applicant's personal integrity.

The complaint alleged some 15 separate violations of Nevada gaming regulations relating to internal controls. The complaint resulted in a stipulation of settlement wherein certain unspecified violations were admitted by the casino and its owners, but willful misconduct was denied. The Applicant was not named as a respondent in the complaint and was not a party to the settlement.

Upon receipt of the September 5, 1978 letter-report, the Commission chose to defer action until such time as the Division undertook further investigation, and developed more facts upon which an informed decision could be made. Thereafter, on October 12, 1978, the Applicant appeared for a stenographically recorded interview (D-1 in evidence)¹ which was conducted under oath by Division staff.

Based on the information gleaned from the interview the Division filed a second letter-report dated October 24, 1978. The Division continued its objection to the Applicant's licensure for essentially the same reasons as previously stated.

By letter dated November 14, 1978, the Applicant was apprised of the Commission's intention to act on his application and of his right to a hearing on this matter. The

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1. Exhibits and documents introduced at the hearing are identified by "A" for Applicant, "D" for Division, "C" for Commission and "J" for jointly offered items.

References to the transcript of the hearing will use the following notations:

1T refers to the transcript for March 9, 1979;

2T refers to the transcript for March 15, 1979.

Applicant's counsel timely made a request for a hearing and a pre-hearing conference was scheduled for January 16, 1979. The resulting Pre-Hearing Conference Order, attached hereto, set forth the factual areas in controversy and emphasized the affirmative obligation placed on the Applicant to establish his individual qualifications by clear and convincing evidence. See N.J.S.A. 5:12-89(b)(2), 90(b).

This matter was originally set down for hearing on February 20, 1979. On February 16, 1979, a written request for postponement of the hearing date due to the unavailability of a principal witness was received from the Division. Counsel were subsequently apprised of a new hearing date, March 9, 1979, and the placement of an obligation on the Division to justify any further postponement. The hearing did commence on that date. A second day, March 15, 1979, was necessary to complete the hearing.

II. GOOD CHARACTER, HONESTY AND INTEGRITY

The Applicant testified about his employment with the South Point Nevada Club [Nevada Club]. He was employed there for 7 years (1T47-15-22). The Nevada Club is located in Clark County, Nevada, some 90 miles from Las Vegas, in a small fishing resort (pop. 18,000) on the banks of the Colorado River. Because of the physical location, and the size of the town in which the Nevada Club was situated, the casino owners fostered a policy where by customers were to be accomodated to the greatest extent possible so as to cultivate a regular clientele. (1T49-9 to 50-2).

The Applicant started work at the Nevada Club as a dealer in 1970. The casino owner was then a Mr. Odie Lopp. (1T 47-23 to 25). By September, 1977, when the Applicant left this employment, he had attained the position of pit boss or assistant to the casino manager (1T76-18 to 22), and the casino had undergone a change in ownership. The new owner was a Mr. John Jenkins.

The Applicant indicated the existence of some unusual circumstances attendant to his departure from employment with the Nevada Club Casino. On his personal history disclosure form (J-1), in response to question 33 which seeks information regarding forced termination of employment, the Applicant answered "Quit Th[e]n fired." In addition, during the course of his October 12, 1978 interview by the Division, the Applicant stated that his reason for leaving the Nevada Club was that he "quit [p]lus [he] got fired." (D-1, page 5, lines 7-9). During that interview, the Applicant described the circumstances of his departure from that employment. Following a change in casino ownership, the new owner represented to the Applicant that the terms of employment, including a considerable annual bonus, would remain unchanged. Later, the new owner, one John Jenkins, balked. However, Mr. Jenkins renewed his promise to pay the bonus in the future and the Applicant, in reliance thereon, remained in his capacity for another year. At the end of that period, the compensation issue arose again, whereupon a dispute ensued, and the Applicant quit. (D-1, page 6, lines 6-20). However, on the next day, the Applicant had another encounter with Mr. Jenkins. He was persuaded, by a check for vacation pay of \$700.00 and a promise by Mr. Jenkins, to rescind his resignation. That very

evening, though, another argument developed over compensation and Mr. Jenkins fired the Applicant. (D-1, p. 7, lines 6-9).

During the course of the hearing itself, the Applicant again gave testimony regarding his termination from employment. (1T60-6 to 65-13; 1T76-23 to 78-10). He reiterated his prior statements and, in addition, stated that he "let a girl do something." (1T77-1 to 2). He explained that he relieved a dealer, who needed to use the rest room, while her table was vacant. During his relief of that dealer, a customer came to the table, and he dealt a hand of 21. He testified that he was not aware that such relief was a violation of company policy, and that it had been a company practice since he began his employment at the Nevada Club (1T77-3 to 23). The Applicant further asserted that he left the Nevada Club because of his belief that Mr. Jenkins, the new owner, had lied about the financial terms of his employment, and because, in reliance on Mr. Jenkin's representations, Applicant had misled others whom he supervised about the financial terms of their employment. (1T78-5 to 10).

On cross-examination, the Applicant gave clarifying testimony about an apparent inconsistency in his statement given during the investigative interview and that given on direct examination. He explained that it was his firm belief that he was fired by Mr. Jenkins because the owner did not want to pay the annual bonus according to the promised terms. (1T87-6 to 22).

Detective Romanowski, who conducted the background investigation of the Applicant, testified on behalf of the Division. He stated that, while in Nevada pursuing several investigations, he verified the Applicant's employment history, specifically the

circumstances surrounding the Applicant's termination from the Nevada Club Casino. He asserted that, even though the termination slip indicated that the Applicant was released for personal reasons a subsequent interview with Mr. Jenkins revealed that the Applicant was fired because he violated company policy by dealing a game of 21 while he held a managerial position. (1T193-10 to 194-7).

During cross examination, Detective Romanowski stated that he personally saw the termination slip, signed by one Clark Bingham which indicated that the Applicant was released for personal reasons. He also acknowledged that Mr. Jenkins' version of the termination had not been put into writing. (1T203-19 to 204-3).

Detective Romanowski conceded that he did not ask for, and did not see, the internal control regulations relative to the Nevada Club. (1T220-21 to 221-1). He also testified that he was not shown a written memorialization of the company policy alleged to have been violated by the Applicant (1T221-2 to 8). He further testified that he did not receive any information that would indicate a motivation on the part of Clark Bingham, signatory on the termination slip, to provide untruthful information as to Applicant's termination of employment. (1T222-4 to 223-3). Detective Romanowski also contacted the Applicant's direct supervisor at the Nevada Club, one Roy Babich, who was also fired by Mr. Jenkins. Mr. Babich corroborated the written information appearing on the termination slip by stating that the Applicant left the Nevada Club because of a personality clash with Mr. Jenkins. (1T223-7 to 224-3).

Based on the testimony elicited during the hearing and during the Division interview of the Applicant, I find that the Applicant worked in a small, remote Nevada casino for approximately seven years. I further find that the Applicant continued in the employ of the Nevada Club after a change in ownership because he believed that the terms of employment would remain unchanged. Moreover, there is ample credible evidence on this record to support a finding that the Applicant initially resigned his employment, reconsidered his decision and was subsequently discharged by his employer because of the ongoing dispute concerning the annual bonus. I therefore conclude that the circumstances surrounding his departure from employment with the Nevada Club do not reflect adversely on the Applicant's personal integrity within the meaning of the Casino Control Act, N.J.S.A. 5:12-89(b)(2) and 90

As noted, the principal issue raised by the Division concerned the allegations contained in a complaint filed by the Nevada Gaming Authorities against the Nevada Club. The Applicant was twice mentioned in that complaint with respect to alleged violations of the casino's internal controls and the Nevada regulations. The complaint (D-3) was admitted for the limited purpose of showing the existence of the allegations, and not to prove the truth of the allegations contained therein. (1T120-11 to 121-15). The stipulation entered into by the Nevada Club and its owners was admitted into evidence on a somewhat different basis. The certified copy of the stipulation of settlement (D-4) contains an acknowledgment by the casino that certain unspecified violations recited in the complaint did occur. Such an admission would,

of course, be against the interest of the Nevada Club and, for that reason, carries indicia of reliability recognized by our judicial system. See Evid. R. 63 (10). Given this factor, admission of the stipulation of settlement was not restricted. It may be used to prove the matters acknowledged therein and should be given such weight as it may deserve. (1T121-16 to 122-25)

The complaint (D-3) asserted that between January 31, 1977 and February 12, 1977 and between October 18, 1977 and October 21, 1977, agents of the Nevada Gaming Control Board observed approximately 15 violations of the Nevada statutes and regulations and of the Nevada Club's own internal control systems.² Only Paragraphs A and B of Count V mentioned the Applicant as a participant in those alleged violations. Specifically, Paragraph A recited that at 11:00 p.m. on January 31, 1977, the Applicant was serving as pit supervisor and that he then took \$25 worth of \$5 chips from a table game tray and handed them to one Rich Matora who then left the casino. Paragraph B alleged that at 8:40 p.m. on February 2, 1977, the Applicant was again working as pit supervisor and that he authorized extension of \$50 credit to a patron named Gene. Allegedly, the Applicant did not prepare any supporting paperwork for this transaction but did place a "lammer" or credit marker on the table. At 9:55 p.m., the lammer was removed when the patron repaid the credit with \$50 in chips. The

2. As noted, the Applicant left the employ of the Nevada Club in September, 1977. Thus, the second observation period occurred after his departure.

complaint was dated January 3, 1978. The Applicant was not named as a respondent and was not party to the ensuing stipulation of settlement (D-4) which was entered on March 29, 1978.

At the Division interview (D-1) and during the hearing, the Applicant related that he could not independently recall the specific incident in which he allegedly handed \$25 in chips to one Rich Matora. (D-1, p. 12, l. 3 to 16; 1T129-6 to 16). With regard to the alleged credit transaction, the Applicant seemingly indicated during his interview by the Division that he did recall authorizing \$50 credit to a patron named Gene and that his superior, Roy Babich, told him that Gene was a good credit player (D-1, p. 13, l. 16 to 15-8). He also indicated that he did not prepare any paperwork upon extension of the credit because Mr. Babich expressed his confidence in Gene and the Applicant felt it unnecessary to do more than place a credit marker on the table. However, his statements were unclear as to whether he would ordinarily prepare paperwork until the player had finished play. (D-1, p. 15, l. 9 to p. 16, l. 25). At the hearing, the Applicant stated that he might possibly recall the specific incident because he did know patrons named Gene to whom credit had been extended. (1T130-17 to 23). Regardless of his recall of the specific events alleged in the complaint, the Applicant freely admitted that similar transactions routinely occurred at the Nevada Club during his employ.

As to extension of credit to players, the Applicant related that he was authorized to extend up to \$500 in credit to known customers with good credit records. In those instances, he would ordinarily approve the credit request and direct the dealer to place a marker or "lammer" on the table to signify that the

player had obtained the credit. No supporting paperwork would be prepared until the player had completed gaming. At that point, if the player repaid the credit, the Applicant would allow the marker to be removed. If, however, the player could not then repay some or all of the credit, the Applicant would have the patron sign a three-part marker slip. One part would be brought to the cage, another would be deposited in the table drop box and the third would be given to the Applicant's supervisor. (1T99-21 to 100-16; 1T187-14 to 24). The Applicant stated that his superiors at the Nevada Club instructed him to follow this procedure. (1T96-8 to 25).

Concerning the allegation that the Applicant gave \$25.00 worth of chips to one Rich Matora, a dealer employed by an adjacent casino, the Applicant testified that he did not recognize the name of that person but he might well know such person on sight. (1T129-8 to 16). However, the Applicant gave an explanation as to what might have been observed by the Nevada Gaming agent. He stated that players often temporarily left the gaming tables for various personal reasons. If the player's chips remained on the table, the casino would keep his seat open for a short time. If the player did not return and other persons were waiting to play, the Applicant would instruct the dealer to move the absent player's chips to another place on the table and hold them. Upon the return of the absent player to the gaming table, the chips which he left behind would be returned to him upon verification by the dealer made to the supervisor that the chips rightfully belonged to the former player. (1T129-17 to 130-10; 1T151-22 to 153-7).

The Applicant asserted that this "customer accomodation" was a company policy to encourage customers to return to the casino. (1T130-6 to 16; 1T153-4 to 23). The Applicant conceded the likelihood that a Nevada Gaming agent could have observed him return the chips of a previously absent player who subsequently left the casino. (1T153-22 to 154-8; 1T155-6 to 157-9). The Applicant repeatedly stated that he was unaware that any actions he undertook in his employment in the Nevada Club were in violation of any rules or regulations of the State of Nevada or the Nevada Club casino. (1T133-1 to 24; 1T170-10 to 17). He testified that he acquired his gaming skill through observation and on-the-job training as opposed to formal study. (1T172-10 to 25).

On the other hand, the Division advances the position that the Applicant's alleged conduct was violative of Nevada statutes and regulations and was serious enough, under Nevada standards, to warrant some adverse action by the Nevada Gaming authorities. According to the Division theory, such action would not be undertaken by Nevada authorities until such time as the Applicant attempts to renew his work permit for employment in another Nevada casino. Therefore, the Division concludes that the Applicant's admitted conduct in the Nevada Club is of such gravity as to require denial of the Applicant's request for New Jersey licensure. (See A-1B,C).

In support of the Division's position, Detective Fred Romanowski testified that he interviewed Mr. Ron Tanner, a supervisor with the Nevada Gaming Control Board, which has enforcement and investigative responsibility. Detective Romanowski

inquired of Mr. Tanner why no action had been taken against the Applicant even though he was mentioned in two allegations in the complaint filed by the Gaming Control Board. (D-3). The Detective related Mr. Tanner's response that, as a matter of policy, the Applicant would not be confronted with the alleged violations until he applied for a new work permit. (1T197-17 to 198-15; 1T 208-9 to 210-25; 1T216-11 to 217-4; 1T227-7 to 13).

The Division's main witness on Nevada provisions and regulations was Larry Clark, a Division investigator who was offered as an expert in financial investigations and in internal control procedures. As a former investigator for the Nevada Gaming Control Board, Mr. Clark was also presented as one with specialized knowledge of the Nevada regulations and the enforcement techniques of the gaming board. (2T17-1 to 19-12).

On direct examination, Mr. Clark was asked whether the two types of conduct alleged in the Nevada complaint (D-3) and admitted by the Applicant violated Nevada regulations in force at the pertinent time, specifically Regulation 6 relating to accounting requirements. (D-2). With regard to the holding of chips for a patron who temporarily absented himself from the table and the return of those chips to that player, Mr. Clark expressed the opinion that such transaction would probably violate regulation 6.050 if not accompanied by written documentation. (2T27-6 to 28-11) Mr. Clark indicated that regulation 6.050 is a general requirement that casino licensees submit an adequate plan for internal controls to the gaming board which plan then becomes, in effect, the regulations as to that licensee's operation. Thus, Mr. Clark's

opinion was that the above-described transaction would violate the minimum standards which would be required for any internal control plan. (2T28-12 to 30-15).

With regard to the authorization and extension of \$50 worth of credit by using a marker or "lammer" without any initial supporting documentation, Mr. Clark stated that such a procedure would also violate the minimum standards of regulation 6.050 because initial documentation is always to be created in some manner. Further, he noted that if documentation was not created at all for credit play then the calculation of gross revenue for purposes of taxes and fees would be distorted, in violation of regulation 6.080. (2T30-16 to 31-12).

On cross-examination, Mr. Clark indicated that he was somewhat familiar with the development of the Nevada Club. He related that the casino had begun as a very small operation which served the fishermen on the Colorado River. As the area developed a greater tourist trade, Odie Lopp, the then owner, increased the size of the Nevada Club operation. When the casino was sold to John Jenkins in 1975, it had an annual gross revenue of approximately \$3.5 million and was considered a Group I, non-restricted licensee within the meaning of the accounting regulations. Despite this classification, however, the Nevada Club was vastly different from the major Las Vegas casinos in its size, clientele and practices. Mr. Clark observed that "smaller casinos have a unique marketing problem and that is that they have to bring in their clients. So they many times have to cater to those clients. In general, smaller casinos adhere to the internal controls less than

larger casinos." (2T62-16 to 21). Although he considered the Nevada Club to have become "large," Mr. Clark acknowledged that it retained some of the practices of a smaller operation. He also recognized that the size and nature of a particular casino operation would affect the sophistication of its internal control systems. (2T50-4 to 10; 2T51-1 to 52-16; 2T53-10 to 54-22; 2T63-1 to 11; 2T96-11 to 21; 2T113-5 to 19).

As noted, Mr. Clark's opinion was that both of the transactions in question were contrary to the Nevada accounting regulations. On cross-examination, Mr. Clark admitted that he had never reviewed the Nevada Club's internal control plan. (2T58-8 to 20; 2T101-23 to 102-7). Moreover, with regard to the holding of chips for a temporarily absent player, Mr. Clark acknowledged that such an accommodation would not be unusual in a casino like the Nevada Club which had certain marketing needs and which catered to lower limit players. In fact, while Mr. Clark insisted that such an accommodation was inconsistent with proper accounting controls, he could not state that Nevada regulations would prohibit the practice. (2T65-7 to 67-17). He further indicated that if no provision for that transaction were made in an internal control system submitted to the gaming board and if the casino then performed that service for a patron, it would probably not violate Nevada law. Nevertheless, he insisted that the gaming board would not specifically authorize such practice because it was not in keeping with effective internal controls. (2T67-18 to 73-4).

When cross-examined concerning the extension of credit through use of a marker button or "lammer" without initial documentation, Mr. Clark was more definite in supporting his

opinion that a violation of the regulations appeared. Mr. Clark agreed that regulation 6.050 generally requires adequate internal control submissions from casino licensees. However, he pointed out that 6.050 makes reference to the minimum procedures contained in regulations 6.200 to 6.300. Specifically, regulation 6.260 sets forth five alternative methods for accounting for credit transactions (D-2, pp. 195-99). In every alternative, documentation is required at the outset and further documentation is required to reflect any repayment of the credit. Regulation 6.050(4) states that, upon submission of an internal control system by a licensee the submitted system is the operative regulation for that casino and "Regulations 6.200 to 6.300 shall be of no further effect as to such licensee." Despite that language, Mr. Clark steadfastly asserted that, in his experience, no system of internal control would be approved unless it contained safeguards at least as stringent as the minimum procedures of regulation 6.260. Mr. Clark testified that he had never seen a less stringent plan and that the Nevada gaming board accountants considered regulations 6.200 to 6.300 as the basic requisites for an approved system. (2T75-3 to 9; 2T85-18 to 86-3; 2T89-10 to 91-4; 2T92-14 to 93-21; 2T100-19 to 101-11; 2T102-12 to 15).

Based on the foregoing testimony and evidence, I find that the Applicant did engage in activities similar to those described in Paragraph V of the Nevada complaint. (D-3). I further find that the Applicant engaged in those practices in accordance with the policies of the Nevada Club and with the authorization of his superiors. I find that those practices were rooted in the nature and history of the Nevada Club, including the type of clientele

which that casino served. These findings are based primarily on the testimony of the Applicant and Mr. Clark. They are not based on the allegations contained in the complaint (D-3). As to the admissions in the settlement stipulation entered by the casino owners (D-4), I find that these admissions support the conclusion that the Nevada Club was generally operated with less stringent control practices than might obtain in the largest and most successful casinos.

The next inquiry is whether the holding of chips for an absent player or the extension of credit as described above constitute violations of the Nevada regulations or the internal control system of the casino. With regard to the former, I find that such an accommodation to a patron, who temporarily left the table without taking his chips, was not unusual in smaller Nevada casinos. I further find that the practice of holding the chips and returning them to the player is not consonant with the most severe form of internal controls. However, I am unable to conclude that such practice does violate the Nevada accounting regulations or that it would necessarily contravene any approved control system.

With respect to the authorization and extension of credit to a known patron without preparation of supporting documentation, I find that such practice violates the procedures set forth in regulation 6.260. Moreover, I find that those procedures are intended as minimum safeguards and that the Nevada gaming officials review internal control submissions on that basis. I therefore find that the use of only a marker button or "lammer" to signify the extension of credit would violate the regulations

and any internal control system approved by the gaming board.

Even assuming that both of the practices in question violated the Nevada regulations and the casino's formal internal control system, the issue remains whether any adverse reflection is cast upon the Applicant's good character, honesty or integrity. While adherence to adequate internal controls is necessary to proper casino operation and regulation, not every deviation from those procedures evinces a lack of moral fibre. Rather, the nature and circumstances of the infraction must be examined.

In the present matter, the Applicant testified that he conducted himself in accordance with the regular practices in the Nevada Club. He asserted that he was unaware of any rule or requirement which these practices contravened. As noted, the Applicant's testimony is corroborated by the stipulation of settlement (D-4) which recited that none of the alleged violations were the result of willful misconduct. Moreover, Mr. Clark acknowledged that neither of the challenged practices was unusual in smaller casinos. Indeed, he conceded that the use of a marker button without initial documentation was, until relatively recently, the normal way in which credit play was indicated.

Even more significantly, Mr. Clark recognized that the procedures admitted by the Applicant and described in the complaint (D-3) did not reveal any criminality or wrongdoing other than a failure to apply proper controls. Actually, Mr. Clark was unwilling to state that the credit procedure would even be a material breach of accounting control in a low-credit operation such as the Nevada Club. Of course, if the credit play were handled as the Applicant

related, there would be no misrepresentation of the gross revenue for the casino. See Nevada Reg. 6.080. (2T108-5 to 109-23; 2T110-15 to 114-23; 2T115-16 to 22).

From the foregoing and based upon my observation of the Applicant, I find that he did not realize there was anything improper in the two procedures under discussion. The Applicant's formal education ended after the eighth grade. Although he has 20 years experience in Nevada gaming, he has learned the business by working in it and not by academic means. His understanding of internal control is practical rather than abstract. Although the Nevada Club did not follow optimum control procedures, the Applicant realized the need to safeguard the assets of the casino while cultivating good customer relations. Thus, the Applicant complied with the policies established by his superiors and sought to protect the casino from loss. In light of the fact that the challenged procedures were fairly common in smaller casinos and the fact that the Applicant candidly admitted engaging in such transactions on a routine basis, I find that the Applicant was not cognizant of any misconduct in those respects. Therefore, I cannot find any reason to doubt the Applicant's good character, honesty or integrity on this basis.³

3. At the hearing, the Division introduced correspondence and other testimony to show that the Nevada gaming authorities might not renew the Applicant's work permits. While this evidence was allowed, its relevance is limited. The Applicant must be judged on the present record and against the New Jersey standards. Potential action by Nevada officials cannot be the basis for the instant decision. In fact, the Division's own witness, Mr. Clark, testified that all of the allegations in the complaint (D-3) would probably not reflect adversely on the integrity of the casino operator named as respondent.

At the outset of the hearing, the Applicant testified he was currently employed as an "administrator" for the Casino Career Institute, a licensed gaming school which is part of Atlantic County Community College. He stated that he interviewed prospective students of the gaming school. (T25-4 to 7). The Division reacted to this information and asserted that the Applicant held a position for which licensure was required. In the Division's view, such conduct would evidence a lack of integrity.

To determine whether the Applicant's unlicensed employment with the Casino Career Institute reflects on his integrity, it is first appropriate to review the pertinent sections of the Casino Control Act and the regulations of the Commission. Section 92(b) of the Act (N.J.S.A. 5:12-92(b)) requires that "each resident director, instructor, principal employee, and sales representative" employed by a gaming school be licensed to the standards for a casino employee. However, Section 92(b) also provides that:

nothing in this subsection shall be deemed to require, in the case of a public school district or a public institution of higher education, the licensure or qualification of any individuals except those instructors and other principal employees responsible for the teaching of playing or dealing techniques.

Since the Casino Career Institute is part of a "public institution for higher education," the statute would not require licensure unless the Applicant was acting as an instructor or "principal employee responsible for the teaching of playing or dealing techniques." However, the regulations pertaining to gaming school

personnel are not so restricted in their coverage of public school employees.

N.J.A.C. 19:44-5 generally requires that all natural persons employed by a gaming school be licensed unless the employee fits the undefined category of "clerical personnel." Moreover, N.J.A.C. 19:44-2.5 creates a procedure whereby a public institution of higher learning may petition the Commission to "waive any licensure or qualification of any individuals except those instructors or other principal employees responsible for the teaching of playing or dealing techniques." When these provisions are read together, it is unmistakeable that the Commission chose to extend public gaming school employee licensing beyond the minimum requirements of §92(b) and that a gaming school must affirmatively seek a waiver of licensure for anyone other than "clerical employee."

Although "clerical employee" is not defined, the term "administrative employee" is described as anyone employed in a non-teaching capacity in such positions as business manager, director of admissions and director of placement. N.J.A.C. 19:44-1. Thus, it appears that a clerical employee is one who does not possess the discretionary and supervisory authority which seems to be common to the administrative personnel.

In the present matter, the Applicant testified that he was assigned to the admissions office of the Casino Career Institute. One aspect of his employment relates to matters which are clearly ministerial such as running errands for the resident director, Mr. Creveling. (2T131-12 to 24). Another aspect, however,

is less obviously clerical. The Applicant related that he would interview prospective students and would administer basic tests for color recognition and simple mathematics ability. In addition, he would generally observe the individual's appearance, attitude, grooming and speech. (2T135-13 to 22). Based on these observations and tests, the Applicant would submit an evaluation to the resident director. (2T136-17-22).

While it does appear that the Applicant's employment responsibilities were more than merely clerical, it is necessary to recall that the inquiry here concerns the Applicant's integrity. Most importantly, the Applicant testified that he inquired of the resident director whether a license was necessary and was told that it was not. This testimony is corroborated by a letter submitted by the Division (D-5) which relates that the Applicant was classified as a clerical employee by Casino Career Institute. Since I find the Applicant's testimony both candid and credible, I am unable to perceive any cause to question his character for accepting this employment. Having recently arrived from Nevada and awaiting a decision on his instructor's license application, the Applicant understandably relied on the advice of the resident director that the interim office employment did not require licensure under the complex New Jersey scheme of controls.

In support of his application for licensure, the Applicant submitted some seven (7) letters of recommendation. (A-4 through A-10). These letters vouched the Applicant's reputation for honesty, integrity and good character. They also praised extensively his casino experience and good work habits. Moreover,

during the hearing, I found the Applicant to display the type of candor that was contemplated by the Casino Control Act.

I also found the Applicant to be forthright and cooperative. The Applicant displayed diligence in providing, to the best of his ability, all information requested by this Commission both during the hearing and on his disclosure form (J-1). The praise and positive personal attributes which were ascribed to the Applicant in those letters, were corroborated by my observations of the Applicant during the course of an extensive hearing in which the Applicant was called upon to testify at length.

Based on the foregoing, I find that the Applicant has successfully shown that he holds the requisite degree of good character, honesty and integrity for licensure as a gaming school instructor and that the matters which formed the grounds for the Division's objection do not detract from that showing.

In the interest of presenting a complete record to the Commission, certain information supplied by the Applicant in his personal history disclosure form (J-1) should be addressed in this report. It should be emphasized that these events, which occurred some 25 years before the date of the hearing, did not form the basis for the objection lodged by the Division.

In response to question 47,⁴ the Applicant indicated that he had been named as an unindicted party to a grand larceny. At the hearing, the Applicant gave his explanation of the facts. In May, 1951, in Steubenville, Ohio his car was found by the police at the site of a breaking and entering. Stolen items were found in the car. The Applicant related that he had

4. Question 47 on personal history disclosure form-2 inquires as follows: "Have you ever been named as an unindicted party or co-conspirator in any criminal proceeding in this State or in any other jurisdiction?"

last seen the car several hours earlier when he left it with a parking attendant to whom he had entrusted the keys.

The police questioned the Applicant because he was the registered owner of the car. He complied with the officers requests for information and voluntarily went to the station. At the station, according to the Applicant's testimony, a captain of the police force verified that he had seen the Applicant at another location at the time in question. The Applicant was never charged. (1T28-8 to 28-25).

I find the Applicant's recitation of the facts to be credible. As the registered owner of the car, he was the natural subject of police inquiry, when his auto was discovered at the scene of a crime. In absence of any evidence to the contrary, I further find that the Applicant was never a party, unnamed or otherwise, to this criminal transaction. Moreover, I find that due to the Applicant's limited educational background, he misunderstood question 47 in its entirety. I therefore conclude that this misperception by the Applicant, and the information thereby revealed, do not reflect adversely on the Applicant's personal integrity. If anything, his disclosure in this instance stands as additional testimony to his candor and honesty.

Consistent with the frankness displayed by the Applicant, in response to question 33 on the form⁵ the Applicant listed a previous employment with the Yorkshire Club, in Kentucky for two

5. Question 33 reads in pertinent part: "Provide...information...as to each place in which you have been employed...."

months in 1954, and gave the reason for leaving as "Raided."

At the hearing before me, the Applicant stated that he was a dealer at the Yorkshire Club. He asserted that the gaming activity was conducted openly. He also testified that, at that time, the Steubenville, Ohio area was notorious as a center of illegal gaming. The Applicant's disclosure of this short period of employment is revealing since Applicant was neither arrested nor charged with any offense as a result of the raid. Moreover, the Applicant testified that he has not worked in any illegal gaming establishments since that raid in 1954. As he put it, he did not want any trouble. (1T29-12 to 30-4; 1T159-8 to 161-15).

In view of the fact that no evidence was produced showing the Applicant's participation in ongoing criminality or showing a continuing disregard of the criminal law, I find that the relevance of this 25 year old incident is questionable, at best. It is too attenuated in time to overcome the testimony and other evidence of good character, honesty and integrity presented to this Commission. The Applicant's 20 years of lawful participation in the Nevada gaming industry eliminates any significance which this dated behavior may have had. The Division's decision not to raise this as a point of objection bolsters this conclusion.

The Applicant, in response to question 38⁶, supplied information about ownership of an Ohio Gaming Stamp but failed to provide information as to other gaming permits held by him from the

6. Question 38 inquires as follows: "Have you ever made application to a licensing agency for any permit, license, certificate or qualification in connection with any gambling venture?"

State of Nevada. During the course of the hearing, the Applicant testified that he misunderstood the question to ask only for gaming licenses the Applicant acquired as a proprietor (1T31-1 to 32-1). He also stated that he was not trying to conceal the Nevada work permits he held, since he had listed his employment as a dealer, pit boss and assistant casino manager in response to question 31.

The Applicant testified that he was a co-owner of a pool lounge in Steubenville, Ohio in 1954. He stated that customers played bridge, hearts and other card games in the lounge and that they sometimes played these games for money. He contended that he had never actually seen anyone bet at the card games. He also testified that some bets were made on games of pool. The Applicant also asserts that, to avoid any conflict with the law, he and his partner purchased the Ohio State Gaming Stamp. It was his belief that such a stamp would insulate him from liability for any gaming activity occurring on the premises. (1T163-5 to 167-11). The Applicant was unclear as to whether this stamp, which was displayed on the wall of the pool lounge, was issued by the State or Federal government. (See 1T163-16 to 166-16). The Applicant did acknowledge his understanding that, despite obtaining a stamp, operation of a cardroom was illegal in Ohio. (1T167-3 to 11).

Based on the testimony of the Applicant, I find that the Applicant misread question 38. He believed that the question referred only to proprietary interests in gaming related activities. Thus, he revealed that he had obtained the "Ohio Gaming Stamp" for his pool room and lounge. I find that the Applicant made no attempt to conceal his ownership of Nevada workpermits by incorrectly answering this question.

Based on the foregoing, I find that I am hard pressed to perceive the relevance of this 25 year old occurrence. I am persuaded by the Applicant's cooperative manner and candor that he did not intend to engage in illegal gambling and took steps to comply with the law as he understood it. Nevertheless, assuming the Applicant's activity was then improper and that he then knew of its impropriety, I am persuaded for many of the same reasons previously set forth in regard to the Yorkshire Club employment, that these 25 year old events do not bear on the Applicant's present fitness when viewed against the total record presented.

III. CONCLUSION

For the reasons set forth herein, I find that the Applicant has demonstrated his good character, honesty and integrity as required by N.J.S.A. 5:12-92(b), 90(b) and 89(b). I find that the Applicant was candid, forthright and credible in his testimony and in his personal history disclosure form. (J-1). Further, I find that the Applicant has been lawfully engaged in the Nevada gaming industry for 20 years and that, although he was mentioned in the complaint filed against the Nevada Club, he was never formally charged with any violation of Nevada law or regulations.

Nor has any action been taken against him by the Nevada authorities for these alleged violations.

I find that the Applicant's participation in certain gaming transactions while employed as a pit supervisor at the Nevada Club does not reflect adversely on his integrity. This finding is based on my conclusion that the Applicant acted in those instances in good faith and without knowledge of any internal control prohibition imposed either by regulation or by the casino's own system of controls. Specifically, the Applicant was following the practices customarily used in that casino which practices were not unusual in casinos of similar location, origin, and nature. Similarly, I find that the Applicant's interim employment as an

office worker for the Casino Career Institute does not indicate any disrespect or disregard of the Casino Control Act or the regulations of this Commission. The Applicant was informed by the resident director of that gaming school that such employment did not require licensure. His reliance on that representation cannot be viewed as evidence of poor character.

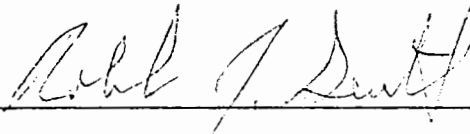
With regard to the Applicant's short involvement as a dealer for an illegal casino in Kentucky, I am persuaded that this 25 year old behavior has no bearing on the Applicant's present fitness in light of his subsequent 20 year employment in Nevada. I find nothing in the record to suggest that the Applicant has had any illegal involvements since that time. Similarly, I find no cause for disqualification based on the Applicant's co-ownership in 1954 of a Steubenville, Ohio, pool lounge where betting on card games and pool games may have taken place. My finding in this regard is reinforced by the fact that the Division interposed no objection on these grounds.

Based on these findings, I hereby recommend that the Applicant be licensed as a gaming school instructor.

I add only that the Applicant's apparently limited grasp of the abstract concepts of internal controls should not require a denial. I am convinced that, in the Division's words, the Applicant "unquestionably has the gaming experience to qualify him as an instructor." (A-1B). Moreover, I am convinced that the Applicant can and will comply with any New Jersey rules, regulations and procedures as he becomes familiar with them. I note, however,

that, prior to engaging the Applicant as an instructor, a gaming school is obliged by regulation to advise the Commission and to establish his "qualifications with respect to each course or element of the program" which he will teach. N.J.A.C. 19:44-8.2(n). I would therefore recommend that, until such time as the Applicant demonstrates his knowledge of the New Jersey internal control requirements, he not be permitted to instruct gaming students on that element.

Respectfully submitted,



Robert J. Genatt
Hearing Examiner

Dated: August 24, 1979

IN THE MATTER OF THE APPLICATION :
OF ANTHONY P. PACCHIANO FOR A :
GAMING SCHOOL INSTRUCTOR LICENSE. :

PRE-HEARING CONFERENCE ORDER

A pre-hearing conference having been held on this matter before the undersigned Hearing Examiner on January 16, 1979 at 10:00 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, Joseph T. Wilkins, Esq. appearing for the applicant, and Fredric E. Gushin, Deputy Attorney General, appearing for the Division of Gaming Enforcement, the following was decided:

A. ISSUES

The factual issues to be resolved by the Commission in determining whether the Applicant has met his affirmative responsibility of establishing by clear and convincing evidence his individual qualifications for licensure as a gaming school instructor concern the following:

- (a) The factual allegations set forth in the Division's letter-report of September 5 and October 24, 1978, which allegations include:

1. The Applicant's involvement as a pit supervisor in Nevada on January 31, 1977 in a transfer of \$25 worth of chips to a patron in alleged violation of Nevada Gaming Commission Regulations and the internal

control system of the Applicant's employee;

2. The Applicant's involvement as a pit supervisor in Nevada on February 2, 1977 in authorizing \$50 worth of credit to a patron without preparing supporting paperwork in alleged violation of Nevada Gaming Commission Regulations and the internal control system of the Applicant's employer;
 3. The Applicant's knowing involvement in casino activities at variance from and in violation of Nevada Gaming Commission Regulations while the Applicant held a supervisory position at the Southpoint Nevada Club;
 4. The intent of the Nevada gaming authorities to deny renewal of the Applicant's Nevada license.
- (b) The reasons for the termination of the Applicant's employment at the Nevada Club in September, 1977.
 - (c) The circumstances surrounding the Applicant's employment as a dealer at the Yorkshire Club in Kentucky in 1954.
 - (d) The failure of the Applicant to list any gaming license other than a 1954 Ohio Gaming Stamp in response to question 38 on the personal history disclosure form and the status of any gaming license or permit held by the Applicant.

- (e) The nature of the Ohio proceedings in May, 1951, relating to an alleged grand larceny and the reasons for the Applicant's involvement in those proceedings.

B. DISCOVERY

1. The Division shall provide to the Applicant any written, recorded or documentary material relevant to the matters in issue, exclusive of work product. This material shall include, without limitation, any reports secured from Nevada officials and any statements taken or obtained by the Division in relation to this application, other than those already in the Applicant's possession.

2. The Division shall provide to the Applicant a copy of the Nevada regulations pertaining to internal and accounting controls which were in force at the pertinent times and, to the extent possible, shall specify the particular sections of those regulations which were allegedly violated by the Applicant. Specifications of particular sections shall not limit the right of the Division to inquire at the hearing whether the Applicant was aware of other violations in the Nevada casino operation.

3. The Applicant and the Division shall exchange lists of witnesses to be called at the hearing. The lists shall contain the name and address of each witness and a brief indication of the nature of his or her testimony.

4. The Applicant and the Division shall exchange lists indicating all exhibits which each intends to introduce at the hearing.

5. The Division shall endeavor to obtain any manual or compilation of the internal and accounting controls adopted by the Southpoint Nevada Club and in force at the pertinent times. Upon obtaining such material, the Division shall provide same to the Applicant.

6. Discovery shall be completed by Friday, February 2, 1979, provided that the parties shall be under a continuing duty to promptly provide any subsequently obtained discoverable material.

C. MOTIONS

1. Any pre-hearing motions shall be filed and served no later than Wednesday, February 7, 1979. Motions shall be accompanied by briefs or letters in lieu of formal briefs.

2. Responding briefs or responding letters in lieu of formal briefs shall be filed and served no later than Wednesday, February 14, 1979.

3. Motions shall be argued and decided at the outset of the hearing.

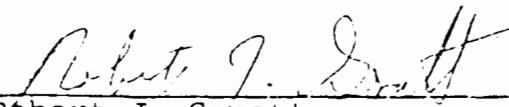
D. HEARING

The hearing in this matter shall commence at 10:00 a.m. on Tuesday, February 20, 1979, in the Commission offices at 379 West State Street, Trenton, New Jersey.

It is hereby on this 18th day of January, 1979, ORDERED that this Pre-Hearing Conference Order be served upon the Applicant and the Division within two days of its entry.

DATE

1/18/79


Robert J. Gonnatt
Hearing Examiner

STATE OF NEW JERSEY

CASINO CONTROL COMMISSION

OAL Docket Number CCC-1046-79

CCC Docket Number 79-EA-43

IN THE MATTER OF THE APPLICATION :

OF JUAN ANTONIO PADIAL FOR :

LICENSURE AS A CASINO EMPLOYEE :

(FLOOR PERSON) . :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Richard McGill of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions and objections filed by the applicant; and no objections or exceptions to the Initial Decision having been filed with the Commission by the Division of Gaming Enforcement and the Commission having resolved at its public meeting of August 29, 1979, to adopt the Initial Decision of the Administrative Law Judge as modified herein and to deny the application for licensure,

It is on this 21st day of September 1979, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and is hereby adopted by the Commission with the following modifications: in addition to the stated ground for denial of licensure, namely failure of the applicant to clearly and convincingly prove his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90, licensure must be denied under N.J.S.A. 5:12-86(g) and 86(c) based upon

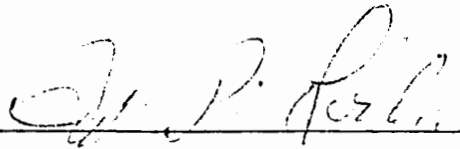
a finding of ample and credible evidence in the record that the applicant engaged in conduct which would constitute an offense which would indicate that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations; and to the extent that the Initial Decision might be read to include as a ground for decision a finding that the applicant had established an association with members of a career offender cartel, the Commission specifically disavows reliance on any such finding; and

It is further ORDERED that the application of Juan Antonio Padial for a casino employee license be and hereby is denied for the reasons herein stated;

It is further ORDERED that copies of this Order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

Dated: 9-21-79

IN THE MATTER OF THE APPLICATION)
OF JUAN ANTONIO PADIAL FOR A CASINO)
EMPLOYEE LICENSE (FLOOR PERSON))
#79-BA-43)

INITIAL DECISION
O.A.L. DKT. #CCC 1046-79

APPEARANCES:

Joseph J. Peters, Esq., Edison, N.J. for
Juan Antonio Padial

Fredric E. Gushin, Esq., Deputy Attorney General,
Trenton, N.J. for the Division of Gaming
Enforcement

David Arrajj, Esq., Trenton, N.J. for the
Casino Control Commission

BEFORE THE HONORABLE RICHARD MCGILL, ALJ:

On September 11, 1978, Juan Antonio Padial (applicant) filed an application for a license as a floor person. On March 27, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Padial on the basis of Mr. Padial's alleged arrest for participation in an illegal gambling operation in New York City with alleged ties to an organized crime cartel. Mr. Padial was advised by letter dated April 9, 1979, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

On April 13, 1979, 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. After appropriate notice, the matter was brought to hearing on June 18, 1979, at Mercer County Community College before Administrative Law Judge Richard McGill. Briefs were requested in the matter, and the last paper was filed on July 24, 1979.

Robert Jensen, a police officer with the New York City Police Department, testified on behalf of the Division that he arrested the applicant at the Intrepid Social Club in Brooklyn, New York. The facilities included five blackjack tables, one crap table, chips, cards, dice, a fully stocked bar, and a Mini-max camera for surveillance. According to Officer Jensen, undercover agents observed Mr. Padial at the Intrepid Social Club on numerous occasions where he functioned as a blackjack dealer. The raid was conducted at approximately ten o'clock at night on September 21, 1978. A total of seven persons were arrested including Mr. Padial who had run into a back room and locked himself in a closet. The persons arrested were wearing black pants and white shirts, which the witness testified was the uniform of the people working at the club. The witness concluded that the Intrepid Social Club was an illegal gambling casino.

Officer Jensen further testified that the Intrepid Social Club was owned by Charles Panarella and managed by Frank Amato, who is the son-in-law of Paul Castellano. Based on a New York City Police Department publication, One Hundred Major Violators in New York Gambling Violations, Officer Jensen testified that Charles Panarella and Paul Castellano are involved in organized crime.

The applicant was charged with promoting gambling in the second degree pursuant to Section 225.05 of the New York Penal Code. On September 23, 1978, the applicant pled guilty to the lesser offense of disorderly conduct pursuant to Section 240.20 of the New York Penal Code. On May 24, 1979, the applicant had his arrest sealed pursuant to Section 160.50 of the New York Penal Code.

The applicant testified that he worked for one week at the Intrepid Social Club. The applicant acknowledged that he knew that gambling was illegal in New York but explained that he was very short on money. The applicant denied knowing any of the principals of the Intrepid Social Club. The applicant testified that he was never charged with a crime prior to the incident at the Intrepid Social Club and that during his seven years' experience as a dealer in Puerto Rico he was never disciplined by any of the hotels for which he worked for violations of their rules or regulations. The applicant presented seven letters from persons in Puerto Rico describing his good character.

The applicant argues, based upon the sealing of the New York arrest, that all circumstances and facts of the arrest and conviction are inadmissible evidence at a licensing hearing before the Casino Control Commission and should be stricken from the record. New York Criminal Procedure Law Section 160.60 provides:

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The

arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

The applicant argues that this New York statute is analogous to the expungement statutes in New Jersey. N.J.S.A. 2A:168A-3 is part of the Rehabilitated Convicted Offenders Act and provides in part: "The presentation to a licensing authority of evidence of ...the expungement of a criminal conviction, pursuant to N.J.S. 2A:164-28,...shall preclude a licensing authority from disqualifying or discriminating against the applicant." Based on these statutes, the applicant concludes that his arrest and conviction cannot be used to disqualify or discriminate against him.

The Division maintains that the arrest and conviction may be considered because they were disclosed to the Division prior to the sealing of these matters under New York law. The Division also points out that it objected to the licensure of the applicant prior to the sealing of these matters. The Division's second argument is that the Commission may consider the underlying acts regardless of whether the arrest and conviction may be considered.

At the outset it must be recognized that the gravamen of the Division's objection to licensure of the applicant is to be found in the underlying conduct rather than the arrest and conviction. An arrest in itself provides little, if any, probative value that the person arrested actually engaged in any misconduct. While the Division argues that the conviction may be considered, the Division did not identify the specific offense of which the applicant was convicted in its letter of objection or at the hearing. Accordingly, neither the arrest per se nor the conviction per se will provide the basis for this decision.

The applicant's argument based on N.J.S.A. 2A:168A-3 does not prevent consideration of the underlying conduct. In Hvland V. Kehavas, 157 N.J. Super. 258 (1978), the Board of Professional Planners revoked a certificate of license as a professional planner on the grounds of misconduct in the practice of professional planning and lack of good moral character despite the fact that the licensee presented a certificate of rehabilitation pursuant to the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-3. In upholding the revocation the court stated:

the action under review does not involve disqualification or discrimination because of a conviction of crime. The determination by the Board consisted of a revocation for misconduct, a standard which does not depend on a criminal conviction. Hence, the provisions of the Rehabilitated Convicted Offenders Act are inapplicable notwithstanding that the underlying misconduct may have also given rise to a criminal

conviction. 157 N.J. Super. at 262.

Thus, N.J.S.A. 2A:168A-3 applies to convictions rather than to underlying conduct. Similarly, Section 160.60 of the New York Criminal Procedure Law, which provides in part: "The arrest and prosecution shall not operate as a disqualification...", addresses itself to the arrest and prosecution rather than the underlying misconduct.

In the Hyland v. Kehavas, supra, the court went on to say:

Were we to conclude otherwise it would follow that those licensees whose misconduct results in criminal convictions and who are therefore eligible to be considered for a certificate of rehabilitation are protected from revocation whereas those whose misconduct falls short of criminality are not. We will not ascribe so illogical a purpose to the legislative intent. 157 N.J. Super. at 262.

The court's reasoning applies with equal force to the Casino Control Act, N.J.S.A. 5:12-1 et seq., under which an applicant may be denied a license for misconduct even if such misconduct did not result in a conviction. Accordingly, it is proper for the Commission to consider the circumstances and facts underlying the applicant's arrest and conviction.

With respect to the underlying conduct, it is apparent that the applicant accepted employment in an illegal gambling casino. The applicant admitted such conduct as well as admitting that he knew such conduct was illegal. Officer Jensen's testimony established ties between the Intrepid Social Club and reputed members of organized crime cartels. Despite the applicant's previous good record, the applicant has not established, in light of his recent misconduct, by clear and convincing evidence his reputation for good character, honesty and integrity.

After consideration of the entire record, I FIND that:

1. The applicant has approximately seven years' experience as a dealer in Puerto Rico.
2. In September 1978, the applicant worked as a dealer at the Intrepid Social Club in Brooklyn, New York.
3. The Intrepid Social Club was an illegal gambling casino.
4. The applicant knew that working as a dealer at the Intrepid Social Club was illegal.
5. The Intrepid Social Club had ties with reputed members of organized crime cartels.

I CONCLUDE as a matter of law that:

1. The Casino Control Commission may properly consider the circumstances and facts underlying the applicant's arrest and conviction described hereinabove.

Based on the above, I CONCLUDE that the applicant has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of N.J.S.A. 5:12-89(b)(2) as incorporated in N.J.S.A. 5:12-90(b).

Accordingly, it is HEREBY ORDERED that the application be DENIED.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission my Initial Decision in this matter and the record of these proceedings.

August 8, 1979
DATE

AUGUST 9, 1979
DATE

August 13, 1979
DATE

Richard McGill
RICHARD MCGILL, A.L.J.

Receipt Acknowledged:

[Signature]
AGENCY HEAD
KEVIN J. COTEN
Mailled to Parties:

[Signature]
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1275-79
CCC DOCKET NO. 79-EA-48

IN THE MATTER OF THE APPLICATION :

OF CHRISTINE WILLIAM PAUL FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :
(DEALER) :

A hearing having been conducted in the above-captioned matter on July 18, 1979, before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the exceptions and objections filed thereto by both the Applicant and the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of October 3, 1979 to adopt the Initial Decision of the Administrative Law Judge and deny the application for licensure,

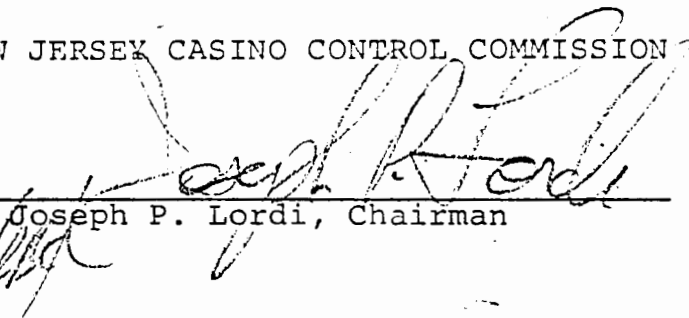
It is on this *9th* day of October, 1979, ORDERED that the Initial Decision of the Administrative Law Judge in this matter, a copy of which is attached hereto and made a part hereof, be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Christine William Paul for licensure as a casino employee be and hereby is denied based on the findings of fact and conclusions of law, specifically, the intentional non-disclosure of material facts, as stated in the Initial Decision of the Administrative Law Judge; and

It is further ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY


Joseph P. Lordi, Chairman

DATED:

October 9, 1979

IN THE MATTER OF)
THE APPLICATION OF CHRISTINE PAUL
FOR LICENSURE AS A CASINO
EMPLOYEE (DEALER)

INITIAL DECISION

OAL DKT. NO. CCC 1275-79

APPEARANCES:

H. Parker Smith, Esq., for applicant Christine Paul
Frederick E. Gushin, Deputy Attorney General, for the
Division of Gaming Enforcement, Department of Law
and Public Safety
Denise A. Cobham, Esq., for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

In September, 1978, Christine Paul (applicant) filed an application, including a personal history disclosure form, with the Casino Control Commission (Commission) for licensure to work in a casino as a dealer. By letters dated January 18, 1979 and April 5, 1979, the Division of Gaming Enforcement (Division) objected to the licensure of Ms. Paul based upon her alleged failure to disclose correct answers to three questions on her personal history disclosure form. Applicant was advised by letter dated April 26, 1979, from the Casino Control Commission General Counsel, that based upon the information received from the Division, there was a "substantial possibility" that the Commission would deny her application, and that she had a right to a hearing.

Applicant 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 hearing was held July 18, 1979, at the State House Annex, Trenton, New Jersey.

At issue is whether applicant should be denied licensure as a casino dealer based upon three omissions from her personal history disclosure form concerning her employment as a Division Manager at Sears Roebuck. The three omissions were 1) a failure to disclose her employment at Sears from 1966 to 1969; 2) failure to disclose that she was fired or asked to resign from Sears; and 3) failure to disclose her record of an arrest for petty larceny and her conviction upon a plea of guilty to the downgraded offense of shoplifting, arising from her sale of Sears merchandise at marked down prices to two fellow employees.

The relevant section of the Casino Control Act relied upon by the Division of Gaming Enforcement in its opposition to applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the applicant shall show by "clear and convincing evidence the applicant's reputation for good character, honesty and integrity". Section 90 of the Act also incorporates the disqualification criteria of section 86, which provides, inter alia, that the Commission shall deny licensure to any applicant disqualified for failure to provide information required by the Act or requested by the Commission, or for failure to reveal any fact material to qualification, or for supplying information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

Applicant testified that she had successfully completed a blackjack dealer's course for Caesar's Boardwalk Regency, and had also finished at the top of her class upon completion of the required hours for baccarat. Applicant has been employed at Boardwalk Regency since May 7, 1979 and practices her dealing daily. Applicant was employed from March 1969 to February 1979 at Paul's Charcoal Pit, a restaurant owned by her parents. She is an active member of her church, and is also a member of the Atlantic County Theater.

Applicant testified that she had been employed by Sears Roebuck from 1966 to 1969 as a Division Manager of lamps, china and giftware, and that her employment with Sears had been terminated as a result of an incident involving her sale of marked down merchandise to two fellow employees without having followed the proper procedures for such a sale. According to the applicant, she did not remember the incident well, since it had occurred 10 years earlier, and her parents had intervened on her behalf. It was her recollection that she had been given an option to resign from Sears, and although she could not remember being arrested, she did remember that there were criminal charges against her and that she had gone to court. She did not recall pleading guilty to anything or that a fine had been imposed.

Applicant testified that she knew her answer was not complete when she did not include her employment with Sears on her disclosure form. She stated that she did not disclose the employment because the incident which led to her leaving Sears was too embarrassing and she did not want it to reflect badly on her character. She did not reveal her conviction because her own investigation led her to believe there were no charges or convictions on her record, and it was her belief that she had not in fact been convicted of anything. Applicant testified that she had never been arrested or in trouble either before or after the Sears incident.

James J. Webster, a security manager for Sears, testified on behalf of the Division of Gaming Enforcement concerning applicant's termination. The records of the incident maintained by Sears revealed that applicant had sold nine items worth a total

of \$72.55 for a marked down price of .93¢, and Mr. Webster testified that a division managersuch as applicant would not have had the authority for such a markdown. The Sears records reveal applicant was terminated due to a security violation, and that larceny charges against applicant were downgraded to shoplifting, to which a plea of guilty was entered.

Investigator Bruce Perino of the Division of Gaming Enforcement testified concerning his investigation of applicant. Applicant was arrested March 5, 1969 on the larceny charge and was finger printed, according to the State Police Arrest Report obtained by the investigator. It was Investigator Perino's testimony that when he questioned applicant about her failure to disclose her employment with Sears, she stated that she did not disclose it because she felt it would look bad if it were investigated.

Applicant has admitted her failure to disclose three years of employment with Sears Roebuck, explaining that the incident resulting in her termination caused her embarrassment and she feared the incident would reflect badly on her character. Applicant did not dispute the accuracy of evidence showing she was fired from Sears for selling merchandise priced at \$72.55 for .93¢, although she explained it was her recollection that she had been given an option to resign. Neither did applicant dispute her subsequent arrest for petty larceny, arising out of the Sears incident, or her conviction upon a plea of guilty to the downgraded offense of shoplifting. However, applicant testified that she did not remember being arrested or pleading guilty to any offense. She did remember that she had faced criminal charges, and that it was necessary for her to go to court.

Exclusive of the events surrounding her termination from Sears, applicant's record both before and after the incident appears to be unblemished. Under such circumstances, it is reasonable to expect that the abrupt termination of her employment and her subsequent police and court activity, being events unique in applicant's experience, would have left upon her a lasting impression. It is therefore difficult to give credence to applicant's explanation that omissions concerning these events, from her personal history disclosure form, were due to her inability to recall precisely what had happened.

Even if it were accepted that applicant's recollection of the events in question was faulty, it must not be overlooked that this information was not candidly disclosed in her personal history disclosure form. In fact, quite the opposite is true. Question 27 of the form seeks disclosure of all places of employment, in inverse chronology. Applicant made no mention of her three years of employment at Sears in response to this specific request for employment information. Question 29 of the form specifically asks whether applicant was ever discharged or asked to resign from employment. Applicant's answer to this question was "no", even though it was her recollection that she had been given the option to resign from Sears as a result of the incident involving her sale of marked down merchandise to two fellow employees. Question 41 of the disclosure form asks if applicant had ever been arrested,

indicted, charged with or convicted of a criminal or disorderly persons offense. Although it was applicant's testimony that she knew when she appeared in court that she faced criminal charges, her response to this specific request for just such information was "no".

It is clear from applicant's own testimony that she possessed significant information concerning her employment and termination at Sears and her resulting police and court activity. Applicant's failure to disclose this information was not inadvertent. Rather than disclose that information which she did possess, applicant chose to disclose none of the requested information. The information withheld is significant as to the evaluation of applicant's qualifications for licensure, and as such it constitutes material facts within the meaning of the disqualification criteria of section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who, inter alia, fails to reveal any fact material to qualification.

After consideration of the entire record, I FIND:

1. Applicant successfully completed courses in blackjack and baccarat and was employed May 7, 1979 by Caesar's Boardwalk Regency.
2. Applicant failed to disclose on her personal history disclosure form any information in her possession concerning her employment at Sears Roebuck from 1966 to 1969.
3. Applicant failed to disclose on her personal history disclosure form any information in her possession concerning her termination from employment at Sears in 1969, for having sold merchandise at marked down prices to two fellow employees.
4. Applicant failed to disclose on her personal history disclosure form any information in her possession concerning her arrest on a charge of petty larceny, arising from the incident at Sears which resulted in her termination, and failed to disclose any information in her possession concerning her subsequent conviction upon a plea of guilty to the downgraded charge of shoplifting.
5. Applicant's failure to disclose any information concerning her employment relationship with Sears, her termination therefrom, and the resultant arrest, charges, and conviction, was intentional, rather than inadvertent.
6. The information withheld by applicant was material to the evaluation of her qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1047-79
CCC DOCKET NO. 79-EA-105

IN THE MATTER OF THE APPLICATION :

OF KENNETH W. PROBASCO AS A :

CASINO EMPLOYEE (DEALER) :

ORDER

A hearing having been requested in the above-captioned licensing matter on August 28, 1979, and such request having been withdrawn on October 17, 1979; and the Administrative Law Judge having entered an Order of Dismissal of the contested case before him based upon such written request; and the applicant simultaneously with his withdrawal of request for hearing having filed with the Casino Control Commission a written request for withdrawal of his application for licensure in accordance with the provisions of N.J.A.C. 19:41-8.6, and the Division of Gaming Enforcement having filed with the Commission a letter raising no objection to such withdrawal provided that the applicant be precluded from reapplying for licensure for a period of twelve (12) months; and the Commission having considered the applicant's request for withdrawal and the Division's recommendations concerning such withdrawal; and the Commission having resolved at its public meeting of November 14, 1979 to grant the applicant's request for withdrawal of his application and having further resolved that applicant shall not be permitted to reapply for a period of twelve (12) months, based upon a finding that such withdrawal

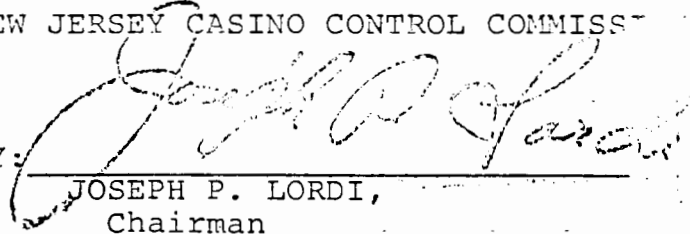
would be consistent with the public interest and the policies of the Casino Control Act;

It is on this 15th day of November, 1979, ORDERED that the request for the withdrawal of the application of Kenneth W. Probasco for licensure as a casino employee be and hereby is granted; and

It is further ORDERED that the applicant be precluded from reapplying for licensure for a period of twelve (12) months from October 17, 1979; and

It is further ORDERED that copies of this Order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI,
Chairman

DATED: November 15, 1979



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION)
OF KENNETH W. PROBASCO FOR LICEN-) ORDER OF DISMISSAL
SURE AS A CASINO EMPLOYEE (DEALER)) OAL DKT. NO. CCC 3599-79

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

A prehearing conference was held in the above entitled matter on Wednesday, October 3, 1979, at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey. The applicant was represented by George H. Stanger, Jr., Esquire. Joseph Mussomeli, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement. Denise A. Cobham, Assistant Counsel, appeared on behalf of the Casino Control Commission.

By letter dated October 17, 1979, the applicant's counsel wrote to Administrative Law Judge R. Jackson Dwyer, in pertinent part, as follows:

"On behalf of my client, Kenneth Probasco, I wish to withdraw Mr. Probasco's request for a hearing in this matter.

I make this withdrawal based upon extensive discussions with Mr. Mussomeli of the Division of Gaming Enforcement.

The withdrawal of the hearing is coincidental with a withdrawing of the application for license before the Casino Control Commission. The withdrawal is premised upon an understanding with Mr. Mussomeli that Mr. Probasco will not reapply for 12 months from the date of this letter. It is further based upon the understanding that if in fact Mr. Probasco should desire to reapply after 12 months, there is no guarantee that the Casino Control Commission will act favorably upon it. There is a further understanding that the withdrawal of his application for a license at this time is subject to the approval of the Casino Control Commission. If any further formal pleadings are necessary, please advise. Otherwise, I extend my appreciation for the courtesies extended by Your Honor."

I FIND there is no longer a contested case before me.

It is, therefore, ORDERED that the applicant's hearing for a Casino Employee License (Dealer) be terminated.

It is further ORDERED that the matter be remanded back to the Casino Control Commission for whatever action on the application it deems appropriate pursuant to N.J.A.C. 19:41-8.6.

October 25, 1979

DATE

R. Jackson Dwyer

R. JACKSON DWYER, A.L.J.

10/25/79
DATE

[Signature]
AGENCY HEAD

DATE

OFFICE OF ADMINISTRATIVE LAW

ahk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

Docket No 78-CL-1

IN THE MATTER OF THE :
APPLICATION OF RESORTS :
INTERNATIONAL HOTEL, :
INC. FOR A CASINO :
LICENSE. :

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Joseph P. Lordi, Chairman
Kenneth N. MacDonald, Vice-Chairman
Albert W. Merck, Commissioner
Alice Corsey, Commissioner
Prospero DeBona, Commissioner

APPEARANCES:

R. Benjamin Cohen, General Counsel
For the Casino Control Commission.

John J. Degnan, Attorney General
By: G. Michael Brown, Assistant Attorney General
Guy Michael, Deputy Attorney General
For the Division of Gaming Enforcement

Sterns, Herbert and Weinroth, Esquires
By: Joel H. Sterns, Esquire

Brown and Brown, Esquires
By: Raymond A. Brown
Raymond M. Brown
For Resorts International Hotel, Inc.

LEGAL CONSIDERATIONS

On December 22, 1977, Resorts International Hotel, Inc. (the "Applicant") applied to the Casino Control Commission for a casino license. In accordance with the Casino Control Act, the Commission requested the Division of Gaming Enforcement to conduct an investigation into the qualifications of the Applicant. On March 17, 1978, while that investigation was in progress, the Legislature amended the Casino Control Act to authorize temporary casino permits upon the filing of certain corporate information, the institution of an appropriate voting trust agreement and the establishment of the suitability of the proposed casino hotel facilities. On April 3, 1978, the Applicant formally requested to be issued a temporary casino permit. After conducting a hearing on this request, the Commission found that the Applicant met the requirements for a temporary casino permit. Thereafter, the Commission issued such a permit which became effective on May 26, 1978. Except as noted above, the statutory requirements for a temporary casino permit were limited to areas which did not concern the suitability of the Applicant or other persons required to be qualified for a casino license. On December 4, 1978 the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Resorts International Hotel, Inc." (the "Report"). Along with this comprehensive Report, the Division filed a "Statement of Exceptions" setting forth seventeen (17) matters discussed in the Report which were

deemed particularly significant. These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission.

Although they assisted the Commission in focusing its inquiry into the qualifications of the Applicant, these documents were not evidence of the matters stated therein. Nor did the Report and Statement of Exceptions initiate the license hearing. The Casino Control Act requires a hearing on every casino license application, and each applicant must meet the statutory criteria regardless of the tenor of the Division's report.

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, four (4) pre-hearing conferences were conducted. These conferences resulted in four (4) pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concerned the areas described in the Division's Report, as supplemented by additional submissions which were incorporated in the pre-hearing conference orders. As to any other factual matters not placed in issue nor actually litigated during the hearing, it was assumed that such matters posed no cause for concern. In this regard, the Commission took notice of the fact that the Applicant had filed numerous documents pertaining to uncontested matters which were not introduced at the hearing.

The Chairman instructed the Commissioners that the process to be followed in reaching a decision involved four (4) steps:

First, all the evidence as to each factual question was to be considered and evaluated as to its accuracy and credibility. In performing this function, the Commissioners were to assess the credibility of the witnesses based on such factors as the demeanor of the witness, the candor or forthrightness of his answers, the interests or motives of the witness as to the outcome, and the inherent credibility or incredibility of his testimony. A similar assessment was to be made as to the accuracy and credibility of any documents or writings which were admitted into evidence. Thus, the reliability of the sources of information contained in such documents were to be considered along with the circumstances under which the document was written or the information obtained. During the course of the hearing, the Chairman, as presiding officer, refused to admit certain materials into the record. These items were not to be considered. On the other hand, various forms of hearsay evidence were admitted during the hearing, even though such evidence might not have been allowed in a court of law. The Commissioners were instructed that they were entitled to consider such hearsay and to accord it the weight which it deserved upon analysis of its nature and source.

Second, based upon review and assessment of the quality of the evidence, the Commissioners were to arrive at a determination

of the underlying specific facts. Those facts were to indicate what the Commissioners found to be the important facts and events which occurred and were to reflect the evidence and the reasons for each finding. In reaching these fact findings, the Commissioners were advised that they might draw any reasonable inferences that may flow from the credible or believable evidence. The Commissioners were instructed that any finding of fact must be supported by the "sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs." Whether the evidence met this standard was to appear from the evaluation described above in the first step.

The Chairman instructed that, although a finding may be based solely on hearsay which meets this standard, the Commissioners must consider whether the opposing party had an opportunity to confront and cross-examine the source of the information and whether such confrontation and cross-examination would be required for a full and true disclosure of the asserted facts. If the source was not available and if cross-examination was necessary to fairly respond to disputed assertions in the hearsay, then such hearsay evidence should not form the sole basis for any fact finding. In announcing a decision, the Commissioners were to articulate on the record all necessary findings of fact as to each contested statutory standard and the reasons therefor, including the evidence relied upon. Third, upon reaching findings of fact, the Commissioners were instructed to apply the pertinent findings to the statutory

standards to which they related. The Commissioners were then to indicate whether these findings and any reasonable inferences drawn therefrom indicated satisfaction of the standard or not. In reaching this legal conclusion, the Commissioners were to be aware of the applicable burden of proof and what quantum of believable, reliable evidence must be present to meet that burden, that is either "clear and convincing evidence" or a "preponderance of the evidence." The Commissioners were advised to articulate this reasoning and announce the determination in the language of the particular contested statutory standard. Fourth and finally, the Commissioners were instructed to state whether, based on the above determinations, the qualifications for licensure had been met and whether a casino license should or should not issue. In the event that licensure were recommended, the Commissioners were advised to state on the record whether the issuance should be subject to any conditions, and, if so, to specify those conditions. Pursuant to law, a casino license and any condition imposed thereon must be approved by at least four (4) Commissioners.

The statutory standards to be considered under the foregoing procedure are contained in sections 84, 85 (c), 85 (d), 86 and 89 of the Casino Control Act.⁽¹⁾ Sections 84 and 89 (b) (2) of that Act set forth the criteria which the Applicant and other persons required to be qualified must affirmatively establish by clear and convincing evidence. The clear and convincing evidence requirement falls somewhere between the ordinary civil

(1) N.J.S.A. 5:12-84, - 85(c), - 85(d) - 86, and -89.

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 matters sought to be established. The Chairman charged that in order to sustain its burden, the Applicant must present clear and convincing proof of the facts upon which the Commission may base a reasonable conclusion as to suitability.

As noted, the Applicant had the burden of establishing by clear and convincing evidence that it met the criteria of section 84 and that all the persons who must be qualified met the criteria of section 89 (b) (2) for casino key employees. The persons required to so qualify are described in sections 85 (c) and 85 (d) of the Act. Under section 85 (c), the following persons connected with the Applicant corporation must qualify:

- (a) each officer;
- (b) each director;
- (c) each person holding any beneficial interest, direct or indirect, in the securities of the Applicant corporation;
- (d) any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and
- (e) any lender, underwriter, agent or employee of the Applicant corporation whom the Commission considers appropriate for qualification.

Under section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Resorts International, Inc. (the holding company) must also qualify to the standards under section 89.⁽²⁾

As to the standards themselves, Sections 84 and 89 (b) (2) establish essentially the same qualification criteria which must be established by clear and convincing evidence for the Applicant, the holding company and the other persons to be qualified. One affirmative qualification criterion is that of *financial stability, integrity and responsibility.*" By its terms, this standard encompasses all financial aspects of the Applicant, the holding company and the other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual.

- (2) Since Resorts International, Inc., (the holding company) is a publicly traded corporation, the Commission and the Director of the Division were permitted by the Act to waive such qualification requirement as to persons not significantly involved in the activities of the Applicant corporation and who do not have the ability to control the holding company or to elect one or more directors of the holding company. During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified. The Division also indicated those individuals to whom it interposed an objection and the grounds for such objection. These materials were incorporated into the pre-hearing conference orders, which were provided to the Commissioners and the parties. The Commission accepted the Division's list of persons to be qualified.

A second affirmative qualification criterion appears in both Section 84 (c) and in Section 89 (b) (2). Although the wording of the two sections is not precisely the same, the difference is without consequence. 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," whereas Section 89 (b) (2) requires such proof as necessary "to establish by clear and convincing evidence...reputation for good character, honesty and integrity." The underlying concepts in either formulation are those of good character, honesty and integrity. These concepts are so commonly employed and so well understood that elaboration is unnecessary. However, in addition to these three qualities, the Act speaks in terms of reputation. Some comment is appropriate on this point.

Literally, the statute states that an applicant must establish that it enjoys a reputation for good character, honesty and integrity. This reference to reputation is consistent with the express policy of the Act to foster and maintain "public confidence and trust in the integrity of the regulatory process and of casino operations." A sullied reputation may well be indicative of poor character. In that respect, reputation is quite relevant. However, reputation and actual character are not the same. It may well occur that an applicant or individual suffers from an undeservedly bad reputation.

In such cases, the applicant or individual must address the questions raised by the reputation and must convincingly show that the reputation is not grounded in fact and that it does not accurately reflect the true character of the person. In other words, if the credible evidence demonstrates that, despite the unfavorable reputation, the person actually possesses the essential attributes of good character, honesty and integrity, then that person should not be rejected. Public confidence will be preserved by the exposition of reliable evidence which proves the inaccuracy of the reputation.

To deny an application based on an undeserved reputation does not significantly further the statutory goals but does effect an unfair result to the party involved. Of course, if the applicant is unable to convincingly demonstrate the falsity of any adverse reputation bearing on character, honesty or integrity, then the license should not issue. The denial would be based in such instances on the inability of the applicant to shoulder its affirmative burden to the satisfaction of the Commission. To reiterate, reputation is relevant to raise questions which the applicant is obliged to answer; but the real issue is the applicant's actual character, with special attention being given to the subject matter of the reputation.

In 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 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.

A related qualification requirement concerns the "integrity and reputation" of all financial sources which bear any relation to the proposed casino operation. Since the

reputation and integrity of such sources "shall be judged on the same standards as the applicant," there is no independent standard established for this class. Therefore, the foregoing comments applicable to the standards for the Applicant are equally applicable to these financial sources with regard to reputation and integrity.

A third affirmative qualification criterion requires the applicant or qualifying person to demonstrate by clear and convincing evidence "sufficient business ability and casino experience as to establish the likelihood" that the Applicant will create and maintain "a successful, efficient casino operation" or that the qualifying person will achieve "success and efficiency in the position involved." The plain meaning of this criterion renders any explanatory remarks unnecessary. It should be noted, however, that the Applicant has now operated casinos both in New Jersey and in the Bahamas. Both operations are relevant in assessing the Applicant's ability to properly, efficiently and securely operate a casino. But, without ignoring the Bahamian operation, it would seem that the Applicant's experience during the past nine months while operating in Atlantic City under the Commission's regulations should be the primary factor in assessing ability to operate under the New Jersey scheme in the future. Moreover, evaluation of the Applicant's performance in the Bahamas should take into account the governmental controls and requirements which existed there. Although

the absence of strict governmental regulation in the Bahamas would not justify improper or unsound casino operations, it would not be fair to judge the Bahamian activities by retrospective application of the strict New Jersey code.

To this point, only those qualification standards which the Applicant must affirmatively demonstrate by clear and convincing evidence have been addressed. Regardless whether the Applicant can sustain its burden as to those standards, no casino license will issue so long as the Applicant or any person required to qualify suffers from any of the disqualification criteria enumerated in Section 86 of the Act. An applicant will be denied a casino license based on a Section 86 disqualification only if the credible proofs in the whole record indicate the existence of the disqualification by a preponderance of the evidence. If, however, the credible proofs in the whole record fail to indicate the existence of a disqualification by a preponderance of the evidence, those proofs may nonetheless be considered as to whether the applicant has established by clear and convincing evidence the three (3) affirmative qualification criteria discussed above.

As mentioned earlier, "preponderance of the evidence" is a lesser requirement than "clear and convincing evidence." It is the normal standard of proof in civil matters. Essentially, "preponderance of the evidence" means that, upon analysis and evaluation of all the evidence, for and against the finding, including an assessment of the credibility of witnesses and

documents, it must appear more probable that the fact exists. Stated differently, when all the evidence on the point is considered, the credible, believable evidence must favor the fact to be found and must fairly support the finding. As before, any finding of fact must be based on "the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs." Here also, the use of hearsay evidence to support any critical aspect of a factual finding must be circumscribed by the guidelines which already have been outlined.

The first disqualification criterion under Section 86 is failure to provide all information required by the Act or requested by the Commission, failure to reveal any fact material to qualification or supplying any information which is untrue or misleading as to any material fact pertaining to qualification. In this regard, a "material fact" is one which would be important to evaluation of the qualifications of the Applicant or person required to qualify. However, 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. Merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification. In judging such a failure, the existence of an official request for the information would be a significant factor.

Three of the disqualifying factors in Section 86 may be conveniently considered together. One of the three criteria would disqualify any applicant or person to be qualified who has committed any act which would be a certain type of offense under current New Jersey law, whether such conduct has been prosecuted or not. The second criterion would bar any person who is currently being prosecuted for one of the disqualifying offenses. The third such criterion prohibits any person from participation in gaming where the person has been convicted of such a disqualifying offense. This Section, 86 (c), also describes the disqualifying offenses.

Although these criteria are fairly straightforward, two aspects deserve comment. The first concerns the possibility of unfairly applying current New Jersey law to events occurring at other times and in other jurisdictions, as noted, an applicant or other person will be disqualified if he committed any act which would have constituted one of the described offenses in New Jersey at the time of application for a casino license. This section must be read to encompass only those acts which, at the time and place committed, would have constituted an offense. Thus, if a person had conducted activity which was legal under the then existing law of the jurisdiction where it occurred, no automatic disqualification would arise under these criteria even if the same conduct would constitute one of the described offenses if it were committed now in New Jersey.

However, the Commission would remain free to consider such conduct under the affirmative standards in Sections 84 and 89 (b) (2), for example, as relating to good character, honesty and integrity.

inimical

The second aspect concerns the nature of an offense which will automatically disqualify an applicant or other person from participation in gaming operations. After describing several classes and types of offenses, Section 86 (c) concludes with the general category of "any other offense which indicates that licensure...would be inimical to the policy of this act and to casino operations." Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. As will be presently

seen, this same concept plays a crucial role in two other disqualification criteria.

An Applicant also may be disqualified because either P62
the Applicant itself or any person required to qualify pursued economic gain in an occupational manner or context which is in violation of the civil or criminal public policies of this State. The statute defines "occupational manner or context" as the "systematic planning, administration, management or execution of an activity for financial gain." Thus, an isolated or incidental transgression of civil or criminal public policy is not a disqualification under this section. Rather, there must appear a regular or ongoing scheme for financial gain which has as an integral component, repeated or continuing violations of the criminal or civil policies of this State.

With regard to whether the civil or criminal public policy of this State is violated, there must be reliable proof in the record to support a finding that such policy exists and that it was routinely violated. Without limitation, these policies would include the criminal laws and civil requirements, e.g. infractions of which would give rise to penalties or private causes of action at law. In this respect, one must be careful not to extend the New Jersey public policy to a jurisdiction where a different policy is in force. If no such policy was violated in the places where the pursuit of gain actually occurred, then it cannot be said that this disqualification criteria applies.

Such pursuit of economic gain will disqualify a person under this standard only if that pursuit creates a reasonable belief that participation of such person in casino operations would be "inimical" to the policies of the Act or to legalized gaming. The analysis must be similar to that just described with regard to offenses "inimical to casino operations." Many factors, including the nature of the systematic pursuit of economic gain, the public policies violated, the circumstances surrounding the pursuit, the person's involvement in the pursuit, termination of the pursuit and remoteness of the pursuit in time, all must be assessed to determine whether public confidence in the regulatory process will be eroded or whether an enhanced danger of improper activity will result if the person is permitted to participate in legalized gaming.

Under Section 86 (f) of the Act, disqualification will follow upon identification of the Applicant or person required to qualify as either a "career offender" or a member of a "career offender cartel." A "career offender" is "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State." Thus, a career offender must systematically seek financial gain by methods which have as a normal or regular component the violation of the criminal laws. Of course, it is not necessary that the individual physically conduct this activity in

New Jersey but, if the activity occurred in another jurisdiction, it must have been a violation of the criminal laws applicable at that time and place. A "career offender cartel" is defined as "any group of persons who operate together as career offenders." Thus, to be a member of a career offender cartel, one must participate with other career offenders in the unlawful enterprise and must share the intent to further that scheme. In order to disqualify a person as a career offender or a member of a career offender carter, there must be sufficient, believable proof to sustain such finding.

A person who is neither a career offender nor a member of a career offender cartel may nonetheless be disqualified if that person is an "associate of a career offender or career offender cartel in such manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Act and to gaming operations." Associations were discussed previously with respect to the affirmative qualification criterion of good character, honesty and integrity. The same factors mentioned at that point are applicable here in assessing the quality and importance of the association. However, in considering an alleged association with a career offender, the Commission is concerned with more than the reflection, if any, which the association has on the character of the Applicant or other person required to be qualified.

Even assuming the good character of such person, a continuing association with career offenders or other unsuitable

persons might well be inimical to the Act or to legalized gaming where the nature and quality of the association would justly call into question the integrity of the regulatory process and of casino operations. Such a question would arise where the nature and quality of the relationship create a risk that the career offender might exercise some degree of influence or control over the association with regard to gaming operations or other business incidental to such operations. The danger of such indirect participation by career offenders or other unsuitable individuals cannot be tolerated. Therefore, if reliable evidence appears to show that the Applicant or other person to be qualified is associated in any way with a person who is proven to be a career offender or otherwise statutorily unsuitable, the Applicant must come forward with evidence to rebut such allegation or to demonstrate that the association is of such nature as to pose no appreciable threat to the proper functioning of legalized gaming in this State.

The final disqualification criterion in Section 86 is contumacious defiance, by the Applicant or by any person required to qualify, of any official investigatory body when such body is engaged in investigating crimes related to gaming, official corruption or organized crime activity. This criterion requires no explanation except to note that contumacious defiance is an improper, willful refusal to obey a lawful request or order of such investigatory body.

The foregoing summary has attempted to briefly touch upon the specific licensing standards of the Act. However, the broad scope of those standards reveals that no precise, mechanical formulation is possible or even desirable. In deciding whether this Applicant should receive a license, the overall sense and purpose of the Act must be brought to bear on the particular facts as found. Careful evaluation of the evidence must be combined with a conscientious effort to achieve the true intent of the law. The four-step procedure described above is designed to assure that this has actually been done. In that way, the Commissioners will have exercised their own reasoned judgment in finding the pertinent facts and applying those facts to the statutory criteria, both those qualification criteria which the Applicant must affirmatively establish by clear and convincing evidence and those disqualification criteria which must appear, if at all, by a preponderance of the evidence in the record as a whole.

FINDINGS

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The applicant, Resorts International Hotel, Inc. a New Jersey corporation, is a wholly owned subsidiary of Resorts International, Inc., a North Miami, Florida based corporation whose stock is publicly traded on the American Stock Exchange. Primarily through the applicant corporation, the parent corporation, Resorts International, Inc. conducts its activities in Atlantic City. The parent corporation also does business in other parts of the world.

In the San Francisco, California area, it operates a sixty-six acre theme park under the name of Marine World/Africa U.S.A., which combines marine, animal and amusement exhibits. From Miami, Florida, it operates air flights to the Bahama Islands as Chalk's International Airline. From seven different cities (Washington, Atlantic City, New York, Toronto, Chicago, Los Angeles and Memphis), as Intertel, it provides services pertaining to the protection, preservation and enhancement of corporate assets including the supervision of security at its own three casinos.

The parent company also has actively been present in the Bahama Islands since 1963. Freeport, the primary city on Grand Bahama Island, is sixty-five miles due east of Palm Beach, Florida and one hundred miles from Miami. The corporation, as Bahama Developers, Ltd., owns 1,700 acres of land on Grand Bahama at Queens Cove which is available for residential land and apartment sales. The company also operates El Casino in Freeport, through its subsidiary G.B. Management, Ltd. This 16,000 square foot casino contains forty-six gaming tables and 340 slot machines.

Approximately 125 miles southeast of Grand Bahama is New Providence Island, containing the Bahamian capital city of Nassau. This island is 175 miles from Miami and almost due east of the Florida Keys. Paradise Island is connected to Nassau by a 1,500 foot bridge owned by a company which is independently owned by James Crosby. The parent company owns approximately 650 acres on Paradise Island which is almost the entirety of this small island and thereon operates three hotels which contain a total of 844 sleeping units. The Paradise Island Casino, which it operates, is 22,000 square feet in size, and contains 42 gaming tables and 350 slot machines.

Through the applicant company, this publicly traded corporation conducts its Atlantic City activities. This, of course, primarily involves the operation of its 561 sleeping unit hotel (504 of which are qualifying within the meaning of the Casino Control Act) and its 54,768 square foot casino which presently contains 97 gaming tables and 1,354 slot machines.

James Maurice Crosby (who was born in Great Neck, New York in 1927) has since 1959 been the principal individual shareholder and the Chairman of the Board of the parent corporation. He had, one year earlier, met New York attorney Charles E. Murphy (born in approximately 1924) who has, since that time, been both Mr. Crosby's attorney and the corporation's general counsel. It was in January of 1959 that Mr. Crosby acquired the then publicly traded Mary Carter Paint Company which was head-

quartered in Tampa, Florida. In December, 1960, I.G. Davis, Jr. (who was born in White Plains, New York in 1925) joined the corporation as its president, a position which he still holds today.

In early 1963, Miami attorney Richard Olsen discussed with Mr. Crosby the possibility of this paint company diversifying by purchasing land in the Bahamas for residential resale. On April 1, 1963, the Bahamian government granted to Bahama Amusements, a company controlled by Wallace Groves and Louis Chesler, a certificate of exemption for the operation of casinos on Grand Bahama Island. No casino, however, was then operating on Grand Bahama. Between May 24, and July 13, 1963, the Mary Carter Paint Company (through a merger with a group of Miami businessmen operating as Bahama Developers, Ltd.) acquired approximately 3,500 acres of land near Freeport on Grand Bahama known as Queens Cove and Kings Cove for planned residential development and land sales. Approximately six months later, in January, 1964, the above-mentioned Groves-controlled Bahama Amusements, Ltd. opened the Monte Carlo Casino at the newly constructed Lucayan Beach Hotel in Freeport (which was located more than five miles from the Mary Carter Paint Company land). This casino was operated by that firm for three and one half years until it closed on June 30, 1967. However, the Groves group bought out associate Louis Chesler of Miami in May of 1964, five months after the casino had opened.

In the latter part of 1964, again through Miami attorney Richard Olsen, Mr. Crosby became interested in further diversifying the Mary Carter Paint Company by acquiring the 683 acre Paradise Island (which was located some 125 miles northwest of its Freeport properties on Grand Bahama) from Huntington Hartford of New York and developing it as a resort area. Hartford had acquired the island four or five years earlier. In January, 1965, Messrs. Crosby and Olsen, together with Hartford representative Seymour Alter (who was born in New York in 1921), toured the Paradise Island property. Thereafter, in March, Messrs. Crosby and Murphy, together with Hartford's New York tax attorney Sidney Pine, met with prominent Nassau attorney Stafford Sands. Sands also served the Bahamian government and its United Bahamian Party (U.B.P.) which was then in power as its Cabinet Minister of Tourism and Finance. This meeting concerned the possibility of the Mary Carter Paint Company retaining Sands' law firm to represent it as local counsel in its prospective purchase from Hartford of Paradise Island. At this March, 1965 meeting, Sands apparently indicated that the Bahamian government would insist that the Paradise Island development include the construction of a bridge to Nassau and a 500 room hotel and that the casino operator be of an acceptable character. It also was Sands who then apparently mentioned another of his clients, Wallace Groves (who had in January, 1964 opened the Monte Carlo Casino in Freeport), as a casino operator acceptable to the Bahamian government.

On January 15, 1966, the Mary Carter Paint Company closed on its purchase of Paradise Island from Mr. Hartford. During the thirty-month period beginning in July, 1966, Mr. Crosby raised almost \$25 million through equity financing and borrowed an additional \$27 million from institutional lenders. The somewhat complicated terms of the transaction contemplated that a casino be constructed on Paradise Island, that it be operated by persons representing Wallace Groves (in the name of his wife Georgette Groves), and that the Mary Carter Paint Company participate in 50% of the casino's profits. In fact, the Paradise Island casino was not completed until almost two years after the January, 1966 closing. Between December, 1965 and August, 1967, the Groves interests operated the Bahamian Club Casino in Nassau with the intention of closing it down when the Paradise Island Casino opened. The Bahamian Club had theretofore been operated in Nassau by other persons for the preceding forty-five years.

During early 1966, Chairman Crosby and President Davis met and hired present corporate vice-president H. Steven Norton (who was born in Virginia in 1934), an American who had been working in the hotel business in the Bahamas since 1958. It was also during this period that the Mary Carter Paint Company first became associated with Eduardo Cellini (who was born in Steubenville, Ohio) who, in January of 1966, had been brought by the Groves interests from its Monte Carlo Casino in Freeport to its Bahamian Club Casino in Nassau. Mr. Cellini, of course,

at this time was an employee of the Groves interests.

On January 10, 1967, at a general election, Lynden O. Pindling of the Progressive Liberty Party (P.L.P.) unseated the United Bahamian Party and was elected Prime Minister of the Colony of the Bahamas. Media articles primarily critical of the operation of the Monte Carlo Casino in Freeport (which had opened some two years earlier) and concerned about the prospective operation of the Paradise Island Casino then under construction, had appeared in American periodicals in October of 1966 (the Wall Street Journal) and February of 1967 (Life Magazine and the Saturday Evening Post) and had projected the propriety of casino operations as a campaign issue in the Bahamian general election. In February, after the defeat of his U.B.P. by Pindling, Sir Stafford Sands left the Colony.

In early 1967, El Casino was opened by the aforesaid Groves company as its second casino in Freeport. On March 4, 1967, the British Governor of the Bahamas appointed a five member Commission of Inquiry to inquire into the manner in which casinos were then being operated in Freeport and in Nassau with particular reference to the suitability of persons associated with the casino operations, to the nature and propriety of any funds disbursed by the casino companies and to whether any government officials had received any direct pecuniary benefit from the licensing or operation of the casinos. In March, 1967, Assistant U.S. Attorney Robert D. Peloquin was assigned as the U.S. Department of Justice liaison to the Commission of Inquiry.

Also in March, Mr. Crosby's personal company opened its newly constructed 1,500 foot long bridge which linked Nassau to Paradise Island. In April or May, Mr. Crosby visited the Criminal Division of the U.S. Department of Justice in Washington for advice as to how to avoid organized crime from associating with the casino operation. Between April and August, with the approval of the Bahamian government, the Mary Carter Paint Company bought out the Groves interest in the Bahamian Club (substituting Mr. Davis for Georgette Groves) and assumed the full obligation of owning and operating that Nassau casino. In June, 1967, the Monte Carlo Casino of Freeport closed. In October, two months after the company had assumed the operation of the Bahamian Club, Washington attorney Robert D. Peloquin (who was born in 1929) was retained by Mr. Crosby to assure that criminal interests did not infiltrate the corporation's casino operations. One month later, in November, 1967, the Commission of Inquiry issued its 108 page report on casino operations. In December, the company opened the Paradise Island Casino under the authorization of a ten-year "certificate of exemption" previously granted by the Bahamian government. With the opening of the Paradise Island Casino, the Bahamian Club in Nassau was closed.

In May, 1968, the Mary Carter Paint Company sold both its paint division and the "Mary Carter Paint Company" name, and changed its corporate name to "Resorts International, Inc.".

It, of course, retained its Bahamian and other holdings.

During the period from April, 1968 to January, 1970, the corporation permitted 309 junkets to be run to its casino by twenty-three persons from at least thirteen different cities. On July 15, 1969, the Bahamian Legislature enacted the Lotteries and Gaming Act and in August of that year, the Bahamian Gaming Board was established. In January, 1970, corporate subsidiary International Intelligence, Inc. (Intertel) was formed, and Mr. Pelloquin was installed as its corporate president. During the summer of 1970, the company also operated both the Essex and Sussex Hotel and the Monmouth Beach Hotel in Spring Lake, New Jersey. After a two-year hiatus brought on because of a change in Bahamian tax law in late 1969, the corporation again briefly resumed its junket program and, between January and March, 1972, permitted forty-one junkets to be run to its casino by twelve persons from at least eight different cities.

In the general election of 1972, Prime Minister Pindling was re-elected to that office. In 1973, the Colony of the Bahamas was granted its independence from Great Britain. In the general election of 1977, Prime Minister Pindling, still of the P.L.P., was again re-elected to office.

In mid-1976, corporate representatives of Resorts International, Inc. visited Atlantic City and bought real property in anticipation of the legalization of casino gaming there. In November, 1976, the referendum authorizing casino gaming was approved by New Jersey voters, and in June, 1977, the Casino

Control Act was approved by the Legislature. The applicant, during 1977 and 1978, reconstructed the former Haddon Hall Hotel and created a casino room presently of almost 55,000 square feet. That casino has been operating for the nine months since May 26, 1978 pursuant to a temporary casino permit and operation certificate issued on that date by this Commission. Also during this period, the company borrowed almost \$29 million from institutional lenders.

Five months prior to the opening of its Atlantic City casino, Resorts International, Inc. (on January 1, 1978) obtained from the Bahamian government a renewal of its certificate of exemption authorizing its operation of the Paradise Island Casino for an additional ten years and also bid for and obtained authorization to operate El Casino in Freeport for the same ten-year period.

The Division's exception number one deals with Mary Carter Paint Company's acquisition of approximately 1,300 acres of land plus an option on approximately 2,200 more acres on Grand Bahama Island, near Freeport on July 13, 1963. Richard Olsen, the Miami attorney whom James Crosby had met in 1960, first advised Crosby about the availability of this property. Olsen knew that Mary Carter Paint Company had a healthy capital situation and was looking to diversify, and that Bahama Developers, Ltd., which owned the land, needed capital. This acquisition was accomplished by means of a corporate merger in

which Bahama Developers, Ltd. became a wholly owned subsidiary of Mary Carter Paint. Bahama Developers, Ltd., whose principals were a group of Miami businessmen, had purchased this property in 1959 or 1960 from the Grand Bahama Port Authority, a principal of which was Wallace Groves. At the time of the acquisition and after negotiations, the Grand Bahama Port Authority agreed to cancel approximately \$900,000 in mortgages which it held on this land upon prepayment by Mary Carter Paint of \$450,000.

In negotiating this transaction, Messrs. Crosby, Davis and Murphy had only fleeting contact with Wallace Groves, a man who in 1941 (over twenty years earlier) had been convicted on a mail fraud charge. There was no evidence presented to establish that Crosby, Davis or Murphy knew of Groves' 1941 conviction when they had the contact with him in 1963. On the contrary, Colin Callendar, a Bahamian attorney, testified at the hearing that prior to the issuance of the Report of the Royal Commission of Inquiry in November, 1967, Groves had a good reputation in the Bahamas for honesty and fair dealing. There was no contact in this transaction between any of the principals of Mary Carter Paint Company and Louis Chesler, a man who was linked in the testimony with persons of unsuitable character.

There is nothing in the record to suggest that this was anything other than an arm's length business transaction. After the corporate merger, Bahama Developers, Ltd., as a subsidiary of Mary Carter Paint, continued the business it had been

in, which consisted primarily of dredging landfill and the sale of small parcels of land for residential purposes. Under these circumstances, there is nothing concerning this 1963 land transaction which reflects adversely on the character of Mr. Crosby, Mr. Davis, Mr. Murphy or the applicant corporation.

Exception number two deals with the utilization by Mary Carter Paint of the services of Sir Stafford Sands, an attorney and Minister of Tourism and Finance in the Cabinet of the Bahamian government. In June, 1964, Richard Olsen advised James Crosby that Huntington Hartford had told Olsen that he wanted to sell Paradise Island. Olsen brought Crosby to visit the property in January of 1965. Huntington Hartford's representative, Seymour Alter, showed Crosby the island. In early February, 1965, Olsen arranged for Crosby, Davis and Murphy to meet with Huntington Hartford and Sidney Pine, one of Hartford's attorneys, in New York to discuss acquisition of the property. Hartford's asking price and the concept of the development of Paradise Island as a resort made a license to operate a casino an important element of the transaction.

At the suggestion of Pine, Crosby, Davis and Murphy went to see Sir Stafford Sands in early March, 1965. Sands had the reputation at that time as the outstanding lawyer in the Bahamas and was also a Cabinet Minister. At that meeting, Sands explained the conditions which the Bahamian government would impose before agreeing to issue a casino license. The primary

conditions included the acceptability of the purchaser of the island to the government as a casino operator, the construction of hotel facilities, and the construction of a bridge linking Paradise Island to Nassau.

Sands suggested that the government would find Wallace Groves acceptable as a casino operator since it had issued a Certificate of Exemption to Groves' company, Bahama Amusements, Ltd. on April 1, 1963. Crosby agreed because he needed a casino operator who had experience and who would be acceptable to the government. Sands advised Crosby at that time of Groves' prior conviction in 1941. After looking into the matter, Crosby felt that he could deal with Groves because in Crosby's mind, Groves had proven himself to have been rehabilitated, because Groves was acceptable to the Bahamian government and because some of the leading companies in the world were dealing with the Grand Bahama Port Authority, which was controlled by Groves.

It was agreed that Sands would be retained as the attorney to make application for the Certificate of Exemption and to create the companies and contractual arrangements necessary to accommodate the interests of the three principals to the Paradise Island transaction: Huntington Hartford, Mary Cartier Paint, and the Groves interests. Sands explained that under the code of ethics then prevailing in the Bahamas with regard to unsalaried government officials, he could make the application for a Certificate of Exemption as an attorney, but would be required to abstain from taking part in the consideration of such application as a Cabinet Minister.

Negotiations amongst the parties continued throughout 1965. Three interlocking companies were formed: Paradise Enterprises, Ltd. (100% owned by the Groves interests) was to operate the casino and retain 10% of the casino profits. Paradise Realty, Ltd. (5/9 owned by Paradise Island, Ltd. and 4/9 owned by the Groves interests) was to build the hotel and casino and was to receive 90% of the casino profits. Paradise Island, Ltd. (75% owned by Mary Carter Paint and 25% owned by Huntington Hartford) was to own the land.

During the course of the negotiations sometime in late 1965, the Bahamian government suggested that the parties purchase the Bahamian Club, a small casino which had been operated under a Certificate of Exemption on a seasonal basis on New Providence Island for many years. The suggestion was that the Bahamian Club casino be operated until the Paradise Island casino was ready to open, at which time the Certificate of Exemption would be transferred to the Paradise Island casino and the Bahamian Club would close.

Mary Carter Paint obtained the necessary financing and on January 15, 1966, the Paradise Island transaction was closed. The Bahamian Club was purchased for \$750,000. On December 7, 1965, a Certificate of Exemption was issued to Paradise Enterprises, Ltd. for the Bahamian Club. That certificate was valid until the earlier of the opening of the new Paradise Island casino or December 31, 1967. The certificate was valid for the Paradise Island casino for ten years thereafter,

until December 31, 1977.

James Crosby testified that Sir Stafford Sands was paid \$240,000 in legal fees over a period of one and one-half years for the legal work he performed. Of that \$240,000, \$50,000 went to another law firm which was representing the Bank of Nova Scotia. Another \$30,000 of the \$240,000 went to an English attorney named Freddie Marsh, who had prepared the complex contracts involved. This would have left \$160,000 for Sands. At the hearing, the expert testimony of the Bahamian attorney, Colin Callendar, was to the effect that under the scale of legal fees in the Bahamas prevailing in 1965, the minimum fee for a transaction of this magnitude would have been approximately \$180,000. So the fee paid to Sands was in no way inordinate.

It is equally clear from Callendar's testimony that Sand's conduct in representing Mary Carter Paint as a private client before the government of which he was a member was proper under the prevailing ethical standards of the Bahamas, so long as Sands declared his interest and withdrew from consideration of the matter as a Minister.

Under all of these circumstances, the utilization of the services of Sir Stafford Sands by Mary Carter Paint during the period from March, 1965 to January, 1967, cannot be said to reflect adversely on the good character, honesty and integrity of Crosby, Davis, Murphy or the applicant corporation.

Exception number three addresses the business arrangement wherein Mary Carter Paint Company, from January 15, 1966 until August, 1967, was associated with Wallace Groves and with Bahama Amusements, Ltd. in the operation of the Bahamian Club casino. The circumstances under which these associations were initiated have already been described. After the closing of the Paradise Island transaction on January 15, 1966, Paradise Enterprises, Ltd. (100% owned by Georgette Groves, wife of Wallace Groves) operated the Bahamian Club casino. Under an agreement with Georgette Groves, Bahama Amusements, Ltd. took over management of the Bahamian Club for Paradise Enterprises, Ltd. Bahama Amusements, Ltd. had been, since January 1, 1964, operating the Monte Carlo casino in the Lucayan Beach Hotel on Grand Bahama Island.

There was a great deal of testimony presented at the hearing concerning the Monte Carlo casino which Bahama Amusements, Ltd. operated from January 1, 1964 until June 30, 1967. It is important to point out that neither the Mary Carter Paint Company nor any of its principals ever had any interest in, participation in, or control over the Monte Carlo casino.

Bahama Amusements, Ltd. was incorporated on March 20, 1963 and obtained a Certificate of Exemption to operate casinos on Grand Bahama Island on April 1, 1963. Wallace Groves (through his wife Georgette) and Louis Chesler originally formed this company. Robert Peloquin testified that prior to the opening of the Monte Carlo Casino in 1964, Louis Chesler had sought the

advice of Meyer Lansky concerning operation of that casino. Present during a meeting between Chesler and Lansky in Miami were Dino Cellini, Max Courtney, Frank Ritter and Charles Brudner, persons who subsequently obtained various management positions within the Monte Carlo casino. The Commission is satisfied from the evidence presented that Dino Cellini, Max Courtney, Frank Ritter and Charles Brudner were associates of Meyer Lansky and were persons of unsuitable character. It was through Louis Chesler that these unsuitable persons insinuated themselves into the Monte Carlo Casino.

However, by early 1964, shortly after the opening of the Monte Carlo Casino, Chesler and Wallace Groves were at odds. Chesler resigned his position as president of Grand Bahama Development Company by April, 1964. In May of 1964, Groves bought out Chesler's interests in Bahama Amusements, Ltd. By early 1966 when Mary Carter Paint Company entered into a business association with the Groves interests, Chesler was no longer involved. The business association between Mary Carter Paint and the Groves interests lasted for less than twenty months. During that period, from February, 1966 until August of 1967, the Groves interests operated the Bahamian Club.

By virtue of the election in the Bahamas on January 10, 1967, the Progressive Liberal Party achieved power and Lynden O. Pindling became the Premier. As a result of public allegations concerning Sir Stafford Sands and concerning the presence of unsuitable persons in management positions at the Monte Carlo

Casino operated by the Groves interests, James C. Crosby
the new Premier in February of 1967 and requested
buy out Groves' interests in the Bahamian Club. P.
Pindling indicated that this would be acceptable to

Crosby then negotiated through Gerald Gold
purchase the Groves interests. This transaction was
by August of 1967. In the interim, Crosby sought to find
casino operator to take over the Bahamian Club, and ultimately
the Paradise Island Casino which was scheduled to open by
end of 1967. Crosby went to the United States Justice Department
in Washington, D.C. and asked for a recommendation from
law enforcement authorities. He met there with Assistant
Attorney General Fred Vison, who introduced him to Robert D.
Peloquin, then associated with the Organized Crime and Racketeer
Section. The Justice Department officials suggested that Mary
Carter Paint operate the casino itself. Crosby was reluctant
because the company lacked the experience. A few days after the
meeting at the Justice Department, Crosby contacted Peloquin and
offered him the job of managing the casino. Peloquin declined
this offer, and Crosby thereafter delegated the task of finding
a casino operator to I.G. Davis.

The business association between Mary Carter Paint
Company and the Groves interests appears to have been an arrangement
negotiated at arm's length. The actual contact during the
twenty-month partnership was not extensive, since the Groves
interests operated the Bahamian Club exclusively from approximately

February, 1966 until August of 1967. The source of the unsuitable persons working in the Monte Carlo Casino operated by the Groves interests appears to have been Louis Chesler, Groves' former partner, whom Groves had bought out one and one-half years before Mary Carter Paint became involved with Groves. And, most significantly, when James Crosby learned, nearly twelve years ago, of the character and reputation of some of the persons working for the Groves interests in its Monte Carlo Casino, he acted decisively to terminate the association. For these reasons, the Commission finds that the association of Mary Carter Paint Company with the Groves interests does not reflect adversely on the good character, honesty and integrity of James Crosby or the applicant corporation.

The fifth exception concerns the financing of the Mary Carter Paint Company's casino operations in the Bahamas. During the period between July, 1966 and January, 1969, \$24,810,000 in equity capital was raised. The Division has suggested that a substantial amount of these funds were received by or through the efforts of persons or organizations of unsuitable character and nature. James Crosby testified that he was personally responsible for arranging most of this financing, and that at the time when he dealt with the individuals and enterprises involved, their reputation for good character, honesty and integrity was above reproach.

The Fiduciary Trust Company, a Bahamian bank, was responsible for investments in Mary Carter Paint Company in July of 1966 and in May of 1967. The principals of the Fiduciary Trust Company were Samuel Clapp, William Sayad and Edward Cowett. In 1968, after having invested in Mary Carter Paint, Clapp, a Bahamian resident, and Sayad, a Miami attorney, entered consent decrees with the SEC for trading in unregistered shares of Mary Carter Paint stock. Subsequently, on March 1, 1971, Cowett, a principal in Investors Overseas Service (I.O.S.), was barred by the SEC from engaging in the business of a broker-dealer for actions unrelated to Mary Carter Paint Company stock.

William Mellon Hitchcock, whose family was the beneficiary of a trust for which the Fiduciary Trust Company had invested in Mary Carter Paint stock on May 10, 1967, was later (in 1969) suspended as a broker by the SEC for ten days, and was in 1973 convicted of violating the federal banking laws.

Seymour Lazar, who invested in Mary Carter Paint as part of the Mary Carter Paint bonds in the July, 1966 placement later entered consent judgments with the SEC in 1973 as a result of securities violations unrelated to Mary Carter Paint Company.

Frank Mace, who was not an investor himself but who acted as a registered securities representative for the brokerage firm of Delafield and Delafield, handled placements of Mary Carter Paint stock with investment companies owned by the Goulandris family on November 1 to 3, 1967 and January 10, 1968.

Mace also handled the January 10, 1968 placement with Sol Oppenheim, Jr., a German bank. Subsequently, in June, 1969, Mace was barred from acting as a broker dealer by the SEC.

Richard Gitlin, a limited partner in the brokerage firm of Kleiner, Bell and Company, received a fee from Mary Carter Paint Company in July, 1967 in connection with his role in securing the agreement of the American National Insurance Company to exercise its conversion option. According to an Intertel internal memorandum dated October 27, 1971, Gitlin was rumored to be an associate of Meyer Lansky - a rumor which could not be substantiated.

With regard to J.J. Frankel, an alleged associate of unsuitable persons, the evidence establishes that Messrs. Crosby, Davis, Murphy and Peloquin had no business dealings with Mr. Frankel. Moreover, that fact that Joel Mallin, an attorney who was convicted of federal banking violations in 1973 relating to the 1968 sale of stolen securities, may have represented Samuel Clapp, Fred Alger, Seymour Lazar and William Mellor Hitchcock who had earlier in May and June of 1967 been involved in private placements of Mary Carter Paint Company stock, does not reflect adversely on the good character, honesty and integrity of James Crosby or the applicant corporation.

Virtually all of these consent decrees and violations occurred at a point in time after these persons had invested in the Mary Carter Paint Company.

In light of this, in light of the technical nature of most of these violations and in light of the fact that James Crosby could not reasonably have been expected to have known about these matters when he dealt with these investors, the Commission finds no adverse reflection on the good character, honesty and integrity of James Crosby or the applicant corporation. This finding is amply buttressed by the testimony of Arthur Mathews, who testified at the hearing as an expert in SEC matters.

The fourth exception concerns itself with the fact that it was only because of the glare of widespread adverse publicity commencing in October, 1966 and February, 1967 (in American periodicals the Wall Street Journal, Life Magazine and Saturday Evening Post) concerning the Bahamian casino activities of Wallace Groves, Louis Chesler, Meyer Lansky and Bahamas Amusements, Ltd., that the Mary Carter Paint Company attempted to disassociate itself from any connections with such persons in the operation of its then existing Bahamian Club Casino or its then planned Paradise Island Casino by acquiring the financial interests of the Groves group in these casinos.

The corporation thus assumed for the first time the responsibility for the actual operation of a casino. It retained, virtually intact, the Bahamian Club staff to operate the Bahamian Club for five months and to, thereafter, operate its new Paradise Island Casino. This exception is also critical of the fact that

the Bahamian Club staff, which had been assembled by the disreputable prior operators of that casino, was continued by the corporation in its casino operations.

Consideration, however, must also be given to the following facts:

1. That Groves had bought out the Chesler interest in Bahamas Amusement, Ltd. more than three years earlier and that Groves himself had been suggested to the corporation as the casino operator by Sir Stafford Sands more than two years earlier while the United Bahamian Party and Sands were still in power in the Colony;

2. That the certificate of exemption then in force as to the Bahamian Club expressly provided for an employee screening process whereby the Commissioner of Police had to be furnished with all information reasonably necessary to satisfy him as to the suitability of all casino employees;

3. That Mr. Crosby had consulted with Prime Minister Pindling on the acquisition almost six months earlier in February or March;

4. That Mr. Crosby had visited Assistant U.S. Attorney Fred Vinson of the Criminal Division of the U.S. Justice Department in Washington as to the purchase some three or four months earlier;

5. That the acquisition was made during the pendency (from March to October, 1967) of the Commission of Inquiry's

investigation and almost four months prior to the November issuance of its Report;

6. That the acquisition occurred less than two months prior to the retaining of former Assistant U.S. Attorney Robert D. Peloquin in October of 1967 to screen associations that the casino might then have or in the future become involved with;

7. That the acquisition was two full years prior to the enactment of the Bahamas Lotteries and Gaming Act in July, 1969 and the establishment of the Bahamian Gaming Board in August, 1969; and,

8. That the corporation's decision to retain the Bahamian Club staff was made almost twelve years ago at a time prior to the existence of strict government controls as to casinos in the Bahamas and at a time when the corporation had virtually no experience in the casino gaming industry and was itself attempting to evolve its own security and internal control skills.

In the context of these facts, it is difficult to criticize the corporation for having, in August, 1967, retained virtually intact the Bahamian Club casino staff.

The sixth exception criticizes the parent corporation's associations in its operation of first the Bahamian Club in Nassau (from August to December, 1967) and then the Paradise

Island Casino (from December, 1967 to the present) through the use both of casino staff and junketeers "who they knew to be or should have known to be persons of unsuitable reputation, character and nature." Four such casino employees and five such junketeers were specifically named. Exceptions number 7, 8, 9, 10 and 11 expand on these criticisms.

Eduardo ("Eddie") Cellini was born in Steubenville, Ohio and apparently worked both in illegal casinos in Ohio and Kentucky and, in the late 1950's, in Cuban casinos in Havana with his brothers Dino, Robert and Godfreddo prior to their being closed by Premier Fidel Castro in 1959. In 1970, Meyer Lansky had reportedly offered Sir Stafford Sands \$1 million for the right to operate a casino in the Bahamas but, according to Sands, was refused. In 1963, Louis Chesler of Miami, then a partner of Wallace Groves in Bahamas Amusements, Ltd., reportedly met with Meyer Lansky, Dino Cellini and others in Miami for advice as to how to open a casino. When in January, 1964, Bahamas Amusements, Ltd. opened its Monte Carlo Casino at that hotel in Freeport, it employed among others, Eduardo Cellini and known New York gamblers Frank Ritter, Max Courtney and Charles Brudner in its top management.

In April, 1964, Dino Cellini was placed on the Bahamian "stop list" but apparently was then in London recruiting and training croupiers for employ at the Monte Carlo Casino. In May, 1964, the Groves group bought out the Chesler interest in

Bahamas Amusements, Ltd. In January, 1966, when the Groves group took over the operations of the Bahamian Club in Nassau in anticipation of the development of Paradise Island, Eduardo Cellini became an employee of the Bahamian Club under manager Jack Metler and, in January, 1967, himself became its manager.

In February, 1967, Dino, who apparently then was again conducting a croupier school in London, was placed upon the United Kingdom "stop list" and directed to leave England. In June, 1967, Ritter, Courtney and Brudner were placed on the Bahamian "stop list" and ordered to leave the Colony.

Between April and August, 1967, the Mary Carter Paint Company negotiated for and acquired the Groves interest in the Bahamian Club and assumed responsibility for its operation, continuing Eduardo as its manager.

Between October and December, 1967, Mr. Peloquin, on behalf of the parent corporation, conducted a background investigation of Eduardo and concluded that, although his brother Dino was an associate of Meyer Lansky, Eduardo was not an associate of organized crime. In November, 1967, pursuant to a 1964 verbal agreement between Dino and the Bally Manufacturing Corporation, the latter paid Dino a commission of \$28,200 on the sale of 188 slot machines to the Paradise Island Casino which had been ordered by Mr. Davis and Eduardo. No evidence directly indicates, however, that either knew of the association of Dino with the sale.

On January 1, 1968, Eduardo was given a three-year contract as general manager of the Paradise Island Casino over its staff of approximately 120 employees and was to be compensated at the rate of 2% of the casino profit with a guaranteed minimum of \$50,000 per year. In fact, he received in excess of \$100,000 for 1968, \$150,000 for 1969 and \$150,000 to \$200,000 for 1970. From December, 1967 to May, 1969, Eduardo actively managed the Paradise Island Casino.

In May, 1969, however, because of persistent adverse publicity to the casino because of the reputation of Eduardo's brother, Dino, Mr. Crosby directed that he be assigned to work on junket matters from Resorts International's Miami office and that he be replaced as casino manager. Thereafter, except for two weeks that August, Eduardo apparently never returned to the Bahamas. In July, 1969, he was placed on the United Kingdom "stop list" and, four months later, in November, was "stop listed" in the Bahamas.

On November 22, 1969, Resorts International notified the Bahamian Immigration Department that Eduardo's "services have been terminated". On November 26 and again on December 23, the then recently established Bahamian Gaming Board directed the company to terminate his services in any capacity or locality even as an employee or agent of any affiliated company. On October 19, 1971, two years later, Mr. Davis informed the Bahamian Gaming Board that Eduardo had performed no services for the company since December 23, 1969.

The criticism of exception number 6 is that the corporation's three-year association with Eduardo Cellini from mid-1967 to mid-1970 was wrongful because of his "unsuitable reputation, character and nature." Although apparently he was an effective casino manager and although no credible evidence has been presented suggesting any improper conduct by him as an employee of the company, it is unlikely that Eduardo Cellini would today qualify for a casino employee license in this jurisdiction. However, twelve years ago when this corporation was new to the casino gaming business and had inherited Eduardo as its casino manager, after having conducted a substantial investigation of his background, it did conclude that Eduardo Cellini was a man of good character despite the associations and activities of his brother Pino and in spite of the fact that he had worked in illegal American casinos and in allegedly corrupt Cuban casinos. Ultimately, upon being directed to do so by the Bahamian government, the corporation terminated his services; although admittedly not as quickly or as completely as it should have done. In such a context, the association should not be held to have been a disqualifying one.

The evidence, however, suggests that Eduardo Cellini did, at least through mid-1970, perform occasional and limited services for the company outside the Bahamas, although it could not be fairly said that he was "employed" after November 26, 1969. A fair analysis of the record does not support the con-

clusion that the company materially violated any government directive (exception number 7) or materially misrepresented facts to the government (exception number 8).

Casino supervisor Robert Manes and casino inspector Lawrence Biggio had admittedly previously worked in the Riveria Casino in Havana, Cuba prior to 1959 and had associated with both Eduardo Cellini and his brother Dino. Casino supervisors Raymond Duddy and Charles Martin had admittedly previously worked in illegal casinos as associates of Eduardo Cellino. These facts, standing alone, however, do not establish that the corporation's association with these men through employment is an association inimical to the policies of the Act or to gaming operations.

The evidence disclosed that during the twenty-two months from April, 1968 to January, 1970, 309 junkets were run by 23 persons from at least 13 different cities to the Paradise Island Casino and, after a twenty-four month hiatus, during the three months from January to March, 1972, an additional 41 junkets were run by twelve persons from at least eight different cities to that casino. Both Mr. Davis and Mr. Peloquin indicated that the junket program was initially terminated in January, 1970 because of a then recent change in the Bahamian tax structure and was again and finally terminated in March, 1972, primarily because its profitability was not substantial enough to justify the intense security effort required to ade-

quately police it. Mr. Peloquin noted that the Bahamian Gaming Board began its regulation of junketeers in 1971. It thus appears that Resorts International, Inc. has not been involved in any junket arrangements during the last seven years.

Joseph "Joe Black" Lamattina, Daniel Mondavano, Carlo Mastrototaro and Vincent Teresa, all of whom enjoy federal convictions with substantial prison sentences, apparently associated together in the Boston area in the Esquire Sporting Club to run junkets from that area during or about 1968. Teresa, in a civil deposition in 1978 (and after admitting to having had a long career in organized crime in New England, to then being a participant in the Federal Witness Immunity and Relocation Programs and to having authored two books about organized crime activity), stated that Lamattina had hosted two junkets for him to the Paradise Island Casino through the Esquire Sporting Club. One of these junkets was allegedly run in July or August of 1968 and a second in September of 1968, pursuant to arrangements personally made by Teresa in Miami with Meyer Lansky and Dino Cellini whereby both Teresa's group and Lansky's group participated in a credit skim from casino profits in the collection of "markers" given by their junketeers to the casino. Allegedly, the "skim" had at least the tacit consent of Paradise Island casino manager Eduardo Cellini. In statements presented in evidence, Messrs. Lamattina, Mondavano and Mastrototaro flatly deny that any such junkets or skim ever occurred. Teresa's deposition in this regard, when evaluated in its total context and viewed in the

light of Teresa's long criminal background, simply cannot be accepted as credible. The further allegation that the twelve junkets run to the casino by Arthur Levey of New York in January, February and March, 1972 were actually run on behalf of the Esquire Sporting Club does not appear to be supported in the record.

The evidence did establish that, in late 1969, known gambler Murray Goodman of New York ran eight junkets to the Paradise Island casino prior to his being rejected by Intertel in March of 1972 and that, during that same period, known gambler David Brill of New York ran fifteen such junkets prior to his being similarly rejected in September of 1971. Ernest Bracker of New York also appears to have run three such junkets in early 1972 as a "front" for Brill prior to his being similarly rejected in March of 1972.

Further evidence showed that James "Loia" Neal of Miami, Florida utilized the North Miami offices of Resorts International, Inc. during late 1971 and early 1972 in the operation of his Good Time Tours firm, that Neal was a close friend of both Eduardo and Dino Cellini and that, at the time, Neal was an associate of reputed Toronto racketeer Albert Volpe. It also appeared, however, that Intertel finally severed all contact between Neal and Resorts International on June 23, 1972. Although Neal himself apparently never ran a single junket to the casino, three junkets in early 1972 were run by Ralph Sherrill of Miami,

an associate of Neal's Good Time Tours. Evidence also showed that one Peter Hayes was, in mid-1974, also an associate of Albert Volpe and a person through whom Mr. Volpe was attempting to run junkets to the casino. Hayes worked for Resorts International as an assistant collections agent in its New York office from before 1972 to December, 1978. As previously noted, of course, the evidence presented indicated that no junkets were made to the casino after March of 1972. Mr. Hayes was terminated from this employment by Intertel both because of his association in 1974 with Volpe and because he falsely denied knowing Volpe in July, 1978 when being interviewed by the Division of Gaming Enforcement.

Exceptions number nine and ten criticize Resorts International, Inc. for not readily disassociating itself from Neal or Hayes, both of whom it knew as associates of Albert Volpe. As to Neal, the concern was the fact that only the threat of publicity as to its association moved Resorts to sever its relationship and as to Hayes, it took more than four years and the criticism of the Division of Gaming Enforcement's report to cause Resorts to act to disassociate itself. However, no evidence establishes that Hayes, Neal or Volpe ever, in fact, ran a junket to Paradise Island. Moreover, at present no such associations exist.

In summary, Resorts International, Inc. appears to have tried to properly police its junket operations but, finding effective control difficult to maintain, discontinued its junket

program almost seven years ago. The New Jersey Casino Control Act recognizes junket activities as an area requiring close scrutiny and government regulation but also recognizes that effective policing is possible. After evaluating the evidence presented in relation to the parent corporation's junket programs, the Commission can here find no basis for disqualifying the applicant.

As a final comment, however, it should be noted that the applicant was somewhat deficient in providing at an appropriately early time its full records relating to its past junket activity.

The evidence indicated that during the years 1969, 1970, 1971, 1972, 1976 and 1977, Bahamian subsidiaries of Resorts International, Inc. made contributions to political parties and to individual candidates for office in the Bahamas aggregating nearly \$700,000. All of these contributions were made under the direction of James Crosby.

While a total of \$175,000 of these political contributions was made in cash, receipts were obtained for the vast majority of this amount. With regard to virtually all of the contributions a contemporaneous record of each transaction was made on the company books. Although some of the contributions were made indirectly, for example, through the law firm utilized by the Bahamian subsidiary, the need to maintain the confidentiality

of these contributions is apparent.

Prior to the general election in 1972, such contributions were made to both of the two principal political parties. Mr. Crosby testified that such contributions were traditional in the Bahamas for good will and to preserve the two-party system. However, after 1972, Mr. Crosby made a policy determination to contribute only to the party in power.

Mr. Crosby testified at the hearing that all of these political contributions were bona fide and were legal in the Bahamas. His testimony is supported by the written legal opinion rendered by the Bahamian law firm to Charles Murphy on March 25, 1976 and admitted in evidence. Further corroboration of the legality of such contributions was supplied by Colin Callendar, the Bahamian attorney, who testified at the hearing as an expert on the law of the Bahamas. No evidence has been offered to suggest that these contributions violated the law of the Bahamas or any other jurisdiction.

Based on these facts, the Commission finds that these political contributions were legal under existing law at the time when they were made. No automatic disqualification of the applicant arises here even though such political contributions would not be lawful if made in New Jersey at the present time. Additionally, especially in light of the legality and the tradition of such contributions in the Bahamas and in light of the fact that records thereof were maintained, on the whole these contributions do not reflect adversely upon the good character, honesty and integrity of James Crosby and the appli-

cant corporation. However, this is not meant to condone some of the practices utilized by Resorts in the past, including such practices as cash payments and "indirect" payments by check. Although corporate contributions to political parties and to candidates for political office may be traditional and perfectly legal in the Bahamas, the only way to avoid the appearance of a potential diversion of funds is to adequately document all such payments. Mr. Crosby apparently recognized this in 1972 when, according to the testimony, he directed that from that time on, all political contributions were to be made by check directly payable to the recipient party or candidate.

Exception number seventeen concerns the business relationships between Resorts International, Inc. and David P. Probinsky. Probinsky, who was born in Philadelphia in 1919, lived in Wildwood, New Jersey area until the mid-1950's, when he went to Florida. He became associated with the Sir John Hotel in Miami, until that establishment went bankrupt in the mid-1960's. In 1966, Probinsky learned of the impending election in the Bahamas and, through acquaintances he had made during his years at the Sir John, he became active in raising funds for the then opposition PLP Party and its leader, Lynden O. Pindling. After the PLP won a narrow victory in the election of January 10, 1967, Pindling became the Premier. By virtue of his efforts during the campaign, Probinsky had gained Pindling's confidence.

Probinsky remained in the Bahamas doing public relations work for Diversified Services, a firm in which he held an interest. In June or July, 1967, Probinsky met I.G. Davis and he began to do some public relations work for Resorts' subsidiary, Paradise Island, Ltd.

Probinsky testified that by 1972, Resorts had alienated Pindling's PLP which had solidified its power in the Bahamian elections of that year. Several factors contributed to this. Resorts had been associated with the old UBP party of Sir Stafford Sands when it acquired Paradise Island in 1966. President Davis and Vice President Norton were friendly with many of the members of the UBP and were not looked upon with favor by the Pindling government. Perhaps most importantly, during the years 1969 - 1972, at the direction of Chairman Crosby, political contributions had been made to both parties, but primarily to the opposition.

The ten-year Certificate of Exemption issued for the Paradise Island casino was due to expire on December 31, 1977. Pindling had expressed an intention to nationalize the Bahamian casinos after their Certificates of Exemption expired. Pindling also mentioned the possibility of another competing casino on Cable Beach. Previously he had publicly warned foreign investors in the Bahamas that they would either "bend or break" in granting Bahamian citizens better economic benefits. Independence for the Bahamas from Great Britian was achieved in 1973.

Mr. Crosby enlisted Probinsky's aid in establishing a dialogue with Pindling with the aim of seeking assurances of a renewal of the Certificate of Exemption to operate the Paradise Island casino. Probinsky arranged several meetings between Pindling and Crosby and succeeded in establishing the dialogue. During the years 1973-1975, Probinsky spent most of his time working with members of the Bahamian government in an effort to obtain a renewal of the Certificate of Exemption.

During the first week of April, 1976, Probinsky heard of the possibility of casino gambling in Atlantic City. Probinsky contacted his old friend, attorney Marvin Perskie, who advised Probinsky to come to New Jersey and examine the situation. Probinsky traveled to New Jersey on behalf of Resorts in April, 1976, spent two to three weeks here and then returned to the Bahamas and reviewed his findings with Mr. Crosby. As a result of Probinsky's recommendation, Crosby, Davis, Peloquin and Seymour Alter came to Atlantic City with Probinsky around the end of April or beginning of May, 1976. They stayed for three or four days, and as a result both Crosby and Davis became enthusiastic about investing in Atlantic City. In early May, 1976, Probinsky took up residence in the Atlantic City area to continue his efforts on behalf of Resorts.

Probinsky was being paid a monthly consulting fee by Resorts. For some time, however, he had been asking Crosby for a written contract providing for compensation for his services

in New Jersey. Both Probinsky and Crosby testified that Probinsky was responsible for establishing the rapport between Pindling and Crosby which ultimately led to the renewal of the Certificate of Exemption for the Paradise Island casino. And both Probinsky and Crosby testified that it was Probinsky who was primarily responsible for Resorts coming to Atlantic City at an early date and being in a position to make investments that have proved to be extremely successful.

By June, 1976, Probinsky was having serious differences with Davis, Pelouquin and Patrick McGahn, one of Resorts' New Jersey attorneys. At Crosby's instruction, a contract between Resorts International, Inc. and Probinsky was prepared which was signed on July 1, 1976, four months prior to the November, 1976 referendum authorizing casino gaming in Atlantic City. This contract (A-42 in evidence) provided in essence that Probinsky was to be paid \$60,000 in monthly installments between July 1, 1976 and December 31, 1977. In consideration of Probinsky's services in connection with Resorts' efforts to renew its casino license in the Bahamas, if the Bahamian government renewed that license by December 31, 1977, Probinsky was to receive \$30,000 per year for ten years plus a four-year option to purchase 12,500 shares of Resorts Class A common stock at book value (approximately \$13.50 per share). The stock was then selling at about \$4 per share. In consideration of Probinsky's services in connection with Resorts' efforts to obtain a casino license in Atlantic City, if Resorts got its license by December 31, 1977,

Probinsky was to receive \$35,000 per year for ten years plus a four-year option to purchase an additional 12,500 shares of Resorts stock at book value. In return, Probinsky was to use his best efforts to enhance the reputation and good will of Resorts and its principals and was not to have any contact with or within the State of New Jersey until after December 31, 1977. The contract provided that neither Resorts nor Probinsky were to utter any statements privately or publicly, adverse to or critical of the other.

Two years and four months later, on November 11, 1978, Resorts and Probinsky entered into a second contract. The purposes of this contract (A-43 in evidence) were to make explicit Probinsky's obligation to cooperate in providing information to the Division of Gaming Enforcement and to resolve a dispute as to what Probinsky was entitled to under the first contract. Prior to the second contract Resorts had received a renewal of its casino license in the Bahamas. So this contract provided that he receive \$30,000 per year for the nine remaining years, plus, upon payment of the book value price, the equivalent number of shares of Resorts common stock as per the first contract. Additionally, Probinsky was given a new contingency with regard to the Atlantic City casino. Under this second contract, if Resorts obtained a plenary casino license by June 30, 1979, Probinsky was to receive \$35,000 per year for ten years plus a four-year option to purchase at book value the equivalent number of shares of Resorts stock as per the first contract.

On January 6, 1978, approximately one month after the Division of Gaming Enforcement rendered its report to this Commission and its statement of exceptions, Resorts gave Probinsky a third contract (A-44 in evidence) in an effort to assure the Division that Probinsky was not as of that time required to perform any services for Resorts and that Probinsky was not limited by Resorts in his movements or his comments. In lieu of the consideration Probinsky was to receive under the second contract for his work in the Bahamas, he now received \$400,000 plus two-thirds the amount of Resorts common stock. In lieu of the consideration Probinsky was to receive under the second contract for bringing Resorts to Atlantic City, he now was to receive \$85,000 plus the equivalent number of shares of Resorts common stock, in the event that Resorts were granted its plenary casino license in New Jersey.

A review of the evidence indicates that these contractual arrangements do not reflect adversely on the good character, honesty and integrity of James Crosby or the applicant corporation. Although the consideration flowing to Probinsky is great, it is not inordinate in light of the value of his services. It can fairly be said from this record that without Probinsky's efforts in the Bahamas in establishing the Pindling-Crosby dialogue, Resorts might very well not have had its casino license renewed. And without Probinsky's actions in bringing Crosby to

Atlantic City in April, 1976, seven months prior to the referendum, Resorts might not have been able to make the investments which enabled it to open its casino in Atlantic City. Under the circumstances presented by the evidence, it does not appear that this contingency contract was drawn to buy Probinsky's silence.

However, this type of contract is somewhat troublesome. An agreement contingent upon the granting of a casino license creates the potential incentive for inhibiting the full and complete disclosure of information to this Commission. The Commission shall give consideration as to whether it has the authority to prohibit such contracts, and if so, whether they should in the future be prohibited.

The evidence relating to exception number 16 established that I. G. Davis Jr., as President, personally maintained a "special fund" of corporate monies during the period from 1970 to 1976, from which \$26,098 was paid under his direction to provide gifts and entertainment to Bahamian government employees, primarily lower-echelon employees in the Customs Department. Of these monies, \$14,155 was properly recorded in the corporate books in its "travel", "donations" or "dues and subscriptions" accounts. However, \$11,843 was falsely recorded from 1970 to 1973 as if it was salary paid to a corporate employee and charged against the corporation's "salary and wages" account. Finally, it was established that these gifts were sometimes paid to officials out of monies borrowed by Mr. Davis or Mr. Norton from the Paradise Island Casino cage after either officer had given his "marker" for the monies to the cage cashier.

The first issue these facts raise, of course, is whether the payments were illegally made with an intent to influence the official conduct of the public employee. Mr. Davis insisted that his intent was merely to promote, in Customs Department workers, goodwill toward the company and to reward those in that government office who had handled such a large volume of goods imported by the corporation into the Bahamas.

He pointed to the relatively modest amount of money expended for this purpose over a six year period as supportive of his position. On at least three occasions, however, the funds were used to finance trips for those officials to Las Vegas, Nevada and Acapulco, Mexico which were hosted by Seymour Alter, who had been an associate of Resorts International since 1965.

A second area of concern, suggested by the method in which these corporate funds were recorded, was the fact that the true nature and character of these expenditures was concealed by false entries in its books and records. Such entries both tend to undermine the overall credibility of the records of the company and raise the suspicion that the actual expenditures may have been for other than legal purposes.

A final area to be evaluated related to the simple uncontrolled borrowing of corporate funds from the casino cage by corporate officers Davis and Norton by use of their personal "markers" to the casino cashier; a practice that would not be in compliance with the internal control requirements of this jurisdiction.

The practices engaged in by Mr. Davis and the corporation in the administration of this special fund would not be tolerated in this jurisdiction. These were practices as to which Mr. Crosby has indicated he is not proud. In the total context, however, the \$26,000 actually is a relatively modest sum when spread over the six years of its existence and the practice appears to have been discontinued in mid-1976, almost three years ago.

After considering the amount of money involved, the fact that most of the expenditures were accurately accounted for and the absence of any evidence demonstrating any corrupt intent on the part of Mr. Davis or the parent corporation, the Commission finds that these payments from the special fund were not illegally made and do not disqualify Davis, Crosby or the applicant corporation. Nor do they reflect so adversely upon the good character, honesty and integrity or financial stability, responsibility or integrity of Davis, Crosby or the applicant corporation as to warrant a finding that the applicant has failed to satisfy its burden of establishing these criteria.

In exception number 16 the parent corporation was criticized for its more than thirteen year association with Seymour Alter (who was born in New York in 1921). Evidence presented suggested that in mid-1962 while operating a retail liquor store in Manhattan's upper east side Mr. Alter conspired to pay a bribe of \$10,000 or more to a government official to improperly expunge certain fair-trade price and credit sale violations then about to be lodged by the New York State Liquor Authority against his store's retail liquor license. In April 1963, in exchange for his testimony before a New York County Grand Jury, Mr. Alter was granted immunity. In 1964, the government official who apparently was to receive the bribe pleaded guilty to the indictment.

Further evidence suggested that in a 1969 or 1970 "goodwill" trip financed by the corporation to Las Vegas for certain lower-echelon Bahamian customs officials, Mr. Alter assisted in procuring girls for his guests although they apparently were not paid for with corporate funds.

Prior to Resorts International's acquisition of Paradise Island in January of 1966, Mr. Alter had been a personal employee of Huntington Hartford, from whom Paradise Island was purchased. Mr. Alter stayed on as an associate of Resorts International and, among other things, operated the Paradise Island Bridge Company, Ltd. which is privately owned by Mr. Crosby.

Recently, Mr. Alter has been employed by Resorts International Hotel, Inc. as its Director of Retail Stores in its Atlantic City Casino Hotel and as having some responsibility for the interviewing of cocktail waitresses to be employed at that hotel. At the time of the hearing he also was half owner, together with I. G. Davis Jr., of the gift shop in the hotel lobby. However, the evidence further established that Mr. Alter was suspended from his employment with the applicant without pay in December, 1978 and intended to close on the sale of the hotel gift shop by April 1, 1979. As a pending applicant for a casino employee license, Mr. Alter's qualifications will be separately considered by the Commission when the Division of Gaming Enforcement's final report is submitted on that application. Counsel for the corporate

applicant has represented that Mr. Alter will have absolutely no association with Resorts International unless and until he is granted such an employee license. In light of his present status, Mr. Alter would not appear to be a person who must himself be qualified for this casino license to issue. His past association with Resorts International would not appear to have been such as would serve as a basis for its present disqualification.

Exception number 12 relates to the accounting and internal control system used at the Paradise Island Casino. The Division's report asserted that several significant deficiencies were found to exist in the system when Division investigators reviewed the casino operation in February and August, 1978. The Division contended that these alleged deficiencies reflected adversely not only on the casino experience and business ability of Resorts International but also on the motives of the company. The Division claimed that this conclusion was bolstered by the existence of an unsigned memorandum dated June 23, 1970, which was discovered in Intertel's files and which commented that deficiencies in the marker procedures create a "wide open area for theft." A subsequent memo from Fen Richards dated November 2, 1970 to Robert Peloquin, with copies to Messrs. Davis, Norton. Rice and Gore, noted an apparent weakness in marker control due to failure to maintain numerical sequence records. According to the Division, Resorts made no effort to respond to this

criticism and, as of the last Division inspection, the Paradise Island casino continued to employ the same marker procedure.

One of the affirmative qualification criteria to be established by the applicant is sufficient business ability and casino experience to demonstrate the likelihood of a "successful, efficient casino operation." The concern under this standard is, of course, the applicant's ability to create and maintain such a casino operation in Atlantic City and, in particular, to conform to the strict New Jersey system of internal and accounting controls. This applicant has now operated casinos both in New Jersey and in the Bahamas. While both operations are relevant to assessing the applicant's ability to properly, efficiently and securely operate a casino, the applicant's experience during the past nine months while operating in Atlantic City under the Commission's regulations must be the primary factor in assessing its ability to operate under the New Jersey scheme in the future. The applicant's New Jersey casino experience will be discussed in relation to the next exception. The point here is that the quality of the Bahamian operation is far less significant and that evaluation of that operation must take into account the governmental controls and regulations in effect there.

During the hearing, Raymond M. Gore, Senior Vice President of Resorts International, Inc. and its chief financial officer, testified regarding the internal and accounting controls

in the Paradise Island casino. Mr. Gore was questioned as to each of the alleged deficiencies in the controls. He responded that the controls were in full accord with Bahamian law and that, in his experience, they were adequate to meet the needs of the Paradise Island Casino, a much smaller casino than the Atlantic City operation. Specifically, Mr. Gore addressed the questions raised about the marker controls. He testified that due to the size of the casino, any effort to substitute false markers or to withhold a marker would be easily spotted by supervisory personnel. Moreover, Mr. Gore disclosed that in ten years of operation, the casino has never had missing markers or discrepancies in the markers. Notwithstanding his position that the existing controls were satisfactory for the Paradise Island Casino, Mr. Gore stated that the recommendation of the Division would be implemented.

Mr. Gore's assertion that the previous controls were generally adequate is supported by other evidence in the record. Mr. Lincoln Hercules, chief security officer of the Paradise Island Casino, related that on February 8, 1978, several investigators from the Division of Gaming Enforcement appeared without notice at the casino and requested to audit the cage. Although it violated Bahamian regulations for unauthorized individuals to enter the cage, the Division investigators were admitted. The result of the audit was that the cage assets balanced to within a few hundred dollars which the Division indicated was quite satisfactory. Additional

support for the general adequacy of the controls appears in the November 1, 1978 report on the casino controls proposed by Laventhol & Horwath. That report states that, while improvements in certain areas would provide more effective control, the "study of the system did not disclose any evidence of theft, fraud, significant error or other irregularities."

Based on the record, especially the testimony of Messrs. Gore and Hercules, any deficiencies in the Paradise Island casino controls when considered in the context of the Bahamian gaming rules, do not indicate any lack of business or management ability by Resorts International, Inc. It should be further noted that, although Resorts has never been cited for a violation of Bahamian gaming law, it has begun moving toward implementation of the Division recommendations. As to the allegation that the operations in Paradise Island reflect adversely on the motives of the company, there is simply no evidence to support that claim. The existence of the unsigned June 23, 1970 memorandum which indicated that marker procedures were "wide open for theft" hardly evinces an attitude or motive to purposely retain lax controls for improper purposes. So, too, the November 2, 1970 memorandum from Fen Richards to various key Resorts personnel is not consistent with a motive to exploit the very inadequacy which was confessed in the memorandum. In sum the system of internal

and accounting controls utilized by the Paradise Island casino were undoubtedly less than perfect. However, they were not so significant under all the circumstances as to cast serious doubt on the motives or management ability of Resorts International, Inc.

The report prepared by the Commission staff's Division of Financial Evaluation & Control, C-1 in evidence, reviewed and analyzed the operation of the applicant's Atlantic City casino and, especially its compliance with accounting and internal control regulations. The applicant's New Jersey casino operations are directly relevant to two of the affirmative qualification criteria in section 84 of the Act. First, the applicant's ability to operate within an approved system of security and management controls reflects upon its "financial responsibility", that is, its care and prudence in the protection, conservation and enhancement of assets. Second, the applicant's performance during the period of the temporary casino permit is perhaps the best indication of whether the applicant possesses "sufficient business ability and casino experience" to assure a "successful, efficient casino operation."

The staff report indicated that, when the casino opened on May 26, 1978, the operation failed to comply with several areas of the internal and accounting control regulations. These early deviations were the result of three factors: (1) the unexpectedly large crowds which descended upon the casino;

(2) the inability of the applicant to utilize many trained employees because they had not yet been licensed; and (3) a lack of adequate instruction of existing employees regarding the regulations. Problems caused by initial understaffing were most severe in the slot change booths, count rooms and cashiers' cage. This understaffing required use of management officers, Intertel personnel and licensed dealers to assist in these areas. As a result, the dealers were pressed into service for nine or ten hours a day, seven days a week, a condition which further hindered compliance.

Significant movement toward full compliance began in mid-July, 1978. Several factors contributed to this improvement. On July 12, 1978, the Commission, recognizing the congestion and overcrowding in the casino, permitted expansion of the casino floor space from 33, 735 square feet to 54, 768 square feet. The expanded casino area helped to alleviate much of the pressure on the slot booths and an increase in the size of the cashiers' cage. Licensing of additional casino employees also began to have its effect. The situation was further aided by the appointment of David Belisle as Inspector General by I. G. Davis and by an increase in the number of Commission inspectors to monitor internal controls on the casino floor. Mr. Belisle's appointment was soon followed by a precipitous decline in the number of patron complaints due to implementation of more effective controls and grievance procedures.

A statistical analysis of the c
filed by the Commission inspectors and
members of the Division of Financial Ev
demonstrated that the applicant has ste
operation. For the first three weeks o
inspectors reported 37 alleged deviation
only eight separate internal and account
Although the report noted the existence
problems, it is fair to state that as of
the casino was in virtually full compliar
This conclusion is bolstered by the repor
& Co., dated January 5, 1979, and the rep
Horwath, dated December 13, 1978. Althou
noted areas for improvement, Price Wa. h
cant's control system to be "generally ade
& Horwath concluded that the "system follo
practices found in other well-controlled o

While the applicant has been adjud
of several regulations, those complaints r
part to the first few weeks of operation w
associated with the start-up of the casino
complex regulations were most severe. In
has demonstrated its ability to properly o
conformance with the strict New Jersey reg

The Commission staff report, prepared by the Division of Financial Evaluation & Control, also dealt with the financial qualifications of the applicant and its holding company. That report, Item C-1 in evidence, addressed among other things, the financial stability of these corporate entities. There appears to be no dispute regarding satisfaction of the financial stability qualification criterion; the Commission has reviewed the staff report and is satisfied that its conclusions are well founded.

The report analyzed the 1978 operations of the applicant through October 1, 1978 and also reviewed the interim report of the Division of Gaming Enforcement on the operations of the holding company for the five-year period ending in December, 1977. In addition, the supplemental portion of the report assessed predicted financial stability based on projections for the next three years, prepared and submitted by the applicant.

In brief, the data collected in the staff report indicated that, prior to 1978, the parent corporation had performed in a manner comparable to other companies and that it possessed an acceptable degree of solvency and liquidity. The commencement of casino operations by the applicant had such a material impact on the parent corporation that analysis of the applicant's operations are sufficient to indicate the current financial strength of both applicant and parent corporation. Basically, the applicant's operations have been enormously successful. In fact, it is expected that after a full year of operation, the casino would be the most productive in the world. The

applicant has exhibited a very high degree of short-term profitability and a strong short-term solvency. As to the future, it appears that, based on the rather conservative projections submitted by the applicant, there will be little difficulty for the applicant to undertake its planned expansion and additional investments in Atlantic City, despite the entry of competitor casinos over the next few years.

With respect to the future operations of the applicant and their effects on the Atlantic City economy, the applicant presented Mr. Frederick O'Reilly Hayes, a university professor of Public Management, who has served as a consultant to several federal and state agencies and who was formerly Director of the Budget for New York City. Mr. Hayes undertook an examination of the economic impact of the applicant's activities in Atlantic City and prepared a detailed report which has been admitted as A-233 in evidence. Mr. Hayes testified at the hearing that the unemployment rate for Atlantic City decreased from 14.3% to 8-1/2% from November, 1977 to November, 1978. This drop occurred despite a significant migration into the area of persons attracted by employment opportunities. Similarly, Mr. Hayes pointed out that other signs of economic resurgence existed such as a large increase in hotel rooms and alcoholic beverage sales throughout the city following a steady decline since 1968. Much of the increased hotel business came during the off-season months, portending more year-round visitors. The

effect on the construction industry has also been dramatic. According to Mr. Hayes, the local economy is now in the twenty-first month of its recovery and Mr. Hayes attributed that recovery "almost entirely" to the applicant's resourcefulness and willingness to begin investing in Atlantic City.

Exception number fifteen concerns the initial refusal of the Bank of Commerce, located in New York City and the Bank of Nova Scotia, located in the Bahamas, to grant the Division of Gaming Enforcement access to all credit and correspondence files relating to Resorts International, Inc. and its subsidiaries. The Bank of Commerce had a \$2,000,000 participation in an \$11,000,000 loan made by the First National State Bank of New Jersey to finance the applicant's Atlantic City operations. The Bank of Nova Scotia loaned a total of almost \$15,000,000 to Bahamian subsidiaries of Resorts International, Inc., the proceeds of which were advanced to the applicant to finance the Atlantic City project.

In its December 4, 1978 report to the Commission, the Division indicated that its investigation of the internal sources of funds had not revealed any undisclosed or undesirable sources of financing for the Atlantic City operations. With regard to the external debt financing for Atlantic City, the Division stated that its investigation had not discovered any undisclosed parties, guarantees, collateral, compensating balances or finders' fees in the financing transaction. At the hearing,

there was not one scintilla of evidence presented to suggest that any of the financing for Resorts' Atlantic City operation was tainted.

In the final analysis, there can be little question but that the Division was provided the information necessary to complete its investigation here. All of the requested affidavits were supplied. The Bank of Commerce did provide access to the correspondence and credit files with regard to the \$2,000,000 loan to Resorts for the Atlantic City project. Russell L. Weiss, President of the Bank of Commerce, answered all questions of the Division investigators concerning the requested information. Division Investigator James M. King testified that he believed that Resorts had exercised all reasonable efforts to obtain cooperation from the banks. In light of these circumstances, the Commission finds nothing which reflects adversely upon the financial integrity of the applicant corporation.

Based upon the testimony presented and upon the report entitled Affirmative Action at Resorts International (A-23 in evidence), the Commission finds that the applicant corporation has formulated for Commission approval and abided by an affirmative action program providing for equal employment opportunity. According to the evidence at the time of the hearing, Resorts International Hotel, Inc. employed 3,431 persons including 1,545 female employees, which is 45% of the total and 737 minority employees, which is 21.5% of the total. These figures exceeded

the goals established by Commission regulation. The construction workforce has also been in compliance. Significant progress has been achieved in the advancement of female and minority employees toward the upper end of the job scale. This has been made possible largely by the successful recruitment efforts for Resorts International Dealers School and by the upward mobility program whereby training for the professional positions within the casino has been provided. Additionally, Resorts created a scholarship program whereby twenty-two needy area residents were provided the funds to attend other gaming schools licensed by this Commission. Resorts has also implemented an employee discrimination grievance procedure to assure the fair treatment of employees. In this area Resorts is to be commended.

As previously indicated in the preliminary comments on the statutory standards for casino licensure, Sections 85(c) and (d) of the Act require the qualification of officers, directors, lenders, underwriters, agents and certain employees and securities holders of the applicant corporation and its holding company. The Division of Gaming Enforcement has informed the Commission that it believes there are twenty-three individuals who must be qualified pursuant to the foregoing sections. The Division has further suggested that no other shareholders and lenders, underwriters, and agents should be required to be qualified. The Commission accepted the Division's recommendation as to those individuals who must be qualified.

Turning next to the twenty-three individual qualifiers, it should be noted that this opinion has previously dwelt at length with three of them -- James M. Crosby, I.G. Davis, Jr., and Robert D. Peloquin. The Commission finds them to be qualified. There is no need to repeat here the findings regarding these three. In addition to these three individuals, six of the twenty-three qualifiers are individuals whom the Commission has already licensed. The Division did not object to them. They were:

1. Edward H. Jordan, who is vice-president and resident manager of the applicant;
2. George K. Herdman, who is vice-president of sales and marketing for the applicant;
3. Raymond Palmer, who is assistant secretary and comptroller of the applicant;
4. Edward B. Michael, who is vice-president of finance for the applicant;
5. Richard V. Barbato, who is vice-president for personnel of the applicant; and,
6. Tibor Rudas, who is the director of entertainment for the applicant.

There was another group of four individual qualifiers to whom the Division interposed no objection:

1. Anthony M. Rey - Mr. Rey is president and managing director of the applicant. Prior thereto, he had long-term associations with the Leeds & Lippencott Company, and the Hotel Astor and Waldorf Astoria Hotel in New York City.

2. Edward M. Mullin - Mr. Mullin has been employed by Intertel since 1971 and is director of surveillance for the

applicant. Prior to 1971, he held several high level law enforcement positions with the federal government.

3. Phillip R. Smith - Mr. Smith has been employed by Intertel since April, 1977 and is director of security for the applicant corporation. Prior to 1977, Mr. Smith was employed for many years as a supervisory criminal investigator for the Federal Drug Enforcement Administration.

4. Elaine Murphy - Mrs. Murphy is a housewife and is married to Henry B. Murphy, who is secretary and director of the holding company. She, along with her husband, have substantial stock holdings in that company.

There was another group of nine individuals with regard to which the Division did object based solely on matters contained in the Division's report. They were:

1. David G. Bowden - Mr. Bowden has been employed by the holding company since 1969 and presently serves as assistant to the senior vice president. From 1964 to 1969, Mr. Bowden worked as a senior auditor with Price Waterhouse & Company.

2. David F. Edwards - Mr. Edwards is a practicing attorney and is a director and assistant secretary of the holding company. He has held the latter position since 1961.

3. John C. Miller - Since 1967, Mr. Miller, a Florida resident, has been a director of the holding company and is a substantial shareholder in such company.

4. William M. Crosby - Mr. Crosby, a Florida resident, has been a vice president and director of the holding

company since 1959. In addition, Mr. Crosby is a substantial shareholder in the holding company.

5. John F. Crosby - Mr. Crosby is a practicing physician in Alabama and since 1960, he has been vice chairman of the board and director of the holding company. He is also a substantial shareholder of the holding company's stock.

6. Charles L. Rice - Since 1967, Mr. Rice, a Florida resident, has been employed by the holding company as vice president, controller, treasurer and assistant secretary. He also serves in these capacities to the various subsidiaries of the holding company. From 1960 to 1967, Mr. Rice was employed by the holding company in lesser positions. He, too, is a substantial shareholder of the holding company.

7. Henry B. Murphy - Mr. Murphy, a licensed funeral director in New Jersey, has been secretary and a member of the Board of Directors of the holding company since 1958. He is vice chairman of the Trenton Parking Authority and treasurer of the Trenton Mercer County Memorial Building Commission. From 1962 to 1970, Mr. Murphy served as a councilman and a member of the Central Planning Board for the City of Trenton. He is a substantial stockholder of the holding company.

8. H. Steven Norton - Mr. Norton has served as a vice president of the holding company since 1971. From 1967 to 1971, he served as vice president and treasurer of Paradise Island, Ltd. Prior thereto, he worked as a hotel manager for several other hotels in the Bahamas and in Virginia. Mr. Norton

also serves on the Board of Directors of various subsidiaries of the holding company. He and his wife own a significant amount of Resorts stock.

9. Raymond M. Gore - Mr. Gore of Florida has been associated with the holding company since 1968. He serves as a senior vice president of the holding company and the applicant corporation and is also a director of the applicant. Mr. Gore owns a significant amount of stock of the holding company. In light of the findings of fact with regard to the applicant, there is no reason to question the qualifications of any of these individuals.

The last qualifier was Walter I. Rogers. The Division objected to Mr. Rogers because of his association with the holding company and because of Casino Control Commission Complaint number 78-25 filed against Mr. Rogers alleging violations of casino regulations. Mr. Rogers is employed by the applicant as executive vice president of casino operations. Prior to coming to Atlantic City, he worked as casino manager for the holding company in the Bahamas at the Paradise Island casino. He also worked in the gaming industry in Las Vegas and Lake Tahoe.

With regard to the allegations contained in complaint 78-25, it should be noted that they were adjudicated by the Commission in January, 1979 and that Mr. Rogers was exonerated of the charge that he offered materially misleading misrepresentations to the Commission on July 12, 1978 regarding the slot booth

operation in Resorts. However, he was assessed a civil penalty of \$2,000 for violating a Commission regulation by participating in the count of slot booth currency and a letter of censure was made a part of his permanent file because of his improper directing of wage increases for casino cage employees. While these violations which occurred during the early weeks of the casino operation are significant, they do not call for the harsh sanction of disqualification of Mr. Rogers at the present time.

As part of its investigation of the present matter, the Division submitted two reports on International Intelligence, Inc., also known as Intertel. One of the reports concerned itself with Intertel as a subsidiary of the applicant while the second one dealt with it as an applicant for a casino service industry license. The substance of these reports reveals that the Division conducted a thorough investigation of Intertel and objected to its licensure based solely upon the information submitted in its report on the casino applicant. The Division's investigation did not uncover any additional derogatory information concerning this entity.

Intertel is a Delaware corporation which was formed in 1970. Essentially, it is a security consulting organization. It supervises all aspects of security controls at the Resorts casino in Atlantic City and at the Paradise Island casino.

The main office of Intertel is in Washington, D.C., but it has satellite offices in other U.S. cities as well as in Canada, the Bahamas and England.

Until recently, Resorts International, Inc. owned 86.1% of Intertel's stock. Resorts International, Inc., however, has made an offer to purchase the outstanding stock of Intertel to make it a wholly owned subsidiary. Robert Peloquin has agreed to sell his Intertel stock to Resorts. He testified that currently Resorts owns approximately 97% of Intertel's stock.

Exhibits A-215 and A-216 clearly show the organizational structure in general as well as its Atlantic City make-up.

Mr. Robert Peloquin has been associated with Intertel as its President since its inception. In light of the fact that Mr. Peloquin has been found to be qualified and in light of the findings with regard to Resorts as set forth above, Intertel is qualified pursuant to the criteria of the Casino Control Act.

CONCLUSION

-83-

The Division investigated this corporate applicant and its affiliated companies for nearly a full year. After this comprehensive and in-depth investigation, with the exception of the four (4) witnesses called by the Division -- three (3) of whom were Division investigators -- virtually all of the evidence presented before this Commission at the hearing came from the records, files and employees of the applicant itself. In light of the time and effort devoted to this case, it must be presumed that there simply was no other evidence adverse to licensure to present and no other facts which might bear adversely upon the applicant's fitness for licensure to be established.

In light of the Division's position the true import of the often mentioned statement of Exceptions may be ascertained. The Division's Statement of Exceptions assisted the Commission by synthesizing and enumerating those factual matters which the Division deemed most pertinent to the Commission's inquiry. However, in order that this matter be viewed in its proper perspective, it must be kept in mind that those exceptions designated only the areas which, in the Division's opinion, raised questions as to the qualification or disqualification of the Applicant or other persons who must be found suitable. This negative emphasis, while necessary, tended to obscure the fact that the applicant provided the Division and the Commission with voluminous information which was not challenged and which supported the positive attributes of the applicant and the

various persons required to be qualified. As a practical matter, the hearing focused almost entirely on the negative assertions contained in the exceptions. Nevertheless, the Commission has not taken a myopic view of the evidence. It bears repeating that following an exhaustive investigation the only areas of concern to the Division were those which were so extensively litigated at the hearing. In assessing these areas and their impact, if any, on the suitability of this applicant, the Commission must abide by the letter and spirit of the Casino Control Act. However, lest a distorted picture result, one should be mindful that the Division's investigation did not reveal any other questionable areas.

Viewing each of the seventeen (17) exceptions noted by the Division separately, the Commission has found no facts which suggest that this applicant is not qualified for licensure. Now viewing all of the exceptions collectively, the Commission is of a like opinion. While some of the practices engaged in by the applicant in the past and in another jurisdiction might not pass muster in this jurisdiction under the strict regulatory system established under our statute and regulations, the circumstances of prevailing law, custom and environment must be considered in placing such practices in their proper perspective.

In the final analysis, three (3) factors are the keys to this case:

First, there is absolutely no evidence of present organized criminal involvement in the applicant corporation or its parent; Second, all of the sources of funding for the Atlantic City operations of the applicant have been cleared as to integrity; and, Third, with the experience gained during the past nine months of operation, the applicant is now running a well-controlled casino.

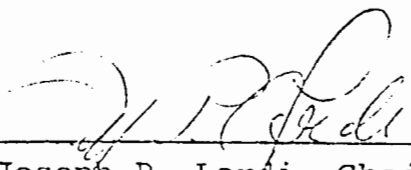
After all of the evidence had been presented at the hearing, the Division conceded these key points. In response to questions from Commissioner MacDonald, the Division stated that, based on the evidence in the record, the Division did not assert that there was any present connection between Messrs. Crosby, Davis and Peloquin and organized crime. (T8088-11 to 17)*. The Division also indicated that, based on the evidence in the record, the Division did not assert that there was any impropriety in the financing of the Atlantic City investments of the corporate applicant or its parent corporation. (T8089-14 to 20). And finally, with regard to the present operation of the applicant's Atlantic City casino, the Division represented that the internal controls had improved to the point where they were adequate, in the Division's opinion. (T8090-3 to 1)

In light of these facts and in light of all of the facts and conclusions which have been found, the Commission is

* "T" refers to the transcript of the hearing in this matter conducted from January 8, 1979 to February 26, 1979.

satisfied that the applicant, Resorts International Hotel, Inc., has established by clear and convincing evidence its financial stability, integrity and responsibility; the integrity and reputation of its financial backers; its good reputation for honesty and integrity; and its business ability and casino experience, so as to qualify it for a casino license.

NEW JERSEY CASINO CONTROL COMMISSION

By: 

Joseph P. Lordi, Chairman

Date: _____

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-21

STATE OF NEW JERSEY,	:	
Department of Law and Public	:	
Safety, Division of Gaming	:	
Enforcement,	:	
Petitioner,	:	
v.	:	<u>FINAL ORDER</u>
RESORTS INTERNATIONAL HOTEL,	:	
INC.,	:	
Respondent.	:	

This matter having been brought before the New Jersey Casino Control Commission upon the Petition for Declaratory Judgment and Appropriate Relief filed by the New Jersey Division of Gaming Enforcement on July 7, 1978, whereupon a hearing was held on July 25, 1978, before Hearing Examiner Michael A. Santaniello, whose Report and Recommendation dated December 1, 1978, was considered and adopted by the Casino Control Commission at its public meeting of January 3, 1979, as evidenced by a Casino Control Commission Order entered on March 12, 1979, which Report and Recommendation directed that further proceedings be conducted by the Hearing Examiner to determine the amount and proper disposition of a fund identified therein as resulting from the failure of certain slot machines owned and operated by Respondent Resorts International Hotel, Inc. to comply with the provisions of the Casino Control Act and the Casino Control

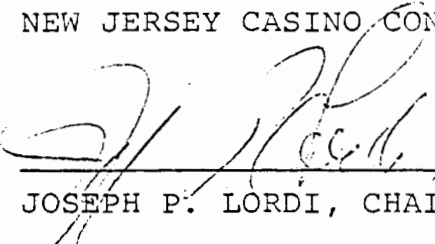
Commission's Regulations (N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e)); and

Whereupon such additional proceedings were conducted by said Hearing Examiner resulting in a Report and Recommendation dated September 18, 1979, and the Casino Control Commission having read and considered said Report and Recommendation, and the exceptions or objections thereto filed by the Respondent, and no exceptions or objections having been filed with the Casino Control Commission by the Division of Gaming Enforcement, and the Casino Control Commission having resolved at its public meeting of October 3, 1979, to adopt the Hearing Examiner's Report and Recommendation dated September 18, 1979, as modified herein, it is therefore on this 22nd day of October, 1979,

ORDERED that the Report and Recommendation of the Hearing Examiner in this matter dated September 18, 1979, be and hereby is adopted by the Casino Control Commission with the following modifications: the Respondent shall provide restitution in this matter by paying the following amount on October 24, 1979, to the Casino Revenue Fund created by section 145 of the Casino Control Act (N.J.S.A. 5:12-145): \$319,392.00, which amount represents the sum of the "excess monies" identified in said Report and Recommendation (\$315,857.00), as increased by \$28,804.00 in interest on these "excess monies" as calculated in Schedule "A" which is attached hereto and incorporated herein, and reduced by a set-off of \$25,269.00, as calculated in Schedule "A," which is equivalent to the 8% gross revenue tax previously paid on these "excess monies" by the Respondent; and

It is further ORDERED that a copy of this Order be served on the parties within two (2) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI, CHAIRMAN

Dated: 10/22/79

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-21

SCHEDULE "A"

RESORTS INTERNATIONAL HOTEL, INC.

EXCESS SLOT WIN WITH INTEREST*

SUMMARY - 1978

	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>Total</u>
Total Excess Win	\$21,428	\$82,999	\$112,844	\$98,586	\$315,857
Less: Credit Allowed for 8% Gross Revenue Tax Paid on Excess Slot Win	<u>(1,714)</u>	<u>(6,640)</u>	<u>(9,028)</u>	<u>(7,887)</u>	<u>(25,269)</u>
Sub-Total	19,714	76,359	103,816	90,699	290,588
Plus: 8% Interest Charged (From 6/1/78 to 10/24/79) on					
Sub-Total	<u>2,206</u>	<u>8,044</u>	<u>10,231</u>	<u>8,323</u>	<u>28,804</u>
 TOTAL AMOUNT DUE	 <u>\$21,920</u>	 <u>\$84,403</u>	 <u>\$114,047</u>	 <u>\$99,022</u>	 <u>\$319,392</u>

* The 8% simple interest rate charged on the excess win per month is based upon the "legal rate" of interest utilized in civil judgments as provided in R.4:42-11(a) of the New Jersey Court Rules. The 8% interest charged on the excess win per month was calculated on the total excess win less a credit equivalent to the 8% gross revenue tax previously paid in the month the tax was filed with the Commission. Interest charges have been calculated from the end of each respective month beginning May, 1978, to October 24, 1979.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 78-21

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

Petitioner,)

v.)

RESORTS INTERNATIONAL HOTEL,)
INC.,)

Respondent.)

REPORT AND RECOMMENDATION
OF HEARING OFFICER

GUY S. MICHAEL, Deputy Attorney General
appearing for Petitioner, Division of
Gaming Enforcement

JOEL H. STERNS, ESQ.
From the Firm of Sterns, Herbert and
Weinroth, appearing for Respondent,
Resorts International Hotel, Inc.

On July 7, 1978, the New Jersey Division of Gaming Enforcement filed with the Commission a "Petition for Declaratory Judgment and Appropriate Relief" seeking an interpretation of the "83% payout requirement" set forth in N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e). Section 100 of the Casino Control Act provides in pertinent part that

"each slot machine shall have a minimum payout of 83%."

Likewise, section 19:45-1.36(e) of the Commission regulations provides that "the casino licensee shall set each slot machine to pay out, at a minimum, 83% of the amount of coins placed by patrons into the slot machine..."

In its Petition, the Division sought an interpretation of these provisions as they applied to two specific slot machine models on the casino floor of Resorts International Hotel, Inc. They were the Bally 956-16 slot machine manufactured by Bally Manufacturing Company and the Jennings 1100-051-103 slot machine manufactured by TJM, Inc. Both the Bally and Jennings machines offer to the player the opportunity of placing from 1 to 5 coins into the machine for each handle pull. The theoretical payout percentages for each machine, however, varied with the number of coins placed into the machine. At the time the Division filed its Petition, the payout percentages for wagers of between one and four coins were below 83%; whereas the payout percentages for a five-coin wager was in excess of 83%. The question, therefore, presented by the Division's Petition was how should compliance with the "83% payout requirement" be determined. Was compliance achieved if only one type of wager had an 83% payout percentage, or if the average payout percentage for the machine were at least 83 percent, or only if each type of wager individually had a theoretical payout percentage of at least 83%?

Following a review of the hearing transcript of July 25, 1978, and the briefs subsequently filed, a Hearing Officer's Report and Recommendation on this issue, dated December 1, 1978, was submitted to the Commission. After analyzing the possible interpretations of the "83% payout requirement," the Report recommended that compliance with this requirement necessitated "a theoretical payout percentage of at least 83% on each type of wager offered by the machine" and that the two slot machine models in question should be found not to have been in compliance as of, at least, the date of the hearing. The Report also recommended that the Commission undertake further proceedings to determine whether any action should be taken "with respect to any excess monies Respondent may have received as a result of these slot machines not complying with the 83% requirement." This Report was adopted and approved, in its entirety, by the Commission at its meeting of December 28, 1978.

Due to the involvement of both parties in the licensing hearings of Resorts International which took place in early of 1979, further action in this case was deferred until March of 1979. At that time, the Hearing Officer requested both parties to submit memoranda of law on the one outstanding issue regarding what action, if any, should be taken with respect to any excess monies Respondent may have received as a result of the slot machines in question not complying with the 83% payout requirement. In response to

that request, memoranda of law were filed by Resorts International on May 1, 1979, and by the Division of Gaming Enforcement on May 23, 1979.

In its Memorandum of Law, Resorts International takes the position that no action should be taken with respect to the "excess monies" at issue. It argues that the Commission's December 28, 1978, decision interpreting the "83% payout requirement" was of a rule-making nature and, as such, its decision should be applied prospectively. If viewed as a quasi-judicial decision, it contends that retrospective application would be inequitable and impractical under the circumstances of this case and argues that the Commission should exercise its discretion to apply the decision prospectively only. In support of its contention that retrospective application would be inequitable, Resorts contends that it relied on the traditional interpretation of "payout percentage" as utilized in the slot machine industry, on the representations of manufacturers of the machines and on the Division's silence when the machines were given provisional approval. It also contends retrospective application would be impractical because of the impossibility of determining whether there are any excess monies and identifying the patrons to whom the monies should be returned.

The position taken by the Division of Gaming Enforcement on this issue is similar to that propounded by Resorts International. After emphasizing the general rule that

judicial decisions should be applied retroactively, the Division contends that the Commission should exercise its discretion to apply this decision prospectively only. It argues that public interest has already been served adequately by the Commission's decision in this case. The machines have been modified to comply with this requirement, and all casino operators and future operators have been made aware of the proper payout allocation. In further support of prospective application, it points to the previous ambiguity of the "83% payout requirement" and to the difficulty in calculating the amount of any excess monies.

The Commission's decision of December 28, 1978, which construed the "83% payout requirement" contained in the Casino Control Act and the Commission regulations, was clearly of a quasi-judicial nature. In that decision, the Commission did not promulgate a new requirement, but simply took an existing statutory and regulatory requirement and discerned its meaning when applied to a given fact situation. The construction of statutory or regulatory provisions in the context of a given fact situation is one of the most traditional of judicial functions.

Although a change in the settled law by statute is generally prospective only, Fox v. Snow, 6 N.J. 12, 14 (1950), just the opposite holds true for judicial decisions in civil cases. In such cases, the prevailing view is that

a change of the established law by judicial decision is retrospective. Busik v. Levine, 63 N.J. 351, 360-61 (1973); Johnson v. State, 18 N.J. 434, 428-29 (1955); Fox v. Snow, supra; Oxford Consumer Dis. Co. of N. Phila. v. Stefanelli, 104 N.J. Super. 512, 520-21 (App. Div. 1969); Jersey Central P. & L. Co. v. Morris County Land et al., 91 N.J. Super 40, 49 (App. Div. 1966); In re Kloppenberg, 82 N.J. Super. 117, 119 (App. Div. 1964); Pabon v. Hackensack Auto Sales, Inc., 63 N.J. Super. 476, 485 (App. Div. 1960). As expressed by the Appellate Division in State v. Murphy, 85 N.J. Super. 391, 402 (App. Div. 1964),

"The general rule in civil cases is that a change in law by judicial decision is retrospective in nature and makes the law as it is declared in the last decision applicable to all transactions that can be reached by it. /Citation Omitted/ Such retrospective operation of a decision in civil cases 'does not reach transactions where contract or property rights have vested or where extreme hardship would result.'"

Under this rule, "courts may treat overruled cases and/or statutes as if they had never been and thus give the new decision retroactive effect." Inganamort v. Fort Lee, 131 N.J. Super. 558, 566 (Ch. Div. 1974). In applying this rule, however, the courts have recognized their authority to confine "the effect of a decision of first impression or of novel or unexpected impact to prospective application if considerations of fairness and justice, related to reasonable surprise and prejudice to those affected, seemed to call for such treatment." Oxford Consumer Dis. Co. of N. Phila. v. Stefanelli, supra, at 520.

Contrary to the positions taken by both parties, there seems to be no significant reason for deviating from the general rule of retroactivity in this case. Initially, it is to be noted that Resorts International does not attempt to bring itself within the exception to the general rule by showing that retrospective application would divest them of contract or property rights or impose upon them extreme hardship. Instead, they contend that prospective application is appropriate because they relied on the industry meaning of "payout percentage," on the representations of slot manufacturers that the machines did comply with the "83% payout requirement," and on the Division's silence when the machines were provisionally approved. Assuming, without deciding, that such reliance was proper, Resorts does not show what detriment or undue hardship resulted from such reliance or would result from retroactive application of the Commission's decision.

A review of the facts of this case reveals that, by placing reliance, as it did, on the actions or inactions of others, Resorts suffered no undue hardship or prejudice. Quite the contrary, the only significant effect of such reliance was to provide Resorts with an unwarranted benefit. That benefit accrued by having machines with payout percentages below that required thereby increasing the money obtained by Resorts from patrons playing those machines. There is no

indication that Resorts provided anything additional to patrons in return for that increase or suffered any other loss or deprivation.

Similarly, retrospective application of the Commission's decision would produce no undue hardship or significant prejudice. The only result would be that Resorts would not be able to retain the extra monies it gained as a result of its slot machines not being in compliance with the 83% requirement. There is no allegation, nor could there be, that this would seriously impair the financial stability of Resorts or cause any other catastrophic results.

Resorts further argues that retroactive application is impractical because of the impossibility of calculating any excess monies and identifying patrons to whom the monies should be returned. But these reasons go to the type of remedy to be devised and not to whether the Commission's decision should be applied retrospectively. The fact that difficulty exists in ascertaining the precise amount in question and the remedy to be fashioned does not justify permitting Resorts to retain the unwarranted benefit derived from non-compliance with the 83% requirement.

Furthermore, the difficulty of calculating the amount of excess monies involved is to a significant degree the result of a dereliction of responsibility by Resorts International. In describing the impracticality of calculating the monies involved, Resorts states that "there is no

record of the actual experience of these specific machines for the relevant period." By virtue of the regulations adopted by the Commission, however, Resorts was under an obligation to prepare and maintain such records. N.J.A.C. 19:45-1.2(c)(6) specifically requires a casino licensee to maintain:

"Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages, and differences between theoretical and actual win amounts and percentages, for each slot machine on a week-to-date, month-to-date, and year-to-date basis."

Since Resorts was required by regulation to maintain these records, it certainly cannot now use the results of its non-compliance as a defense in this proceeding.

Having concluded that no substantial reason exists for deviating from the general rule of retrospective application, the next issue to be decided is the amount of monies involved and the remedy to be employed. Resorts International first opened its slot machines for active play on May 24, 1978. On August 28, 1978, Resorts, by letter, asked permission to voluntarily change the payout percentages on its Jennings 1100-051-103 slot machines and its Bally 956-16 slot machines so that each type of wager would have a theoretical payout percentage of at least 83%. Written permission for this change came from the Commission offices by letter of August 28, 1978. By approximately September 1, 1978, the payout percentages on each machine in question had been modified. Therefore, the payout percentages on these machines were under 83% for

the period from May 24, 1978, to approximately September 1, 1978. During this period, Resorts had on its casino floor 50 Jennings machines and approximately 318 Bally machines that did not meet the "83% payout requirement."

Since Resorts did not maintain the records required by regulation for each individual machine, the calculation of excess monies must be discerned from the information available. The Jennings slot machines comprise most, if not all, the revenue reported on the monthly tax returns derived from nickel slot machines. Therefore, the handle and win for these machines are contained on those tax returns for this period and can be utilized in estimating the excess monies derived by these machines. Essentially, an approximation of the excess monies derived can be calculated by multiplying the allowable win percentage, being 17%, times the handle as reported on the monthly returns, which provides the maximum win allowable. The maximum win allowable is then subtracted from the win as reported on the return to provide the excess obtained. This calculation shows that approximately \$44,771.00 in excess monies was obtained from the operation of the Jennings machines during this period.¹

¹ Since the handle was not reported on the May tax return, the calculations for that month had to be estimated based on the June figures.

Because the revenue figures for the 318 Bally 956-16 slot machines are aggregated on the monthly tax returns with all the other quarter slot machines, the calculations of the excess monies derived by this model of machine are more difficult to compute. However, an approximation of excess monies for the period can be calculated by utilizing average handle figures for the twenty-five cents slot machines reported on the returns. In general, this can be accomplished by first taking the handle reported on each monthly return and dividing it by the total number of authorized twenty-five cents slot machines which will provide the average monthly handle per machine. Then this average is multiplied by the 318 Bally machines in question to give us the total monthly average handle for the 318 machines. The monthly average handle for the 318 machines is then multiplied by 17.52%, which was the weighted theoretical payout percentage for these machines prior to their modification. This calculation provides the theoretical monthly win for the 318 machines. The maximum allowable win is then calculated by multiplying the handle by 17%, which is the maximum allowable payout percentage. The maximum allowable win is then subtracted from the theoretical monthly win to provide an approximation of the excess monies received by the 318 machines during each of the months in question. The excess for each month is then totaled to provide the total excess for the complete

time period in question. These calculations show that approximately \$271,086.00 in excess monies were derived from these machines during this time period. Therefore, the approximate total in excess monies received by both the Bally and Jennings machines during this time period is \$315,857.

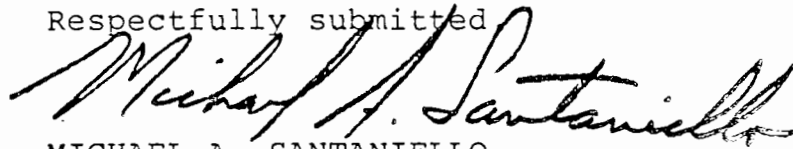
As Resorts International points out, it is impossible to determine the identity of the specific individuals who played the machines during this time period. Therefore, any restitution of the excess monies to that category of individuals would be impractical. On the other hand, this fact does not justify retention of the excess monies by Resorts. Given these circumstances, it appears appropriate that the excess monies be turned over to the Commission for deposit in either the Casino Revenue Fund or the Casino Control Fund.

For the foregoing reasons, it is respectfully recommended that the Commission:

- (1) apply its decision of December 28, 1978, retrospectively to reach those slot machines in operation as of May of 1978;
- (2) find that Resorts International received \$315,857 in "excess monies" as a result of its slot machines not complying with N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e); and
- (3) order Resorts International to pay over to the Commission such amount of excess monies with interest for deposit in either

the Casino Control Fund or the Casino
Revenue Fund as the Commission may deem
appropriate.

Respectfully submitted

A handwritten signature in cursive script, reading "Michael A. Santaniello". The signature is written in dark ink and is positioned above the printed name and title.

MICHAEL A. SANTANIELLO
HEARING EXAMINER

DATED: Sept. 18, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-21

STATE OF NEW JERSEY, :
Department of Law and Public :
Safety, Division of Gaming :
Enforcement, :
Petitioner, :
v. :
RESORTS INTERNATIONAL HOTEL, :
INC. :
Respondent. :

FINAL ORDER

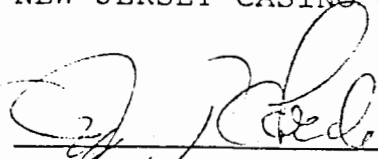
This matter having been brought before the Commission upon the petition for declaratory ruling filed by the Division of Gaming Enforcement and the Commission having read and considered the Report and Recommendation of Hearing Examiner Michael A. Santaniello dated December 1, 1978, on December 5, 1978 and January 3, 1979, and having received no objections or exceptions thereto, and the Commission having on January 3, 1979, voted to adopt the report and recommendation, it is therefore on this 12th day of March, 1979,

ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission, and it is further ORDERED that the Respondent be and hereby is directed to comply strictly with the Casino Control Act and the Commission's Regulations as more particularly set forth in the Report and Recommendation of the Hearing Examiner; and

It is further ORDERED that a copy of this Order be served on the parties within two (2) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY:



JOSEPH P. LORDI, CHAIRMAN

Dated:

MARCH 12, 1974

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 78-21

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

Petitioner,)

v.)

RESORTS INTERNATIONAL HOTEL,)
INC.,)

Respondent.)

REPORT AND RECOMMENDATION OF
HEARING OFFICER

GUY S. MICHAEL, Deputy Attorney General
appearing for Petitioner, Division of
Gaming Enforcement

JOEL H. STERNS, ESQ.
From the Firm of Sterns, Herbert and
Weinroth appearing for Respondent,
Resorts International Hotel, Inc.

This case comes before the Commission by means of a
Petition for Declaratory Judgment filed by the New Jersey
Division of Gaming Enforcement [hereinafter referred to as the
Division]. In its Petition, the Division seeks an interpreta-
tion of the "833 minimum payout" requirement contained in

N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e).¹ More specifically, section 5:12-100(e) of the Casino Control Act provides in pertinent part that "each slot machine shall have a minimum payout of 83%." Likewise, section 19:45-1.36(e) of the Commission regulations provides that "the casino licensee shall set each slot machine to pay out, at a minimum, 83% of the amount of coins placed by patrons into the slot machine"

Although these provisions appear clear, on their face, they become somewhat ambiguous when applied to two types of slot machines currently on the casino floor of Resorts International Hotel, Inc. [hereinafter referred to as Respondent]. These models are the Bally 956-16 manufactured by Bally Manufacturing Company and the Jennings 1100-051-103 manufactured by TJM, Inc.² By adopting one method of calculating the theoretical payout percentage³ for a machine, the Division

¹ This section of the Commission regulations is cited by the parties as N.J.A.C. 19:45-35. Although this was the original citation for this section, the Division of Administrative Procedure subsequently changed it to N.J.A.C. 19:45-1.36.

² As of the date of the hearing, Respondent had 50 Jennings 1100-051-103 slot machines being operated on the casino floor. As of this same date, Respondent possessed 500 Bally 956-16 slot machines of which between 308 and 318 were being operated on the casino floor (T79-9 to T81-21).

³ The theoretical payout percentage is a calculation based on the laws of probability that represents the expected percentage of coins that will be paid out over an extended period of time. In general, it is computed by dividing the number of coins expected to be paid out during a cycle of operation by the number of coins expected to be paid in during that cycle. See N.J.A.C. 19:45-1.1. On the three reel machine with 20 stops on each reel, the number of possible combinations of symbols would be 20 x 20 x 20 or 8,000 possible combinations. Assuming that the machine will pay out 7,000 coins if, according to the laws of probability, each combination appears once in a cycle, the theoretical payout percentage is determined by dividing the 7,000 coins paid out by the 8,000 coins placed into the machine. In this case, the calculation results in a payout percentage of 87.5%. As Mr. Hubbard, Chief Project Engineer of Bally Manufacturing Company, pointed out in his testimony, the theoretical payout percentage may vary slightly above and below the actual percentage of coins paid out, but the longer the machine is in operation, the truer the actual payout percentage will be to the theoretical payout percentage. (T107-14 to -19; T108-22 to T109-1) This, of course, assumes the machine is operated, maintained and working properly.

takes the position that these machines do not comply with the 83% requirement; whereas, Respondent, by employing a different method of calculating this percentage, contends they do comply with this requirement.

The Respondent ordered the Bally 956-16 slot machines from Bally Manufacturing Company in March of 1978. In a letter to Bally confirming the order of these and other machines, Mr. I. G. Davis, Jr., President of Resorts International, Inc., set forth the requirement that the "[p]ercentage of all machines to be at least 83% payoff." (R-1).⁴ Bally responded with a letter acknowledging the order and including a list of the machines to be delivered and the payout percentages for each model. Model 956-16 was listed as having a payout percentage of 84.15% (R-2).

Respondent issued a purchase order dated April 7, 1978 which reflected the purchase of the Jennings 1100-051-103 slot machines. In that purchase order, the payout percentage requirement for the machines is stated as: "Reel strips and reel mechanism programmed to pay out percentage of 83.25% (16.75 hold %). NOTE: Includes 2,000 coin bonus." (R-3).

In compliance with N.J.S.A. 5:12-100(h) and N.J.A.C. 19:46-1.28, one of the Jennings and one of the Bally machines were sent to the Division by the manufacturers for testing and analysis. Also forwarded to the Division and to the Respondent by the manufacturer were the theoretical payout percentage calcu-

⁴ "C", "R" and "H" refer to exhibits introduced at the hearing of July 25, 1978.

lations applicable to each machine. (T67 to T70; T101-13 to -21).⁵ The calculations submitted for the Bally machine contain theoretical payout percentages of 84.15% and 81.65% (H-1). Although not labelled as such, an examination of the calculations shows that the former is the payout percentage for a 5 coin wager and the latter for a wager of one to four coins. The calculation sheet submitted by TJM for the Jennings machine lists a theoretical payout percentage of 83.25% (H-2).

By letter dated May 24, 1978, the Division advised the Commission of the status of its review of slot machine models received and recommended that provisional approval be granted to certain of those machines including the two models here in question (C-1). The provisional approval was recommended subject to further review and analysis of the machines by the Division. On May 25, 1978, the Commission granted provisional approval to the proposed machines including those here at issue subject to the conditions and reservations recommended by the Division.

Subsequently, the Division focused additional attention on the payout percentage calculations for the two models of machine at issue and recognized that several possible methods existed for calculating these percentages in determining compliance with the 83% requirement contained in N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e). (T49 to T51). Because of this, the Division filed the instant Petition seeking a declaratory ruling on the proper method for determining compliance with these provisions.

⁵ "T" refers to the transcript of the hearing conducted on July 25, 1978.

The contentions of both parties and the proper application of the above provisions cannot be addressed without a brief description of the operation and payout schemes of the two slot machine models in question. Before presenting this review, it should be noted that both Petitioner and Respondent are in agreement with respect to the operation and payout schemes of these slot machines. (See T71-23 to T72-4; T78-3 to -19).

The Bally 956-16 contains three reel strips with 20 symbols positioned on each reel, (C-2; H-1). When the reels are not in motion, a player is able to view, through the front glass of the machine, three symbols on each of the reels or a total of nine symbols. The symbols seen through the glass form three horizontal lines - an upper, center and bottom line. This machine, however, is referred to as a one-line win machine in that the player can only win on symbols appearing in the center horizontal line. (T39-5 to -7).

This Bally machine also has a five-coin multiplier feature in that it permits a player to put from one to five coins in the machine before each handle pull. The winnings are multiplied accordingly for each additional coin inserted. (T39-10 to -14). For example, with one coin inserted, a "Single Bar, Single Bar, Single Bar" combination on the center horizontal line will pay 50 coins. (C-2; H-1). When two coins are placed in the machine, the payout for this same combination is 2 times 50 coins or 100 coins. (See T39-15). With three coins, the payout for this combination becomes 3 times 50 coins or 150 coins. The same multiplier effect is achieved with four and five coins.

In addition to the normal payouts, this machine provides a one-thousand coin bonus on the fifth coin when a "Triple Bar, Triple Bar, Triple Bar" combination appears on the center horizontal line. In this case, a player putting five coins in the machine would receive the normal one-thousand coin payoff plus the one-thousand coin bonus for a total of two-thousand coins. (T39-17 to -22; T63-9 to -15).

This machine has a theoretical payout percentage of 81.65% for a player who puts either one, two, three or four coins in the machine (T39-23 to -25; T64-15; T109-16 to 110-1). Because of the one-thousand coin bonus on the fifth coin, the theoretical payout percentage for a player who puts five coins in the machine is increased to 84.15%. (T40-1 to -3; T64-17; T110-2 to -3). Depending on the method of averaging used, the machine has a theoretical average payout percentage of either 82.15% when using a straight averaging method (T40-11 or 82.48% when using a weighted averaging method. (T97-25).

The Jennings 1100-051-103 machine also contains three reel strips with 20 symbols positioned on each reel. (C-3; H-2). Like the Bally machine, the Jennings machine allows a player to view nine symbols through the front glass when the reels are stationary and to insert from one to five coins in the machine before each handle pull. The payout scheme for the Jennings machine, however, is somewhat different, in that, it does not limit the player to winning only on the center horizontal line of symbols, nor does it have the same multiplier effect as the Bally machine. Instead, with each coin inserted, the player has a chance of winning on a different and additional

line of symbols (T35-11 to -14). The first coin gives the player an opportunity of winning on the center horizontal line; the second coin provides this opportunity on the top horizontal line; the third coin on the bottom horizontal line; the fourth coin on the diagonal line of symbols running from the upper left-hand corner to the lower right-hand corner; and the fifth coin on the diagonal line running from the lower left-hand corner to the upper right-hand corner. (T30-14 to T31-1). Thus, each coin inserted gives the player an opportunity of winning on an additional line of symbols (T31-8 to -19).

The Jennings machine also contains a bonus feature for a five coin player. When five coins are inserted into the machine and a "Triple Bar, Triple Bar, Triple Bar" combination appears on the fifth line, the player receives an 1800 coin bonus over and above the 200 coins that are normally paid out for this combination of symbols. (T31-5 to -7; T62-18 to T63-8).

The Jennings machine has a theoretical payout percentage of 78.75% for a player who puts either one, two, three or four coins into the machine (T35-4 to -10; T63-22 to T64-9; T137-5 to -12). Due to the 1800 coin bonus on the fifth line, the theoretical payout percentage for a player who puts five coins in the machine is increased to 83.25%. (T35-19 to T36-20; T64-12; T137-16). Depending on the method of averaging, the machine has a theoretical average payout percentage of either 79.65% when using a straight averaging method (T37-3) or 80.25% when using a weighted averaging method (T98-9).

For ease of reference, the theoretical payout percentages for both the Bally and Jennings machines are listed below in tabular form.

	<u>Bally 956-16</u>	<u>Jennings 1100-051-103</u>
1 to 4 coin wagers	81.65%	78.75%
5 coin wagers	84.15%	83.25%
Straight Averaging ⁶	82.15%	79.65%
Weighted Averaging ⁷	82.48%	80.25%

Because the machines in question offer to the patron five types of wagers, namely, a one, two, three, four and five coin wager, several possible methods exist for calculating their payout percentages. In essence, three basic approaches for computing payout percentages have been suggested for determining compliance with the 83% minimum requirement. The first is to find the machines in compliance if they have an 83% theoretical payout percentage on any one or more of the different types of wagers available to the patrons. Another alternative is to utilize an averaging method by aggregating the payout percentages for each type of wager and then calculating an average or overall percentage for the machine. The third option is to require each type of wager offered by the machine to have an 83% theoretical payout percentage in order to be in compliance.

Respondent argues the term "payout" is one with a specific and widely accepted meaning in the slot machine industry. Respondent states that the gaming equipment industry utilizes this term to mean the percentage payout on the maximum number of coins that can be wagered per play which, in the case of five coin machines, would be the percentage payout calculated

⁶ See footnote 9 infra.

⁷ See footnote 10 infra.

on five coin wagers. By incorporating this term in N.J.S.A. 5:12-100(e), Respondent contends that it must be presumed that the Legislature intended the industry standard be applied. In support of this position, Respondent notes the general rule of statutory construction that commercial terms when used in a statute relating to trade or commerce are presumed to have been used in their trade or commercial meaning. 2A Sutherland, Statutory Construction, § 47.31, at 150 (4th ed. 1973). See also Fisher v. Board of Education, 94 N.J. Super. 359, 372 (L. Div. 1967, aff'd. 99 N.J. Super. 18 (App. Div. 1968); 82 C.J.S., "Statutes" § 331.

The evidence adduced at the hearing does show that the term "payout" is used by the slot machine industry to refer to the "theoretical payout percentage" calculated for a given machine. When the industry refers to the "payout" of a five coin machine, it is referring to the maximum percentage of coins a machine could pay back which, in the case of the present machines, is the theoretical payout percentage for a five coin wager (T77-16 to -19; T85-8 to -19). Both Mr. George Hubbard, the Chief Project Engineer from Bally Manufacturing Company, and Mr. Donald Pearl, Vice President of Engineering for TJM, Inc., supported this as the industry meaning of the term (T109-8 to -11; T114-19 to -23); T134-23 to -25). Mr. Bruce Lampa, an employee of the Division responsible for the testing and inspection of slot machines, also agreed that this was the way the industry calculated the payout percentage for these machines. Upon initially being employed by the Division, Mr. Lampa received training from representatives of International

Schools. During this training, he was shown that manufacturers calculate a machine's payout percentage by "[using] the fifth coin percentage as the percentage of the machine." (T48-1 to -12; T44-3 to -11).

Although the meaning given the concept of payout in the slot machine industry is one factor to consider in deciding on a proper interpretation of the 83% payout requirement contained in N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e), it is not necessarily controlling. The presumption that words having a commercial or technical meaning are to be considered as having been used in their technical sense is not applicable when the words have both a technical and a popular meaning or when it appears they were intended to be used in a different sense or when such an interpretation is consistent with the legislative purpose. 82 C.J.S. "Statutes" § 330; 73 Am. Jur. 2d "Statutes" at p. 418; 2A Sutherland, Statutory Construction, § 47.29 at 151; see Passaic National Bank and Trust Co. v. Eelman, 116 N.J.L. 279 (Sup. Ct. 1936). As with any question of statutory interpretation, the primary consideration is the intent and purpose of the Legislature in enacting the statutory requirement. N.J. Builders, Owners & Managers Assoc. v. Blair, 60 N.J. 330, 338 (1972); Union Co. Bd. of Freeholders v. Union Co. Park Comm., 41 N.J. 333 (1964).

The testimony presented at the hearing indicates that the calculation used by the slot machine industry to describe a machine's payout has an entirely different purpose than the 83% requirement of the statute. Without going beyond the statutory language, the 83% requirement was clearly designed

to establish a minimum payout for each slot machine. The purpose of the calculation used by the industry, however, is to advise the machine's purchaser of the maximum payout percentage of that machine. In addressing the payout percentage used by the industry, Mr. Hubbard from Bally explained that the reason the payout percentage of the five coin wager is used is

"because the purchaser or buyer of the machines wants to know how much money is going to be paid out, maximum, or conceivably be paid out, so they know how much money they can expect in the drop bucket." (T115).

In view of this, it would be rather incongruous to define the 83% minimum payout requirement as the maximum conceivable percentage of coins a machine is set to pay out and, therefore, such a legislative intent should not be presumed.

In searching further for the proper application of the 83% requirement contained in N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e), two essential criteria emerge against which the three suggested approaches can be measured. The first stems from the actual language used by the Legislature and the Commission in formulating the 83% requirement and the second from the apparent purpose to be served by it.

The standard set forth in the statute is that "each slot machine shall have a minimum payout of 83%." Similarly, the regulation provides that "the casino licensee shall set each machine to payout, at a minimum, 83% of the amount of coins placed by patrons into the machine." By the plain language of these provisions, the operative standard to be met is that

the machine disburse as winnings at least 83% of the coins placed therein by patrons. Viewed in this context, the theoretical payout percentage calculated for a given machine is not the standard per se, but only a means for projecting whether a machine will comply with the requirement of the statute and regulation. Since the theoretical payout percentage is used as a means for projecting whether a machine will comply with the 83% requirement, the appropriate theoretical payout percentage calculation to be chosen in ascertaining compliance is the one that can most accurately project and assure the machine will payout, at a minimum, 83% of the coins placed therein.

The second criteria that emerges in reviewing these provisions is the purpose to be achieved by the 83% requirement. It seems apparent that the Legislature and the Commission were concerned with providing a measure of protection to the slot machine player by assuring that each slot machine would provide fair and equitable odds, while also providing a reasonable profit to the casino operator. The Legislature's concern in this regard is supported by the fact that the 83% requirement is found in the same subsection as, and immediately following, the Legislature's statement that the rules promulgated by the Commission should seek to "assure the vitality of the casino operations and fair odds to and maximum participation by casino patrons." N.J.S.A. 5:12-100(c). Having expressed its concern in this regard, the Legislature continued by setting forth with specificity one component of the fair odds determination, namely, the 83% requirement, which provides a

specific standard of protection and assurance to slot machine players. Since there is no hint in the record that any of the possible interpretations suggested would deprive the casino operator of a reasonable profit, the question to be asked is which interpretation would best serve to assure casino patrons of fair and equitable odds.

Having identified these criteria, the three suggested methods for determining compliance with N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e) can now be analyzed to ascertain the proper means of applying these provisions. Under the first method suggested, a machine would be in compliance if it had a theoretical payout percentage of at least 83% on any one of the different types of wagers offered. When this mode of calculation is applied to the two slot machine models under consideration, both models would be in compliance since, on a five coin wager, they both have a payout percentage slightly in excess of 83%. Viewed in the context of the standard set forth in the statute and regulation, however, this method for determining compliance would not assure that the machine will pay out 83% of the coins placed therein.⁸ Depending on the payout percentages for one to four coin wagers, the machine may pay out either above or below 83%. Although the payout percentage for a five coin wager may be above 83%, the payout percentages for one to four coin wagers may be below 83%, thus causing the machine to have an overall payout of under 83%.

⁸ The only way this method could be said to assure that the machine would payout 83% of the coins placed therein is to assume that all patrons playing the machine would always make a five coin wager. The very statement of this assumption, however, contradicts the existence of the other wagers. Obviously if this assumption were true, there would be no reason for having anything but a five coin wager on the machine. By placin

This method is also deficient in providing slot machine players with an assurance of fair and equitable odds. In this regard, it only provides an assurance to one category of slot machine player, namely, those who wager five coins in the machine. It provides no assurance or protection to that group of players who wager from one to four coins in the machine. In this respect, there is no indication in the statute or the regulation that the 83% requirement was intended only for the benefit of one category of slot machine player.

The second means suggested for determining compliance is to use an averaging approach either through a straight⁹ or

⁹ The average payout percentage utilizing what was referred to at the hearing as the "straight averaging" approach is calculated simply by adding the payout percentages for each type of wager and then dividing by the number of different types of wagers available. In the case of the Bally 957-16 and the Jennings 1100-051-103, the calculations are as follows:

Type of Wager	Bally Machine Payout Percentages	Jennings Machine Payout Percentages
1 Coin Wager	81.65%	78.75%
2 Coin Wager	81.65%	78.75%
3 Coin Wager	81.65%	78.75%
4 Coin Wager	81.65%	78.75%
5 Coin Wager	84.15%	83.25%
	$410.75 \div 5 = 82.15\%$	$398.25 \div 5 = 79.65\%$

weighted¹⁰ average payout percentage calculation. An examination of this approach indicates that it has deficiencies similar to those previously suggested. Like the first approach, it does not

¹⁰ Under the weighted averaging approach, it is reasoned that, if each of the five types of wagers is made 20% of the time, the five coin wagers will account for 5/15 of the total number of coins in the machine, the four coin wagers 4/15, the three coin wagers 3/15, the two coin wagers 2/15 and the one coin wagers 1/15. As such, the payout percentage of the five coin wager will be applicable to 5/15 or 1/3 of the coins placed into the machine and should be weighted accordingly in computing an average payout percentage.

To give an example, suppose a total of 40,000 wagers are made with each of the five types of wagers being made 8,000 times. When viewed in terms of the total number of wagers made, the five coin wagers, like the one, two, three and four coin wagers, represent 20% of the total. Under the weighted averaging approach, however, it is not the percentage of wagers that is important, but the percentage of total coins attributable to each type of wager that is important. Under the above supposition, 120,000 coins would have had to be deposited into the machine with one to four coin wagers accounting for 80,000 or 10/15 of the total and five coin wagers accounting for 40,000 coins or 5/15 of the total. Since the five coin payout percentage is applicable to these 40,000 coins or 5/15 of the total, the weighted averaging method seeks to reflect this by attributing to that percentage a weight equal to 5/15 of the total number of coins placed into the machine. Mathematically, this can be accomplished by multiplying the five coin payout percentage by 5, the four coin payout percentage by 4, the three coin payout percentage by 3, the two coin payout percentage by 2, the one coin payout percentage by 1, aggregating the totals, and dividing by 15.

The weighted average percentage calculations for the Bally 956-16 are as follows:

<u>Type of Wager</u>	<u>Payout Percentage</u>		<u>Weight</u>	
One Coin	81.65	x	1	= 81.65
Two Coin	81.65	x	2	163.30
Three Coin	81.65	x	3	244.95
Four Coin	81.65	x	4	326.60
Five Coin	84.15	x	5	<u>420.75</u>
TOTAL				1237.25 ÷ 15 = 82.48

The weighted average percentage calculations for the Jennings 1100-051-103 are as follows:

<u>Type of Wager</u>	<u>Payout Percentage</u>		<u>Weight</u>	
One Coin	78.75	x	1	= 78.75
Two Coin	78.75	x	2	157.50
Three Coin	78.75	x	3	236.25
Four Coin	78.75	x	4	315.00
Five Coin	83.25	x	5	<u>416.25</u>
TOTAL				1203.75 ÷ 15 = 80.25

provide adequate assurance that the machine will payout at least 83% of the coins placed therein. The average payout percentage calculated by means of either method is speculative in that it may or may not reflect accurately the percentage of coins a machine will payout. It is conjectural and uncertain because both averaging methods suggested are based on assumptions. The straight averaging method assumes that each type of wager will represent 20% of the total number of wagers made in each machine. The weighted averaging method also makes this assumption but translates it into the assumption that five coin wagers will account for 5/15 of all coins placed into the machine. It is evident, therefore, that under either averaging approach, the payout percentage calculation is dependent upon the volume of each type of wager made. If the volume of each type of wager, in fact, differs from that assumed, the machine will payout a percentage of coins below or above the average percentage calculated for it.

The averaging method also fails to provide slot machine players with the assurance that each will be within the category of players protected by the 83% minimum requirement. Under either averaging approach, a payout percentage in excess of 83% may result from offering a high bonus on one or two types of wagers to offset payout percentages substantially below 83% on the other types of wagers being offered by that machine. Under these circumstances only some of the players gaming at the machine would have the benefit of the fair and equitable odds protection of the 83% requirement, whereas the others would be afforded little, if any, protection.

Of the three compliance methods suggested, assurance that a machine will payout 83% of the coins placed therein can best be achieved if the third approach is adopted. Since this approach requires a theoretical payout percentage of at least 83% on each type of wager made and is not dependent on any assumption as to the percentage of times one type of wager is made, it is best suited to project that the machine will payout at a minimum of 83%. Moreover, this is the only approach suggested that would assure all patrons that they were within the group of players protected by the 83% requirement. Since each type of wager would have to possess a theoretical payout percentage of 83%, all patrons playing the machines would be within the protected group. For these reasons, it would appear that requiring a theoretical payout percentage of at least 83% on each type of wager offered by the machine could be the proper method of determining compliance with the standard set forth in N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e).

Applying this method of determining compliance to the two slot machine models in question, it is clear and I find as a fact that these machines did not comply with the 83% requirement as of the date of the hearing in this case. Although the Bally 956-16 had a theoretical payout percentage of 84.15% on a five coin wager, its payout percentage on wagers of one to four coins was only 81.65%. Similarly, the Jennings 1100-051-103 had a theoretical payout percentage of 83.25% on a five coin wager but only a payout percentage of 78.75% on wagers of one to four coins.

In its Petition, the Division of Gaming Enforcement requests that if the Commission finds the machine in question to be operating in violation of the 83% requirement, it takes such action as "it may deem just, right and appropriate pursuant to its authority under N.J.S.A. 5:12-129." At the commencement of the hearing, the Division made clear that it was not seeking any penalty to be assessed against Respondent at this time. (T11). Although Respondent did submit legal argument on this point, this was not an issue at the hearing, nor does the Hearing Officer believe that anything in the record warrants the taking of punitive action against respondent.

In its Brief, the Division takes the position that the Commission should issue an order requiring Respondent to modify each of the slot machines in question so that each type of wager will have a theoretical payout percentage of at least 83% and restraining Respondent from operating the machines until such changes are made. This request, however, is now moot. Shortly after the hearing in this case, Respondent voluntarily modified each machine so as to possess a theoretical payout percentage of at least 83% on each type of wager offered.

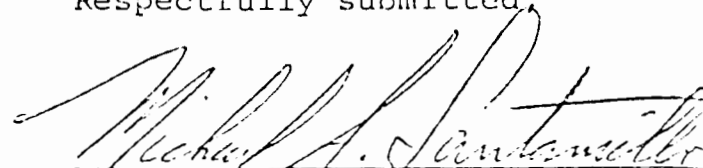
The only remaining issue arising in this case is whether the Commission, assuming it adopts the above recommendation, should take any action with respect to any excess monies Respondent may have received as a result of these slot machines not complying with the 83% requirement. This raises questions as to whether the above interpretation should be applied retroactively or prospectively; what, if any, excess monies Respondent received as a result of the machines not complying with the 83% requirement; and whether the circumstances are such to warrant

action being taken with respect to these monies. Since these issues were not addressed at the hearing or in the briefs filed by the parties, it is recommended that a further hearing be held to address them.

For the above reasons, it is respectfully recommended that the Commission:

- (1) find that a slot machine must have a theoretical payout percentage of at least 83% on each type of wager offered in order to comply with N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e);
- (2) find that the Bally 956-16 and Jennings 100-051-103 model slot machines did not comply with N.J.S.A. 5:12-100(e) and N.J.A.C. 19:45-1.36(e) as of, at least, the date of the hearing in this case;
- (3) dismiss as moot the request for an order directing Respondent to modify these machines and restraining Respondent from operating these machines until such modifications are made; and
- (4) direct that a hearing be held and further legal argument presented on the issue of whether the Commission should take any action with respect to any excess monies Respondent may have received as a result of these slot machines not complying with the 83% requirement.

Respectfully submitted,


MICHAEL A. SANTANIELLO
HEARING EXAMINER

DATED: December 1, 1973

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBERS 78-22 through
78-30

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Charging Party, :
v. :
RESORTS INTERNATIONAL HOTEL, INC., :
WALTER I. ROGERS, AND JAMES CARR, :
Respondents. :

FINAL ORDER

The New Jersey Casino Control Commission having read and considered the December 29, 1978 Report and Recommendation of Commission Kenneth MacDonald, Hearing Examiner, which is attached hereto, and having on January 3, 1979, heard full oral argument on behalf of the Respondents and the Division, and having considered the Hearing Examiner's findings, conclusions and recommendations in light of the sanctions provided in Section 129 of the New Jersey Casino Control Act (N.J.S.A. 5:12-129) and the standards for imposition of such sanctions provided in Section 130 of the New Jersey Casino Control Act (N.J.S.A. 5:12-130),

It is on this 3rd day of January, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the Respondent Resorts International Hotel, Inc. be and hereby is directed to pay the civil penalty of One Hundred and Twenty-Three Thousand Dollars (\$123,000.00) to the New Jersey Casino Control Commission on or before January 16, 1979; and

It is further ORDERED that the Respondent Walter I. Rogers be and hereby is directed to pay the civil penalty of Two Thousand Dollars (\$2,000.00) to the New Jersey Casino Control Commission on or before January 16, 1979; and

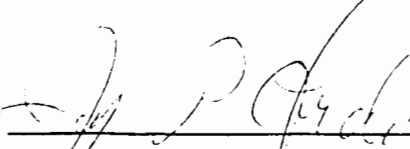
It is further ORDERED that the Respondent James Carr be and hereby is directed to pay the civil penalty of Five Hundred Dollars (\$500.00) to the New Jersey Casino Control Commission on or before January 16, 1979; and

It is further ORDERED that the Respondents be and hereby are censured as more particularly set forth in the Report and Recommendation of the Hearing Examiner; and

It is further ORDERED that the Respondents be and hereby are directed to cease and desist the conduct and to comply strictly with the Commission Regulations as more particularly set forth in the Report and Recommendation of the Hearing Examiner; and

It is further ORDERED that a copy of this Order be served on the parties within two (2) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

By: 

JOSEPH P. LORDI, CHAIRMAN

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.S 78-22 through 78-30

STATE OF NEW JERSEY, DEPARTMENT :

OF LAW AND PUBLIC SAFETY, :

DIVISION OF GAMING ENFORCEMENT, :

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

Charging Party :

v. :

RESORTS INTERNATIONAL HOTEL, INC., :

WALTER I. ROGERS, JAMES CARR, :

Respondents :

Richard T. Morrissey, Deputy Attorney General, appearing for the
Division of Gaming Enforcement.

Joel H. Sterns, Esq., and Richard K. Weinroth, Esq., appearing for
Resorts International Hotel, Inc., Walter I. Rogers, and
James Carr.

These matters involve nine civil complaints filed by the
Division of Gaming Enforcement (hereinafter the "Division") charging
Respondent Resorts International Hotel, Inc. (hereinafter
"Resorts"), a temporary casino permittee, with violating various
provisions of the New Jersey Casino Control Act, N.J.S.A. 5:12-1,
et seq. and various Regulations adopted by the New Jersey Casino
Control Commission (hereinafter the "Commission"), N.J.A.C. 19:40
et seq.¹ Additionally, one of these complaints² charges Respondent
Rogers and Carr with certain of such violations. Mr. Rogers is
Resorts' Vice President of Casino Operations, and Mr. Carr is
Resorts' Casino Manager.

1. Four companies alleged to be casino service industries and named as
Respondents in No. 78-25 were severed from this matter. Eleven companies
alleged to be casino service industries and named as Respondents in No.
78-29 were severed from this matter.
2. No. 78-25.

At the outset I must state that these matters should be viewed in their proper context. For the most part these complaints relate to events which occurred during the first weeks of operation of the first casino to open its doors in this jurisdiction. As this record clearly shows, conditions in the casino during those first weeks were less than optimal. Several factors contributed to those conditions. First, the response of the public to the first legalized casino on the East Coast was overwhelming. Patron demand from opening day on May 26, 1978 and continuing throughout the summer months surpassed everyone's wildest dreams. At the same time, in several areas there was a critical shortage of licensed personnel. This shortage was attributable at least in part to the length of time required to complete the extensive background investigations which the law demands. Many of the personnel who were licensed lacked extensive experience. Others were impressed into service performing functions for which they had little or no training. And finally, the entire operation commenced under a complex and comprehensive body of internal and accounting control regulations³ which were not adopted by the Commission until the day on which the casino opened. These regulations are far more demanding than those of other jurisdictions which permit casino gaming, and contain some requirements which are novel even to those who are experienced in the casino industry.

As the undisputed testimony in the record indicates, within a few days after the casino opened it became apparent to Resorts' management that under the circumstances described above

3. N.J.A.C. 19:45-1, et seq.

Resorts could not comply with the letter of each and every regulation of the Commission.⁴ Resorts at that juncture had to make some practical business decisions. The company chose to serve the public as best it could, with the knowledge that it was in violation of several Commission regulations, and with the apparent hope that conditions would improve with the steady addition of licensed personnel, with increased space and facilities, and with experience.

This is the proper perspective for these complaints. There is no charge here and no evidence of any criminality. The most serious of the charges in these complaints, which allege misrepresentations made to the Commission, have not been established. And none of the violations which have been established herein indicate that Resorts has abused the privilege granted by the Commission to operate a casino in this State.

The remaining charges which have been established may be described as technical, but not insignificant. This is not meant to demean the importance of the violations which have been proven, but merely to keep them in their proper context. Some of these violations are serious and fully warrant the severe monetary sanctions imposed. These violations exemplify the need for strict enforcement of Commission regulations, lest public confidence in the gaming industry and in the regulatory process be eroded. I hasten to add that the failure of Resorts to affirmatively advise the Commission of the slot booth discrepancy^{4a}, cannot be condoned. Although I have found this failure to constitute neither a violation nor a willful attempt to mislead the Commission, this omission is not in keeping with the spirit of the Act.

4. Mr. I.G. Davis, Chief Executive Officer of Resorts, testified that he told the Director of the Division of Gaming Enforcement of this on the opening weekend and sought his advice. The Director advised Davis to exercise his own business judgement, and if violations of the regulations were committed, Resorts would "down the road in a couple of months, get---I don't remember whether he said a traffic violation or a speeding ticket, but it was something of that nature... 12/15/78 T707-18 to 711-12.

4a. See No. 78-25, Count IV.

No. 78-25

FIRST COUNT

The First Count of No. 78-25 alleges in substance that by failing to properly conduct its casino operations regarding slot booth⁵ transactions during the first seven weeks of the operation of its casino, Resorts severely hampered the ability of both its own personnel and the State to determine the amount of money involved in those slot booth transactions. The First Count of this complaint is divided into eight parts, each of which will be dealt with separately.

PART I.

Part I alleges that during the first two weeks of casino operations Resorts failed to maintain its slot booths on an imprest basis⁶ in violation of Commission regulations.⁷

Resorts has admitted that by failing to maintain its slot booths on an imprest basis during the first two weeks of its operation, it acted in violation of N.J.A.C. 19:45-33(a). I so find

5. Slot booths are physical structures located within the casino where patrons may exchange currency for coin and where other operations relating to slot machines are conducted. N.J.A.C. 19:45-32.

6. N.J.A.C. 19:45-1 provides:

"'Imprest basis' means the basis on which cashiers' cage and slot booth funds are replenished from time to time in exactly the amount of the net of expenditures made from the funds and amounts received. A review is made by a higher authority of the propriety of the expenditures before the replenishment."

7. N.J.A.C. 19:45-33(a) provides:

"The assets for which the slot cashiers are responsible shall be supplied from the cashiers' cage and shall be maintained on an imprest basis. At the end of each shift, the slot cashier assigned to the outgoing shift shall record on a Slot Cashiers' Count Sheet the face value of each slot booth inventory item counted and the total opening and closing slot booth inventories and shall reconcile the total closing inventory with the total opening inventory." (Emphasis Added).

PART II.

Part II charges that during the period from June 18 to July 14, 1978, thirty-eight separate instances of inter-booth transfers of assets were made and documented by records kept by Resorts in violation of Commission regulations.⁸ Resorts has admitted that these improper transfers were made in violation of N.J.A.C. 19:45-32(a)(7) and I so find.

-
8. N.J.A.C. 19:45-32(a)(7) provides that the slot booth shall serve as the central location for:

"The exchange with the cashiers' cage of any coin, currency, chips, plaques and documentation and the related preparation of Slot Booth Exchange Slip, which shall be a two-part, prenumbered form signed by the cage cashier, slot cashier, and the security department member. Except for the exchanging of change with change persons, the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers cage. Exchanges with the cashiers cage must be accompanied by a Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins to the Slot Booth." (Emphasis Added).

PART III.

Part III alleges that during the first seven weeks of casino operations persons entered and exited Resorts' slot boot absent maintenance of any record of their presence therein, in that in part, records of dealers assigned to work in slot booths did not reflect with particularity the booths assigned. Resorts has admitted that by failing to record which dealers were assigned to which particular booths it violated N.J.A.C. 19:45-10(a)(2).⁹ I so find.

9. N.J.A.C. 19:45-10(a)(2) provides, in part:

"Each casino licensee shall have a system of internal control that includes the following:

(2) Accounting control which includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

(ii) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and Section 19:45-5 of this regulation, and to maintain accountability for assets;"

PART IV.

Resorts has admitted that for approximately the first two weeks of casino operations it did not compare existing assets present in and emanating from its slot booths with the recorded accountability for those assets. Resorts had also admitted that during the first seven weeks of casino operations, in many cases where documentation did accompany the exchange of assets between the slot booths and the cage, that documentation contained inadequate or insufficient signature verification. Specifically, numerous slot booth exchange slips contained either no signature or only initials contrary to Commission regulations.¹⁰ Resorts had admitted that by virtue of these facts it has violated Commission regulations N.J.A.C. 19:45-32(a)(7),¹¹ N.J.A.C. 19:45-2A(b),¹² and N.J.A.C. 19:45-43(a)(3).¹³ I so find.

10. N.J.A.C. 19:45-43(a) provides that:

"(a) Signatures shall:

1. Be, at a minimum, the signer's first initial and last name written by the signer;" (Emphasis Added.)

11. See note 8 above.

12. N.J.A.C. 19:45-2A(b) provides:

"The Commission shall review each submission required by subsection (a) of this section and, with the advice of the Division, shall determine whether it conforms to the requirements of the Casino Control Act and to this regulation and whether the system submitted provides adequate and effective controls for the operations of the casino licensee. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee, who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee of same. No casino licensee shall commence gaming operations, or alter in fact its internal controls, unless and until such system of controls is approved by the Commission."

13. See note 10 above.

PART V.

The charges contained in Part V allege in substance that from the commencement of casino operations on May 26, 1978 until June 6, 1978 uncounted bags of currency were removed from the slot booths, brought into the cashiers' cage and stored in the main vault. On June 6, 1978 Respondents Rogers and Carr and other employees of Resorts first counted this currency which totalled approximately \$688,611.00. The Division charges that these actions violated numerous Commission regulations relating to internal and accounting controls.

Resorts has admitted the following facts all of which I find to be established:

1. It was not until June 6, 1978 that the slot booth currency, which had been daily taken to the main vault, was counted.
2. On June 6, 1978 Respondents Rogers and Carr and helped sort this currency, which was then counted.¹⁴
3. By failing to count the currency removed from the slot booths from May 26, 1978 to June 6, 1978, Resorts was unable to ascertain the precise amount of existing assets present in the casino during that period. By failing to count this currency during this period Resorts acted in violation of Commission regulation N.J.A.C. 19:45-14(a),¹⁵ and its own submitted system of internal and accounting controls.

14. Respondents claimed that this sorting process was not a part of the count. See p. 9, below.

15. N.J.A.C. 19:45-14(a) provides:

"The assets for which the cashiers are responsible shall be maintained on an imprest basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier's account sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory."

All of the Respondents disputed that Rogers and Carr participated in the count of the bagged currency on June 6, 1978. The testimony at the hearing indicates that on that date Rogers, Carr and several others removed the bags of slot booth currency which had been accumulating in a safe in the main vault since May 26. Rogers and Carr assisted in the sorting of this currency by denomination. The stacks of sorted currency were then placed on a cart. Other persons (not including Rogers and Carr) would then run these stacks of sorted bills through a currency counting machine located in an adjacent room, where the currency was counted and strapped.

Respondents contend that the sorting process described above was not part of the count of this currency. Based on all of the evidence presented before me I reject this contention. The sorting of the bills by denomination was an integral part of the counting process. The testimony indicated that this sorting was a necessary step which had to be taken prior to feeding the sorted stacks of bills into the currency counting machine. I find that Rogers and Carr participated in the count of this currency on June 6, 1978.

I conclude that by failing to count this slot booth currency until June 6, 1978 Resorts has violated Commission regulation N.J.A.C. 19:45-10(a)(2)(iv).¹⁶

16. N.J.A.C. 19:45-10(a)(2)(iv) requires a system of internal and accounting controls which provides reasonable assurance that:

"The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

Furthermore, by virtue of the participation of Rogers¹⁷ and Carr¹⁷ in this count all Respondents have violated Commission regulation N.J.A.C. 19:45-10(a)(2)(iii).¹⁸

17. Rogers and Carr are in the casino department. The counting process, according to the testimony, is properly a function of the accounting department.

18. N.J.A.C. 19:45-10(a)(2)(iii) requires a system of internal and accounting controls which provides reasonable assurance that:

"Access to assets is permitted only in accordance with management authorization which shall include requirements of this regulation [19:45-1 et seq.]."

PART VI.

Resorts has admitted that by comparing the result of its physical coin inventory with the record of coin on hand per its accounting records it determined that on July 6, 1978 it was suffering an apparent shortage of \$179,195.01. Resorts has further admitted that by virtue of the admitted record keeping inadequacies during the first several weeks of casino operations described above it was unable to determine precisely when during its operation up to and including July 6, 1978 the apparent shortage of \$179,195.01 was incurred. In light of these facts Resorts has admitted that it has violated Commission regulation N.J.A.C. 19:45-10(a)(2)(ii) so find.

19. See note 9, above.

PART VII.

Part VII charges that when Resorts determined on July 6, 1978 that it was suffering an apparent shortage of \$179,195.01 and failed to immediately report this matter to the Commission, the Division and to its own internal audit department,²⁰ it violated Commission regulation N.J.A.C. 19:45-4(b)(3).²¹

It is undisputed that on July 6, 1978 Resorts took an inventory of all coin actually in its possession. On that date Resorts had sufficient documentation of transactions with supplies of coin to determine the amount of coin which should have been in its possession according to its records. By comparing the result of its physical coin inventory with its accounting records, Resorts determined that on July 6 it actually had \$179,195.01 less coin than its records indicated it should have had. It has not been established whether any money was actually missing or whether the discrepancy is the result of a bookkeeping error.

The regulation in question, N.J.A.C. 19:45-4(b)(3), requires a casino licensee to immediately notify the Division, the Commission and its internal audit department of exceptions (discrepancies) in two types of situations: whenever Commission internal and accounting control regulations require forms or serial numbers to be accounted for (and such forms or serial numbers are not accounted for); and, whenever copies of a form are required to be compared for agreement (and those copies do not agree).

20. As noted herein Resorts admitted in Parts II and III of the Second Count of Complaint No. 78-25 that during this period it had no functioning internal audit department.

21. N.J.A.C. 19:45-4(b)(3) provides:

"Whenever under this regulation [19:45-1, et seq.] forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, such exceptions shall be reported immediately in writing to the internal audit department, the Commission, and the Division for investigation."

Resorts contends that the apparent shortage of which it learned on July 6, 1978 by comparing a physical inventory of coin with its accounting records is not an exception of the type contemplated in N.J.A.C. 19:45-4(b)(3), and therefore immediate notification of this discrepancy was not required by that regulation. I agree and consequently I find that a violation of N.J.A.C. 19:45-4(b)(3) as charged in Part VII has not been established.

PART VIII.

Part VIII alleged that soon after Resorts became aware of the possibility of shortages in its slot booth operation its surveillance department conducted surveillance of its slot booths, but failed to notify the Division of this surveillance until after the Division had discovered that surveillance. The Division has agreed to withdraw this charge, since the regulation²² requiring such notification relates only to "the detection and taping of cheating, theft, embezzlement, or other illegal activities," and since there was no charge or evidence here that any such activities had been detected.

22. N.J.A.C. 19:45-10(c)(1)(vii) provides, in part:

"Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1. A surveillance department....The director of surveillance shall be responsible for, but not limited to, the following:

vii. The notification of appropriate supervisors, the Commission, and the Division upon the detection and taping of cheating, theft, embezzlement, or other illegal activities."

SECOND COUNT

The Second Count of No. 78-25 charges in substance that during the first seven weeks of its casino operations Resorts maintained an organizational structure which did not conform to the requirements of Commission regulations²³ or with the pertinent provisions of its own submitted system of internal and accounting controls which the Commission had approved.

PART I.

Part I alleges that Respondents Resorts and Rogers violated Commission internal and accounting control regulations²⁴ relating to the segregation of incompatible functions²⁵ in that Rogers, as head of the casino department exercised some control and supervision over the accounting department. Specifically, the

23. N.J.A.C. 19:45-1 et seq.

24. N.J.A.C. 19:45-10(c) provides, in part:

"Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

(3) A casino department supervised by a casino manager who shall perform independently of all other departments...."

(6) An accounting department supervised by a controller or equivalent, who shall perform independently of all other departments...

N.J.A.C. 19:45-10(b)(2) provides:

"The casino licensee's system of internal control shall provide for

(2) The segregation of incompatible functions so that no employee is in a position to perpetuate and conceal errors or irregularities in the normal course of his duties."

25. N.J.A.C. 19:45-1 provides, in part:

"'incompatible function' means a function, for accounting control purposes, that places any person or department in a position to both perpetuate and conceal errors or irregularities in the normal course of his duties. Anyone recording transactions and having access to assets ordinarily is in a position to perpetuate errors or irregularities. Persons may have incompatible functions if such persons are members of departments which have supervisors not independent of each other."

Division charges that Rogers acted, at least until July 26, 1978 in a supervisory and management capacity to members of the accounting department, including Cornelius T. Klerk²⁶ in that by memoranda dated July 5, 1978²⁷ and July 26, 1978²⁸ Rogers directed that Klerk issue wage increases to certain casino cage employees.²⁹ Respondents Resorts and Rogers have admitted that these wage increases were implemented by Resorts, but have denied that such increases were directed by Rogers.

The testimony indicates that Gary Thompson, casino cage manager for Resorts,³⁰ recommended to Rogers the names of cage personnel who Thompson felt were deserving of raises. Those names were the genesis of the July 5 and July 26 memoranda from Rogers to Klerk.³¹ Thompson explained that he sent his requests through Rogers, because at his previous place of employment in Las Vegas, Nevada, although he was a cage cashier shift supervisor, he had reported to the casino manager.³²

26. Cornelius T. Klerk is casino controller for Resorts.

27. D-2 in evidence.

28. D-3 in evidence.

29. Casino cage employees fall within the jurisdiction of the accounting department.

30. Thompson, as casino cage manager, is in the accounting department and reports to Cornelius Klerk, casino controller.

31. See 12/12/78 T345-5 to 17; 12/12/78 T356-21 to 358-8.

32. 12/12/78T 340-24 to 341-22; 12/12/78T345-18 to 346-11.

Upon reviewing all of the evidence presented, including the memoranda D-2 and D-3,³³ I find that Respondent Rogers did direct that wage increases be issued to certain casino cage employees, and at least to that extent, he did impermissably intrude into an area which was under the jurisdiction of the accounting department in violation of the Commission regulations set forth above.

Although not specifically alleged in Count II, Part I of the Complaint, the Division offered evidence in an effort to establish that Rogers recommended promotions for two count room employees, that Rogers had directed the cashiers' cage to order additional coin from a commercial bank, and that Rogers had corresponded with a manufacturer of coin counting equipment. Based on the record before me I find that none of these latter actions constitute an exercise of supervisory or management control over the functions of the accounting department by Respondent Rogers.

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33. Both memoranda (D-2) and (D-3) from Rogers to Klerk, regarding cage employee increases, provide substantially as follows:

"Effective [date], please see that the following Casino Cage Employees are increased to \$5.00 hourly.

[Names].

Effective [date], please see that the following Casino Cage Employee is increased to \$6.25 hourly.

[Name].

Thank you."

PART II AND III.

Resorts has admitted that during the first seven weeks of its casino operations it had no functioning internal audit department in violation of both Commission regulations³⁴ and its own³⁵ submitted system of internal and accounting controls as embodied in its organizational chart. I so find.

34. N.J.A.C. 19:45-10(c) (2) requires a casino licensee to establish:

"An internal audit department supervised by an executive who shall perform independently of all other departments and shall report directly to the Board of Directors, or its audit committee, or equivalent."

35. N.J.A.C. 19:45-2A provides:

"(a) Each casino licensee shall submit to the Commission and Division a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in the previously submitted system are to become effective, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee.

(b) The Commission shall review each submission required by subsection (a) of this section and, with the advice of the Division, shall determine whether it conforms to the requirements of the Casino Control Act and to this regulation and whether the system submitted provides adequate and effective controls for the operations of the casino licensee. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee, who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee of same. No casino licensee shall commence gaming operations, or alter in fact its internal controls, unless and until such system of controls is approved by the Commission."

-- PART IV AND V.

Part IV and Part V charge that by virtue of Resorts' violation of Commission regulations relating to the segregation of incompatible functions (as set forth in Part I of the Second Count, above) and by virtue of the failure of Resorts to maintain a functional internal audit department, Resorts failed to maintain a plan of organization sufficient to provide effective safeguarding of assets in violation of Commission regulation N.J.A.C. 19:45-10(a)(2)³⁶ and failed to provide a system of internal control which sufficiently segregated incompatible functions in violation of Commission regulation N.J.A.C. 19:45-10(b)(2).³⁷

36. N.J.A.C. 19:45-10(a)(2) provides:

"Accounting control which includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

i. Transactions are executed in accordance with management's general and specific authorization which shall include the requirements of this regulation;

ii. Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and section 19:45-5 of this regulation, and to maintain accountability for assets;

iii. Access to assets is permitted only in accordance with management authorization which shall include requirements of this regulation; and

iv. The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

37. See note 24 , above.

I find that by its admitted failure to maintain a functioning internal audit department during the first seven weeks of car operations, and by virtue of its violation of the Commission regulations relating to the segregation of incompatible functions during approximately that same period Resorts failed during that period to maintain a plan of organization sufficient to provide effective safeguarding of assets, and to provide a system of internal control which sufficiently segregated incompatible functions in violations of N.J.A.C. 19:45-10(a)(2) and N.J.A.C. 19:45-10(b)(2).

THIRD COUNT

The Third Count of No. 78-25 alleges in substance that Respondents Resorts and Rogers, through the testimony of Rogers before the Casino Control Commission on July 12, 1978, offered materially misleading misrepresentations to the Commission regarding its slot booth operation. More specifically, the charge is that in support of Resorts' request to expand its casino ("phase II"), Rogers represented to the Commission that Resorts was sufficiently staffed to support the expansion and was sufficiently staffed to perform slot booth operations in conformance with Commission standards, when Rogers was aware of the slot booth operational deficiencies described in the First Count of No. 78-25 and that these deficiencies were the result, in part, of staff shortages.

On July 12, 1978, after operating its casino in Atlantic City for approximately seven weeks, Resorts came before the Commission with a request to expand its casino into what it called "Phase II."³⁸ At that July 12, 1978 hearing Rogers and other employees of Resorts testified. The issue here is whether Resorts or Rogers made materially misleading misrepresentations to the Commission at that time, and the primary evidence which must be reviewed is the transcript of the testimony of the July 12 hearing, which has been admitted here as (D-5) in evidence. A review of

38. This consisted of a request to amend the Temporary Casino Permit so as to increase the size of the casino from 33,735 square feet to 54,768 square feet and a request to amend the Certificate of Operation so as to allow for 12 additional blackjack tables, one additional big six wheel and 463 additional slot machines.

that transcript (D-5), along with the other evidence presented indicates that the charges in the Third Count have not been established.

The testimony of Rogers on July 12 must be viewed in the context of the entire record made on that date. At that hearing Rogers described the personnel situation in Resorts' casino as "not...the optimum condition,"³⁹ and in fact "in a state of emergency."⁴⁰

This "state of emergency was due principally to two factors. First, the patron demand which the casino had experienced since its opening had greatly exceeded managements' expectations.⁴¹ And second, Resorts had discovered upon opening its casino that it had a lack of sufficient licensed personnel, particularly in the accounting department. Rogers attributed this latter factor to a misunderstanding on the part of Resorts that accounting department personnel, particularly in the hard count room and soft count room, only had to be licensed as casino hotel employees.⁴²

These two factors necessitated the use by Resorts of licensed dealers (casino employees) to perform various accounting department functions (eg. - in the count rooms and slot booth operations),⁴³ until the Division could investigate and the

39. 7/12/78 TI-185-4 to 13 (First volume of transcript of July 12, 1978 hearing)

40. 7/12/78 TI-184-14; 7/12/78 TI-192-8 to 21.

41. 7/12/78 TI-216-3 to 7.

42. 7/12/78 TI - 216-8 to 217-2.

43. 7/12/78 TI - 137; 7/12/78 TI-167; 7/12/78 TI-173; 7/12/78 TI-183-184; 7/12/78 TI-229 to 230.

Commission could license persons to perform those accounting department functions. Rogers said that he recognized that, technically, dealers, who were employees of the casino department, should not be performing accounting department functions. But under the emergent circumstances he felt this was temporarily necessary until sufficient accounting department personnel could be licensed.⁴⁴

Rogers was examined at the July 12 hearing concerning the adequacy of Resorts' personnel. He testified at great length on both direct and cross-examination regarding a detailed memorandum⁴⁵ prepared by Commission staff concerning the adequacy of Resorts' personnel to meet the staffing demands created by the proposed Phase II expansion. In response to a specific question as to where the personnel would come from to man the proposed new change booths, Rogers, referring to the Commission staff memorandum, stated that Resorts would rely on its excess pool of dealers until additional applicants were licensed.⁴⁶

Rogers readily admitted on July 12 that Resorts' initial slot booth was "nowhere near adequate,"⁴⁷ and that "we made mistakes in the earlier stages that we won't be making at this time...."⁴⁸ He added, however, that the new slot booths proposed as part of the Phase II expansion would alleviate some of the pressure on the existing slot booths.⁴⁹ Moreover, Phase II would enable the casino to

44. 7/12/78 TI-184 to 185.

45. This memorandum dated July 7, 1978 was prepared by Michael A. Santaniello, Senior Assistant Counsel to the Commission, after consultation with representatives of the Commission, the Division and Resorts. It was admitted as (P-9) in evidence at the July 12 hearing.

46. 7/12/78 TI-136-8 to 137-23. See also 7/12/78 TI-183-18 to 185-13.

47. 7/12/78 TI-80-6 to 10. See also 7/12/78 TI 176-7 to 14.

48. 7/12/78 TI 135-21 to 22.

49. 7/12/78 TI-80-6 to 82-6; 7/12/78 TI-135-25 to 136-4.

close pit number one, which was located right in front of the main slot booth, and move that pit into the new casino space, thereby relieving a great deal of the congestion on the floor.⁵⁰ This latter testimony was corroborated by that of Lieutenant Anthony DeMasi of the Division, who stated at the July 12 hearing⁵¹ that relocating pit number one away from the main slot change booth would reduce congestion and would definitely be "an improvement."

As the transcript (D-5) indicates, at the July 12 hearing the Commission was fully and accurately apprised as to the ability of Resorts to meet the additional personnel burdens created by its proposed Phase II. Detailed memoranda from both the Commission staff⁵² and the Division staff⁵³ were presented along with the testimony of Resorts officials, Commission staff members and Division staff members.⁵⁴ In his closing remarks to the Commission on July 12, Mr. Sterns, attorney for Resorts, alluded to the fact

50. 7/12/78 TI-231-9 to 232-22.

51. 7/12/78 TII-191.

52. See n. 45 , above.

53. See (P-10) in evidence at the July 12, 1978 hearing.

54. For example, Charles Carpenter, investigator for the Division, testified that from his personal observation he was familiar with the operation of the cage in the casino, that he had reviewed Resorts' submission regarding proposed staffing schedules in the cage for Phase I and Phase II operations and that he agreed with Rogers that the staffing was sufficient there for Phase I and for the expanded Phase II. 7/12/78 TII-133-21 to 134-18. Joseph Wolf, of the New Jersey State Police, assigned to the Division, testified that Resorts was not sufficiently staffed in the slot department to permit expansion into Phase II. 7/12/78 TII-145-23 to 150-13. (See also 12/15/78 T736-4 to 738-16.)

that since the opening of the casino on May 26, 1978 there had been mistakes, there had been legitimate complaints, at times there had been a lack of adequate personnel, there had been less than optimum working conditions, and there had been technical violations, some of which had not been remedied as of that time. But, he argued, conditions were continually improving with the licensure of additional personnel, and Phase II with its additional space would actually facilitate that improvement.⁵⁵

At that hearing the attorney representing the Division⁵⁶ stated after all the evidence had been presented:

"With regard to slot change personnel and slot booths, I think there is an adequate number of personnel to service those functions as long as the applicant is permitted to use dealers in that function [however] the use of dealers in that function would raise questions concerning the internal control procedures that have already been discussed."⁵⁷ (Emphasis added).

Counsel for the Commission⁵⁸ stated that Resorts appeared to have adequate personnel to support the Phase II expansion, with the exception of slot mechanics and security persons.⁵⁹

55. 7/12/78 TII 216-15 to 227-6.

56. Guy S. Michael, Deputy Attorney General.

57. 7/12/78 TII-228-23 to 229-6.

58. Joseph A. Fusco, Special Counsel for Licensing.

59. 7/12/78 TII 231-13 to 235-3.

At the July 12 hearing the Commission granted Resorts' request to increase the size of its casino but granted only part of Resorts' request for more table games and slot machines⁶⁰ due to the lack of sufficient licensed personnel in the slot and security departments. Chairman Lordi stated on the record:

"I would like a situation [in] which all of the employees were in place, where all of the count rooms were large enough and equipped sufficiently to not only service whatever machines were brought in there or whatever equipment and games were on the floor, but also, to accomodate the public in accordance with the statutes. We recognize that that is not here. We also recognize that we have a problem in the casino. It is congested, it is overcrowded, it seems to me, the only way of opening it up is to not only give the area to the applicant, but to provide some additional machines, machines that perhaps can be adequately serviced until such time as additional employees have been licensed by the Commission.

Now, I think there is sufficient evidence on the record to show what we are doing here is really temporary in nature, temporary in the sense that we know [there] are presently pending before the Division a number of applications for employment, license for employment, within the casino itself, employees that will fill up all the boards and the deficiencies that have been brought out here and I would urge, of course, the Division of Gaming Enforcement to give the kind of priorities that they have and let's get as many applications, as we possibly can, processed within the shortest period of time possible."
(Emphasis added).⁶¹

60. See n. 38, above. Resorts was permitted to open up 12 additional blackjack tables, one big six wheel and 158 slot machines. The request was continued as to the remaining 305 slot machines due to the lack of an adequate number of licensed personnel to service these machines and the patrons who would use them.

61. 7/12/78TII-258-19 to 259-23.

When the transcript of the July 12 hearing (D-5) is read in its entirety as it must be, it is crystal clear that neither Resorts nor Rogers made materially misleading misrepresentations to the Commission regarding Resorts' slot booth operation. Although the various deficiencies which are now the subject of Count I of Complaint No. 78-25 were not specifically referred to, a generally accurate picture was presented, wherein emergency procedures, mistakes and even violations were alluded to. The thrust of the testimony was that, although there were many problems during the first days and weeks of operation, conditions were steadily improving, and Phase II with its additional space and facilities would further that process.

In the instant proceedings the Division had charged that Resorts and Rogers made materially misleading misrepresentations to the Commission on July 12 by failing to advise the Commission at that time of the \$179,195.01 discrepancy which had been discovered by Resorts on July 6 when it took inventory of its coin.⁶² It was not established, either at that time or subsequently, whether this discrepancy was due to an actual shortage or to mere book-keeping error. But, no evidence of foul play has been presented. According to the testimony⁶³ Mr. I.G. Davis⁶⁴ was informed of this discrepancy on or about July 9. He immediately contacted Mr. Larry Rice,⁶⁵ and asked him to come up from Florida to look into the matter.

62. See Count I, Parts VI and VII.

63. 12/15/78 T674-24 to 677-2.

64. Vice-Chairman and Chief Executive Officer of Resorts International Hotel, Inc. and President of the parent company, Resorts International, Inc.

65. Vice President, Controller and Treasurer of the parent company.

and determine the possible causes of the discrepancy. Davis testified that he was advised on July 9 that this discrepancy could not have resulted in Resorts paying less gross revenue tax than required. Davis stated that when he testified before the Commission a few days later (at the July 12 hearing) this matter was not in his mind and moreover the discrepancy "was still speculative,...was very unresolved, very unclear as to its causes, or actual existence and... in fact it was our money. It was not anyone else's."⁶⁷ Other testimony was introduced by Resorts to the effect that there was no suspicion of any theft or embezzlement and that Resorts did not consider this apparent discrepancy--which amounted to approximately two-tenths of one percent (0.2%) of the handle during the period in question--unusual, especially in light of the admittedly chaotic conditions in the casino during the first weeks of its operation. It is undisputed that, upon discovering the discrepancy on July 9, Resorts promptly recorded it in its daily income journal for that date as a slot booth shortage. This fact undermines any notion that Resorts attempted to hide the discrepancy, since the daily income journal is readily accessible to both the Division and the Commission, as Resorts is well aware.

With regard to Rogers, the testimony indicates that he did not learn of the discrepancy until after he had testified on July 12.⁶⁸ He may not then be held responsible for failing on July 12 to advise the Commission of that discrepancy.

66. 12/15/78T 721-24 to 722-17.

67. 7/15/78 T 725-6 to 9.

68. He was first advised of the discrepancy by a memorandum from Cornelius Klerk, Casino Controller. The memorandum was dictated on July 12 and was not read by Rogers until July 13 or 14. See 12/15/78T 633-16 to 635-25; 12/15/78T 655-24 to 657-17; 12/15/78 T760-9 to 761-10; 12/15/78 T765-21 to 767-3; 12/15/78 T771-22 to 774-10.

In light of the record before me I find that at the July 12, 1978 hearing neither Respondent Resorts nor Respondent Rogers offered materially misleading misrepresentations to the Commission regarding the casino's slot booth operation.

In spite of this finding and in spite of the fact that in Count I, Part VI of this Complaint, I have found no violation of the technical reporting requirements of N.J.A.C. 19:45-4(b)(3), I am constrained to add these thoughts. Resorts should be censured for not immediately advising the Commission and the Division of the apparent \$179,195.01 discrepancy. Wholly apart from the question of material misrepresentation and the technical reporting requirements of specific regulations, the notion of public confidence in gaming operations which permeates the Casino Control Act demands that whenever a discrepancy of this magnitude is discovered even if it is only an apparent discrepancy, the cause of which has yet to be determined--the regulatory authorities should be notified. While the record here indicates no intent on the part of Resorts to conceal⁶⁹ this discrepancy, the better practice would have been to report it immediately. This is especially true where, as here, it was brought to the attention of the highest officers of the corporation, Mr. Crosby and Mr. Davis.

69. Indeed, the testimony of Charles Carpenter, investigator for the Division's casino compliance unit, indicated that he generally received 100% cooperation from officials and employees of Resorts. 12/11/78 T136-4 to 8.

FOURTH COUNT

The Fourth Count of No. 78-25 alleges in substance that Respondent Rogers continued to exercise supervisory control over certain accounting department functions, that Respondents Resorts and Rogers materially misrepresented Resorts' organizational structure in testimony before the Commission on July 12 and July 26, 1978, and that Resorts knowingly and willfully maintained its organizational structure in a manner contrary to Commission regulations.

PART I.

Part I charges specifically that subsequent to July 19, 1978, Rogers exercised supervisory control over Resorts' cashiers' cage⁷⁰ in violation of Commission regulations, despite representation to the contrary in a letter to the Commission from counsel for Resorts dated August 2, 1978.⁷¹ I am unable to find any evidence in the record sufficient to support this charge.

70. The cashiers' cage is within the jurisdiction of the accounting department.

71. This letter was written in response to a July 20, 1978 letter from the Commission staff to Resorts which advised Resorts in general terms that the casino department was determining procedures in the cashiers' cage, count rooms and slot booths. Although neither of these letters was offered in evidence, both were specifically referred to in Count IV, Part I of Complaint No. 78-25 (paragraphs 5 and 6), and both were included in the appendix to that Complaint (Exhibits "X" and "L"). In its Notice of Defense Respondents relied upon the letters referred to for the contents thereof. In light of these facts I consider these letters properly before me. However, these letters which do not mention Rogers and which do not specify at all how the casino department may have been involved in the operation of the cashiers' cage, count rooms or slot booths - are insufficient by themselves to establish the charges in Count IV, Part I.

PART II.

Part II charges that Resorts knowingly and willfully maintained its organizational structure in a manner contrary to Commission regulations and Resorts and Rogers materially misrepresented this organizational structure in testimony before the Commission on July 12 and July 26, 1978.

Again the transcripts of the Commission hearings on July 12⁷² and July 26,⁷³ viewed in their entirety, are the best evidence as to what was represented to the Commission. On July 12 Rogers testified at length in support of Resorts' Phase II expansion request. His testimony indicates that during the first several weeks of casino operations the use of dealers (from Rogers' casino department) to perform functions in the count rooms, slot change booths and other areas normally under the jurisdiction of the accounting department created a dual chain of command situation. The dealers, who volunteered for these temporary assignments because of the emergent conditions, ordinarily reported to Rogers since they were casino department employees. But while they were performing accounting department functions they were required to report to the supervisors within the accounting department. Rogers testified that he had to become "involved" with the functions of the accounting department for staffing purposes, since he had to know how many and which of his dealers he would have to loan to the accounting department.⁷⁴ He agreed that the cashiers' cage was not under his jurisdiction.⁷⁵

72. (D-5) in evidence.

73. (D-6) in evidence.

74. See 7/12/78 TI-163-1 to 16; 7/12/78 TI-169-16 to 19.

75. 7/12/78 TI 178-14 to 16.

On July 12 Rogers testified that he was aware that internal control procedures ordinarily prohibit the utilization of employees of the casino department to perform functions in other departments. When asked how he reconciled that awareness with the use of dealers to perform accounting department functions, he replied:⁷⁶

"I would say in a 'state of emergency' which we are in right now and with the approximately 280 applications we have submitted, I see a relief very shortly. I would have no intentions of working under these conditions for any prolonged period. That certainly isn't our intention at all. The quicker we can get our dealers out working on the tables, the more tables we can open."

He indicated that with the licensure of additional personnel at each Commission meeting the situation was improving.⁷⁷

On July 26 Rogers testified before the Commission and agreed that he had no role with regard to casino accounting functions other than to delineate certain dealers from the pool who were available.⁷⁸ He added that he had no supervisory authority over the accounting department and only became involved at all in the accounting areas because "we were supplying casino personnel to those areas."⁷⁹

At the July 26 hearing Mr. Larry Rice⁸⁰ substantially corroborated Rogers' July 12 and 26 testimony on these matters.

76. 7/12/78 TI-184-14 to 20. See also 7/12/78 TI-192-8 to 21.

77. See, eg. 7/12/78 TI 219-4 to 9.

78. 7/26/78 TII-115-5 to 14.

79. 7/26/78 TII - 121-21 to 122-6.

80. See n. 65, above.

He stated that there were communications between the casino department and the accounting department because of the expertise required to operate a casino. The two departments were working together to get the casino operation going.⁸¹ The slot booths were staffed at that time by dealers, cashiers and corporate personnel.⁸² He also stated that the manning charts for the assignment of personnel to the change booths were made up jointly by the accounting department and the casino department. This was due to the fact that the accounting department was at that time short of licensed personnel and was using dealers from the casino department to fill in. Rice agreed that the casino department directed the activity of those dealers only to the extent of indicating which dealers would be available for temporary assignment to the accounting department. The casino department did not direct the activities of the dealers while they were working in the coin booths.⁸³

At the hearing before me, Mr. Edward B. Michael, Vice President of Finance for Resorts, testified that during the first several weeks of casino operations, although in general there was segregation of functions between the casino department and the accounting department,⁸⁴ there were several "gray areas" in which the respective responsibilities of the two departments were not defined with sufficient clarity. He attributed these "gray areas"

81. 7/26/78 TII-36-2 to 7.

82. 7/26/78 TII-36-12 to 37-12. See also 7/26/78 TII 98-4 to 23.

83. 7/26/78 TII 42-3 to 43-16.

84. 12/12/78 T474-19 to 475-6.

to the lack during that period of licensed personnel in the accounting department, particularly at the supervisory level.⁸⁵ This necessitated a temporary reliance on personnel from the casino department--licensed dealers -- who ordinarily would report to Rogers.⁸⁶

One of the "gray areas" related to Rogers advising the casino cage to order additional coin without Michael's knowledge.⁸⁷ Michael felt that this type of thing, while not a big issue, "could potentially be a problem if the communication is not clear."⁸⁸ Another "gray area" was Rogers' recommendation of two count room people for promotion.⁸⁹ However, these promotions were not made on a permanent basis because Cornelius Klerk, casino controller, did not approve them.⁹⁰

Michael recalled relating some of his general concerns about "gray areas" to James Crosby⁹¹ sometime in mid-June. He testified, however, that these matters which he called "gray areas" did not in his mind rise to the level of the casino department exercising control over the accounting department.

85. See 12/12/78 T-460-7 to 461-22; 12/12/78 T471-12 to 18.

86. 12/12/78 T-499-19 to 503-14.

87. 12/12/78 T475-7 to 476-15; 12/12/78T484-12 to 25. Michael added, however, that he did not feel that this violated the principle of segregation of incompatible functions. 12/12/78T-489-1 to 9.

88. 12/12/78T477-20 to 24.

89. 12/12/78T480-24 to 484-10.

90. 12/12/78T493-1 to 494-17.

91. Chairman of the Board of Resorts.

In light of these facts and on the basis of the record before me I find that Respondent Resorts did not knowingly and voluntarily maintain its organizational structure in a manner contrary to Commission regulations. I further find that neither Resorts nor Respondent Rogers materially misrepresented Resorts' organizational structure in testimony before the Commission on July 12 and July 26 1978.

No. 78-26

FIRST COUNT

The First Count of No. 78-26 charges Resorts with employing twenty-five named individuals in its casino as casino employees at times when said persons did not hold valid casino employee licenses in violation of the provisions of the Casino Control Act⁹² and Commission regulations.⁹³ Resorts had admitted that it employed twelve of these individuals in its casino operation at times when they did not hold valid casino employee licenses, in violation of N.J.S.A. 5:12-106(a)⁹⁴ I so find.

92. N.J.S.A. 5:12-1 et seq.

93. N.J.A.C. 19:45-1 et seq.

94. The Division has withdrawn the charges with regard to the remaining thirteen individuals.

SECOND AND THIRD COUNTS

The Second and Third Counts of No. 78-26 charge Resorts with employing twenty named individuals in its casino hotel as casino hotel employees at times when said persons did not hold valid casino hotel employee licenses in violation of the Casino Control Act and Commission regulations. Resorts has admitted that it employed seventeen of these individuals in its casino hotel operation at times when they did not hold valid casino hotel employee licenses, in violation of N.J.S.A. 5:12-106(a).⁹⁵ I so find.

95. The Division has withdrawn the charges with regard to the remaining three individuals.

No. 78-27

Complaint No. 78-27 charges that, by failing to comply with a Commission regulation⁹⁶ which requires that at the end of each gaming day a cage cashier must determine that all locked containers containing gaming chips have been returned to the cashiers' cage, Resorts is unable to pinpoint responsibility for a chip tray containing \$14,260.00 missing from a blackjack table on June 4, 1978. Resorts has admitted the following facts, all of which I find to be established:

1. On Sunday, June 4, 1978 at approximately 6:00 a.m., the contents of the chip tray from blackjack table No. 57 (hereinafter "BJ 57") in Pit #6 were counted by pit boss Jerry Higginbotham and dealer Alfred Thomas Glenn, who recorded on the "closer" for that table the value thereof as fourteen thousand, two hundred and sixty dollars (\$14,260.00).

2. The chip tray from BJ 57 was immediately thereafter placed by boxman Robert Brown in the presence of certain security personnel on top of a cart used to transport such trays to the casino cage.

3. The cart upon which said chip tray was placed was thereafter transported to the casino cage and stored in a vault therein.

4. Subsection (g) of N.J.A.C. 19:45-29 requires that at the end of each gaming day, a cage cashier shall determine that all locked containers containing gaming chips have been returned to the cashiers' cage.

96. N.J.A.C. 19:45-29(g) provides:

"At the end of each gaming day, a cage cashier shall determine that all locked containers have been returned to the cashiers' cage."

5. No such inventory of the chip containers from Pit #6, including BJ 57, was made by cage personnel.

6. On Sunday, June 4, 1978 at approximately 9:40 a.m., Steve Manague, day shift pit boss for Pit #6 reported that the chip tray for BJ 57 was missing from the cart from which trays were being replaced on the tables in anticipation of opening.

7. Despite extensive investigation, neither the missing tray nor its contents have been located, and the perpetrator or perpetrators have not been identified.

Resorts has admitted that its failure to comply with the provisions of N.J.A.C. 19:45-29(g) has made it impossible to determine who had custody of the chip tray from blackjack table number #57 when it was lost or stolen. I so find.

No. 78-28

Complaint No. 78-28 which is in four counts charges in substance that Respondent Resorts transacted business directly relating to casino or gaming activity with four unlicensed companies alleged to be casino service industries, contrary to provisions of the Casino Control Act⁹⁸ and Commission regulations.⁹⁹

Resorts has admitted to all of the factual allegations concerning each transaction with each company. Additionally, at the hearing¹⁰⁰ Resorts stipulated as to the relevant filing dates, and dates on which enterprises were placed on the Commission's list of companies approved to do business with Resorts, as set forth in the December 8, 1978 letter from the Commission to Resorts and the Division, (R-3) in evidence.

Resorts argues, however, that it has not committed a violation because the transactions did not involve "gaming equipment,"¹⁰¹ at least with regard to three of the four companies.

I need not reach the question of whether the transaction in question involve gaming equipment or "goods or services...which directly relate to casino or gaming activity."¹⁰² The transactions and the dates thereof are admitted. These transactions occurred, at times when none of these four companies had been placed on the list of companies which had been approved by the Commission to do

97. SEG Casino Sales Company; Amiel Industries of North America, Inc.; Abbott Coin Counter Company, Inc.; and Price Atlantic City Enterprises, Inc.

98. N.J.S.A. 5:12-92(a); N.J.S.A. 5:12-104(b).

99. N.J.A.C. 19:41-11.

100. 7/16/78 T933-1 to 934-14.

101. See N.J.S.A. 5:12-23 and N.J.A.C. 19:43-1.1.

102. See N.J.S.A. 5:12-92(a).

business with Resorts.(R-3). Carol Kangieser, Director of Purchasing for the Development Division of the Project Office of Resort testified that she was familiar with the procedure whereby Resorts obtained authorization to deal with service industries.¹⁰³ She admitted that at the times the purchases in question were made from the four companies, none of those companies had appeared on the Commission's list of approved companies.¹⁰⁴

Commission regulations relating to applications by casino licensee for approval of agreements¹⁰⁵ provide as follows:

"The Commission may in its discretion permit an unlicensed casino service industry enterprise to provide goods or services to or conduct business with a casino, a casino licensee, its employees or agents:

1. only if an application for the approval of a casino licensee agreement has been properly filed by the casino licensee or applicant for a casino license with and is pending before the Commission; and,
2. only if any required casino service industry license application has been properly filed by the casino service industry enterprise with and is pending before the Commission, provided, however, that any such enterprise directed to file a casino service industry license application may in the discretion of the Commission be permitted a reasonable time to prepare and file same." (Emphasis added)

As this regulation indicates, upon the filing of the appropriate forms, the Commission must exercise its discretion before a casino licensee may conduct business with an unlicensed casino service enterprise. As the record indicates, the procedure established for this exercise of discretion by the Commission was to place the name of appropriate enterprises upon a list of enterprises approved for doing business. Resorts was aware that it could not continue +

103. 7/16/78 T970-12 to 971-21.

104. 7/16/78 T972-20 to 973-5; 7/16/78T974-13 to 976-2.

105. N.J.A.C. 19:41-11.3(g).

conduct business with any enterprise which had not been by approved by the Commission and placed on the list.

Based upon this record I find that Resorts did transact business with each of the four named companies in violation of Commission regulation N.J.A.C. 19:41-11.

No. 78-29

Complaint No. 78-29 charges Resorts in eleven counts with having transacted business with eleven named enterprises¹⁰⁶ at times when those enterprises were not licensed as casino service industries and prior to the filing by Resorts of appropriate applications for approval of agreements ("contract approval forms") and, where appropriate, applications for casino service industry licenses.¹⁰⁷ Resorts has admitted to all of the business transactions alleged in each count and has admitted that it violated N.J.S.A. 5:12-104(b) in each instance. I so find.

106. These eleven enterprises, which were also named as Respondents in No. 78- by the Division have been severed and will be dealt with separately.

107. N.J.A.C. 19:41-11.

No. 78-30

Complaint No. 78-30 charges Resorts with violating seven provisions of the Commission regulations relating to internal and accounting controls, which provisions Resorts had been cited for violating in a previous Order of the Commission.¹⁰⁸

FIRST COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-3 found conduct in violation of Commission regulation N.J.A.C. 19:45-23(g)(1) in that pit supervisors for Resorts acted to verify player credit rather than said actions being conducted by casino pit clerks.

2. Resorts continued to engage in conduct in violation of N.J.A.C. 19:45-23(g)(1) in that on or about September 23, 1978 floorman Donald C. Davis, Resorts identification number B17523, acted to verify the player credit of the following players with the cashiers' cage.

- a. Donald Zarin, marker number 0004385, in the amount of \$2,000.
- b. A. Montehite, marker number 0003130, in the amount of \$1,000.
- c. Howard Wolfe, in the amount of \$2,000.
- d. Harold Siegal, in the amount of \$500.
- e. Joseph Gallino, marker number 0007685, in the amount of \$500.

¹⁰⁸. On September 12, 1978 the Commission adopted the Report and Recommendation of this Hearing Examiner which concluded that Resorts had violated twenty provisions of N.J.A.C. 19:45-1 et seq. during the initial days of operation of its casino.

SECOND COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-5 found there to be conduct by Resorts in violation of N.J.A.C. 19:45-41(i)(6)¹⁰⁹ in that all persons involved in the counting of coin did not sign the slot win sheet attesting to the accuracy of the information recorded thereon.

2. On September 20, 1978 fourteen named individuals did not sign the slot win report for that date.

It has been stipulated by the parties that the named individuals who failed to sign the slot win sheet were on the first (day) shift and thus were not present when the final count was completed during the second shift.¹¹⁰ However, the Division argued persuasively that all employees engaged in the entire weighing and counting process are "count team members" within the meaning of the regulation and should be required to sign the slot win sheet. The results of the initial weighing (in which the named individuals participated) are compared to the results obtained from the subsequent counts as a check on the accuracy of the final figure.

109. "Procedures and requirements for conducting the count shall be the following:

After the contents of each drop bucket is counted and recorded, each count team member shall sign the Slot Win Sheet attesting to the accuracy of the information recorded thereon and the Commission inspector shall sign the Slot Win Sheet evidencing his presence during the count."

110. 12/16/78 T991-1 to 994-21.

The coin weighing is thus an integral part of the counting process, and those who participate in it should be required to attest to the fact.

I find that by virtue of the failure of the named individuals to sign the Slot Win Sheet on September 20, 1978, Resorts has violated N.J.A.C. 19:45-41(i)(6).

THIRD COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-6¹¹¹ found Resorts to be engaging in conduct in violation of N.J.A.C. 19:45-31(i)(1)¹¹² in that the cashiers' cage representative in the soft count was not adequately recounting the currency and coin received.

2. Resorts continued to engage in conduct in violation of N.J.A.C. 19:45-31(i)(1) in that on or about September 20, 1978 Bernadette Brown, cage cashier representative in the soft count, accepted the currency without conducting an independent count verification of each bill accepted.

Resorts argues in mitigation of sanction that the regulation does not specifically require an independent count verification of each bill accepted. Moreover, such a procedure would require the cage cashier to break open the seals on all of the currency already counted and thus add significant time to the count.

111. See Count I of No. 78-6.

112. N.J.A.C. 19:45-31(i)(1) provides, in pertinent part:

"Procedures and requirements at the conclusion of the count for each shift shall be the following:

1. All currency and coin removed from the drop boxes shall be immediately presented in the count room by a count team member to a general cashier, who, prior to having access to the information recorded on the Master Game Report and in the presence of the count team member, shall recount either manually or mechanically, the currency and coin...." (Emphasis added).

FOURTH COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-12 found Resorts to be engaging in conduct in violation of N.J.A.C. 19:45-41(f)¹¹³ in that persons were permitted to enter and leave the count room during the count other than during a normal break or emergency.

2. On or about September 20, 1978 two named individuals left and re-entered the hard (coin) count room on three occasions during the conduct of the count.

At the hearing the parties stipulated that the two persons named left the count room at the times cited in order to go to the mens' room.¹¹⁴ Respondent argues that this constitutes an "emergency" within the meaning of the regulation. I agree and consequently I find no violation here.¹¹⁵

113. "Immediately prior to counting the contents of the drop buckets, the doors to the count room shall be securely locked and, except as required by subsection (i)(1) of this section, no person shall be permitted to enter or leave the count room, except during a normal work break or in an emergency, until the counting devices to be used are checked for accuracy, and until the entire counting, recording, and verification process is completed. During a work break or in the event of an emergency, the counting and recording process shall be discontinued unless the appropriate number of personnel as described in subsection (c) of this section is present." (Emphasis added).

114. 12/16/78 T989-2 to 11.

115. I note additionally that these facts differ materially from the earlier violation of this regulation for which Resorts was cited (No. 78-12). There, management personnel who were not participating in the count impermissably entered and left the count room during the conduct of the count.

FIFTH COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-16 found Resorts to be engaging in conduct in violation of N.J.A.C. 19:45-20(c)¹¹⁶ in that all dealers assigned to particular gaming tables did not properly count the contents of the table inventory container and agree said count to the opener removed from the container.

2. On or about September 14, 1978, a single dealer signed all the openers for blackjack tables 37, 38 and 39 and placed said openers in the drop box of each table prior to the appearance at each such table of the particular dealer scheduled for assignment at that table.

At the hearing the parties stipulated that a dealer count the contents of the table inventory container and did sign the openers for the three tables in question. There were four dealers responsible for the three tables. The dealer who did the counting and signing was the fourth, or relief dealer for those tables.¹¹⁷ Resorts argues that this relief dealer was "the dealer... assigned to the gaming table" within the meaning of the regulation, and therefore no violation was committed. The Division contends that the regulation requires the dealer primarily assigned to a gaming table to count the inventory and sign the opener. This is necessary to provide adequate safeguards and protection against potential abuses or irregularities.

116. "The dealer or boxman assigned to the gaming table shall count the contents of the container in the presence of the casino supervisor assigned to such table and shall agree the count to the Opener removed from the container.

117. 7/16/78 T995-1 to 996-25.

This regulation has two primary purposes: to insure that the table inventory is counted and agreed to the opener; and to pinpoint responsibility for those assets and documents. Resorts procedure here complied with the first purpose but not with the second. Accordingly, I find that a violation of N.J.A.C. 19:45-20 has been committed.¹¹⁸

118. It should be noted that this violation differs materially from the earlier violation of this regulation for which Resorts was cited (No. 78-16). There among other things, the contents of the table inventory container were neither counted nor agreed to the opener. Here, the contents were counted and agreed, but not by the dealer who then manned each table.

SIXTH COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-17 found Resorts to be engaging in conduct in violation of N.J.A.C. 19:45-31(h)(10) in that after preparation of the master game report each count team member did not sign the report attesting to the accuracy of the information recorded thereon.

2. On or about September 4, 1978 count team member Stella Ames did not sign the master game report appropriate for that date.

3. On or about September 13, 1978 count team member Cookie Schwartz did not sign the master game report appropriate for that date.

The facts are undisputed and clearly indicate a violation of the regulation in question. I so find.

SEVENTH COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. Commission docket number 78-20 found Resorts to be engaging in conduct in violation of N.J.A.C. 19:45-30(b)(3) in that no alarm device was connected to the entrance of the count room in such a manner as to cause a signaling to the monitors of the closed circuit television system and to the Division's office in the establishment whenever the door to the count room was opened.

2. Resorts continued to engage in conduct in violation of N.J.A.C. 19:45-30(b)(3) in that no alarm device has been connected to the entrance of the count room in a manner which would cause notification to the offices of the Division in the establishment whenever the door to the count room is opened.¹¹⁹

¹¹⁹. This alarm device has subsequently been installed.

No. 78-22

Resorts has admitted the following facts, all of which I find to be established:

1. On June 26, 1978 at or about 9:50 a.m. Blackjack table Number 52 in Respondent's casino received a Fill of 100 two dollar and fifty cent denomination chips worth a total of \$250.

2. On said date at said time Steve Manogue, an employee of Respondent, was then and there serving as the Pit Boss for Pit Number 6, which included Blackjack table Number 52.

3. On said date at or about said time Mr. Manogue, upon receipt of the 100 two dollar and fifty cent chips, removed \$225 worth of such chips from Blackjack table Number 52 and replaced them with marker buttons in the same amount.

4. Mr. Manogue then took the removed \$225 in chips and distributed them in \$25.00 amounts to other Blackjack tables in Pit Number 6.

5. Upon distribution of said chips to each Blackjack table, Mr. Manogue received, in exchange, one \$25 chip, the sum of which he then returned to Blackjack table Number 52.

6. Mr. Manogue, upon placing the received \$25 chip on Blackjack table Number 52, removed the marker buttons which he had previously placed there.

7. Instructions to perform the above described procedure were given to Mr. Monague by Rick Howe, employed by Respondent as a Shift Boss.

8. N.J.A.C. 19:45-22(a) provides that:

"A request for credit (Request) shall be prepared by a casino supervisor, or a casino clerk, to authorize the preparation of a credit slip ("Credit") for the removal of gaming chips and plaques from gaming tables to the cashiers' cage. The request shall be a two part form,

at a minimum, and access to such form shall, prior to use, be restricted to casino supervisors and casino clerks."

9. N.J.A.C. 19:45-21(a) provides that:

"A request for Fill (Request) shall be prepared by a casino supervisor, or a casino clerk, to authorize the preparation of a Fill slip ("Fill") for the distribution of gaming chips and plaques to gaming tables. Access to the Request shall be restricted to supervisors and casino clerks."

10. The distribution of chips between the Blackjack table in Pit Number 6 as described was conducted without the utilization of Request, Fill, or Credit slips reflecting this distribution.

11. The distribution of chips between and among the Blackjack tables in pit number 6 as described was conducted in violation of N.J.A.C. 19:45-22(a); and N.J.A.C. 19:45-21(a).

No. 78-23

FIRST COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. On June 7, 1978 at or about 9:50 a.m. Bob James, an employee of Respondent, was on duty as pit boss of Pit Number 5.

2. At said time Bob James counted the table inventory at Blackjack table number 41 and then asked the dealer then and there on duty if the inventory agreed with the Opener.

3. The dealer then and there on duty was employee number 11289, an employee of respondent.

4. Dealer number 11289 did not separately count the table inventory.

5. N.J.A.C. 19:45-20(c) provides:

"The dealer or boxman assigned to the gaming table shall count the contents of the container in the presence of the casino supervisor assigned to such table and shall agree the count to the Opener removed from the container."

6. The actions described were in violation of N.J.A.C. 19:45-20(c).

SECOND COUNT .

Resorts has admitted the following facts, all of which I find to be established:

1. On June 7, 1978 at or about 9:50 a.m. Bob James, an employee of respondent, was on duty as Pit Boss in Pit Number 5.

2. On said date at said time Mr. James counted the table inventory at Blackjack table number 42 and then asked the dealer if the inventory agreed with the Opener.

3. The dealer then and there on duty was employee number 12838, an employee of respondent.

4. Employee number 12838 did not individually count the table inventory.

5. The actions taken as described were in violation of N.J.A.C. 19:45-20(c).

THIRD COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. On June 7, 1978 at or about 9:50 a.m. Bob James, an employee of Respondent, was on duty as pit boss of Pit Number 5.
2. On said date on or about said time Mr. James counted the table inventory at Blackjack table number 43 and then asked the dealer assigned to said table if the inventory agreed with the Opener.
3. The dealer assigned to said table was employee number 13112.
4. Employee number 13112 did not individually count the table inventory.
5. The actions taken as described above were in violation of N.J.A.C. 19:45-20(c).

No. 78-24

FIRST COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. On June 3, 1978 from on or about 8:00 p.m. to on or about 6:00 a.m. Gerald Higginbotham, an employee of Respondent, was on duty as Pit Boss of Pit Number 6.

2. While serving in this function, Mr. Higginbotham was then and there responsible for the supervision of all table games in Pit Number 6.

3. On said date at said time Pit Number 6 contained 15 Blackjack games and 2 Craps games.

4. On said date at said time Mr. Higginbotham was the only Pit Boss then and there on duty in Pit Number 6.

5. On said date at said time all table games in Pit Number 6 were in operation.

6. N.J.A.C. 19:45-11(a)(6)(ii): provides that:

"Pit Boss shall be:

the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 Blackjack, Roulette, Big 6, or Baccarat tables or a combination thereof."

7. Mr. Higginbotham's supervision of Pit Number 6 was in violation of N.J.A.C. 19:45-11(a)(6)(ii).

SECOND COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. On June 4, 1978 from at or about 8:00 p.m. to at or about 6:00 a.m. Gerald Higginbotham, an employee of Respondent, served as Pit Boss of Pit Number 6.

2. Paragraphs 2 through 7 of the First Count above are incorporated by reference herein.

THIRD COUNT

Resorts has admitted the following facts, all of which I find to be established:

1. On June 29, 1978 at or about 2:00 p.m. Stephen Manogue, an employee of Respondent, served as Pit Boss of Pit Number 6.
2. On said date at said time Pit Number 6 contained 15 Blackjack tables and 2 Craps tables.
3. On said date at said time Mr. Manogue was the only Pit Boss then and there on duty in Pit Number 6.
4. On said date at said time all tables games in Pit Number 6 were in operation.
5. The maintenance of supervision by Mr. Monague as described was in violation of N.J.A.C. 19:45-11(a)(6)(ii).

RECOMMENDED SANCTIONS

After having given due consideration to the standards relating to appropriate sanctions¹²¹ set forth in the Casino Control Act, to the circumstances and context in which these violations occurred and to the oral and written arguments of the parties with respect to sanctions and mitigation, I recommend that the Commission impose the following sanctions:

Complaint No. 78-25

First Count

Part I - For failing to maintain its slot booths on an imprest basis during the first two weeks of casino operations in violation of N.J.A.C. 19:45-33(a) a civil penalty of \$5,000.

Part II - For permitting improper inter-booth transfers of assets from June 18 to July 14, 1978 in violation of N.J.A.C. 19:45-32(a)(7), a civil penalty of \$5,000.

Part III - For failing to record which personnel were assigned to which particular booths during the first seven weeks of casino operations in violation of N.J.A.C. 19:45-10(a)(2), a civil penalty of \$5,000.

Part IV - For failing during the first weeks of casino operations to compare slot booth assets with recorded accountability therefor, and for permitting insufficient documentation to accompany the exchange

120. N.J.S.A. 5:12-130.

121. N.J.S.A. 5:12-129.

of assets between booths in violation of N.J.A.C. 19:45-32(a)(7), N.J.A.C. 19:45-43(a)(1) and N.J.A.C. 19:45-2A(b), a civil penalty of \$5,000.

Part V - As to Resorts:

1. For failing to count slot booth currency during the first two weeks of casino operations, in violation of N.J.A.C. 19:45-14(a), and N.J.A.C. 19:45-10(a)(2)(iv), a civil penalty of \$5,000.
2. For permitting Respondents Rogers and Carr to participate in the count of this slot booth currency in violation of N.J.A.C. 19:45-10(a)(2) a civil penalty of \$5,000.

As to Rogers: For participating in the count of slot booth currency on June 6, 1978 in violation of N.J.A.C. 19:45-10(a)(2)(iii), a civil penalty of \$2,000.

As to Carr: For participating in the count of slot booth currency on June 6, 1978 in violation of N.J.A.C. 19:45-10(a)(2)(iii), a civil penalty of \$500.

Part VI - For various record-keeping inadequacies during the first several weeks of casino operations which rendered it unable to determine the cause of the \$179,195.01 discrepancy, a civil penalty of \$10,000.

Second Count

Part I - As to Resorts: For Rogers' direction of wage increases for casino cage employees in violation of N.J.A.C. 19:45-10(b)(2), N.J.A.C.

19:45-10(c) and N.J.A.C. 19:45-1 (relating to the principle of segregation of incompatible functions), a civil penalty of \$5,000.

As to Rogers: For directing wage increases for casino cage employees in violation of N.J.A.C. 19:45-10(b)(2), N.J.A.C. 19:45-10(c) and N.J.A.C. 19:45-1 (relating to the principle of segregation of incompatible functions), a letter of censure to be made part of his permanent file.

Part II - For failing during the first seven weeks of casino operations to maintain a functioning internal audit department in violation of N.J.A.C. 19:45-10(c)(2), a civil penalty of \$5,000.

Part III, IV and V - For failing during the first seven weeks of casino operations to adhere to its own submitted system of internal and accounting control, for failing to maintain a plan of organization sufficient to provide effective safeguarding of assets, and for failing to provide a system of internal control which sufficiently segregated incompatible functions, (based upon the activities referred to in Counts I and II) in violation of N.J.A.C. 19:45-2A, N.J.A.C. 19:45-10(a)(2) and N.J.A.C. 19:45-10(b)(2), a civil penalty of \$5,000.

Complaint No. 78-26

First Count - For employing in its casino operation twelve persons as casino employees at times when these persons did not hold valid casino employee

licenses, a civil penalty of \$10,000.

Second and Third Counts - For employing in its casino hotel operation seventeen persons as casino hotel employees at times when these persons did not hold valid casino hotel employee licenses, a civil penalty of \$1,000.

Complaint No. 78-27

For the failure on June 4, 1978 of cage personnel to conduct an inventory of chip containers resulting in the inability to determine responsibility for the missing chip tray containing \$14,260 in chips, in violation of N.J.A.C. 19:45-29(g), a civil penalty of \$10,000.

Complaint No. 78-28

For the transaction of business with four unlicensed companies which had not been approved by the Commission in violation of N.J.A.C. 19:41-11.3(g), a civil penalty of \$4,000.

Complaint No. 78-29

For transacting business with eleven unlicensed companies which had not been approved by the Commission in violation of N.J.A.C. 19:41-11, a civil penalty of \$11,000.

Complaint No. 78-30

First Count - For permitting on September 23, 1978, a floorman to verify player credit with the cashiers' cage, in violation of N.J.A.C. 19:45-23(g)(1) a civil penalty of \$5,000, of which \$2,000 is to be

paid immediately and \$3,000 is suspended, conditioned upon future compliance with this regulation.

Second Count - For the failure on September 20, 1978 of certain named individuals to sign the slot win sheet in violation of N.J.A.C. 19:45-41(i)(6), imposition of the \$4,000 civil penalty suspended pursuant to Complaint No. 78-5,¹²² plus a civil penalty of \$5,000, of which \$2,000 is to be paid immediately and \$3,000 is suspended, conditioned upon future compliance with this regulation.

Third Count - For failure on September 20, 1978 of the cage cashier representative to conduct an independent count verification of each bill accepted from the count team, in violation of N.J.A.C. 19:45-3(i), imposition of \$1,000 of the civil penalty suspended pursuant to Complaint No. 78-6.¹²³

Fifth Count - For permitting on September 14, 1978 someone other than the dealer primarily assigned to a particular gaming table to count the contents of the table inventory and agree that count to the opener, in violation of N.J.A.C. 19:45-20(c), a civil penalty of \$5,000, of which \$1,000 is to be paid immediately and \$4,000 is suspended conditioned upon future compliance with this regulation.

122. Entered by order of the Commission on September 12, 1978.

123. Entered by order of the Commission on September 12, 1978.

Sixth Count - For failing to require on September 4, and September 13, 1978 that all members of the count team sign the master game report in violation of N.J.A.C. 19:45-31(h)(10), a imposition of the \$4,000 civil penalty suspended pursuant to Complaint No. 78-17¹²⁴, plus a civil penalty of \$5,000 of which \$2,000 is to be paid immediately and \$3,000 is suspended conditioned upon future compliance with this regulation.

Seventh Count - For failing to connect an alarm device to the entrance of the count room in violation of N.J.A.C. 19:45-30(b)(3), imposition of the \$4,000 civil penalty suspended pursuant to Complaint No. 78-20¹²⁵, plus a civil penalty of \$5,000.

Complaint No. 78-22

For distributing chips among blackjack tables on June 26, 1978 in violation of N.J.A.C. 19:45-22(a) a civil penalty of \$5,000, of which \$1,000 is to be paid immediately and \$4,000 is suspended conditioned upon future compliance with this regulation.

Complaint No. 78-23

For the failure on June 7, 1978, of three dealers to separately re-count the table inventory and agree that count to the opener in violation of N.J.A.C. 19:45-20(c), a civil penalty of \$5,000, of which \$3,000 is to be paid immediately and \$2,000

124. Entered by order of the Commission on September 12, 1978.

125. Entered by order of the Commission on September 12, 1978.

is suspended conditioned upon future compliance with this regulation.

Complaint No. 78-24

For permitting on June 3, 4 and 29, 1978 pit bosses to supervise more than a total of twelve tables in violation of N.J.A.C. 19:45-11(a)(6)(ii), a civil penalty of \$5,000, of which \$3,000 is to be paid immediately and \$2,000 is suspended conditioned upon future compliance with this regulation.

Additionally, as to all violations found in this Report and Recommendation with regard to all Respondents a letter of censure is to be issued which shall be made part of the Respondent permanent files.

Respectfully submitted,

Date:

Dec 29, 1978 Kenneth N. MacDonald

Kenneth N. MacDonald
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OPINION NO. 79-CLI (Addendum)
September 19, 1979

IN THE MATTER of the application of
Resorts International Hotel, Inc., a
casino licensee, to amend its casino
license and its certificate of operation
so as to authorize A 60,000 SQUARE FOOT
BOARDWALK CASINO, THE ANNEXATION OF A
168 SLEEPING UNIT MOTEL BUILDING AND
THE CONSTRUCTION OF THE BRADWAY SITE
ADDITION

OPINION

I. PROCEDURAL HISTORY

In mid-1976, Resorts International Hotel, Inc. (hereinafter "petitioner") acquired the Haddon Hall (built in 1921, 1964 and 1967), Chalfonte and Bradway buildings and during 1977-78 extensively refurbished the Haddon Hall and newly constructed both the north end of its present casino room and its separate utility services building. On April 3, 1978, petitioner requested the Casino Control Commission to issue it a temporary casino permit, which was issued on May 15 subject to the terms, conditions, limitations and covenants contained in the Commission Opinion No. TCP78-1. As of May 26, the effective date of the temporary casino permit, petitioner's "approved hotel" was found to meet the requirements of law and its casino room of 33,735 square feet was authorized to contain 893 slot machines and 84 table games (58 blackjack, 10 craps, 10 roulette, 3 baccarat and 3 big six). This was the first casino authorized to legally operate in the State of New Jersey and the only such casino until the Commission thirteen months later authorized the opening of the Boardwalk Regency Corporation casino on June 26, 1979. A third casino, perhaps

Bally's Park Place, is not expected to be in operation for another three or four months.

On June 16, three weeks after its opening, petitioner formally requested that the Commission amend its temporary casino permit and certificate of operation to include as part of its approved hotel an addition which had been built at the north end of its casino room and to authorize the use of this area as additional casino floor space. This addition had been built prior to June 16, 1978 without authorization by the Commission. The request was granted on July 12, (see, addendum to Opinion TCP78-1, dated July 12, 1978), seven weeks after its opening, and petitioner was authorized a casino room of 54,768 square feet, which included open floor space, a baccarat pit and a slot machine parlor. Permission to operate 1,051 slot machines (an additional 158) and 97 table games (70 blackjack, 10 craps, 10 roulette, 3 baccarat and 4 big six, and additional 12 tables) also was granted. The gallery area above the baccarat pit was eliminated as casino floor space and, on August 15, twelve weeks after its opening, was authorized to operate as the "Gallery Lounge" under a Class IV (pub area) casino hotel alcoholic beverage license.

On August 18, 1978, 12 weeks after its opening, petitioner contracted to purchase the Ramada Inn Motel property, a 2.6 acre tract with 540 feet of frontage along North Carolina Avenue directly adjacent to its approved hotel facility. This property consisted of three separately constructed motel structures including the 168 guest room Ramada Inn building constructed in 1968 and the 91 guest room Coronet Motel buildings constructed in 1956-58. During September, petitioner "closed" on its contract

to purchase. As to part of this property, however, petitioner purchased only the rights of a long-term lease tenant. Discussions pertaining to the possibility of annexing these buildings to petitioner's approved hotel facility were initiated in a letter of July 27, 1978 to Chairman Lordi.

On October 25, 1978, the Commission modified petitioner's certificate of operation to permit the use of an additional 303 slot machines, bringing the total of authorized machines to 1,354. In February, 1979, petitioner's temporary casino permit was modified to include as part of the approved hotel facility an addition to the coin count room which had already been constructed without Commission authorization. On February 26, 1979, after nine months of operation, petitioner was issued its plenary casino license after a seven week hearing.

On May 21, 1979, the Commission modified petitioner's casino license to include as part of the approved hotel a theretofore unauthorized newly constructed 5,810 square foot addition at the north end of the casino and to approve the use of a newly constructed 168 foot long interior pedestrian passageway along the south wall of the former Ramada Inn Motel building connecting North Carolina Avenue directly with the casino room. This passageway, which physically and internally annexes the Ramada Inn building to the "approved hotel," was constructed in early 1979 without any Commission authorization whatsoever. The certificate of operation was then also modified to permit the utilization of the 5,810 square foot addition as casino floor space in exchange for an abandonment of the 5,810 square feet of casino floor space which had commonly been referred to as "the slot parlor" so that petitioner might develop that area into a restaurant or coffee

shop. The casino room-size remained at 54,768 square feet. Also, the use of an additional 24 blackjack and 8 craps tables was authorized, as was the removal of two big six wheels, bringing the total of authorized games to its present level of 1,354 slot machines (a gain of 303) and 127 table games (a net gain of 30; 94 blackjack, 18 craps, 10 roulette, 3 baccarat and 2 big six).

During the fall and winter of 1978-1979, petitioner (without Commission staff review of its plans) had earlier completed construction of an elevated 96 foot long pedestrian bridge across North Carolina Avenue linking the upper lobby of "the approved hotel" at the west wall of the English Lounge to the swimming pool-ballroom level of the unrenovated Chalfonte building. Petitioner also had then constructed to the north of its casino room additional casino floor space, a major pub area and a porte cochere entry without so much as even a request for Commission staff review of its plans. Beginning on April 4, 1979 and during consideration of the petition granted on May 21, inquiries were made as to petitioner's plans to develop and enhance its 823 feet of frontage on Pennsylvania Avenue and to develop the Bradway site, a 0.6 acre tract containing all of the boardwalk frontage between North Carolina and Pennsylvania Avenues not then a part of "the approved hotel."

On June 4, 1979, petitioner filed a four-page petition which requested, inter alia that it be granted an additional 5,232 square feet of casino space to its statutorily permissible maximum of 60,000 square feet. N.J.S.A. 5:12-83. On June 25, it filed an eight page "amended petition" and, on July 20, filed another amendment. The information contained in these petitions was so lacking in specificity that the proposal could not rationally be considered in a thorough and comprehensive manner.

Petitioner withdrew this petition prior to consideration by the Commission and, on July 24, filed a petition entitled "PHASE III PETITION, dated July 20 and Revised July 24, 1979." It was heard by the Commission on August 1, but its decision was postponed to enable a fuller consideration of the issues and to obtain more definitive information from the petitioner. The matter was adjourned until September 19, at which time the petition as amended by a document entitled "PHASE III PETITION ADDENDUM dated September 19" was considered.

II. TESTIMONY AND EXHIBITS

In rendering a decision on the Phase III Petition and Addendum thereto, the Commission heard the testimony of Oliver Van Wagner Haines and I.G. Davis on August 1, and the testimony of Mr. Haines, Edward D. Stone, Jr., and James M. Crosby on September 19.

The following exhibits were made a part of the record on August 1:

A	Existing Casino Floor Plan, dated 6/7/79
B	Proposed Casino Floor Plan, dated 7/18/79
C	Existing Gaming Layout, dated 6/7/79
E	Proposed Gaming Layout, dated 7/18/79
F1, F2, F3	Photographs of Casino Royale
G	Certified Square Footage Summary, dated 6/9/79
H	Facilities Statement Drawing (Sheets 1 through 22) dated 6/9/79
I	Bradway Addition - Preliminary Architectural Drawings (Sheets 1 through 4) dated 7/18/79
J	Bradway Addition - Rendering
K1, K2, K3, K4	Photographs of North Carolina Avenue Bridge
L1	Atlantic City Ordinance No. 46 of 1978
L2	Atlantic City "Certificate of Occupancy" for North Carolina Avenue

L3	Atlantic City Planning Board Resolution Approving Bridge
M1, M2, M3	Elevation Drawings EL-1, EL-2, EL-3, dated 7/18/79
N	Landscaping Plan, dated 7/18/79
O	Roofscaping Plan, dated 6/25/79
P	Traffic Flow Drawing, dated 7/18/79
Q	Site Plan
R	Blueprints - Ramada Hotel (Sheets A-1 through A-12), dated 9/27/68
S	Letter from Lt. Frank Pitcher, Division of Gaming Enforcement to Mr. Haines dated June 22, 1979
T	Letter from James W. Reenie to Leeds & Libbincott dated June 18, 1979
U1	Letter from Oliver Haines to Peter Karabashian dated June 28, 1979
U2	Letter from Peter Karabashian to Joseph Fusco, dated July 2, 1979
V	Letter from Alfred Wenslev to Joseph Fusco, dated July 2, 1979
W	"Certificate of Occupancy" - Atlantic City No. 308 dated 7/16/79
X	Elevation - Casino Interior West Wall, dated 7/18/79
Y	Elevation - Coffee Shop, dated 7/9/79
Z	Blueprint - Baffles in North Carolina Avenue Corridor, dated 7/18/79
AA	Blueprint BA-1 dated 7/18/79 (C.C.C. "Cooling-Off" Room)
BB	Blueprint CB-1, dated 6/20/79 (C.C.C. Inspector's Booth)
CC	Crowd Control Plan
DD	Blueprint C-5, dated 7/18/79
EE	Ramada Lease, dated 3/3/66
FF	Photograph - North Carolina Avenue Corridor Exterior

GG	Blueprints CPA-1, 2, 3, 4 dated 10/10/78 (North Carolina Avenue Bridge)
HH	Photograph - Ocean Frong Guest Room
II	Photograph - Ocean Front Renovated Guest Room
JJ	Photograph - Typical Renovated Bathroom
KK	Blueprints A-001, 2, 3 dated 4/20/79 (Kyoto Restaurant)
LL	Signage Plans (sheets 1 and 2), dated 6/26/79
MM	Atlantic City Zoning Board Resolution of 1/13/78
NN	Atlantic City Zoning Board Resolution of 2/9/79
OO	Atlantic City Zoning Board Resolution of 4/26/79
PP-1, 2, 3, 4, 5, 6, 7, 8	Photographs of exterior signs
QQ	Blueprint PR-1, dated 7/18/79 (Chalfonte)
RR	Architectural Drawings (sheets A4, 5, 6) dated 7/18/79 (Health Club facilities)
SS	Atlantic City Ordinance No. 11 of 1979
TT	Blueprints A21 through A24, dated 6/29/79 (Casino Entrance Elevation).

The following exhibits were made a part of the record on September 19 and collectively marked as exhibit "A-1"; they are, however, referenced in the transcript by the following designations:

A-1	Lower Lobby Floor Plan (same as Exhibit I introduced 8/1/79) - Bradway Addition
A-2	Gaming Plan - 1640 Slots, dated 9/11/79 (same as Exhibit E introduced 8/1/79)
A-3	Rendering - North Carolina Avenue Corridor
A-4	Casino North Entrance Lobby Photograph
A-5	Cafe Casino Photograph
A-6	Daily Inspection Guest Room Report
A-6a	Resorts International Policy Memo Regarding Long and Short Term Renovation, dated 9/11/79

A-7	Management Inspection Guest Room Report
A-8	Photograph - Existing Guest Room Door
A-9	Photograph - Existing Guest Room Door
A-10	Photograph - Modernized Guest Room Door
A-11	Photograph - Modernized Guest Room Door
A-12	Kyoto Restaurant Rendering
A-13	Bradway Addition - Arcade Floor Plan (Basement)
A-14	Bradway Addition - Lobby Floor Plan
A-15	Bradway Addition - Upper Lobby Floor Plan (Ballroom)
A-16	Bradway Addition - Meeting Room Level Floor Plan
A-17	Bradway Addition - Health Club - Pool Deck Floor Plan
A-18	Bradway Addition - Roof Deck Plan
A-19	Bradway Addition - Sectional Details
A-20	Rendering - "Resorts North" Lobby
A-21	Rendering - "Resorts North" Guest Room
A-22	Site Improvements - Illustrative Plan
A-23	Site Improvements - North Caroline Avenue Elevation
A-24	Site Improvements - South Ellevation
A-25	Site Improvements - Pennsylvania Avenue Elevation
A-26	Site Improvements - North Elevation
A-27	Site Improvements - Sections and Details
A-28	Rendering - North Entrance
A-29	Rendering - Hotel Entrance
A-30	Rendering - Bradway Entrance
A-31	Rendering - Pennsylvania Avenue
A-32	Rendering - Porte Cochere

A-33

Letter of September 1, 1978, from Joel Sterns, Esq. to Joseph P. Lordi concerning the Ramada Inn Property

III. THE REQUESTED RELIEF

In its petition, petitioner prays for the following relief:

1. An amendment of its casino license to authorize as part of its "approved hotel" a newly constructed:
 - a. public area to the north of its casino room including an additional 5,232 square feet of casino floor space, a raised pub area to be known as the Casino Royale, a major Pennsylvania Avenue casino entryway and porte cochere, and a mezanine office and service area to be constructed above the ceiling of the casino room at elevation 36'6";
 - b. pedestrian bridge over North Carolina Avenue annexing the Chalfonte Hotel building; and,
 - c. structure to be constructed on the site of the existing Bradway building;
2. An amendment of its casino license to authorize the annexation of the former Ramada Inn Motel building constructed in 1968 to its approved hotel after the refurbishment as first class of its 168 guest rooms and the comprehensive redesign of its first floor lobby area;
3. An amendment of its certificate of operation to authorize:
 - a. the operation of an additional 5,232 square feet of casino floor space (bringing the size of authorized casino room from 54,768 to 60,000 square feet); and,
 - b. the use of 286 additional slot machines (bringing the total to 1,640); and,
4. The issuance of casino hotel alcoholic beverage licenses for:
 - a. the pedestrian bridge over North Carolina Avenue, to be known as "the Green Room;"
 - b. the pub area to the north of the casino room, to be known as "the Casino Royale;" and,
 - c. the coffee shop located in the area previously known as the slot parlor, to be known as "the Cafe Casino."

In light of the fact that the facility modifications substantially enhance the prominence and size of the casino room and

and in consideration both of the Commission requirements as to reconstructed "approved hotels" (N.J.A.C. 19:41-2.4, 2.5 and 2.6) and as to the obligation of all casino licensees to maintain their facilities as first class, five star, deluxe convention resort complexes (N.J.A.C. 19:41-2.7), petitioner submitted for Commission approval the complete and full development of its hotel facility as a first class and superior resort complex, including its plans for:

5. a. the exterior landscaping and roofscaping of the entire complex;
- b. the construction of an athletic complex;
- c. the refurbishing of certain public areas within "the approved hotel" including its guest room corridors, internal stair towers, its North Carolina Avenue corridor, its Trophy Room, Club Room and locker room, and certain of its guestroom bath-rooms and closets;
- d. the establishment of a guestroom maintenance program; and,
- e. the refurbishing of the casino room.

IV. FINDINGS AND CONCLUSIONS

The statutory requirements concerning the architecture of a casino hotel facility are found primarily in N.J.S.A. 5:12-6, 27, 83, 84e, 98 and 136. Additional express requirements for reconstructed buildings are found at N.J.A.C. 19:41-2.4, 2.5 and 2.6. The enabling legislation in N.J.S.A. 5:12-1b(11), expressly confers upon the Commission "the power and duty to review architectural and site plans to assure the proposal is suitable by law enforcement, aesthetic and architectural standards."

Before addressing the substance of petitioner's request, it must be noted that the newly constructed areas in question were designed and built without the authority or approval of the Commission. No vested rights enure to the petitioner by virtue

of the fact that these areas for which it now seeks approval have already been constructed and it is well within the authority of this Commission to disapprove them at this time for appropriate reasons.

1. CASINO NORTH END, CHALFONTE BRIDGE AND BRADWAY SITE

Petitioner requests authorization to include as part of its "approved hotel" the newly constructed additional 5,232 square feet of casino area, raised Casino Royale Pub area, Pennsylvania Avenue casino entry and porte cochere and casino mezzanine level office areas. This construction has not resulted in the loss of any residential housing units or displacement of any residents.

Petitioner owns the structure and ground on which it sits in fee.

The porte cochere, when opened for vehicular use, will aid in reducing the traffic congestion which exists on North Carolina Avenue, presently the only other vehicular access to the hotel. Petitioner states that certain cosmetic work on the area has yet to be completed, including marble facing on the building and paving brick under the porte cochere. This entrance shall not be opened to the public until this work has been substantially completed, permitting safe and convenient access to patrons. When completed, this entryway may not be used, except for emergency purposes or other exceptional purposes approved by the Chairman, during non-gaming hours. Additionally, the existing temporary small foyer leading from Pennsylvania Avenue into the casino shall be closed to the public, except for emergency use, once the porte cochere entry becomes operational, but it may be used as a staff entrance for employees properly licensed to be present on the casino floor, subject to a continuing impact assessment by the Chairman. (The additional casino space and the Casino Royale pub areas are

discussed on pages 16 through 19 of this opinion.)

The Commission and Division office space provided on the mezzanine level above the ceiling of the casino will permit their respective staffs to vacate their temporary quarters in trailers on Pennsylvania Avenue. These trailers must thereafter be removed from the site. The proposed mezzanine construction over the casino room at elevation 36'6", as depicted in Exhibits A-25 and A-31, is not yet in final plans but also would include back-of-the-house functions, such as a bakery and workshop areas. Final plans for this area must be submitted to and approved by the Chairman prior to construction. No workmen shall be permitted on the casino floor during this construction unless authorized by the Chairman.

Petitioner also requests that the pedestrian bridge over North Carolina Avenue be made part of its "approved hotel" facility. Construction of this bridge to the Chalfonte Hotel was authorized by the City of Atlantic City. It passes above a street owned in fee by petitioner subject to a right-of-way easement by the City for the benefit of the public. At its east end, the bridge accesses into the approved hotel's English Lounge, a room which presently qualifies as meeting and exhibition area. It is noted that in January, 1979, petitioner had represented its intent to demolish the Chalfonte and build a new casino hotel on its site. It now appears that petitioner will sell it to another developer which will construct a casino hotel on its site. Although the bridge physically annexes the Chalfonte to "the approved hotel," unlike its connection at grade-level to the Ramada Inn building, this annexation is not permanent and thus, the Commission is not faced with a question of whether it should assume jurisdiction over the annexed Chalfonte facility.

Finally, petitioner seeks authorization for the construction of a new structure on the site of the existing Bradway building and the inclusion of it as part of its "approved hotel." Exhibits A-13 through A-19 depict the proposed floor plans for this addition which include a much needed coffee shop, a ballroom and a swimming pool, three essential components of a first class hotel facility which petitioner presently lacks. Although the proposed first floor plan provides for a pedestrian oriented sidewalk cafe along the boardwalk, such pedestrian and outdoor orientation is presently absent along its Pennsylvania Avenue side. Further, this first floor, as proposed, is unduly dominated by casino floor area. Petitioner should refine and rework the layout of this floor in these areas with Commission staff, after which it shall be reviewed by the Chairman for approval.

Subject to the terms and conditions outlined above, petitioner's casino license is amended to include as part of its approved hotel the newly constructed areas to the north of the casino room (including the open casino floor space, the raised pub area, mezzanine level office and service areas, the entryway and the porte cochere); the pedestrian bridge over North Carolina Avenue; and, the new structure to be built on the site of the existing Bradway building.

2. THE 168 GUEST ROOM MOTEL BUILDING

Petitioner requests amendment to its casino license to authorize it to annex to its approved hotel the 168 room former Ramada Inn Motel building constructed in 1968 and located to the north of the approved hotel on North Carolina Avenue. The motel building, although annexed to it, may not be considered as part of "the approved hotel" because N.J.S.A. 5:12-27 defines

that term as "a single building." The annex will not be so integrated in the "approved hotel" either by exterior massing or design characteristics or by internal functional relationships so that the two elements could fairly said to comprise a "single building" and thus the sleeping units, regardless of size or quality, cannot "qualify" with the statutory requirements.

N.J.S.A. 5:12-27. However, by Commission approval of such annexation, petitioner will be authorized to physically internally permit public access to the motel building from the approved hotel and will properly be able to hold the motel building out to the public as part of the approved hotel complex. Upon annexation, the motel building will come under the full jurisdiction of the Commission for the purposes of employee licensing, contract approval procedures alcoholic beverage licensing, physical facility review and all other appropriate requirements of the Casino Control Act and regulations promulgated pursuant thereto. Petitioner indicates it is willing to accept such jurisdiction if the requested authorization is granted. It properly does not seek to have any public space within the annexed motel building counted as qualifying space nor any of the 168 guest rooms therein counted as qualifying sleeping units.

Petitioner proposes to completely refurbish and redecorate both the interior and exterior of the motel building and to modify the first floor lobby area so as to make the quality of the building and guest experience at least equal to that of the approved hotel. It is noteworthy that at the present time there is a great need for first quality guest rooms in Atlantic City and the development of 168 such rooms is to be encouraged.

Unlike the site upon which the approved hotel is built, a large portion of the ground under the former Ramada Inn Motel building is not owned in fee by petitioner. Certain portions are owned by second parties but subject to 99-year leases which petitioner as a tenant has acquired. Although N.J.S.A. 5:12-27 presently requires the single building "approved hotel" to be under one ownership, this "one ownership" requirement does not expressly extend to buildings annexed to the approved hotel building. In the present instance, the leases are both long-term in duration and for a fixed rental, subject only to a cost of living increase. The petitioner is not an original party to the leases and played no part in their negotiation. The Commission therefore holds that the "single ownership" restriction is no impediment to the annexation of this motel building. However, to fulfill the policy of the Casino Control Act that persons doing business with casino operations on a regular or continuing basis submit themselves to a degree of scrutiny that insures integrity within the industry, these landlords must submit themselves to the same review given a non-gaming related casino service industry and the petitioner must use its best efforts to see that the landlords file the appropriate application documents.

Subject to the terms and conditions outlined above, petitioner's casino license is amended to authorize the annexation of the former Ramada Inn Motel building to and with its approved hotel. This amendment shall not be effective and petitioner shall neither hold out or operate the motel building as part of its casino-hotel complex nor open the internal connections between the buildings to the public (1) until such time as all renovations have been completed and expressly approved by the Chairman in

writing, (2) until all employees employed therein are properly licensed, and (3) until all other appropriate and operational requirements of the Casino Control Act and the regulations promulgated pursuant thereto applicable to an approved hotel have been met.

3. CASINO SIZE AND SLOT MACHINE

Petitioner also requests that its certificate of operation be amended to authorize an increase both in its casino size by 5,232 square feet from 54,768 square feet to a total of 60,000 square feet, and in its authorized number of slot machines by 286 from 1,354 to a total of 1,640.

In N.J.S.A. 5:12-83d, the Legislature has provided the formula by which the maximum permissible casino size may be determined. Petitioner's Certified Square Footage Summary (Exhibit G) discloses that it exceeds legally sufficient qualifying "meeting and exhibition space" (28,178 square feet, without including the English Lounge) "dining, entertainment and sports space," (80,782 square feet) "Kitchen support facilities," (34,800 square feet) and "sleeping units" to permit the Commission to authorize its operation of a 60,000 square foot casino under this formula. Upon completion, petitioner's casino-hotel complex will contain 729 first class sleeping units, 561 in the "approved hotel" of which 506 qualify and 168 in the annexed motel building. It will fully occupy a regular rectangular, six acre site without any outparcels and with the full 320 feet of Boardwalk frontage between North Carolina and Pennsylvania Avenues and link those two public streets by a vehicular drive-through at its northern property line.

This proposed and in some instances completed refurbishment of the approved hotel, the casino room and the annexed motel building; the new construction to the north end of the casino, of the Bradway site building and of the Chalfonte bridge; and the wholistic landscaping and roofscaping of the entire complex will have been completed at a cost to the petitioner of in excess of \$46,760,000. It will, for the first time, represent an exterior and interior design integration to the fullest extent possible of the several dissepate elements which make up the complex (the 1921 Haddon Hall, its 1964-67 Pennsylvania Avenue convention addition, the 1968 motel building, the 1978 utility services building, the 1977-78-79 additions to the convention space, and the 1980 Bradway site building). The proposal of petitioner will substantially "complete" a rational, full and integrated development of this six acre site (except for the possible construction of a connected parking facility and sports complex on the one acre site on North Carolina Avenue immediately to the north of the six acre site). It accordingly appears to be a proper exercise of the discretion vested in the Commission to, in exchange for such capital improvements to the "approved hotel" complex, authorize a 9%, 5,232 square foot expansion of its casino room size to the maximum permissible 60,000 square feet.

With the addition of 286 slot machines, additional burdens will be put on existing casino patron change booths. Petitioner thus, will be required to both open the additional change booths described in its petition, and provide such change persons in the casino as would assure adequate service to slot machine patrons as soon as individuals properly licensed to perform such duties become available.

Petitioner's certificate of operation is amended to increase its authorized casino room size to 60,000 square feet and its authorized number of slot machines to 1,640; provided that the additional floor space and slot machines not be opened to the public until expressly authorized by the Chairman upon final review of the proposed gaming layout and that petitioner limits the occupancy of its casino room to 8,000 persons or by such other limits as may be imposed by the Commission and institutes the crowd control procedures described in its petition when necessary or when directed to do so by the Chairman or his authorized designee.

4. CASINO HOTEL ALCOHOLIC BEVERAGE LICENSES

a. Green Room and English Lounge

Petitioner has requested a Class III (Restaurant-Banquet Room) and Class IV (Pub Area) casino hotel alcoholic beverage license for the pedestrian passageway (bridge) over North Carolina Avenue, to be known as the Green Room. It indicates that if this license is granted, it will abandon the C.H.A.B. license issued to the adjacent English Lounge. An application fee of \$5,000 has been paid.

The criteria for a Class III and Class IV C.H.A.B. license are contained in N.J.S.A. 5:12-103g and N.J.A.C. 19:50-1.9 and 1.10. The Green Room meets these criteria, and is issued the requested license. The C.H.A.B. license of the English Lounge is abandoned and henceforth is of no force, effect or vailidity.

b. Casino Royale

Petitoner requests that a Class IV (Pub Area) casino hotel alcoholic beverage license be issued to the pub area to the north of its approved casino room, to be known as Casino Royale. An application fee of \$5,000 has been paid.

The criteria for a Class IV C.H.A.B. license are found at N.J.S.A. 5:12-103g and N.J.A.C. 19:50-1.10. Although this area meets those requirements, consideration must be given to the impact this area will have on the casino in terms of graciousness and security. Petitioner proposes to provide live nightly entertainment in the area, and at other times to use part of the area as a dance floor, complete with an elaborate discotheque type of lighting system and recorded music. It assures the Commission that the lights and sounds generated in this area will impact on the casino in only the most minimal way. Petitioner proposes to employ individuals licensed as casino hotel employees in this area, encourage them to obtain and in fact pay for their casino employee licenses, and to provide such employees with uniforms of a design and/or color such as to distinguish them from employees properly present on the casino floor. It will instruct employees that they are not to be present on the casino floor while going to, coming from or during the hours of their employment. Employee bathroom facilities will be provided on the mezzanine level and consideration will be given to the construction of employee locker rooms above the casino level at elevation 36'6". The Casino Royale will not be opened to the public during non-gaming hours.

Making each of these representations and proposals a continuing condition of C.H.A.B. licensing, petitioner is hereby issued a Class IV (Pub Area) casino hotel alcoholic beverage license for the Casino Royale, subject to the continued monitoring of light and sound impact on the casino floor.

c. Cafe Casino and Gallery Lounge

Petitioner further requests a Class III (Restaurant-Banquet Room) casino hotel alcoholic beverage license be issued to

the Coffee Shop to be known as the Cafe Casino located just off the casino floor in the old slot parlor. Petitioner wishes to keep this area open to the public 24 hours a day, and to employ individuals therein licensed as casino hotel employees. The criteria for a Class III C.H.A.B. License are contained in N.J.S.A. 5:12-103g N.J.A.C. 19:50-1.9. The area sought to be licensed clearly meets all criteria except for N.J.A.C. 19:50-1.9c, which provides:

"No Class III licensed premises shall have patron access directly to the casino."

The Cafe Casino has two public accesses. One leads into the North Carolina Avenue corridor. The other (southern) access is to a mezzanine approximately four feet above the casino floor. From this area, one may proceed directly to the casino floor or up a set of steps, across the Gallery Lounge, down another set of steps and into the corridor next to the Rendezvous bar leading to the main lobby. Although this access may be said to not directly lead to the casino floor it clearly does provide immediacy of access to the casino room. Petitioner has represented that it could not practically devise a way to publicly access the area through the executive office space to the west or through areas above it, and has committed itself to construct a new coffee shop in the structure to be built on the Bradway site easily accessible from the main hotel lobby and retail areas. Serious security problems may arise if patron access to the Cafe Casino is permitted during non-gaming hours. Also there are no non-casino area toilet facilities proximate to the Cafe Casino and thus none accessible to its patrons during non-gaming hours.

For these reasons, the Cafe Casino is hereby issued a Class I (Restaurant-Banquet Room) casino hotel alcoholic beverage license with the following restrictions:

- a. the southern access may not be used during non-gaming hours, except for emergency purposes and must be appropriately secured during such times.
- b. the Cafe Casino may operate only during gaming hours until such time as appropriate toilet facilities have been installed proximately thereto and have been approved by the Chairman.

In addition, for the same security concerns, the hours of operation of the Gallery Lounge are hereby restricted to gaming hours.

d. Casino Floor

Finally, petitioner requests its Class I (Casino) casino hotel alcoholic beverage license be amended to include the 5,232 additional square feet of casino space and to authorize an additional casino service bar, to be constructed in the North Carolina Avenue corridor, approximately fifteen feet away from the casino floor.

Although all existing casino service bars are located directly off the casino floor, the Commission can discern no statutory or regulatory mandate that such service bars have such direct access.

The consumption of alcoholic beverages dispensed from such a bar, however, will be permitted only in the casino room. All employees of the bar must be licensed as casino employees, pursuant to N.J.A.C. 19:50-1.3b(2). Final plans for this service bar have not yet been submitted.

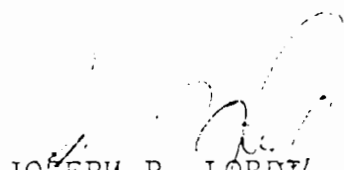
Petitioner's Class I (Casino) C.H.A.B. License is hereby amended to include the additional 5,232 square feet of casino floor space, and a casino service service bar to be constructed in the North Carolina Avenue corridor; provided, the service bar shall not be constructed, nor shall it operate, until plans are submitted to and approved by the Commission, and the bar itself is inspected and approved by the Chairman or his authorized designee.

5. OTHER CONDITIONS ---

In considering the relief requested and the fact that petitioner has for sixteen months operated the first duly authorized casino in this state, the Commission has considered petitioner's obligation to promptly complete the full development of its approved hotel as a first-class facility as required by both the Casino Control Act and by N.J.A.C. 19:41-2.4, 2.5, 2.6 and 2.7. The Commission thus expressly conditions the granting of such relief upon the timely completion of the following commitments, covenants and obligations in accordance with the plans contained in its petition:

1. By no later than May 14, 1980, petitioner shall fully landscape the perimeter and roof of its approved hotel and 168 guest room motel annexed thereto and shall physically separate the Coronet Motel building from the annexed Ramada Inn building; provided, however, that if demolition or construction at the Chalfonte Hotel site makes landscaping improvements impossible or impractical, the Chairman upon request may extend this completion date.
2. By no later than June 30, 1980, petitioner shall fully construct an athletic complex including a swimming pool on the roof of its approved hotel.
3. By no later than March 15, 1980, petitioner shall renovate and upgrade its approved hotel guest room corridors and internal stair towers.
4. By no later than March 1, 1980, petitioner shall redecorate the North Carolina Avenue corridor which shall include an etched glass and metal wall at the eastern terminus of the corridor, and a service corridor leading to the dealer's lounge.
5. By no later than March 15, 1980, petitioner shall renovate and refurbish the Club Room, Trophy Room, Locker Rooms, Squash Courts, Squash Observation Deck and 15th floor corridor.
6. By no later than May 15, 1980, petitioner shall renovate and refurbish those approved hotel guest room bathrooms and closets as described in the petition.

7. By no later than May 15, 1980, petitioner shall establish and implement fully a guest room maintenance and furnishings replacement program. Such program shall include among other things, a full inspection and renovation (as necessary) of all guest room windows.
8. By no later than April 1, 1980, petitioner shall replace the entire casino room carpet and shall properly maintain and replace it, as needed, on a daily basis.
9. By no later than May 15, 1980, petitioner shall complete interior renovations and refurbishment of all sleeping units and public space within the Ramada Inn building and full renovation of its exterior including the pool deck.
10. By no later than September 15, 1980, petitioner shall complete construction of the structure to be built on the Bradway site and open it to the public.
11. Petitioner shall complete all other commitments and covenants made in its petition and addendum thereto by no later than May 15, 1980, and shall maintain and continue to maintain its approved hotel facility as a first class complex.
12. The Chairman, upon a showing of hardship or other good cause may extend the completion date of these commitments


JOSEPH P. LORDY
Chairman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket No. CCC2251-79
CCC Docket No. 79-EA-69

IN THE MATTER OF THE APPLICATION :
OF ANGELO J. RUGGIERO FOR :
LICENSURE AS A CASINO KEY :
EMPLOYEE (PIT BOSS). :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge James A. Ospenson of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the exceptions and objections filed by the parties, and the Commission having resolved at its public meeting of December 5, 1979 to adopt the Initial Decision of the Administrative Law Judge as modified herein and to deny the application for licensure,

It is on this 10th day of December, 1979,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission with the following modifications: in addition to the stated grounds for denial of licensure, namely failure of the Applicant to meet the proficiency and experiential standards as required by N.J.S.A. 5:12-89(b)(3) and failure of the Applicant to satisfy the residency requirements set forth in N.J.S.A. 5:12-89(b)(4), licensure must be denied under N.J.S.A. 5:12-86(b)

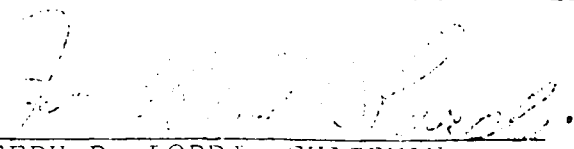
based upon a finding of ample and credible evidence in the record that the Applicant failed to disclose criminal convictions that are material to qualification for licensure; and licensure must also be denied based upon a finding of ample and credible evidence in the record that the Applicant failed to sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A.5:12-89(b); and to the extent that the Initial Decision might be read to imply that the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-2, is applicable to the Casino Control Act, it is hereby rejected; and it is further

ORDERED that the application of Angelo J. Ruggiero for a casino key employee license be and is hereby denied on the basis of the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and it is further

ORDERED that copies of this Order and of the Final Commission Decision be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

DATED

December 10, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket No. CCC-2251-79
CCC Docket No. 79-EA-69

IN THE MATTER OF THE APPLICATION :
OF ANGELO J. RUGGIERO FOR :
LICENSURE AS A CASINO KEY : FINAL COMMISSION DECISION
EMPLOYEE, PIT BOSS. :

Angelo J. Ruggiero, pro se
Howard Barman, Deputy Attorney General, appeared for the
Division of Gaming Enforcement

Angelo J. Ruggiero [hereinafter "Applicant"] filed an application for licensure as a casino key employee, pit boss on November 28, 1978. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter "Division"] for the appropriate background investigation. By letter dated June 4, 1979, the Division informed the Casino Control Commission [hereinafter "Commission"] of the results of its investigation and interposed an objection to the licensure of the Applicant.

By letter dated June 25, 1979, the Applicant was advised that based upon the Division's letter-report, there was a substantial possibility that the Commission would deny the application and that he had a right to a hearing. The Applicant requested such a hearing upon his license application in writing. Thereafter, the matter was transmitted to the Office of Administrative Law. That agency scheduled a pre-hearing conference on August 28, 1979, from which a Pre-Hearing Conference Order resulted. Although numerous issues were framed for determination, the following restatement contains those relevant to the within

discussion:.

1. Whether the Applicant, now a resident of Akron, Ohio, meets the residency requirement of N.J.S.A. 5:12-89(b)(4) and the 6 months' durational pre-licensing requirement authorized by N.J.S.A. 5:12-89(b)(4) and required by N.J.A.C. 19:41-4.2.
2. Whether the Applicant's previous casino gaming experience in Ohio, Kentucky, Florida, Arkansas and New York from 1938-61, alleged by the Division of Gaming Enforcement and conceded by the Applicant to be in gaming operations not then legally authorized in those states, meets the proficiency and experiential standards of N.J.S.A. 5:12-89(b)(3).
3. Whether the Applicant's allegedly illegal casino gaming activities impact negatively upon his good character, honesty and integrity. See N.J.S.A. 5:12-89(b)(2).
4. Whether the Applicant's negative answers to questions #68 and 79 of the Personal History Disclosure Form-1 constitute disqualifying material non-disclosures under N.J.S.A. 5:12-86(b)(2): specifically in view of Applicant's several arrests and/or convictions and 8 instances of his being party to certain civil suits.
5. Whether the Applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2).
6. Whether certain of the Applicant's arrests and/or convictions from 1930-43 disqualify him from licensure under N.J.S.A. 5:12-86(c).

A hearing was held in Trenton on October 2, 1979 before the Honorable James A. Ospenson, Administrative Law Judge. Thereafter Judge Ospenson prepared an Initial Decision which was filed with this Commission on October 18, 1979, and which is appended hereto at A-1 to 6. In accordance with N.J.S.A. 52:14-B-10(c), the parties were afforded the opportunity to file written exceptions or objections to the Initial Decision with this Commission. The Applicant filed his exceptions on November 9, 1979, and the Division also filed exceptions on November 19, 1979. Pertinent issues raised in those exceptions will be addressed below.

In his Initial Decision, the Administrative Law Judge found, inter alia, that the Applicant was, at the time of filing his application for licensure and at the time of hearing, a resident of the State of Ohio. Based upon this factual determination, the Administrative Law Judge concluded that the Applicant is disqualified from licensure for failure to meet the residential and pre-licensing durational residency requirements of N.J.S.A. 5:12-89(b)(4) and N.J.A.C. 19:41-4.2. This finding is amply supported by the record. (See T8-13 to 15; T14-8 to T15-3).¹

The Judge also found that the Applicant had significant gaming experience from 1938 to 1961 in Ohio, Kentucky, Florida, Kansas and New York, such gaming not then being legally authorized in those states. (T16-15 to T17-1). Additionally, he found that the Applicant had later been employed as a dealer in craps at the Desert Inn, Las Vegas, Nevada for a nine week period. This experience, the Judge found, is insufficient to meet the proficiency and experiential requirement of N.J.S.A. 5:12-89(b)(3).

The Commission is satisfied that the foregoing findings of fact and conclusions of law, stated in detail in the Administrative Law Judge's Initial Decision, are amply supported by the record herein. Those findings and conclusions are therefore adopted as the Commission's own. Such findings and conclusions are, without more, sufficient to justify denial of licensure to the

1. "T" refers to the transcript of the hearing herein held on October 2, 1979.

Applicant here. However, there are other findings and conclusions expressed in the Initial Decision which, in the view of the Commission, require further discussion.

The Administrative Law Judge determined, and the Applicant at the hearing readily admitted, that the Applicant had incurred four arrests and two convictions for liquor law violations in Ohio between 1931 and 1935. The Judge also found that the Applicant had been a party defendant in civil proceedings on eight separate occasions. Neither the civil suits nor the Applicant's criminal record was disclosed as required on his Personal History Disclosure Form -1 [hereinafter "PHDF"] in response to questions 67-69 and 79, which form was marked in evidence as "J"-1 (joint exhibit of the Division and Applicant) at the hearing. A culpable failure to disclose requested information is, of course, a disqualification criterion for licensure pursuant to N.J.S.A. 5:12-86(b). Here, the Administrative Law Judge found that since no compelling inference could be drawn that either the original omissions from the PHDF or the Applicant's explanations at the hearing were critically evasive or specious, the non-disclosures were not of matters material to qualification within the meaning of N.J.S.A. 5:12-86(b) and therefore should not result in disqualification. The Judge determined that although these non-disclosures were intentional, they were nevertheless "extenuated" in the case of the convictions by remoteness in time, and in the case of the civil suits, by their relative inconsequentiality and innocence.

These conclusions cannot be accepted by this Commission. They evince a misreading of the statutory qualification scheme of

of the Casino Control Act and a specific misapplication of N.J.S.A. 5:12-86(b).

In order to determine whether an applicant for a casino key employee license satisfies the affirmative criteria set forth in N.J.S.A. 5:12-89, or is subject to disqualification pursuant to N.J.S.A. 5:12-86, the Legislature empowered the Commission and Division to gather information concerning applicants by various means. The Commission requires completion of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq., by all applicants. Information may also be provided to the Commission in response to other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its duties, to request information, materials and any other data from any applicant for a license. N.J.S.A. 5:12-76(b)(8). Not only has the Legislature required an applicant to produce any and all information, documentation and assurances concerning qualification criteria, N.J.S.A. 5:12-89(b), it has also mandated that an applicant's culpable failure to provide the same shall result in disqualification.

N.J.S.A. 5:12-86(b) provides, in pertinent part:

86. Casino License - Disqualification Criteria.
The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;...

The Legislative mandate is clear. Unfettered access to informatio

material to qualification, is essential to informed decisions concerning licensure. Intentional conduct by an applicant which thwarts investigatory and decision making processes cannot be condoned.

In the instant matter, the Applicant failed to disclose the existence of several arrests and convictions as well as several instances in which he was a party defendant in civil litigation as required in response to questions posed in his PHDF. This information was unearthed by the Division during its investigation. The Administrative Law Judge specifically found as a fact that the Applicant's non-disclosures were intentional. That finding is amply supported by the record and is adopted by the Commission.² However, the Administrative Law Judge then concluded that the Applicant's intentional non-disclosures were not of matters "material to qualification" within the context of N.J.S.A. 5:12-86(b), "since no compelling inference can be drawn that either the omissions or the applicant's explanations at the hearings were critically evasive or specious." We reject that conclusion. Section 86(b) clearly mandates disqualification of any applicant who intentionally fails to reveal any fact material to qualification. Certainly all adult criminal convictions in the record of any applicant are matters material to qualification for licensure. Intentional failure to disclose such facts must result in disqualification.

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2. The Administrative Law Judge's conclusion that Applicant's undisclosed arrests and instances wherein the Applicant was a party defendant to civil proceedings were not matters material to qualification within the meaning of N.J.S.A. 5:12-86(b) is not adopted by the Commission. However, this Commission leaves consideration of these issues for another day, such being unnecessary to support the ultimate conclusion that licensure must be denied here. Suffice it to say that precedential value should not be ascribed to the expressions in the Initial Decision regarding these matters.

The Casino Control Act [hereinafter "Act"] is replete with expressions of the Legislature's intent to exclude criminal offenders from participation in casino operations.

N.J.S.A. 5:12-1(b)(7) provides, in pertinent part, that:

(7) Legalized casino gaming in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations,...

As a means of implementing this policy, the Legislature adopted N.J.S.A. 5:12-86 which sets forth disqualification criteria for licensure. Specifically, N.J.S.A. 5:12-86(c) provides that conviction of an applicant for crimes specifically referred to therein or any other offense which indicates that licensure of an applicant would be inimical to the policies of the Act and to casino operation shall result in disqualification.³ N.J.S.A. 5:12-86(d) provides, in pertinent part, that current prosecution or a pending charge in any jurisdiction against an applicant for any offense referred to in N.J.S.A. 5:12-86(c) is a ground for disqualification. The commission by an applicant of any offense set forth in N.J.S.A. 5:12-86(c), even if such conduct has or may not be prosecuted under the criminal laws of this State, is also a ground for disqualification. N.J.S.A. 5:12-86(g). Pursuit by an applicant of economic gain in an

3. In his Initial Decision, the Administrative Law Judge raised the issue of , but failed to decide, whether the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-2, applies to the Casino Control Act. To the extent that this expression implies that the Rehabilitated Convicted Offenders Act is applicable to licensing proceedings under the Casino Control Act, it is specifically rejected. See In the Matter of the Application of Earl Lee Cooper for Licensure as a Casino Employee, Docket No. 79-EA-34, (1979).

occupational manner or context (systematic planning, administration, management, or execution of an activity for financial gain) which is in violation of the criminal or civil public policies of this State, if such pursuit creates a reasonable belief that the participation of such persons in casino operations would be inimical to the policies of this act or to legalized gaming in this State also must result in disqualification. N.J.S.A. 5:12-86(e). Lastly, identification of an applicant as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Act and to gaming operations likewise must result in disqualification. N.J.S.A. 5:12-86(f). The only logical inference to be drawn from this assorted array of disqualification criteria relating to criminal activity is that, at minimum, all criminal convictions must be held to be matters material to qualification for licensure within the meaning of N.J.S.A. 5:12-86(i).

Pragmatically speaking, to hold otherwise would result in the encouragement of non-disclosure of criminal convictions. It is for the Commission and the Division, not the applicant, to determine the weight to be afforded a criminal conviction in determining whether licensure is justified. Non-disclosure deprives the Commission and Division of the wherewithal to carry out legislative mandated duties. Moreover, non-disclosure impedes and complicates the investigatory process, which is already burdensome. In sum, section 86(b) of the Casino Control Act mandates disqualification of any applicant who intentionally fails to disclose a criminal conviction.

The foregoing discussion applies with equal force to the Administrative Law Judge's erroneous conclusion that the Applicant

non-disclosures, though concededly intentional, were "extenuated" by the Applicant's "candor and contrition" at the hearing, by the "remoteness" of the undisclosed convictions, and by the "relative inconsequentiality and innocence" of the undisclosed civil litigation. The findings regarding the "remoteness" of the convictions and the "inconsequentiality" of the civil litigation involvement have already been addressed in part above.

Intentional non-disclosure of such facts cannot be excused by hindsight judgment as to the relative importance of such facts in the context of the whole picture of an applicant's overall qualifications.

see, for example, about possible if this to [unclear] interview.

Section 86(b) of the Act comes into play at the time when such information is officially requested to be disclosed in the PHDF. The judgment to be made is whether, at that time, the Applicant's failure to disclose was excusable by reason of ignorance e.g., of the meaning of the question in the PHDF, or by reason of inadvertence, e.g., where the applicant legitimately and reasonably failed to recall the facts requested. Willful failures to disclose requested information or failures to disclose evincing a conscious disregard for the regulatory system simply cannot be excused by hindsight judgment as to the importance of the facts not disclosed.

For the same reasons, intentional failures to disclose where there are specific requests cannot be excused by subsequent "candor and contrition" after the Division of Gaming Enforcement has discovered the undisclosed information. The Commission and the Division are entitled to disclosure of requested relevant information at the time when the request is made and the PHDF is completed. We repeat that the judgment whether a non-disclosure is culpable within

the meaning of Section 86(b) of the Act is to be made with specific reference to the time at which the non-disclosure occurred.

For all of the foregoing reasons, the Commission specifically rejects the findings and conclusions of the Administrative Law Judge that the non-disclosures here were excused by the subsequent "candor and contrition" of the Applicant and by the "remoteness" or "inconsequentiality" of the facts not disclosed.

The Administrative Law Judge also found that although the Applicant had admittedly been employed as a dealer and pit boss in illegal casino gambling operations in several states at various times between 1938 and 1961, such activities were "remote and victimless" and did not represent a "character impairment." He also found specifically that the Applicant had "sustained his burden of proof of good character." This latter finding relates to Section 89(b) (2) of the Act (N.J.S.A. 5:12-89(b) (2)) which requires that each applicant for licensure as a casino key employee "establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity." For the reasons which follow, we are constrained to disagree with the Administrative Law Judge's findings with regard to the Applicant's compliance with the foregoing qualification standard.

First of all, we cannot lightly dismiss as "remote and victimless" a consistent course of admitted occupational criminal activity involving illegal casino gaming which spanned nearly 23 years of the Applicant's life.⁴ Such a

4. The issue of whether these criminal activities on the part of the Applicant constituted offenses indicating that his licensure would be inimical to the policy of the Act and casino operations (N.J.S.A. 5:12-86(c)) was neither raised to the Administrative Law Judge nor addressed by him. We will not undertake to address that issue here, not only for the sake of fair notice to the Applicant, but also because resolution of the issue is unnecessary to the ultimate result reached herein, and because the record is sketchy at best regarding the circumstances surrounding the Applicant's participation in these activities. Cf. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 15 (1979) (Standards regarding "inimical" offenses).

lengthy course of criminal behavior, admittedly not aberrational, but instead pursued as the Applicant's means of livelihood, cannot reasonably be held irrelevant to the Applicant's good character and integrity based upon remoteness in time.

With regard to the affirmative qualification criteria of good character and integrity, section 89(b)(2) of the Act specifically requires, in pertinent part, that each applicant submit "data pertaining to...habits,...criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application." (Emphasis added). The illegal gaming activities of the Applicant here could not be more directly related to the data mandated by the Legislature to be considered in determining the affirmative qualification criteria in section 89(b)(2).

Moreover, as is obvious from the foregoing quotation from that section of the Act, the Legislature has placed no limit upon the age of the data to be considered. While temporal remoteness of past criminal acts is certainly a relevant consideration, we cannot agree that in the circumstances of this case the derogation of good character inherent in a 23 year course of occupational criminal activity involving illegal gaming is rendered wholly nugatory by the passage of 18 years from its cessation to the present. The Legislature's mandate of strict regulation under the Act (N.J.S.A. 5:12-1(b)(6)) and its expressed policy that persons with known criminal habits or associations be excluded from the casino industry (N.J.S.A. 5:12-1(b)(7)) will not permit such a conclusion.

Finally, and in part based upon the foregoing, we cannot agree with the Administrative Law Judge's conclusion that the Applicant here has sustained his burden of demonstrating his good character, honesty and integrity by "clear and convincing evidence. N.J.S.A. 5:12-89(b) (2). Viewed as a whole, the record in this matter does not support such a conclusion.

We have held above that the Applicant here is disqualified for intentionally failing to disclose requested information material to his qualifications. N.J.S.A. 5:12-86(b). Such intentional non-disclosure obviously tends to impugn the Applicant's honesty and integrity. We have further held that the Applicant's long-term occupational involvement in illegal casino gaming tends to call into question his good character and integrity. These factors, coupled with the Applicant's admitted convictions for liquor law violations in the early 1930's, and viewed in light of the record as a whole, render it clear to us that the Applicant has not sustained his burden by clear and convincing evidence.

For the reasons set forth herein, the findings and conclusions of the Administrative Law Judge as noted above are rejected. His remaining findings and conclusions, including the ultimate conclusion that the Applicant must be denied licensure, are adopted by the Commission. Accordingly, the application of Angelo J. Ruggiero for licensure as a casino key employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY:

JOSEPH P. LORDI, CHAIRMAN

Dated: *December 10, 1979*

IN THE MATTER OF THE APPLICATION OF)
ANGELO J. RUGGIERO FOR LICENSURE AS)
A CASINO EMPLOYEE (PIT BOSS))

INITIAL DECISION

O.A.L. DKT. NO. CCC 2251-79

APPEARANCES:

Angelo J. Ruggiero, Pro Se

Howard Barman, Deputy Attorney General
Division of Gaming Enforcement

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

On November 28, 1978, Angelo J. Ruggiero (applicant) filed application for license as a casino key employee (pit boss) under N.J.S.A. 5:12-9, 89 (and N.J.A.C. 19:41-1.3) of the Casino Control Act. By letter dated June 25, 1979 he was informed by the Casino Control Commission that based on the information contained in the report of the Division of Gaming Enforcement on June 4, 1979, there was a "substantial possibility that the Commission will deny your application." On June 29, 1979 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42.2. The matter was then transmitted to the Office of Administrative Law for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-10.

A prehearing conference was held on August 28, 1979 and an Order entered. The matter proceeded to formal hearing on October 2, 1979. The hearing was concluded ten (10) days thereafter, when a memorandum of law was filed by the Division, as required of it at hearing.

At issue are the following:

- A. Whether applicant has established by clear and convincing evidence that he is qualified for licensure, generally, under N.J.S.A. 5:12-89(b)(1), (2) and (3).
- B. Whether applicant, now a resident of Akron, Ohio meets the residency requirement of N.J.S.A. 5:12-89(b)(4) and the six (6) month durational pre-licensing residency requirement authorized by N.J.S.A. 5:12-89(b)(4) and required by N.J.A.C. 19:41-4.2.

- C. Whether applicant's previous casino gambling experience in Ohio, Kentucky, Florida, Arkansas and New York from 1938-61, alleged by the Division of Gaming Enforcement and conceded by the applicant to be in gambling operations not then legally authorized in those states, meets the proficiency and experiential standards of N.J.S.A. 5:12-89(b)(3).
- D. Whether applicant's activities in C represent character impairment within the meaning of N.J.S.A. 5:12-89(b)(2).
- E. Whether certain of applicant's four (4) arrests and/or two (2) convictions for liquor law violations in Ohio in the early 1930's disqualify him from licensure under N.J.S.A. 5:12-86(c).
- F. Whether applicant's negative answers to questions #68 and 79 of the Personal History Disclosure Form-I (J-1 in evidence) constitute disqualifying material non-disclosures under N.J.S.A. 5:12-86(b)(2) or 86(g): specifically, in view of applicant's several arrests and/or convictions in E and eight (8) instances of his being party defendant to certain civil suits in Ohio from 1979-77.
- G. Whether the eight (8) instances of civil suit involvement in F bear negatively on applicant's financial stability, integrity or responsibility under N.J.S.A. 5:12-8(b)(1) and (b)(2).

Both the Commission and the Division of Gaming Enforcement are parties to the proceeding (although the Commission did not appear by its attorney at the noticed hearing on October 2, 1979, it voiced no objection to the hearing going forward in its absence). N.J.A.C. 19:42-1.2. The Division, by N.J.S.A. 5:12-76, is charged with investigation of licensure application and prosecuting defense thereto in hearings according to the results of its investigations. Here the Division objects to licensure based on the matters contained in its letter to the Commission dated June 4, 1979, as more precisely framed in the issues recited above.

The testimony showed that applicant is a 67 year old resident (since 1963) of Akron, Ohio. He has never resided in New Jersey. He is married, has 5 children and is a licensed plumber. In the early 1970's he operated a small local business in Akron called Ricky's Train Center. He was born in Naples, Italy, and has a grade level education. His last employment in casinos was at the Desert Inn, Las Vegas, Nevada where gaming is legal and where he was a dealer in craps for 9 weeks. He readily admitted that most of his casino experience was in Ohio, Kentucky, Florida, Arkansas and New York, where gambling operations were not legally authorized. He insisted the gambling there was always on the square.

He readily admitted some four (4) arrests and two (2) convictions for liquor law violations in Ohio from 1931-35. Once, he said, he was sentenced to sixty (60) days and thirty (30) more days in lieu of fines. The violations were the illegal possession and sale of liquor, which, he said, he and his dad made. As to why he did not disclose these facts on his Personal History Disclosure Form in question #68, he said, simply, he wasn't trying to hide anything, he merely thought "they didn't want to go back that far." He has never been arrested for anything since 1935.

Applicant reviewed in order the eight (8) instances of his being party defendant to civil proceedings as listed in the Division letter of June 4, 1979. As to the first, he produced a letter (marked in evidence by consent as P-1) showing the debt was paid in full. As to the second, applicant won the suit. The third, involving his wife, was a debt now paid in full. The fourth, a \$35 judgment, has been paid. The fifth was a judgment against applicant for \$75 for medical services that was in reality, said applicant, the debt of his son Frank, who is 24 and does not live at home. The sixth was a suit against applicant that was dismissed, as were the suits in the seventh and eighth instances. As to why he did not disclose these facts on the Form in question #79, he said, simply, that he didn't think he should because he either had won the suits or paid off the judgments.

Lastly, applicant testified that he and his wife were on welfare in Akron during 1974-75 and though he operated his train center and did a little plumbing work, his income wasn't great enough to require filing income tax returns.

The central issue in the case emerged with the Division's only witness, a state police officer who was offered as both a fact and expert opinion witness on the subject of experiential qualifications for the casino key employee position of pit boss. N.J.S.A. 5:12-89(b)(3) provides that each applicant establish by clear and convincing evidence that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency in the position involved. Although N.J.A.C. 19:41-1.3 (as does N.J.S.A. 5:12-9) denominates pit boss as a casino key employee and implies that one so employed is in a supervisory and therefore responsible and sensitive position, neither the statute nor the rules contain explicit minimum proficiency or experiential standards. The state police officer, Detective Sergeant Stefano Gelardi, testified he is Casino Projects Coordinator for the Division of Gaming Enforcement. He has had special training in the state police on Organized Crime Task Force Bureau and has been assigned in the past to train agents of the enforcement unit. He has taught courses on casino games operation. For one year he was assigned as operational shift supervisor at Resorts advising on problems in all facets of the operation from key personnel to cleaning and maintenance personnel.

He has trained about 90% of the staff of the investigative unit of the Division. For the past 14 years he has regularly consulted with and advised personnel of the Commission on devising and preparing standards for promulgation by the Commission as rules codified in the New Jersey Administrative Code. He knows generally the optimum minimum experiential qualification for pit boss, a position he characterized as "a general supervisory key position on the floor." Specifically he helped advise Commission draftsmen in preparation of certain minimum training and experiential requirements for, among others, the position of pit boss. Such requirements are presently in existence and have been published, he said, in the N.J. Register (N.J.A.C. 19:41-7.17, proposed in 11 NJR 477, 478, September 6, 1979) but have not yet been adopted in rule form by the Commission. A draft of the proposed rule was marked in evidence as D-1, there being no objection by applicant.

The officer gave it as his opinion that the following standards regarding pit boss in D-1 represent optimum (that is, reasonable and necessary) minimal experiential standards:

"When blackjack, roulette or baccarat is the game in which licensure as pit boss is sought, an applicant shall establish he was employed by a legally operated casino in this State or any other state or foreign jurisdiction for at least 24 months supervising any authorized game and, in addition, was employed for at least 12 months dealing or supervising the particular game in which licensure as a pit boss is sought. When craps is the game in which licensure as a pit boss is sought, an applicant shall establish he was employed by a legally operated casino in this State or any other state or foreign jurisdiction for at least 12 months supervising any authorized game and, in addition, was employed for at least 24 months dealing or supervising the game of craps."

The officer testified that any casino experience more than 5 years old should be discounted, since the process of internal games control (accounting, money and credit procedures, and game rules) are subject to change each year. In illegal casino operations, there are no standard internal controls capable of evaluation, for the obvious reasons. Whatever such habits of control an applicant learned would be the wrong habits. Based on this applicant's testimony, the officer gave it as his opinion that the applicant is inexperienced when gauged against such optimum minimal experiential standards, the only credible time he would allow applicant being his time at Desert Inn, Las Vegas. (Such testimony is properly admitted even though it may embrace the ultimate issue to be decided by the trier of fact. Evid. Rule 56(3)).

Questioned by the Administrative Law Judge, the officer said there are about 75 to 85 pit bosses presently licensed and employed at Resorts and Boardwalk Regency. Of this number, none fails to meet such optimum minimal experiential standards -- all meet or surpass them. (An administrative agency's interpretation of a statute it is charged with enforcing is entitled to great weight. See Application of Borough of Saddle River, 71 N.J. 14, 362 A2d 552, 557, 558 (1976). And the principle is well established by a wealth of authority that resort may be had to long usage, contemporaneous construction and practical interpretation in construing statutes, to ascertain the meaning of technical terms, to confirm a construction deduced from the language, to explain a doubtful phase or where the meaning is obscurely expressed. See Service Armament v. Hyland, 70 N.J. 550, 362 A2d 13, 18 (1976)).

Having reviewed the arguments, brief and exhibits, and having heard and observed the witnesses, I FIND as follows:

1. The foregoing discussion, to the extent of mediate conclusions of fact, is incorporated herein by reference.
2. The applicant, Angelo J. Ruggiero, has applied for casino key employee licensing as a pit boss.
3. The applicant is not a resident of New Jersey and does not presently meet the New Jersey residency requirement of N.J.S.A. 5:12-89(b)(4) nor the six (6) months durational pre-licensing residency requirement of N.J.A.C. 19:41-4.2.
4. Applicant's previous gambling experience in Ohio, Kentucky, Florida, Arkansas and New York, alleged by the Division of Gaming Enforcement and conceded by applicant to have been in gambling operations not then legally authorized in those states, fails to meet the proficiency and experiential standards of N.J.S.A. 5:12-89(b)(3) generally and the constructive specific standards of the Casino Control Commission inherent in its applied past licensing practices for pit bosses.
5. As to the latter, applicant's previous gambling experience is deficient in both quality (i.e. in operations not legally operated), duration, and currency (i.e. in operations more than 18 years ago).
6. Such activities, however, being remote and victimless, do not represent a character impairment, for I find as a fact that applicant has presently sustained his burden of proof of good character.
7. To a like extent, I find that applicant's arrests and convictions for liquor law violations in the early 1930's, almost 50 years ago, are not, by their nature and remoteness, in view of applicant's good character, such as may reasonably be considered now as

inimical to the policy of the act and to casino operations.

8. Applicant's non-disclosures of arrests, convictions and civil suit involvement, though intentional, are nevertheless extenuated, though not justified, by his candor and contrition at hearing and in the case of the convictions by remoteness and in the case of the civil suit involvement by their relative inconsequentiality and innocence.
9. The non-disclosures were not of matters material to qualification within the meaning of N.J.S.A. 5:12-86(b), therefore, since no compelling inference can be drawn that either the omissions or applicant's explanations at hearing were critically evasive or specious.
10. Although there is no evidence in the record of agency compliance with the exigencies and constraints of N.J.S.A. 2A:168A-2 of the Rehabilitated Convicted Offenders Act, it is unnecessary to the ultimate conclusion herein, as made hereinbelow, to determine whether RCOA is applicable to licensing of casino key employees under N.J.S.A. 5:12-89.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE that applicant has failed to meet the proficiency and experiential standards of N.J.S.A. 5:12-89(b)(3) as a casino key employee (pit boss) and is disqualified from licensure as such, as required by N.J.S.A. 5:12-86(a). I further CONCLUDE applicant is disqualified from licensure for failure to meet the residential and pre-licensing durational residency requirements of N.J.S.A. 5:12-89(b)(4) and N.J.A.C. 19:41-4.2. I HEREBY ORDER that his application be DENIED.

This Initial Decision does not become final until forty-five (45) days from the date of agency receipt hereof unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, pursuant to N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

October 17, 1979
DATE

October 18, 1979
DATE

DATE

James A. O'Penson, A.L.J.
JAMES A. O'PENSON, A.L.J.

Receipt Acknowledged:

R. Benjamin Cohen
AGENCY HEAD

Mailed to Parties:

FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 79-EA-12

IN THE MATTER OF THE APPLICATION :
OF RICARDO E. SABORIDO FOR A :
CASINO EMPLOYEE LICENSE. :

FINAL ORDER

The New Jersey Casino Control Commission having read and considered the recommended decision of Administrative Law Judge Richard McGill of the Office of Administrative Law in this matter which concludes that the applicant's licensure application should be granted; and the Division of Gaming Enforcement having indicated affirmatively that it takes no exception to the recommended decisions; and this Commission having resolved on July 11, 1979 to authorize the issuance of this Order,

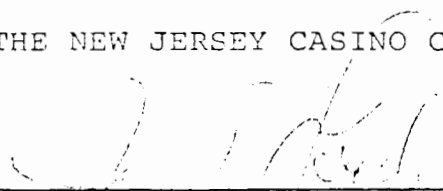
It is on this ~~20th~~ day of July, 1979, ORDERED that the recommended decision of the Office of Administrative Law in this matter be and is hereby adopted by the Commission except insofar as it recommends the separate licensing of the applicant as a blackjack dealer as well as a blackjack floorman, such separate licensure being unnecessary; and

It is further ORDERED that Ricardo E. Saborido be licensed as a blackjack floorperson only; and

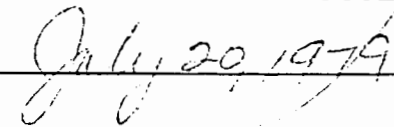
It is further ORDERED that copies of this Order be served upon the applicant and the Division of Gaming Enforcement

within five (5) days of the date hereof.

THE NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI, CHAIRMAN

Dated: 

IN THE MATTER OF THE APPLICATION)
OF RICARDO E. SABORIDO FOR A)
FLOOR PERSON LICENSE AND A GAMING)
SCHOOL EMPLOYEE LICENSE (INSTRUCTOR))

INITIAL DECISION

O.A.L. DKT. NO. C.C.C. 175-79

Wilentz, Goldman & Spitzer, by Douglas T. Hague, Esq.,
Woodbridge, N. J., for Ricardo E. Saborido

Fredric E. Gushin, Esq., Deputy Attorney General
Trenton, N. J., for the Division of Gaming

Thomas N. Auremma, Esq., Trenton, N. J., on behalf
of the Casino Control Commission

BEFORE THE HONORABLE RICHARD MCGILL, A.L.J., c/b:

On December 14, 1978, Ricardo E. Saborido (applicant) filed an application for a license as a casino employee, as a floor person and as a gaming school instructor. On January 22, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Saborido because of his failure to meet the six (6) month durational residency requirement and on the basis of experience. Mr. Saborido was advised by letter dated January 30, 1979, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing. On February 13, 1979, Mr. Saborido requested a hearing.

A pre-hearing conference was held on April 17, 1979. As a result of the conference, the applicant elected not to pursue his application as a gaming school instructor, and the Division and the Commission staff did not object to the applicant's licensure as a blackjack dealer upon satisfaction of the durational residency requirement. It was stipulated by the parties that the applicant became a resident of the State of New Jersey on January 8, 1979, and that he will not meet the durational residency requirement until July 8, 1979. The issue to be resolved at the hearing is whether the applicant has sufficient casino experience, within the meaning of N.J.S.A. 5:12-90, for licensure as a floorman.

The matter was brought to hearing on April 27, 1979.

The applicant testified that he had three (3) years experience as a blackjack dealer in Cuba from 1957 to 1960. From 1977 to 1979, the applicant was employed as a poker dealer at Caesar's Palace in Las Vegas. There, he also completed a one (1) week training course as a floorman for blackjack. The applicant has completed a one hundred and sixty (160) hour course as a blackjack dealer at Atlantic County Community College. On cross-examination, the applicant responded correctly to questions concerning the game of blackjack and statutes and regulations pertaining to casino employees.

Mr. Clarence "Rip" Davis, an employee of Caesar's World with twenty-one (21) years experience in casino operations, testified that in his opinion the applicant was well qualified to work as a floorman supervising blackjack games and that Caesar's World wanted to employ the applicant as a floorman in Atlantic City. Mr. Davis supervised the applicant during the one (1) week training course as a floorman at Caesar's Palace. Based upon appearance, ability to communicate with the public, knowledge of the game, and supervision of dealers, Mr. Davis rated the applicant as excellent. Mr. Davis considered the applicant's experience as a poker dealer to be useful experience for a floorman for blackjack because of the greater complexity of the game of poker and the greater surveillance required. Mr. Davis also considered the applicant's experience in Cuba at the Seville Hotel to be first class experience.

The applicant has three (3) years experience as a blackjack dealer. The applicant's recent experience as a poker dealer and completion of a course as a blackjack dealer allay any concern about possible staleness of the applicant's experience as a blackjack dealer. In responding to questions on cross-examination, the applicant displayed a firm grasp of the game of blackjack and the statutes and regulations concerning casino employees. The applicant's completion of a training program as a floorman as well as his appearance and demeanor at the hearing indicate that the applicant is qualified for the supervisory position of floorman for blackjack.

After consideration of the entire record, I FIND:

1. The applicant has three (3) years experience as a blackjack dealer in Cuba from 1957 to 1960.
2. The applicant has more recent experience as a poker dealer at Caesar's Palace in Las Vegas, Nevada.
3. The applicant completed a one hundred and sixty (160) hour course in blackjack at Atlantic County Community College.
4. The applicant's experience as a blackjack dealer is not stale.
5. The applicant completed a one (1) week training program as a floorman at Caesar's Palace in Las Vegas, Nevada in 1973.
6. The applicant has a firm grasp of the game of blackjack and a knowledge of the statutes and regulations pertaining to casino employees.

I CONCLUDE the applicant has sufficient business ability and casino experience and sufficient knowledge of the Casino Control Act and pertinent Regulations, within the meaning of N.J.S.A. 5:12-90, for licensure as a floorman for blackjack.

Accordingly, it is HEREBY ORDERED that the applicant be ISSUED, upon completion of the six (6) month durational residency requirement on July 8, 1979, a license as a blackjack dealer and a license as a floorman for blackjack.

This action cannot be effected prior to the effective date of this order which is forty-five (45) days from the date of agency receipt of this order unless, the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10(c).

I HEREBY FILE with the designee of the Casino Control Commission, Joseph P. Lordi, Chairperson, my Initial Decision in this matter and the record of these proceedings.

June 8, 1979
DATE

Richard McGill
RICHARD MCGILL, A.L.J. c/b

Receipt Acknowledged:

6/13/79
DATE

J. P. Lordi
FOR AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-13
OAL DOCKET NO: CCC 403-79

IN THE MATTER OF THE APPLICATION :
OF ALAN S. SCHNEIDER FOR LICENSURE: ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been held on this matter on August 30, 1979, before Administrative Law Judge Richard Voliva of the Office of Administrative Law; Patricia Arons, Deputy Attorney General, appearing for the Division of Gaming Enforcement (Division), and Alan S. Schneider (Applicant), appearing pro se, and Walter J. Koprowski, Assistant Counsel, appearing for the Casino Control Commission, and a settlement having been consented to and entered into by the parties, and the Administrative Law Judge having rendered an Initial Decision finding the aforesaid settlement reasonable as to all parties, and that the Applicant fully understood and voluntarily agreed to the terms and conditions contained therein, and that the Division of Gaming Enforcement and the Casino Control Commission through respective counsel consented thereto; and the Casino Control Commission having read and carefully considered the record of the hearing, the evidence adduced therein, and the Initial Decision of the Administrative Law Judge; and no exceptions or objections

having been filed thereto by either the Applicant or the Division; and the Commission having resolved at its public meeting of October 3, 1979 to adopt the Initial Decision of the Administrative Law Judge and approve the settlement as delineated therein;

It is on this 15th day of October, 1979, ORDERED that the findings of fact and conclusions of law contained in the Initial Decision of the Administrative Law Judge, a copy of which is annexed hereto and made a part hereof, be and hereby are adopted by this Commission; and

It is further ORDERED that the Applicant be allowed to withdraw his present request for a hearing; and

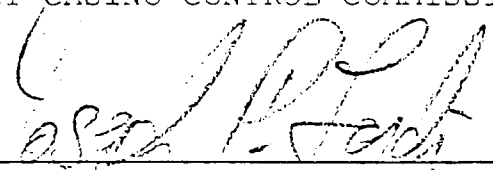
It is further ORDERED that the Commission defer action on the aforementioned license application if and until such time as the Applicant effects compliance with the terms of said settlement; and

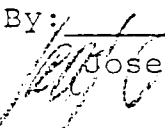
It is further ORDERED that if the Applicant fails to satisfy any term of the settlement, the Commission shall take final action on said license application without a hearing; and

It is further ORDERED that if the Applicant satisfies the terms of the settlement, and thereafter the Division interposes objection to licensure, the Applicant will be given an opportunity to request a hearing on the matter; and

It is further ORDERED that copies of this Order
be served on the Applicant and the Division within five (5)
days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

By: 

 Joseph P. Lordi, Chairman

DATED: October 15, 1977

IN THE MATTER OF THE) ORDER
APPLICATION OF ALAN S.)
SCHNEIDER FOR LICENSURE) OAL DMT. NO. CCC 403-79
AS A CASINO EMPLOYEE DEALER)

APPEARANCES:

Alan S. Schneider, pro se

John J. Degnan, Attorney General of New Jersey,
by Deputy Attorney General Patricia Arons,
on behalf of the Department of Law and Public
Safety, Division of Gaming Enforcement

R. Benjamin Cohen, General Counsel,
by Walter Koprowski, Jr., Assistant Counsel,
on behalf of the Casino Control Commission

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., ALJ:

Alan S. Schneider, petitioner, filed an application with the Casino Control Commission on October 3, 1978 for a casino employee license (dealer). The Commission notified Mr. Schneider of the possibility his application would be denied because he did not possess the requisite educational or casino experience. N.J.S.A. 5:12-90b. Mr. Schneider requested a hearing. A prehearing conference was held on June 12, 1979. The matter was heard on August 30, 1979 and a settlement was reached by and between the parties.

The terms and conditions of the settlement are:

1. Mr. Schneider withdraws his request for a hearing on the issue of whether or not his present experience is sufficient to qualify him for a casino employee license as a dealer. N.J.S.A. 5:12-90.
2. The Commission will hold Mr. Schneider's application, making no decision thereon, for a period of forty-five (45) days from the date hereof, during which time he shall make application for admission to a gaming school

licensed by the Commission. The petitioner shall forward proof of such application to the Division of Gaming Enforcement, c/o Deputy Attorney General Patricia Arens. If Mr. Schneider fails to make application as stated, the Commission may make a final determination concerning his license application, as submitted, without further hearing.

3. If Mr. Schneider makes application for admission to a licensed gaming school in accordance with Paragraph 2 above, the Commission shall make no decision upon his license application for a period of eight (8) months from the date hereof, unless requested by the applicant. If Mr. Schneider is unable to complete his educational requirements within this eight (8) month period, he may apply to the Commission for an extension of time. If, after completion of an educational program, the petitioner's application for a casino employee license is opposed by either the Division or the Commission, he will be given the opportunity to request a hearing.

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

1. The settlement, as set forth above, is reasonable concerning all parties.
2. Mr. Schneider fully understood and voluntarily agreed to the terms and conditions of the settlement.
3. The Division and Commission, through respective counsel, consented to the settlement.

Therefore, I ORDER that the settlement, as set forth above and consented to by and between the parties, be approved.

I HEREBY FILE with Joseph P. Lordi, Chairman, Casino Control Commission, my Order in this matter and the record in these proceedings.

9/16/79
DATE

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

Receipt Acknowledged:

9/16/79
DATE

David P. Hagg
AGENCY HEAD

Mailed, to Parties:

9/16/79
DATE

Richard L. Voliva, Jr.
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF :
KATHRYN C. SHELDON FOR A CASINO :
EMPLOYEE LICENSE (COCKTAIL SERVER). :

ORDER

The New Jersey Casino Control Commission having read and considered the March 21, 1979, Report and Recommendation of Robert J. Genatt, Hearing Examiner, which is attached hereto, at its public meeting of April 6, 1979, and having received no exceptions or objections from the Applicant or the Division of Gaming Enforcement; and having voted unanimously to adopt the said Report and Recommendation;

It is on this 23rd day of April, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission and

It is further ORDERED that the application of Kathryn C. Sheldon for a casino employee license be and hereby is denied; and

It is further ORDERED that a copy of this Order be served upon counsel for the Applicant and for the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI, CHAIRMAN

IN THE MATTER OF THE APPLICATION :
OF KATHRYN C. SHELDON FOR A :
CASINO EMPLOYEE LICENSE, : REPORT AND RECOMMENDATION
(COCKTAIL SERVER). :

David R. Fitzsimons, Jr., Esq., appeared for the Applicant
Stephen C. Becker, Deputy Attorney General, appeared for the
Division of Gaming Enforcement

On or about June 9, 1978, Kathryn C. Sheldon [the Applicant] applied to the Casino Control Commission [The Commission] for licensure as a casino employee. Specifically, the Applicant requested a license to be employed by a casino licensee as a cocktail server with duties requiring and authorizing access to the casino itself. See N.J.S.A. 5:12-7. The application was duly forwarded to the Division of Gaming Enforcement [the Division] for the appropriate investigation. See N.J.S.A. 5:12-76.

By its letter-report dated September 18, 1978, the Division interposed an objection to licensure of the Applicant as a casino alcoholic beverage employee. The Division asserted that the Applicant was disqualified by reason of her alleged arrest and conviction in 1975 for violation of N.J.S.A. 2A:170-5, the disorderly persons offense of prostitution. The Division observed that section 86(c) of the Casino Control Act (N.J.S.A. 5:12-86(c)) specifically lists N.J.S.A. 2A:170-5 as a disqualifying offense. The disqualification criteria of section 86 are made applicable

all casino employee license applicants by section 90(d). N.J.S.A.
5:12-90(d).

Upon receipt of the Division's letter-report, the Commission notified the Applicant by letter dated September 28, 1978, that she had a right to a hearing on this matter. The Applicant exercised her right and a hearing was held before the undersigned Hearing Examiner on October 27, 1978. At the commencement of the hearing, counsel were advised that, in addition to the alleged prostitution offense, the proceeding should inquire into the Applicant's apparent involvement with controlled dangerous substances. This latter area was suggested by the Applicant's answer to question 49 of her Personal History Disclosure Form-2, which was admitted as C-1 in evidence. (T14-3 to 5).¹ Question 49 inquires into unauthorized use, possession or distribution of drugs. The Applicant's response to that question was: "Am a member of NARCO out-pt-drug free program." Because of this response, the scope of the hearing was expanded to determine whether the Applicant was unsuitable due to drug dependency, whether her drug involvement reflected adversely on her present character, honesty and integrity and whether her conduct with regard to illegal drugs may have constituted an additional statutory disqualification under section 86 (T5-11 to 7-3; T30-8 to 16).

1. T refers to the transcript of the hearing. Exhibits and documents introduced at the hearing are identified by use of either a C for Commission, an A for Applicant or D for Division.
2. Counsel for the Applicant declined an offer for a continuance on this aspect and indicated that he had intended to develop the Applicant's drug involvement and her present status in any event. (T7-20 to 8-23). The Division initially reserved the right to continue the hearing if necessary to respond to any new matters regarding the Applicant's drug use, but subsequently declared that it had no reason to request a continuation. (T10-3 to 11-3; T46-6 to 14).

In support of its allegation that the Applicant had been convicted of a disqualifying offense, the Division introduced a copy of a Complaint and Warrant (D-1) which was admitted into evidence without objection. (T11-6 to 13-8). That document recites that one Candice Sheldon was charged with soliciting for prostitution in Atlantic City on April 3, 1975. Originally, the charge was for violation of a criminal statute, N.J.S.A. 2A:133-2. Thereafter pursuant to a plea negotiation, the charge was downgraded to the corresponding disorderly persons offense. N.J.S.A. 2A:170-5. On April 9, 1975, Candice Sheldon pleaded guilty to the disorderly persons offense in Atlantic City Municipal Court. She was fined \$100 and assessed \$10 in court costs. (See D-1).³

The Applicant testified that she began using heroin when she was 15 years old. She was then residing with her father in Saigon, Vietnam, where they lived for a year and a half before returning to the United States in 1971. (T16-2 to 13; T17-4 to 6; T28-13 to 19). Because the heroin in Vietnam was much more potent than that available here, the Applicant discontinued her use within a few months after her return and admitted herself into the N.A.R.C.O. treatment program in 1972. She was then 18 years old. (T16-14 to 19; T17-9 to 20; T32-13 to 33-7; T33-16 to 18). Although she found the N.A.R.C.O. program effective, the Applicant left the program after approximately 9 months. At about that time, the Applicant had a "relationship with a man" and, in her words, "it just got really bad for me and I just turned to drugs as a resort, I guess." (T33-9 to 15; T33-19 to 34-2; T17-21 to 18-5)

3. In response to question 46 of her personal history disclosure form (C-1), the Applicant indicated that she had been charged on April 3, 1975, with a disorderly persons offense in Atlantic City and that she was fined for that offense.

After resuming her heroin use, the Applicant's habit grew more severe until it reached its worst point in 1975. She was then using \$150 worth of heroin a day. To support her habit during that period, the Applicant was engaging in prostitution. (T30-24 to 31-11; T38-4 to 14). The Applicant acknowledged that on April 3, 1975, she was arrested for solicitation and subsequently pled guilty to the disorderly persons offense on the advice of her defense counsel. (T35-9 to 25; T36-25 to 37-22). The Applicant also admitted that, as part of her addiction, she often purchased and possessed heroin for her own use; but she denied ever selling heroin to obtain funds for her habit. (T30-17 to 23; T39-17 to 21).

The Applicant testified that, following her arrest and conviction for solicitation, she began to reduce her heroin use. She travelled to Florida where she resided with her father for several months before returning to Atlantic City. She declared that she used no drugs in Florida and that, in fact, she has remained drug free to the present time. She has been greatly assisted in this endeavor by the N.A.R.C.O. program which she rejoined in 1975 and with which she maintains a voluntary association in order to benefit from continued counseling. (T31-12 to 32-12; T18-10 to 19-10).

In conjunction with her efforts to overcome her drug problem, the Applicant has been active in the employment market. Most recently, she was employed as a cocktail server in the Rendezvous Lounge at Resorts International Hotel from November, 1977 to May, 1978, when she sustained serious injuries in an automobile accident from which she was still recuperating. (T19-11 to 24; T23-8 to 24-2). The Applicant indicated that she encountered no problems during her employment at Resorts, that she enjoyed the work and intended to return. (T24-3 to 10). The Applicant added that she was supporting her infant son and that she would continue to support and raise the child. (T27-4 to 7; T45-5 to 23).

To corroborate her testimony, the Applicant read two letters into the record. The first letter (A-1) was dated October 26, 1978, and was signed by one Alison Ross, an out-patient counselor for the N.A.R.C.O. program. That letter stated that the Applicant had participated in the program in 1975 and 1976 and had received a Treatment Complete discharge on January 9, 1976. Although the Applicant remained drug free after her discharge she returned to the program in September, 1977, to utilize the counseling services. Since that time, the Applicant has continued her voluntary participation and has submitted to periodic urinalysis which has revealed no evidence of narcotics. Ms. Ross asserted that the Applicant's single conviction for solicitation in 1975 was solely the result of her then drug abuse. In Ms. Ross's opinion, the Applicant would be "an asset to Resorts' operation." (T21- 22-25).

The second letter (A-2) was dated October 13, 1978, and was signed by William C. Sedgwick who had been the Applicant's supervisor during her employment at Resorts. (T24-11 to 25-16). Mr. Sedgwick wrote that the Applicant had worked as cocktail server in the Rendezvous Lounge from November, 1977, to May 9, 1978, and that she was forced to terminate the employment because of an automobile accident. Mr. Sedgwick stated that the Applicant was a good employee and, in his opinion, "a person of integrity, loyalty and good character." (T25-17 to 26-3). To similar effect was the testimony of Martha Jane Harris, cocktail waitress supervisor at Resorts. Ms. Harris related that she had worked with the Applicant in the Rendezvous Lounge. According to Ms. Harris, the Applicant was an excellent employee who was punctual and dependable.

Ms. Harris never saw the Applicant intoxicated. Further, Ms. Harris stated that she would hire the Applicant if she received a license from the Commission. (T40-6 to 41-23).

Based on the evidence, I find that the Applicant was arrested and subsequently convicted in April, 1975, for the disorderly persons offense of soliciting for prostitution, in violation of N.J.S.A. 2A:170-5. (D-1) Moreover, in light of the Applicant's candid admission that she was engaging in prostitution during that period in order to support her heroin addiction, I find that the Applicant did commit acts proscribed by N.J.S.A. 2A:170-5. As previously noted, section 86(c) of the Casino Control Act specifically lists conviction under N.J.S.A. 2A:170-5 as a disqualifying event. Furthermore, section 90(d) of the Act incorporates the disqualification criteria of section 86 into the licensing standards for casino employees. Thus, the question is whether the Casino Control Act requires denial of this application or whether the Commission has discretion to grant the license notwithstanding the occurrence of an offense described in section 86.

Analysis of statutory requirements must begin with the legislative language. The words and phrases of the statute are to be given their generally accepted meaning unless doing so would frustrate the manifest intent of the Legislature or unless a different meaning is expressly indicated. N.J.S.A. 1:1-1; Service Armament Co. v. Hyland, 70 N.J. 550, 556 (1976). Application of the so-called "plain meaning rule" to the pertinent statutory provisions strongly indicates that the Commission does not possess discretion in this matter. Section 90(d) of the Act states:

The Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this Act. N.J.S.A. 5:12-90(d).
(Emphasis added).

Ordinarily, the word "shall" is mandatory or imperative as compared to the word "may" which is usually permissive or directory. Harvey v. Essex County Bd. of Freeholders, 30 N.J. 381, 391-92 (1959). Admittedly, these terms may be accorded varying interpretations when achievement of the purpose and intent of a statute so demands. Id.; Knox v. Krause, 152 N.J. Super. 278, 282 (Law Div. 1977). However, examination of the Casino Control Act reveals no reason to believe that the Legislature intended any such variation here.

While it used rigid and uncompromising language in section 90(d), the Legislature demonstrated its awareness of an alternative approach in the succeeding statutory provision. Section 91 of the Act (N.J.S.A. 5:12-91) sets forth the licensing standards for casino hotel employees.⁴ Although section 91(b) requires casino hotel employees to meet the criteria of section 86 in apparently mandatory terms, section 91(c) tempers that requirement. Section 91(c) provides that no applicant shall be denied a casino hotel employee license based upon conviction for any of the disqualifying

4. "Casino hotel employees" are defined as those employees whose duties are not directly related to casino operations and whose employment does not require or authorize access to the casino. N.J.S.A. 5:12-8. Thus, a cocktail server whose duties are restricted to non-casino areas would be licensed under the standards of section 91 for casino hotel employees. See N.J.A.C. 19:50-3 (c) (2). Of course, the present Applicant is seeking licensure to serve alcoholic beverages in the casino itself.

offenses in section 86 if the applicant has demonstrated his rehabilitation or if the offense is not reasonably related to the duties of employment at the casino hotel.

The express provision for waiver of section 86 disqualification for appropriate casino hotel employees underscores the legislative intent to allow no such variance for casino employees. This distinction is in keeping with the extraordinary sensitivity of casino activities and the Legislature's efforts to erect a greater protective barrier around the casino itself. See, e.g., N.J.S.A. 5:12-92(a) and (c); N.J.S.A. 5:12-79(a). To interpret section 90(d) to permit similar discretionary waivers for casino employees would not only ignore the plain meaning of that section but would render the waiver provision for casino hotel employees unnecessary and superfluous. Such an interpretation is disfavored. Pean v. Strelecki, 101 N.J. Super. 310, 313 (App. Div. 1968). Thus, the legislative purpose was clearly to require rejection of any application for a casino employee license where a section 86 disqualification exists.⁵

5. For similar reasons, it cannot be maintained that the Rehabilitated Convicted Offender Act, N.J.S.A. 2A:168A-1 et seq., controls the Commission in considering casino employee license applications. Under that statute, a licensing agency is prohibited from disqualifying or discriminating against any applicant for a license on the grounds that he has been convicted of a crime unless the conviction "relates adversely to the occupation, trade, vocation, profession or business for which the license...is sought." N.J.S.A. 2A:168A-1. The statute then recites several factors to be considered in determining whether a particular conviction "relates adversely" to the license sought. N.J.S.A. 2A:168A-2 and 3. Significantly, the Rehabilitated Convicted Offender Act was last amended in 1974, well before passage of the Casino Control Act; and the Legislature must have been aware of this pre-existing law. See Matawan v. Monmouth Cty Tax Bd., 51 N.J. 291 (1963). Moreover, the policies of the Rehabilitated Convicted Offender Act are effectively incorporated into the casino hotel employee licensing requirements of the Casino Control Act, N.J.S.A. 5:12-91. Thus, it can only be concluded that the Legislature purposely chose to abrogate the general rehabilitative policy of the previous statute in this specific instance. See Mantelair v. Stanoyevich, 6 N.J. 479 (1951); Union County Park Comm. v. City of Union, 54 N.J. Super. 213, 223 (Law Div. 1976), aff'd o.b. 154 N.J. Super. 125 (App. Div. 1977); see also In Re C. Schmidt & Sons, 152 N.J. Super. 595 (App. Div. 1976), certif. granted 77 N.J. 501 (1978). Under section 133(b) of the Casino Control Act, N.J.S.A. 5:12-133(b), any law inconsistent with the Act is thereby amended or superseded to the extent of the inconsistency. Hence, the mandatory disqualification of sections 86 and 90(d) is unaffected by the Rehabilitated Convicted Offender Act.

In light of the foregoing, the present casino employee license application must be denied. The Applicant has been convicted under N.J.S.A. 2A:170-5, which is specifically denominated as a disqualifying offense in section 86(c).⁶ Since the disqualification criteria of section 86 are expressly applied to casino employee license applicants and since no discretion has been accorded to the Commission under section 90(d), the Applicant may not be licensed to serve alcoholic beverages in the casino itself. Given this disposition, it is unnecessary to now determine whether the Applicant would also be disqualified under section 86(c) for her admitted possession of heroin in conjunction with her former addiction.⁷

Although the Applicant is statutorily disqualified from holding a casino employee license, a different issue would be presented if the Applicant sought licensure as a casino hotel alcoholic beverage employee. In that case, the focus would be on the Applicant's rehabilitation. N.J.S.A. 5:12-91(c). Based on the record developed at this hearing, I would be prepared to find that this Applicant has voluntarily and steadfastly striven to overcome her heroin addiction and to take her proper place in society.

6. At the hearing, the Applicant's counsel asserted that section 86 is irrational since it lists N.J.S.A. 2A:170-5, the disorderly persons offense of solicitation and prostitution, but does not list other statutes proscribing similar conduct such as N.J.S.A. 2A:133-2, the corresponding criminal offense of prostitution. It should be noted, however, that under section 86(g) conduct by an applicant which would constitute any of the listed offenses is a disqualifying event regardless whether the applicant is prosecuted or convicted under one of the specified statutes. Thus, it is the nature of the conduct rather than the statutory designation which is critical.
7. Possession of heroin even for one's own use is a crime designated as a misdemeanor under New Jersey law. N.J.S.A. 24:21-20(a). The question projected, but not here answered, is whether conviction of any high misdemeanor under New Jersey law is a disqualification under section 86(c).

I would find that the Applicant has remained drug free since 1975 and that she has sought gainful employment since that time. In addition, she has indicated the sincerity of her rehabilitative efforts by continuing to avail herself of the counseling services of the N.A.R.C.O. program despite the cessation of her drug use. I further would find that the Applicant's involvement in prostitution was the result of her severe drug dependency in the first part of 1975 and that she has not engaged in such activity thereafter. In sum, I would conclude that this Applicant has managed to overcome a serious problem which began in her youth and has attempted to assume adult responsibilities, including the care and support of her infant son. Stated otherwise, I would find that this Applicant has shown that she now possesses the requisite good character, honesty and integrity demanded by the Act.

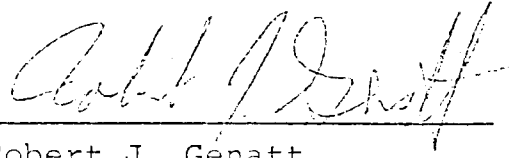
Nevertheless, in the interest of both the Applicant and the public welfare, it would be recommended that issuance of a casino hotel license be conditioned upon the Applicant's continued participation in N.A.R.C.O. counseling and urinalysis monitoring. If this condition is to be imposed, N.A.R.C.O. should communicate its willingness to participate in this respect and to promptly advise the Commission of any failure by the Applicant to cooperate or to remain drug free. The condition should continue in effect until the Applicant demonstrates that it is no longer appropriate or that a modification is justified.

SUMMARY

The Applicant has applied for licensure as a casino employee, specifically, a cocktail server. The Applicant has committed acts which constitute offenses prohibited by N.J.S.A. 2A:170-5. Such offenses are express statutory disqualifications under sections 86 and 90 of the Casino Control Act. Since the Commission does not have discretion to waive such disqualifications for casino employee license applicants, the present application must be denied.

Respectfully submitted,

DATED: March 21, 1979


Robert J. Genatt
Hearing Examiner

In the Matter of the :
Application of Gerald Lance :
Stevenson for Licensure : FINAL ORDER
as a Casino Employee (Dealer) :

The New Jersey Casino Control Commission having considered the September 20, 1979, Report and Recommendation of Robert J. Genatt, Hearing Examiner, and having considered the written exceptions and objections filed by the applicant and the Division of Gaming Enforcement having stated that it has no exceptions or objections to said Report and Recommendation, and having considered the record of the hearing in this matter, and having heard and considered the oral arguments of counsel and the applicant himself at its public meeting of October 24, 1979, and having at that meeting voted to adopt the said Report and Recommendation;

It is on this ^{29th} day of October, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that a copy of this Order be served upon counsel for the applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

Lordi
NEW JERSEY CASINO CONTROL COMMISSION

By

Joseph P. Lordi, Chairman

Dated: October 29, 1979

IN THE MATTER OF THE APPLICATION :
OF GERALD LANCE STEVENSON FOR :
LICENSURE AS A CASINO EMPLOYEE : REPORT AND RECOMMENDATION
(DEALER) . :

Jack E. Granzow, Esq., appeared for the Applicant.
Fredric E. Gushin, Deputy Attorney General, appeared
for the Division of Gaming Enforcement.

I.

INTRODUCTION

Gerald Lance Stevenson [the Applicant] submitted a Personal History Disclosure Form - 2 (PHDF) to the Casino Control Commission [Commission] in support of his application for licensure as a casino employee. This application was forwarded to the Division of Gaming Enforcement [Division] for the appropriate investigation. The Division subsequently filed with the Commission a letter-report dated November 30, 1978. Therein, the Division objected to his licensure based upon the Applicant's arrest and conviction record and his failure to disclose same and the use of aliases on the disclosure form.

On December 11, 1978, the Commission sent out its standard notice of intended action based upon the Division's report. The Commission received a request from Mr. Stevenson for a hearing on December 22, 1978. In that letter, Mr. Stevenson raised the issue whether in addition to the matters stated by the Division, he w

also have to address possible disqualification based on N.J.S.A. 5:12-86(c). By letter dated January 17, 1979, the Commission acknowledged Mr. Stevenson's request for a hearing and advised him that he must address the issues raised by §86(c) in addition to the matters raised in the Division's letter-report.

A hearing was initially scheduled for February 15, 1979, but was postponed at Mr. Stevenson's request. Another hearing was scheduled, and held on this matter on April 23, 1979.

This report will focus first on those matters which occurred prior to the Applicant's initial contact with the Commission or Division. The issue involved here is whether the Applicant's personal history up to the time of his application demonstrates either a lack of good character, honesty or integrity (N.J.S.A. 5:12-89(b) and 90(b)) or the existence of a disqualifying offense. (N.J.S.A. 5:12-86(c)).

Secondly, attention will be directed to the allegation that the Applicant omitted information from the PHDF. If proven, such conduct may constitute cause for disqualification and denial under N.J.S.A. 5:12-86(b) and may also reflect adversely on the overall character and integrity of the Applicant.

II.

EVENTS PRIOR TO APPLICATION

The Division letter-report of November 30, 1978 sets out the Applicant's arrest and conviction record as an adult. (J-1).¹

1. Documents and other materials received into evidence at the hearing will be identified by the following notation; "A" for Applicant, "D" for Division and "J" for jointly offered items.

The record consists of eleven (11) arrests and five (5) convictions.² This arrest and conviction record was stipulated by the parties to be as summarized in the Division's letter-report. (T132,133).² That summary, as it appears in J-1, is as follows:

<u>Date</u>	<u>Offense</u>	<u>Disposition</u>
2-29-68	Receiving stolen goods	dismissed
4-9-68	Loitering-Violation of Curfew law	fine
4-27-68	Burglary	2 yrs. probation
8-23-68	Simple assault and robbery	4 yrs. probation
7-24-69	Fraudulent use of credit card	fine
8-12-69	Trespass	fine
12-7-69	Carrying a concealed weapon	not guilty
12-19-69	Burglary	dismissed
10-16-70	Burglary; violation of Uniform Firearm Act; violation of probation	Not guilty
7-30-71	Robbery/burglary	dismissed
3-8-77	Disorderly conduct-intoxication	dismissed

All of the foregoing occurred in Pennsylvania. In addition, the Applicant testified at the hearing that he was arrested in late 1978 for burglary in Burlington County, New Jersey. It was stipulated, however, that the burglary charge was "no billed" by a grand jury on March 17, 1979 (T107).

The Applicant's criminal history indicates that he has committed at least one offense which disqualifies him from licensure as a casino employee. Section 86(c) of the Act (N.J.S.A. 5:12-86(c)) declares an Applicant disqualified by conviction of any offense which under New Jersey law at the time of application would be "a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the statutory law." The

2. References to the transcript for April 23, 1979, will be signified by a "T" followed by the appropriate page number.

quoted language is followed by a list of criminal statutes. One of the listed statutory sections is N.J.S.A. 2A:119-2 which states that larceny of goods or property worth more than \$200 is a crime.

At the hearing, the Applicant recalled the circumstances surrounding the 1968 arrest for "simple assault and robbery." He related that he had observed a woman carrying a blue money bag and had snatched the bag from her hand as she was walking. Upon apprehending the Applicant, the police recovered the bag and counted \$1,300 from a company payroll. The Applicant was ultimately convicted of the robbery after a trial at which he was represented by counsel. (T51-54; T80 to 82). Thus, it is clear that the Applicant stole more than \$200 and that he was convicted for that conduct. The Applicant is thereby barred from licensure as a dealer because §90(e) of the Act, N.J.S.A. 5:12-90(e), requires the Commission to deny a casino employee license to anyone disqualified under §86.

The Applicant also admitted several other Pennsylvania offenses which would constitute high misdemeanors under New Jersey law at the time of application. For example, he acknowledged his burglary arrest and conviction in 1968 (see N.J.S.A. 2A: 94-1), his carrying of a concealed weapon in 1969 (see N.J.S.A. 2A:151-41) and his possession of heroin for his own use (see N.J.S.A. 24:21-20 (T48 to 50; T56 to 60; T129). Section 86(c) states that certain types of offenses are per se disqualifying events. As noted, the pertinent language in that section is "a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the statutory law." (emphasis added). That language is

followed by a list of criminal statutes which includes 68 misdemeanors and 25 high misdemeanors. While §86(c) is not free of ambiguity, it appears that all high misdemeanors are to be considered disqualifying offenses and not merely those 25 high misdemeanors contained in the statutory list. However, it is unnecessary to resolve the issue here since this application must be denied in any event. Not only did the Applicant admit commission of a specifically listed statutory disqualifier, larceny of over \$200, but other reasons for denial plainly appear.

The Applicant attributes his criminal record to his drug addiction. The greater portion of Mr. Stevenson's criminal involvement, and all of his convictions, coincide with the period Applicant stated he was addicted to heroin. This period was approximately from 1965 to 1971. (T-12). There is no independent source to confirm the duration or extent of his drug addiction. Now, the Applicant claims he is completely rehabilitated. The Applicant produced a certificate stating that he had completed the Ile Elegba drug rehabilitation program. (A-1). The Applicant also produced a letter of recommendation from the director of this program attesting to his rehabilitation. (A-2).

The Division, in its letter-report, asserted that the pattern of behavior that emerges from the Applicant's past criminal record indicates that licensure of this Applicant would be inimical to the policy of the Act and casino operations. However, the Applicant asserts that his past criminal record is an inappropriate measure of his present character. He contends that his addiction was responsible for his criminal record, and since

he is now rehabilitated, his record no longer accurately reflects his actual character.

The Applicant has not been convicted of a crime since August, 1969. (J-1). Since his entry into the Ile Elegba program in 1971, the Applicant has been involved with the law twice. Applicant denies culpability in both of these instances and the dispositions of the charges reflect the same. A disorderly conduct charge in March 1977, was dismissed and a burglary charge during the winter of 1978 was not billed by a grand jury.

The Applicant's work record has been steady, although punctuated with periods of unemployment. After completing the rehabilitation program at Ile Elegba in June, 1973, he was offered a position as a staff person. Applicant accepted this position and remained at Ile Elegba in this capacity until sometime in 1975. (T-15). The Applicant produced a letter of recommendation from the director of this program. (A-2). In September, 1975, the Applicant began work at Amicus House as a counselor. He remained at Amicus House until approximately the time when he relocated to Atlantic City in April, 1977. (T-21). The Applicant also produced a letter of recommendation from the director of this program. In Atlantic City, the Applicant was employed as a counselor at Narco Rehabilitation Center for about three months. (T-23). The Applicant also stated that he drove a shuttle bus for Resorts International during the summer of 1978 for an indefinite period. (T-39). The Applicant is currently unemployed and receiving unemployment compensation.

The Applicant has been attending college sporadically for the past few years at the University of Pittsburgh and at

Atlantic County Community College. He presently has accumulated approximately 45 credits towards his degree. The Applicant also, of course, has been certified as a casino dealer from the Resorts International Dealers School. (A-4).

Based on the record before me, I find that the Applicant was addicted to narcotics during the period from approximately 1965 to 1971. The Applicant, who was born in 1950, was then quite youthful. It was during this period that the Applicant engaged in his most serious unlawful activity. Since that time, the Applicant has successfully overcome his addiction and has drawn praise from two rehabilitation program directors in Pittsburgh for his work as a counselor and therapist. The stipulated criminal record reveals two arrests since the Applicant began his rehabilitation but no convictions.

It thus appears that the Applicant has generally progressed well in his efforts to reform. However, the gravity and nature of the crimes committed by the Applicant and admitted by him at the hearing require a compelling demonstration that the Applicant's reform is complete before the Applicant could be permitted to participate in casino operations as a licensed dealer. If this record were devoid of any other negative indicia, a close case might be presented on the Applicant's present character, honesty and integrity. See N.J.S.A. 5:12-89(b)(2) and 90(b). Unfortunately, the Applicant's actions in filing the present application and responding to Commission requests for information mandate the conclusion that the Applicant has failed to carry the burden of proving his fitness by clear and convincing evidence. These recent deficiencies, which are the subject of the next part of

this report, reveal that the Applicant's rehabilitation is not so total as to negate his past transgressions.

III.

FAILURE TO DISCLOSE

Under N.J.S.A. 5:12-86(b), failure to provide information requested by the Commission or failure to reveal any fact material to qualification constitutes grounds for disqualification. Section 86(b) is applicable to casino employees through §90(e). Also, depending on the circumstances, such failure may reflect adversely on the overall character and integrity of the Applicant.

An Applicant initiates the licensing procedure by submitting a Personal History Disclosure Form (PHDF). The PHDF is the means by which the Commission acquires information regarding the Applicant. It was designed to provide the Commission with a basis upon which to appraise the qualifications of a particular Applicant.

The Applicant is under an obligation to truthfully complete the PHDF and provide all requested information. Material information is that which would be influential or important to an evaluation of the qualifications of the Applicant. However, not every failure to truthfully provide requested information or material facts shall necessarily compel disqualification. A failure to disclose information must be wilful or in bad faith to compel disqualification. Merely inadvertent or ignorant failure to disclose particular information would not warrant so severe a response. The record must now be viewed in light of these standards.

The PHDF submitted by Gerald Stevenson was admitted into evidence as a joint exhibit. (J-2). Examination of the document reveals that it was signed by the Applicant and notarized on April 6, 1978. Applicant testified that he completed the PHDF himself, after he had read each question. (T-36). Later, he testified that a friend actually read the questions and then typed in the answers he provided. (T-121).

There are four questions in this PHDF which present difficulties to licensure pursuant to N.J.S.A. 5:12-86(b). They are questions 2, 45, 46 and 49.

Question 2 of the PHDF requires the Applicant to "Give any other names you have used or by which you have been known." (J-2). The Applicant did not respond to this inquiry and left the space provided for an answer blank. The Division's letter-report claims that the Applicant has in the past used the names of Billy Day, William Day and Darrell Gordon. (J-1). During the hearing, the Applicant testified that he had possessed identification cards with these names on them. (T-41). Applicant admitted that, on one occasion, he was arrested while possessing a license in the name of Darrell Gordon. He was booked under this name, although he testified he made it clear his name was actually Gerald Stevenson. (T-74). Applicant further testified that on another occasion he used an identification card in the name of William Day or Billie Day to assist him in procuring an apartment. (T-75). When questioned why he had not put these names down in response to Question 2, the Applicant replied it had been so long ago that had not recalled ever using them. (T-42 & 77).

Question 45 of the PHDF queries "Have you even been arrested or charged with any juvenile offense whether in this State or in any other jurisdiction?" (J-2). The Applicant responded "No." Yet, at the hearing, the Applicant testified he had been involved with the law as a juvenile on at least two occasions, one of which involved an arrest. (T-11 & 43). The Applicant asserted that he did not reveal that arrest for the same reasons he did not reveal adult charges in response to Question 46. (T125 to 128).

Question 46 inquires, "Have you or has any member of your immediate family ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" (J-2). The Applicant responded "Yes" to this question and listed one offense, the 1967 curfew violation. As previously noted, the Division letter-report states that as an adult the Applicant has been arrested eleven (11) times and convicted five (5) times. (J-1). The arrest and conviction records were stipulated at the hearing. (T-132). The Applicant testified that although he had no recollection of several of these events, he could specifically recall others. When questioned why he had not supplied this information on the PHDF, he offered three explanations. The first was his belief that his criminal record had been expunged as a result of his successful completion of the Ile Elegba drug rehabilitation program. (T-66). The Applicant's second explanation was that he just had no memory of several of the incidents listed in the Division's letter-report. (T47,55,82 and 85). The third explanation was that he considered the arrests to have occurred so long ago that they had no bearing on his application. It was

the third explanation which the Applicant gave to a Division investigator who contacted the Applicant on October 6, 1978. (T152 to 153; T157, D-5).

Question 49 asks, "Have you ever used, distributed or possessed any narcotic, hallucinogenic, drug, barbituate, amphetamine, or any other substance that is listed in schedule I through V of N.J.S.A. 24:21-20 during the past ten year period other than pursuant to a valid prescription issued by a licensed physician?" (J-2). The Applicant responded "No" to this question. However, at the hearing, the Applicant testified that he had been addicted to heroin for about six years, from age 16 to age 22. (T-12). Mr. Stevenson admitted that he had answered the question incorrectly. (T-71). The Applicant explained that he did not feel obligated to answer the question in an accurate manner because he had been rehabilitated and his drug use had "happened in the past." (T71 and 72).

Based on the foregoing, I have made the following findings. The Applicant has failed to provide information requested by the Commission through the PHDF by failing to completely and correctly answer questions 2, 45, 46 and 49. By failing to disclose the information requested in these questions, the Applicant has refused to reveal facts material to his qualification.

The PHDF contemplates that an Applicant will make a serious and thoughtful effort to answer each question thoroughly and accurately. The Applicant's explanation that he had not recalled certain events at the time he completed his PHDF indicates that no such effort was made. However, most of the Applicant's

omissions were admittedly not inadvertent or the result of an unsatisfactory effort. They were the result of an independent and conscious decision to omit particular information in the face of clear and unambiguous inquiries.

His reasoning for this conduct is unacceptable. The Applicant testified that he felt his rehabilitation from drug dependence obviated an accurate response to Question 49. He also testified that the relationship of his criminal activities to his drug involvement, given his rehabilitation, obviated an accurate response to Question 46. Such explanations reveal a purposeful determination by the Applicant that, despite an obvious inquiry, the Commission shall not have particular information.

As previously mentioned, the Applicant also asserted his belief at the time he completed the form that, pursuant to his successful completion of the program at Ile Elegba, his criminal record had been expunged. However, he made no attempt to ascertain before submitting his PHDF that his record had been expunged. (T-67). Moreover, he testified that he discovered the absence of any expungement within three months after submitting the disclosure form. Nevertheless, he made no effort to correct the form and he neglected to tender that explanation to a Division investigator when contacted. (T116- to 119).

The Applicant's unilateral decision to omit such a large portion of the information requested on his PHDF was wilful and without reasonable justification. It displays a palpable disregard for the investigative process. In fact, the scope and extent of these omissions betray an attempt to delude the

Commission and clearly evidences bad faith on the part of this Applicant.

IV.

CONCLUSION

For the reasons set forth above, I find that the Applicant is disqualified from licensure under §86(b) of the Act by reason of his deliberate omission from the disclosure form of requested information and his failure to reveal facts material to his qualification as a casino dealer. In addition, these purposeful omissions reflect negatively on the Applicant's present character, honesty and integrity. When combined with the Applicant's criminal history, these actions preclude any finding that the Applicant has carried his burden of proof as his moral fitness. Finally, the Applicant has committed offenses which require disqualification under §86(c) of the Act. Specifically, the Applicant has admitted theft of more than \$200, an act proscribed by N.J.S.A. 2A:119-2 which is expressly listed in §86(c). For these reasons, the Applicant's request for a casino employee license should be denied.

Respectfully submitted,


Robert J. Genatt
Hearing Examiner

Dated: September 20, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 2257-79
CCC DOCKET NO. 79-EA-71

IN THE MATTER OF THE APPLICATION :
OF ANDREW TOTTENHAM FOR : FINAL ORDER
LICENSURE AS A GAMING SCHOOL :
INSTRUCTOR IN BLACKJACK AND :
ROULETTE :

The Applicant, Andrew Tottenham having applied for licensure as a gaming school instructor in blackjack and roulette; and the said Andrew Tottenham having demonstrated that he possesses the necessary skills, knowledge, and ability to competently and effectively undertake the responsibilities as an instructor in blackjack; and the Division of Gaming Enforcement having agreed to withdraw its objection to the licensure of Andrew Tottenham as a gaming school instructor in blackjack provided the said Andrew Tottenham does not presently seek licensure as a gaming school instructor in roulette; and the Office of Administrative Law in its Initial Decision having recommended that Andrew Tottenham not be licensed as a gaming school instructor in roulette but as a gaming school instructor in blackjack only; and the Commission having duly considered the entire record of the proceedings and the Initial Decision of the Office of Administrative Law, no

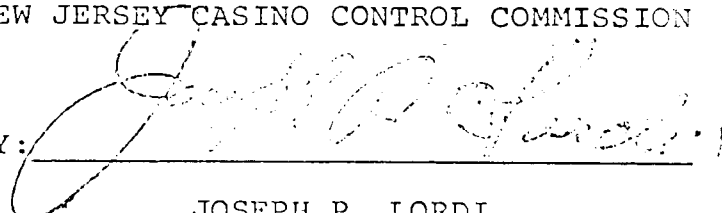
exceptions or objections having been filed; and the Commission having resolved at its public meeting on December 5, 1979 that Andrew Tottenham has satisfied all requirements for licensure as a gaming school instructor in blackjack;

It is hereby ORDERED on this 6th day of December, 1979 that the Initial Decision of the Office of Administrative Law be and hereby is adopted in its entirety; and

It is further ORDERED that Andrew Tottenham be and hereby is licensed as a gaming school instructor in blackjack; and

It is further ORDERED that copies of this Order be served upon the parties within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

JOSEPH P. LORDI
Chairman

DATE: December 6, 1979



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

In the Matter of the
Application of Andrew
Tottenham for Licensure
as a Casino Employee

INITIAL DECISION

O.A.L.DKT. NO. CCC 2257-79

APPEARANCES:

Andrew Tottenham, applicant, pro se

John J. Degnan, Attorney General
by Patricia Arons, Deputy Attorney General
for Division of Gaming Enforcement

Det. Sgt. Stefano Gelardi,
for Division of Gaming Enforcement

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

This is a Casino Control Commission licensure proceeding by Andrew Tottenham for licensing as a gaming school instructor, standards for which are the same as those for casino employees generally under N.J.S.A. 5:12-90, 92(b); and N.J.A.C. 19:44-5.2(a)(2). Having filed his application on October 10, 1978, applicant was informed by the Commission, on June 25, 1979, that based on information contained in the investigative report of the Division of Gaming Enforcement of May 25, 1979 there was a "substantial possibility that the Commission will deny (his) application." On July 2, 1979 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42-2. The matter was thereupon transmitted to the Office of Administrative Law for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-10.

A pre-hearing conference was held on August 24, 1979 and an Order entered. The matter proceeded to formal hearing on October 23, 1979, there having been a continuance granted at the request of the Division from the originally scheduled hearing date of September 29, 1979. At the hearing on October 23, 1979, after a conference between the parties, the matters in dispute were settled amicably.

As set forth in the Division's letter of May 25, 1979 and the pre-hearing Order, the principal objection to applicant's licensure as a gaming school instructor was that, contrary to N.J.A.C. 19:44-5.2(a)(2), he did not have the requisite two (2) years' experience in both dealing blackjack and dealing roulette. By supplemental affidavit of the applicant, which was accepted by the Division at hearing and filed in the proceeding as J-1 in evidence, it was established that applicant has had two (2) years' experience in dealing blackjack, though only nine (9) months' experience in dealing roulette, all within the past five (5) years in licensed casinos in England. To that extent, by agreement, the Division withdrew its objection, and applicant's application was limited, to licensure as gaming school instructor (blackjack).

Under all the circumstances, I FIND the settlement reasonable and in the public interest. Accordingly, I ORDER applicant be licensed as a gaming school instructor, pursuant to N.J.S.A. 5:12-90,92(b), but I ORDER FURTHER, nonetheless, that such licensure be endorsed to reflect, presently, only the subject area of blackjack, pursuant to N.J.A.C. 19:44-5.2(a)(2) and N.J.S.A. 5:12-90(d).

This Initial Decision does not become final until forty-five (45) days from the date of agency receipt hereof unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, pursuant to N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, Joseph P. Lordi, Chairman, my Initial Decision in this matter and the record in these proceedings.

See Exhibit J-1 Affidavit

DATE

October 30 1979

DATE

November 8 1979

JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

Thomas N. Monaghan for Casino Control Commission
AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-2

KENNETH S. USTON, :
Charging Party, :
v. : FINAL ORDER
RESORTS INTERNATIONAL HOTEL, INC., :
Respondent. :

A hearing having been conducted in the above matter before Commissioner Prospero DeBona, acting as Hearing Examiner on behalf of the Commission, and the Commission having carefully considered the entire record of that hearing, including the written submissions of the parties, the Report and Recommendation of Commissioner DeBona issued on September 21, 1979, and the exceptions thereto filed by the parties herein, and the Commission having heard and considered the oral arguments of counsel for the parties and for amici curiae at its public meetings of October 3, 1979 and October 24, 1979, and the Commission having resolved at its public meeting of October 24, 1979 to adopt the Report and Recommendation of the Hearing Examiner and to deny the relief requested by the Charging Party,

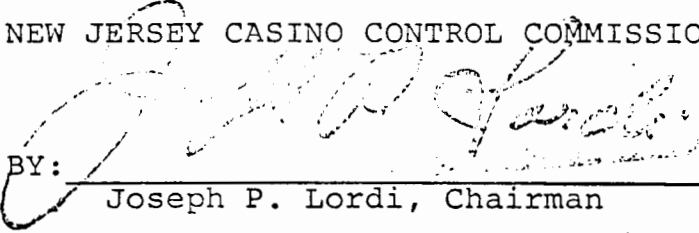
It is on this 31st day of December, 1979,

ORDERED that the Report and Recommendation of the Hearing Examiner be and is hereby adopted by the Commission; and it is further

ORDERED that the Complaint of the Charging Party against the Respondent be and is hereby dismissed; and it is further

ORDERED that copies of this Order be served upon the parties within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

Joseph P. Lordi, Chairman

DATED: December 31, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-2

KENNETH S. USTON,	)	
Charging Party,	)	
vs.	)	<u>REPORT AND RECOMMENDATION</u>
RESORTS INTERNATIONAL HOTEL,	)	<u>WITH</u>
INC.,	)	<u>ADDENDUM</u>
Respondent.	)	

B E F O R E:

PROSPERO DE BONA, Hearing Examiner

A P P E A R A N C E S:

MESSRS. STERNS, HERBERT & WEINROTH
BY: JOEL H. STERNS, ESQ. and
ANN MARIE VAURIO, ESQ.
For the Respondent.

MESSRS. HAWKES & GOLDINGS
BY: MORRIS M. GOLDINGS, ESQ. and
GLENN ALBERICH, ESQ.
For the Charging Party.

JACK E. GRANSOW, ESQ.
For the American Civil Liberties Union.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-2

KENNETH S. USTON,	)	
Charging Party,	)	
vs.	)	<u>REPORT AND RECOMMENDATION</u>
RESORTS INTERNATIONAL HOTEL,	)	<u>WITH</u>
INC.,	)	<u>ADDENDUM</u>
Respondent.	)	

On or about February 21, 1979, Mr. Kenneth S. Uston filed with the Commission a complaint, in which he asserted, in essence, that he had been barred by the respondent, Resorts International Hotel, Inc., from participating in the game of Blackjack operated in respondent's Casino in Atlantic City. He requested that the Commission order the respondent to "cease and desist from denying plaintiff Kenneth S. Uston the right to play Blackjack on its premises."

In response, the respondent filed a notice of defense in which it admitted that on or about January 30, 1979 Mr. Uston was in fact excluded from playing Blackjack in the Casino.

A prehearing conference was conducted on April 3, 1979. During it the Hearing Examiner agreed that at the final hearing he would receive, in addition to evidence relating to the issues, evidence calculated to assist the Commission in formulating

appropriate policy and regulations governing the treatment of "card counters" by Casino permittees and licensees.

In addition, the American Civil Liberties Union was permitted to intervene and to participate in all proceedings.

On May 22, 1979, the hearing was held.

At that time evidence was presented by all parties. From that evidence it seems clear that Mr. Uston did play Blackjack at the Casino operated by Resorts for a period of time previous to January 30, 1979; that on January 30, 1979, he was excluded from playing Blackjack in that Casino; that he was barred on the basis that in the judgment of the Casino's personnel he was a "professional card counter" or "skilled player;" that no standards or criteria for identifying card counters had been filed with the Commission at the time; that Mr. Uston was not barred from participating in the other games offered by the Casino; that card counting will affect the odds in the game of Blackjack; and that Mr. Uston teaches the game of Blackjack, writes books about it and is admittedly a professional card counter or skilled Blackjack player. During his testimony, he said:

" * * * I'm a card counter. I would say, however, that perhaps I'm one of a handful or a full dozen really successful ones. But there are an awful lot of them who consider themselves card counters who are unsuccessful."

He then described himself as a "highly dedicated card counter who works real hard at it."

Therefore, I find the following to be facts:

1. Charging Party did play Blackjack at Resorts Casino previous to January 30, 1979;

2. On January 30, 1979, respondent's employees did exclude the Charging Party from participating in the game of Blackjack in the Casino;

3. The reason for the exclusion was that respondent's employees believed the Charging Party to be a card counter;

4. On January 30, 1979, no standards or criteria for identifying card counters had been filed with the Commission or approved by the Commission;

5. The Charging Party at that time was and had been a card counter;

6. Card counting can affect the odds in the game of Blackjack;

7. The Charging Party was a professional card counter in the sense that he earned a portion of his living by playing the game of Blackjack, wrote books about card counting as a technique of playing Blackjack and instructed others in card counting.

The basic issue in this case is whether respondent had the right to exclude Mr. Uston from the game of Blackjack because he was a card counter.

Mr. Uston contended that the Casino Control Act, N. J. S. 5:12-1 et seq., establishes his right to play Blackjack

in New Jersey Casinos. He asserts that Section 71 of the Act is particularly pertinent. That Section is written, in part, as follows:

"a. The commission shall, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. Such provisions shall define the standards for exclusion, and shall include standards relating to persons:

(1) Who are career or professional offenders as defined by regulation of the commission;

(2) Who have been convicted of a criminal offense under the laws of this State or of the United States, which is punishable by more than 6 months in prison, or any crime or offense involving moral turpitude; or

(3) Whose presence in a licensed casino would, in the opinion of the commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both.

The commission shall promulgate definitions establishing those categories of persons who shall be excluded pursuant to this section, including cheats and persons whose privileges for licensure have been revoked.

b. Race, color, creed, national origin or ancestry, or sex shall not be a reason for placing the name of any person upon such list.

c. The commission may impose sanctions upon a licensed casino or individual licensee in accordance with the provisions of this act if such casino or individual licensee knowingly fails to exclude or eject from the premises of any licensed casino any person placed by the commission on the list of persons to be excluded or ejected.

d. Any list compiled by the commission of persons to be excluded or ejected shall not be deemed an all inclusive list, and licensed casino establishments shall have a duty to keep from their premises persons known to them to be within the classifications declared in paragraph a. of this section and the regulations promulgated thereunder." * * *

The argument, in effect, is that only the Commission may list persons to be excluded from the Casinos. And Mr. Uston applies Section 71 further to prohibit any person or agency other

than the Commission from barring anyone from a game within the Casino.

In Uston v. Hilton Hotels Corp. 448 F. Supp. 116 (1978), the United States District Court determined otherwise. At page 119, the Court stated:

"NRS 463.151 requires the exclusion from gaming establishments of certain persons named on a list compiled by the Nevada Gaming Commission for various reasons, one of which is not card counting. In essence, Uston argues that since the State of Nevada has enacted measures that require the exclusion of a limited class of undesirable persons, of which Uston is not a member, it thereby undertook the affirmative duty to compel the admittance of all persons, such as Uston, who were not named on the list compiled by the Nevada Gaming Commission. Such an argument strains logic. It is the judgment of this Court that NRS 463.151 gives rise to no affirmative obligation by the State of Nevada to compel gaming establishments to admit persons thought to be card counters. Since no duty exists, the failure to prohibit private action is not state action."

The language of the Nevada Act involved in that determination was similar to that of Section 71 of our Casino Control Act.

Although not controlling here, that case is persuasive. Furthermore, the language of Section 71 does not say clearly that the Commission alone may exclude persons from casinos. So if there existed a common law right to exclude, the Act did not effectively distinguish it. See State v. Western Union Tel. Co., 12 N. J. 468, 486, App. Dis., 346 U. S. 869, 74 S. Ct. 379 (1953); Blackmon v. Iles, 4 N. J. 82 (1950).

:

Although not necessarily significant, it should be observed that the language of the statute does not touch the question of exclusion from a game.

Respondent argues that in the absence of statutory or constitutional authority to the contrary, proprietors of private places of amusement and resorts are under no common law duty to serve the public without exception. Briefly, it says that it does indeed have a common law right to exclude.

We agree.

In Garifine v. Monmouth Park Jockey Club, et al., 29 N. J. 47 (1959), the plaintiff sued for injunctive relief against his exclusion from the race track operated by Monmouth Park Jockey Club. It appeared that he had entered the track after paying the admission fee and had left when requested to do so by a representative of the Protective Bureau. Several days later he was again requested to leave the track. When he refused, he was arrested and charged with being a disorderly person. During the following year he was acquitted in proceedings before the local Magistrate. Thereafter, he attended the races at the same track again and a representative of the track executed a warrant and complaint charging him to be a trespasser. He then initiated his action for injunctive relief. The defendants moved to dismiss his complaint on the ground that they had "an absolute right" to exclude and expel the plaintiff and that consequently he was not entitled to the relief sought. The trial court granted the motion and dismissed the complaint.

After reviewing and analyzing numerous cases, the Supreme Court affirmed the judgment entered in the trial court. In so doing, the Court said at page 57:

"The burden of the plaintiff's present attack is on the common-law doctrine which he states should be altered to afford to him a right to admission to the race track in the absence of affirmative legal proof by the defendants that there is good cause for his exclusion. We are satisfied that, without regard to views which may be entertained in other authorities and cases, there has been no showing made here for such alteration. The plaintiff's complaint states that the defendant advised him that he is not wanted at the race track and that his general record and reputation warranted his exclusion. It does not question the defendant's good faith or sound purpose nor does it present countervailing circumstances or any urgent considerations of justice or policy which might move the Court to depart from the many judicial decisions which have sustained the common-law right of race track operators to exclude suspected undesirables."

Although it might be argued that the Garifine case is distinguishable from the one under consideration by us because the Court seemed to be dealing with exclusion of an "undesirable," scrutiny of the allegations in Garifine, the basis for the dismissal below and the cases cited by the Court in Garifine, persuade us that the Court, in affirming the judgment below "in all respects," was effectively agreeing that the right to exclude was absolute. For instance, the defendants' motion to dismiss was based on an alleged "absolute right." The trial court issued its ruling on that motion. Also, the plaintiff's argument had been that "the operator of a licensed race track should not have the common-law right to exclude or expel a patron without reasonable cause."

The Court in Garifine also relied, in part, upon Shubert v. Nixon Amusement Co., 83 N. J. L. 101 (S. Ct., 1912). In the Shubert case, the plaintiff had purchased a ticket for a Newark show of his competitor, Florenz Ziegfeld. He was occupying a seat when he was asked to leave. He did so and then filed an action against Ziegfeld and the Nixon Amusement Company. His action was dismissed by our former Supreme Court, which observed that "whatever views may be entertained as to the natural justice or injustice of ejecting a theatre patron without reason after he has paid for his ticket and taken his seat," it felt compelled to follow the holding in the case of Wood v. Leadbitter, 13 M. & W. 838, 153 Eng. Rep. 351 (Ex., 1845)

In the Leadbitter case, which was referred to by the Court in Garifine as the leading case, the plaintiff was ejected from a race course after having purchased a ticket. In denying recovery, the Court held that the plaintiff had no easement or similar property right to remain on the grounds after being requested to leave. In the Court's view he had only a personal license which could be revoked at any time.

Comparable is Wollcott v. Shubert, 217 N. Y. 212, 111 N. E. 829 (Ct. App., 1916). There Alexander Wollcott, a drama critic, had written an adverse review of a Shubert production. Shubert excluded him from one of his theatres and threatened to exclude him from all. Wollcott sought injunctive relief, as

does the Charging Party before us. In affirming dismissal of his action, the New York Court said:

"The acts of the defendants were within their rights at the common law. At the common law a theater, while affected by a public interest which justified licensing under the police power or for the purpose of revenue, is in no sense public property or a public enterprise. It is not governed by the rules which relate to common carriers or other public utilities. *** His right to and control of it is the same as that of any private citizen in his property and affairs. He has the right to decide who shall be admitted or excluded."

It should be noted too that the plaintiff in the Garifine case asserted that under the provisions of the Civil Rights Act of New Jersey (R. S. 10:1-2 et seq.), the operator of a licensed race track had no right to exclude or expel him. In rejecting that argument, the Court stated that "since the plaintiff does not suggest that his exclusion was based on race, creed, color, national origin or ancestry we find the Civil Rights Act to be inapplicable."

Other arguments in support of Mr. Uston were presented at the hearing. Notable is that submitted by counsel for the American Civil Liberties Union. He urged that to permit a casino operator to exclude a person from the game of Blackjack is to grant him the right to amend the Rules of the game. He stated, in effect, that to permit exclusion allows the permittee or licensee to regulate who may play the game, the manner of playing the game and the manner of wagering. Were that so, it would prompt a conclusion that the casino operator either had usurped the authority and power of the Casino Control Commission

or that the Commission had unlawfully and invalidly delegated its authority and power.

Although the suggestion is interesting, we reject it. We do not consider that exclusion from a game constitutes promulgation of a Rule of the Game.

Other arguments were advanced. But in view of the decisions in Garifine v. Monmouth Park Jockey Club, et al., supra, and the cases on which it relies, we are constrained to reject them without discussion.¹

During the hearing and after the hearing was closed, objections to the admission of certain evidence and motions to strike evidence from the record were made. To the extent that I have not already ruled on those objections and motions, I now overrule the objections and deny the motions.

Accordingly, I arrive at the following conclusions of law:

1. The respondent had the right to exclude the Charging Party from participating in the game of Blackjack.
2. The Charging Party is not entitled to the relief he seeks.

For the foregoing reasons, I respectfully recommend that the Commission deny Mr. Uston's prayer for relief.

¹It should be observed that during the hearing several witnesses testified without rebuttal that respondent had barred them too from playing Blackjack, even though they were not card counters. Since the propriety of those exclusions is not an issue in this case, it will not be evaluated at this time. But perhaps it too should be considered a subject of regulation by the Commission.

ADDENDUM

I. THE PROBLEM

Along with the specific legal issues discussed above, the circumstances of this action give rise to significant policy questions which the Commission should address. Although these policy issues are not technically a part of this case, the hearing officer asked the parties to address them and they will be discussed in this report. The basic question is whether the Commission should exercise its regulatory authority to prohibit the exclusion of "professional card counters." To a large degree, the answer to this question depends on whether an alternative to exclusion exists that would maintain the needed balance between the casino and the gaming patron. In answering these questions, the Commission must examine the effect counting strategists have on the game of Blackjack, the alternatives to exclusion available, the effects each alternative will have on New Jersey gaming, and the purposes and policies expressed in the Casino Control Act.

The viability of any form of legalized gambling is premised on a practical balance between the players and the operator. On the one hand, fundamental fairness dictates that the player have a reasonable possibility of winning. On the other hand, though it is something not popular to espouse,

each form of legalized gambling must have a house advantage which assures a reasonable profit to the operator. It is the identification and retention of this practical balance that enables legalized gambling to be viable by assuring both a fair possibility of winning to the player and an adequate profit to the operator. Once either side of the balance becomes skewed, the viability of the game becomes threatened.

In most forms of legalized gambling, be it the lottery, horse racing, bingo, etc., the house advantage assures the operator that he will retain as profit a certain part of the total amount wagered. That is usually accomplished by limiting, in one way or another, either the number of winners or the amount won or both. In casino gambling, the assurance of an adequate profit to the casino is generally accomplished by providing the casino operator a statistical advantage. For example, in such games as craps and roulette, the advantage is gained by permitting the casino to payout winning wagers at less than true odds. In Blackjack, the advantage is gained through the balanced interaction between the rules of the game and the laws of probability. Historically, the casino advantage in Blackjack has depended on the fact that the players bet first; and, when they go over 21, they lose regardless of the dealer's hand. As Scarne put it, "the

banker's hidden advantage lies in the fact that the player must play first, and if dealer and player both bust at a count above 21, the player loses his bet."¹

For many years, this hidden advantage was sufficient to retain the needed balance between player and casino. The number of possible combinations and permutations which the game of Blackjack involved discouraged players from taking advantage of the laws of probability to affect this house advantage significantly. Without strategies based on the laws of probability, the game was essentially one of chance, with the hidden advantage making it a game viable for casino play. With increased interest, sophistication and the advent of the computer,² however, things began to change. More sophisticated players began analyzing the probabilities associated with the game and, based on those probabilities, developing playing strategies that would affect the house's hidden advantage.

The incipience of this change occurred in 1956 with the publication of an article in the Journal of the American Statistical Association by Baldwin, Cantey, Maisel and McDermott.³

¹ J. Scarne, Scarne's New Complete Guide to Gambling, at 362 (1974), See: Walter I. Nolan, The Facts of Blackjack, at 5 (1976).

² The effect the computer has had in blackjack analysis is reflected by Edward O. Thorpe in Beat the Dealer (1966) at 180-181; "The Modern high-speed computer, essential to a careful analysis of blackjack, has been widely available for only the last ten or fifteen years; without such a computer the analysis on which this book is based would have been impossible."

³ Baldwin, Cantey, Maisel, McDermott, The Optimum Strategy in Blackjack, 51 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 429 (September 1956).

That marked the first time a Basic or Optimum Strategy for blackjack had been published based on a scientific analysis of the probabilities inherent in the game.⁴ This Basic Strategy, however, should not be confused with the card counting systems that later developed. The Basic Strategy, variations of which are still in use, is based on a probability analysis that is solely dependent on the player's cards and the dealer's up card. Unlike the counting systems, it does not involve keeping track of the cards that have been played⁵ nor does it take into account the changes in probability that occur as cards are dealt.⁶

Depending on the assumptions made, the casino's advantage over the average player in blackjack is between 5% and 10%.⁷ Varying with the blackjack rules utilized, it has been estimated that the Basic Strategy Player can decrease this casino advantage to under 1% and, in some cases, gain a very slight edge over the house of approximately one to two tenths of a percent.⁸ Although no studies can be found that analyze the effect of the Basic Strategy Player on the

⁴ L. Revere, Playing Blackjack as a Business, at 10 (1977).

⁵ E. O. Thorp, Beat the Dealer, at 5 (1966) [hereinafter cited as Thorp/]; J. Paterson, Blackjack: A Winners Handbook, at 41 (1978).

⁶ Thorp at 19; R. Epstein, The Theory of Gambling and Statistical Logic, at 219 (1977 Revised Edition).

⁷ Thorp at 12, 33, 38; J. Scarne, Scarne's New Complete Guide to gambling, at 364 (1974) [hereinafter cited as Scarne/].

⁸ Thorp at 4, 5, 14, 33; L. Humble, Blackjack Gold at 10 (1976); J. Patterson, Blackjack: A Winners Handbook, at 41 (1978).

viability and profitability of casino blackjack, it appears that this type of player does not pose a substantial threat to the practical balance underlying blackjack's viability as a casino game.⁹ In this regard, it has been hypothesized that the existence of Basic Strategy has increased player interest in the game; and, even when Basic Strategy gives a slight edge to the player, it does not significantly threaten casino profitability. This is probably due, at least in part, to the fact that the player has only a slight edge. That edge can be eliminated easily by errors made in the implementation of the strategy; and, even with perfect implementation, substantial profits could not be realized without a very extensive bankroll.

The real challenge to the game of casino blackjack began in 1962 with the publication of "Beat the Dealer" by Mathematician Edward O. Thorpe.¹⁰ Utilizing a computer, Thorpe was able to develop a counting system that took cognizance of the fact that the probabilities in the game change as the cards are being dealt. As one commentator has said of Thorpe's work:

⁹ See Transcript: Uston v. Resorts International Hotel, Inc. (Casino Control Commission Docket No. 79-2), at 299, line 13 (hereinafter cited as Transcript).

¹⁰ E. O. Thorpe, Beat the Dealer (1966).

"The publication of Edward Thorp's Beat the Dealer in 1962 revolutionized the game of blackjack. Resulting from extensive computer studies, the book presented the first workable strategy for card counting and varying bet size as the probability of winning fluctuated with the play of cards."¹¹

The publication of "Beat the Dealer" "stimulated the search for and the evolution of a point count system which provides the player with a definitive advantage against the house."¹² Since the first publication of that book, there has been a proliferation of both card counting systems and those able to effectively implement them. The list of systems now includes such ones as Braun, Revere, Wong, High-Opt I, High-Opt II, Gordon, Griffin, Einstein, Collver, DHM, Roberts, etc. With the assistance of computers, the developers of these systems have been able to analyze the change in probabilities as the cards are dealt and to develop strategies that seek to give the player an optimum probability of winning in each situation. The effect of these systems has been to abrogate the traditional casino advantage in the game and to provide the player with a consistent and significant advantage over the house.¹³

In New Jersey, the rules governing the game of blackjack were designed to achieve the necessary balance between

¹¹ J. L. Patterson, Blackjack: A Winner's Handbook, at 27 (1978).

¹² J. Gwynn and A. Seri, Experimental Comparisons of Blackjack Betting Systems, (1978)

¹³ Thorp at 44; K. Uston, How You Can Win at Blackjack in Atlantic City and Nevada, TWO ROCKS ON BLACKJACK p. 142 (1979); L. Revere, Playing Blackjack as a Business (1977).

fairness to the player and profitability to the casino. In order to make the game as interesting and as fair to the average player as possible, Liberal rules were adopted which included such things as early surrender, doubling on any two cards, and the splitting of cards of the same value. When the first casino opened in Atlantic City in May of 1978, the rules adopted were successfully achieving the necessary balance. That condition existed until late November of that year, when highly skilled players, able to implement card counting systems, began to converge on Resorts International Casino from all over the world. By January of 1979, the statistics generated from the blackjack tables indicated that those individuals were causing a serious imbalance to occur, and that a state of significant disequilibrium was present. The statistics for that month show that, although the drop remained constant, the hold percentage and the win were cut in half.¹⁴

Reacting to this situation, Resorts International decided to exclude professional card counters from its blackjack tables on January 30, 1979. As soon as this decision was implemented, the hold percentage and win at blackjack began to rise to their previous levels.¹⁵ Since that time,

¹⁴Casino Control Commission, Division of Financial Evaluation and Control, Impact Study on Minimum and Maximum Wagers, at Section 4 (April 1979); Transcript, pages 268 to 263.

¹⁵Id.

Resorts International has continued to exclude professional card counters; and the Boardwalk Regency Casino, which opened in July of 1979, adopted the same policy.

Although the parties to this particular hearing disagree on many issues, they seem to agree that, when the present blackjack rules are applied to highly skilled players who are able to utilize counting systems effectively, a state of disequilibrium results. In essence, the casinos take the position that professional card counters remove the element of chance from the game and present a real and serious threat to its continued viability as a game suitable for casino use. As expressed in the brief of Resorts International, "the odds of the game are so affected that blackjack becomes an unworkable game for the casino."¹⁶ Although stating it differently, Mr. Uston, an internationally renowned and highly skilled blackjack player, says:

"It is my belief that the current situation pertaining to the rules and policies relating to blackjack play in New Jersey casinos is in a state of disequilibrium.

"The current blackjack rules, while fair to the general public, permit the competent 'card-counter' to attain a relatively high edge over the house. This could have a significant impact on total gaming revenues to the casinos and thus to the State."¹⁷

¹⁶Brief for Respondent at page 5.

¹⁷Kenneth S. Uston, Letter to Casino Control Commission Chairman Joseph P. Lordi, dated February 13, 1979.

Therefore, the question seems to be not whether an imbalance exists, but how to correct it equitably. As will become apparent, the answer to that question is not an easy one.

II. EXCLUSION OF CARD COUNTERS

No doubt, the exclusion of professional card counters is an effective means of protecting the profitability of the game of blackjack and will achieve a balance that will assure relative stability. However, this method of correcting the imbalance also has significant disadvantages. Initially, there is a sense of basic unfairness in permitting the casinos to offer a game of combined skill and chance and then permit them to exclude persons who become skillful enough to win consistently at the game. On the one hand, the game lures patrons with the possibility of winning through skill and proficiency and, on the other, the casinos exclude those who attain a high degree of such skill and proficiency. This sense of unfairness is compounded by what can reasonably be expected to be the practical application of such a policy. There are an increasing number of people attempting the use of counting systems; so it is doubtful that all of them will be excluded. More likely, exclusion will be visited only on those proficient enough to win while those who lose will be tolerated, or as stated by Boardwalk Regency Casino, "it is the good counters

that we do not want to deal to" (emphasis added).¹⁸.

Notwithstanding any question of fairness, a policy of excluding counters or skilled players can have a material effect on the type of playing environment that will exist in this State. Under such a policy, casino personnel will be on continuing vigil to identify and exclude counters. Players who have developed the skill that the game of blackjack entices will be viewed as cheats, and a climate of suspicion and antagonism will arise between casino personnel and skillful players. Once a player begins winning at blackjack, the question will be posed: "Is he or she a card counter?" Surveillance activities will commence of lucky or winning players who, because of their luck or winnings, are suspected of card counting. Instead of their normal supervisory duties, that assure the integrity and fairness of the games and compliance with Commission rules and regulations, the time of supervisory personnel will be devoted to the detection and identification of counters. As has occurred in other jurisdictions, counters will begin to disguise both their physical appearance and method of play only to increase the time and sophistication of detection activities and the likelihood that players who are not counters will mistakenly be excluded as such.

In some cases, as has already occurred, errors will be

¹⁸ Boardwalk Regency Casino Staff, Memorandum to Chairman Joseph P. Lordi, dated May 15, 1979, at page 2.

made, and players who are not counters will be excluded. Such occurrences may well cause some non-counting players to fear that if they become too lucky, they may be excluded as counters. The barring of players, whether identified rightly or wrongly as counters, will also increase the potential for physical confrontation when such exclusion is resisted. As has already occurred in other cases, the exclusion may escalate to arrest and criminal prosecution when the individual excluded either resists or attempts to return to the blackjack tables.

These consequences make an exclusion policy highly undesirable. Such a policy can only be justified if no other alternative exists that would preserve the viability of casino blackjack. Therefore, before a judgment can be made about exclusion, the other alternatives must be examined.

III. SHUFFLE AT WILL

When requested to submit comments about the course of action which the Commission should follow, Boardwalk Regency took the position that the casinos must have the right to exclude counters whenever it thinks it necessary.¹⁹

¹⁹Boardwalk Regency Casino Staff, Memorandum to Joseph P. Lordi, dated May 15, 1979, at page 10.

Originally taking this same position, Resorts International represented at the hearing that if the casinos might shuffle the deck whenever they deemed it appropriate, the right to exclude would not be necessary.²⁰ Witnesses presented by the Atlantic City Casino Hotel Association supported the position that exclusion would not be required if shuffling at will were permitted.²¹ Although they did not address the specific effect that would have on the advantage which is otherwise enjoyed by the counter, they did testify that, based on their experience in Nevada, it would provide a sufficient deterrent. As Mr. William Jordan put it: "When a person who does count cards is faced with a shuffle constantly when he makes his money move, he simply is not going to play."²²

In his book, "Beat the Dealer," Thorp addresses the effect the shuffle at will has on the skilled player who utilizes a counting strategy. He begins by saying that when he "wrote the first edition (he) had the mistaken impression that the casinos could stop a system player by frequently reshuffling the deck."²³ Acknowledging that shuffling at will does effect the counter's advantage, Thorp goes on to say that it is still possible for the counter to obtain an

²⁰Transcript at page 250, line 22; page 251, line 6.

²¹Transcript at page 303-9.

²²Transcript at page 297, line 15.

²³Thorp at 124.

advantage of approximately one percent over the house even assuming a reshuffle after each round of cards is dealt. This is accomplished by the player sitting in the last seat at the table where he is able to view the cards of all the other players before he must apply his playing strategy. Thorp seems to discuss this, however, in relation to a single deck game and it is not clear whether this would also be applicable to a multi-deck game.²⁴

Assuming that shuffling at will would be effective to reach a balance between the casinos and counters, the fairness of the game to the average player could be seriously affected if this right to shuffle up were abused by the casinos. This potential arises from the fact that, as the cards in the stack are dealt, the advantage swings back and forth between the casino and the players. When more high cards remain in the deck, the situation is more advantageous to the player; and when more low cards remain, it is more advantageous to the house. Card counters do not influence this fact, but instead, their system of keeping track of the cards enables them simply to perceive the favorable situations and take maximum advantage of them. The important point is, however, that when the deck is favorable, it is not only favorable to the counter, it is favorable to all players at the table

²⁴ Thorp at 125.

and, when unfavorable, it is likewise unfavorable to all players. Therefore, if the casinos were to keep track of the cards, as do card counters, they would be in a position to shuffle up when the deck was favorable and not shuffle when the deck was unfavorable. Such a course of action would both increase casino profits and have a serious effect on the fairness of the game to all players.

The casinos suggest that several things militate against abuse of the shuffle at will prerogative, and that sufficient safeguards can be established to prevent it. Resorts International argues that there is a practical limit to the number of times the cards can be shuffled without discouraging the average player, that the authority to shuffle could be limited to the Assistant Shift Manager or above, or that shuffling could be allowed only when card counters are present at the table. None of these, however, provides the type of protection and assurance that is necessary.

The first is a far too nebulous and uncertain limit to constitute a reliable safeguard. The second only identifies who is responsible for exercising the discretion and not how it will be exercised. There remains the possibility of abuse through improper exercise, perfunctory approval or de facto delegation. The third alternative, though less offensive than an exclusion policy, has similar disadvantageous effects. Additionally, it lacks a practical and effective

mechanism by which the Commission could assure that players were being properly identified as counters and that shuffling was being limited, in fact, only to when counters were present at a table.

The consequences accruing from the possible abuse of a shuffle at will policy make this alternative less than desirable. Whether the potential for abuse is likely or remote, if it does occur, it would be difficult to detect and have grievous consequences on the basic fairness of the game. For these reasons, this alternative should not be adopted unless a more suitable alternative cannot be found.

IV. SHUFFLE UP CONDITIONED ON BET VARIATION AND SIZE

In an effort to avoid the problems with the shuffle at will alternative, Mr. Uston suggests a modification to that alternative as one way of achieving the needed balance. Though not the alternative he most prefers, as a possible compromise he suggests that the ability to shuffle up be limited to those situations in which a player more than triples the amount of his or her previous wager. He argues that this would provide sufficient protection to the casino by preventing "untoward acceleration of bets which is...the only action which presents a threat to casino vitality."²⁵ He also contends that this fixed and objectively ascertainable

²⁵ Petitioner's Supplementary Memorandum of Policy at page 6.

limitation abrogates the need to identify card counters through generally cumbersome and imprecise procedures, protects against the potential for abuse inherent in a shuffle at will policy, and avoids the utilization of shuffling as a harassment tool to gain the de facto exclusion of counters.²⁶

In examining the effectiveness of this alternative, attention need be focused first on the components of the counting strategies and on how this proposal would impact them. The more sophisticated counting systems contain three basic elements. The first is the method for keeping track of, or "counting," the cards that have been dealt. This is usually accomplished by assigning a certain plus or minus value to each card in the deck and keeping a "running total or count" of these values as the cards are being dealt. The "running count" is then converted into a "true count" which depends upon the number of cards left to be dealt. The second element of these systems is the strategy to be followed for hitting, standing, doubling down, splitting pairs or surrendering. This strategy is a variable one which depends on the specific cards held by the player, the exposed card of the dealer, and the plus or minus value of the count at that particular time. The third component of these systems is the ability to vary the amount of each wager so that minimal amounts are bet when the "count" is unfavorable and larger amounts when the "count" is favorable.

²⁶ Id. at 7.

The ability to shuffle up when a player more than triples his bet is directed at the third component of the counting strategy. This component enables the player to minimize his losses and maximize his winnings by varying the amount wagered in response to the favorable or unfavorable count. Being directed at bet variation, this alternative would not decrease the percentage advantage enjoyed by the counter but, instead, would attempt to reduce the monetary amount that the counter could derive from that advantage. The underlying theory is that the winnings of the counters would be sufficiently reduced so as not to pose a substantial threat to the overall revenue derived by the casino from blackjack.

This alternative will provide some degree of protection to the casinos, and the possibility exists that it could provide the degree of protection needed. From the information at hand, however, it is difficult to assess whether it will achieve the required balance. Although this alternative will decrease the amounts won or, at least, slow down the speed at which winnings are accumulated, it is difficult to determine the precise extent to which winnings will be diminished or the specific impact on the overall blackjack revenues of the casinos. Under this alternative, the player following a counting strategy would still retain a percentage advantage over the casino and the ability to vary bets within

a 3-to-1 ratio which may or may not pose a substantial threat to the overall profitability of blackjack.

The effectiveness of this alternative also depends on the astuteness of the casino personnel implementing it. If the casinos begin to automatically shuffle up whenever a player more than triples his bet, this alternative could provide the counters with an added advantage. Under these circumstances, a counter could more than triple his wager just to get the dealer to shuffle up a deck with an unfavorable count. Once the shuffle had occurred, the bet could be reduced and the counter would begin again with a neutral deck. On the other hand, when the count were neutral or favorable, the counter could stay within the triple up limit to assure that the deck will not be shuffled away. In this way, the counter could get an unsophisticated dealer to shuffle away bad decks so that he only need play against neutral or favorable decks.²⁷

Another way in which this alternative can be overcome is through "Shadow Counting" or certain types of "Team Play." A "Shadow Counter" is a person who stands behind players at the table and, without making any wagers, keeps track of, or "counts," the cards. When the deck becomes favorable, he sits down and makes a sizeable wager. In this way, the player does not have to bet in unfavorable situations and need only risk his money when the probabilities are most

²⁷ Thorp at 127.

favorable to him. One type of "Team Play" operates in a similar manner. One team member is assigned to play at a table betting only minimal amounts. When the deck becomes favorable, he will signal to his partner who will sit down and make a sizeable wager. Under the alternative being suggested, the casinos would not have the right to reshuffle in either of these situations. This, however, could be remedied by giving them the right to reshuffle both when a player more than triples his previous wager and when a player, on his initial bet, wagers a certain amount above the minimum limit at that table. For example, the casinos could be given the right to shuffle whenever a player, on his initial wager at a table, bets more than three times the minimum limit. As a practical matter, the multiple used may have to vary with the minimum limit at each table.

When compared to an exclusion policy or the shuffle at will proposal, the alternative discussed above appears to be a desirable one. Assuming it is sufficient to assure adequate profitability to the casinos, it has several important advantages. Its effect on the non-counting player is minimal; the potential for abuse inherent in the shuffle at will alternative is greatly diminished; and, most importantly, all individuals would be allowed to play blackjack under fair rules without the need to directly or indirectly exclude persons who are skillful or implementing a counting strategy. The only real question, which cannot be answered definitively

at this time, is whether it would provide adequate protection to overall casino revenues derived from blackjack.

V. LOWER MINIMUM/MAXIMUM RATIOS

In lieu of exclusion, another alternative suggested is to reduce the ratio between the minimum and maximum wagers at each table. It is suggested that the "possible ratios available to the player could be lowered in direct relationship to the number of decks dealt, permitting, for example, a 2-to-1 ratio for double-deck games, a 4-to-1 ratio for 4-deck games, and a 6-to-1 ratio for 6-deck games."²⁸ Since the economic impact of the card counter at the \$2 and \$5 tables is less than at the \$25 tables, it is suggested that a \$100 maximum be established at those tables.²⁹

Like conditioning shuffling up on the amount wagered by the player, this suggestion is not directed at the percentage advantage enjoyed by the card counter. Instead, it seeks to reduce the card counter's ability to vary the amount wagered so that the winnings achieved would be diminished. Although this suggestion would effect the winnings of the counter to some degree, like the foregoing alternative, it is difficult to determine the precise effect it will have on the winnings of the counters or on the overall profitability of blackjack

²⁸ Kenneth S. Uston, Letter to Casino Control Commission Chairman Joseph P. Lordi, dated February 13, 1979, at 10.

²⁹ Id.

to the casinos. In order to determine this, a much more thorough and sophisticated analysis would have to be undertaken.

This alternative also has several disadvantages which are not present in the proposal to condition shuffling up on the amount wagered by the players. Generally, it has the effect of limiting the flexibility enjoyed, not only by the card counters, but also by non-counting players, and possibly decreasing casino profits. Reducing the maximum wager at the tables would limit the amount all players could wager and would discourage the high limit bettor from frequenting the Atlantic City casinos. It would also discourage the bettor who utilizes a double up or geometric progression strategy. In this regard, it could be argued that limiting the ability of a player to double up or utilize a geometric progression strategy would be beneficial by protecting him from a losing strategy. However, the game of blackjack has traditionally been one of player flexibility. Blackjack gives the player the greatest degree of freedom, and it places on the player the responsibility for his own decisions, whether those decisions be wise or unwise. This attribute is what makes the game attractive, and it should not be diminished unless essential to do so.

In order to avert the effect this alternative would have on the general public, it has been suggested that the casinos be permitted to raise the minimum bet at the table for suspected card counters. For example, a suspected card

counter could be required "to place a \$50 minimum bet at a \$2-to-\$200 table, a \$250 bet at a \$25-to-\$1000 table and a \$500 bet at a \$100-to-\$2000 table."³⁰ Assuming this were an effective means of reducing the effect of card counters, it would still have some of the same problems inherent in an exclusion policy, though the consequences would be less offensive and severe. For example, it would still entail the proper identification of patrons as card counters and the problems inherent in such an identification procedure. It would still require extensive surveillance and detract from the other activities of supervisory personnel. It would involve disputes between the patrons and the casinos as to whether a person is, in fact, a card counter, which no doubt would become the subject of a complaint filed with the Commission. In all probability, mistakes will be made and persons who were not counters would be identified as such. Both the specific effect this alternative would have on the card counters and these other consequences militate against its adoption.

VI. MOVING THE CUT CARD FURTHER UP IN THE STACK

Under the present regulations, the cut card must be placed no less than one-quarter nor more than one-third from the back of the stack. Once the cut card is reached,

³⁰ Id.

the dealer must finish the round by dealing through the cut card and then reshuffle. The suggestion has been made that moving the cut card further up in the stack would resolve the present problem. There are a number of variations to this proposal. One variation is not to limit how far up the cut card can be placed. Another variation is to place the cut card no more than 45% from the back of the stack. Still another variation picks the 50% mark as the appropriate location. Another suggests that the shuffle up occur as soon as the cut card is reached, and yet another is to burn additional cards at the front of the stack. The last two variations are tantamount to moving the cut card further up toward the front of the stack.

Placing the cut card further up in the stack is aimed at the percentage advantage enjoyed by the player following a counting strategy. The indication is that the further toward the front of the stack the cut card is placed, the greater the decrease to the percentage advantage enjoyed by the counter. When the cut card is placed further up, the frequency and intensity of the favorable situations, at least in theory, decreases. Since the counter depends on these situations, his advantage and profitability are decreased.

There appears to be a paucity of published material that can be found which addresses the specific effects of moving the cut card up in the stack. For example, Mr. Lance Humble simply advises: "Do not play against the dealer that

cuts off more than half the deck or the shoe. You either have no mathematical advantage or such a small advantage that it won't be worth your while."³¹ Another analyst states, with respect to a one-deck game, that there is a

"dramatic increase in winning percentage as more of the deck is dealt out. For example, using a 4-to-1 bet ratio, one's advantage is only 1% with a shuffle point at 25 cards, but 2% when the shuffle point is at the 40 card level."³²

In his submissions to the Commission, Mr. Uston states that, by placing the cut card at the 45% location, the player "encounters more non-earning off-the-top situations" and "will enjoy less rich situations in the rear portion of the shoe, which are now shuffled away."³³ His analysis indicates that, assuming a 50-to-1 betting ratio, the net win of a card counter will be reduced by approximately 15% when the cut card is placed 45%, instead of 33%, from the back of the stack.³⁴

Like some of the other alternatives, the clear indication is that movement of the cut card will have an effect on the counting strategists. The precise effect, however, is difficult to determine without a much more sophisticated analysis. The one commentator's conclusion noted above is

³¹ L. Humble, supra n. 8, at 109.

³² J. Friedman, Choosing a Blackjack Game (1978).

³³ Kenneth S. Uston, Specific Recommendation for Atlantic City Blackjack, dated May 13, 1979.

³⁴ Id.

based on a one-deck-game and does not address the four or six-deck game used in Atlantic City. Although Mr. Uston has submitted his analysis to the Commission, the assumptions underlying it have not been independently verified. Additionally, his analysis only addresses placement of the cut card at the 45 $\frac{1}{2}$ location and does not address its placement at other locations in the stack.

The comments received also indicate that placement of the cut card may have an effect on the average player. There is some indication that placement of the cut card may effect the average player's advantage or disadvantage. For example, Mr. Uston testified at the hearing that:

"Studies have been conducted that show that... a non-counting player utilizing any constant strategy, let's say, for example, basic strategy...that the fewer the cards left the better his chances. The more cards left, the more deleterious the game to his edge.

For example, if I were playing basic strategy and not card counting, perfectly, and there was a deck left, I would be about even with the house. If there were two decks left, I'd be playing at about .35 percent disadvantage to the house.

If there were four decks left, my disadvantage would be .51 percent and if there were six decks left my disadvantage would be .60 percent. Therefore, the more cards that are left, the greater possible loss or the smaller possible win to the average player."³⁵

Movement of the cut card may also impinge somewhat on

³⁵ Transcript at pages 228-29.

the average player's enjoyment of the game which, of course, is an intangible and unquantifiable item. To some degree, non-card counting players may feel annoyed at the earlier and more frequent shuffles that result from movement of the cut card. Though not following any counting system or formalized playing strategy, there are many players who attempt to keep track of how many ten value cards are out or how many aces have been dealt and they bet accordingly. Although such a player does not pose a threat to the vitality of blackjack, placement of the cut card further up in the deck would interfere with their counting pattern. As with many card games, such as poker and pinochle, part of the game is to attempt to keep track of the cards that have been dealt. To interfere with the average player's ability to accomplish this, would to some degree, though possibly minimally, effect the entertainment value of the game.

One other difficulty with the cut card alternative is its effectiveness against "Shadow or Back Counting." As a practical matter, placement of the cut card at the maximum point toward the front of the deck would occur when the casino suspected the presence of a skillful player or card counter at the table. If the casino did not perceive a threat, the cut card could probably be placed toward the back of the stack to increase the number of hands dealt and the profitability of the game. Once the cut card is placed at the back of the stack, a person could engage in "Shadow Counting" without the

casino having the alternative to move up the cut card during the pendency of that shoe.

The only other item that need be addressed in regard to the cut card alternative is the variation suggested by Resorts International. In addition to movement of the cut card, Resorts has suggested that the rules be changed to allow the shuffle up to occur as soon as the cut card is reached, instead of having to deal through the cut card to finish the round of play. Initially, it should be noted that this has the same effect as moving the cut card further up in the stack. There are, however, some other unique ramifications. First, it would have the effect of leaving cards on the table exposed and bets that have been made standing, while the four or six deck shoe is reshuffled. Though possibly controllable, this would present a further security risk that does not presently exist in the game. Secondly, this procedure would have the effect of keeping the players captive while the cards are being reshuffled. Instead of being able to walk away from the table during the reshuffle, the players would have to remain until the cards are reshuffled to complete the hand in progress. Thirdly, it could be subject to what Thorp has called "End Play." By means of this device, it may be possible for a team of counters to play the last hand so that only low cards remain on the table while the ten value cards are placed in the reshuffle pile. If this were accomplished, the next shoe would start out favorable to the counter instead of in a neutral position.

VII. POLICY QUESTIONS - SUMMARY AND CONCLUSION

The foregoing analysis is based on a review of the position papers and correspondence submitted to the Commission, the testimony presented at the hearing of May 22, 1979, and the pertinent publications on blackjack. In addressing the alternative solutions, neither the Commission nor its staff has undertaken an independent in-depth analysis to verify the more technical aspects of the information received or to determine the specific effect each alternative would have on New Jersey casino gaming. To a great extent, the parties to this action disagree as to which alternative will best restore a desirable equilibrium. At this juncture, none of the proposed solutions appear to provide a clear and ideal result. Each is fraught with either difficulty or uncertainty.

It would seem that the information received and publications reviewed do not provide a sufficient basis to pinpoint an alternative that would, with a high degree of confidence, achieve the desired balance. In some instances, the projected effects are based on opinion rather than on scientific analysis. In others, effects are discussed in terms of the card counter's percentage advantage rather than in terms of the balance between fairness to all players and casino profitability. In this regard, the degree to which the counters' percentage is affected cannot be properly relevant unless such figures can be translated into economic terms.

Of the alternatives discussed, the most undesirable is the exclusion of individuals because they are skillful or following a card counting strategy. Although the other alternatives are to one degree or another uncertain or problematic, they should be explored further in order to avoid the consequences of an exclusion policy. This exploration should take the form both of experimentation and analytical study.

In an attempt to avoid the effects of an exclusion policy, it is recommended that the casinos be directed to implement several of the above alternatives on an experimental basis. While operating under these alternatives, the casinos should also be prohibited from excluding any player because he is lucky, winning, skillful or following a counting strategy. Based on the information at hand, the combination of two alternatives seem most probable of achieving the required balance. The first is to place the cut card not less than one-quarter nor more than one-half from the back of the stack. The second entails a slight variation to one discussed above. It would be to allow the casinos to shuffle up whenever a player either:

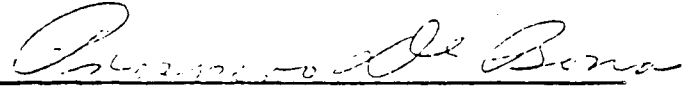
- (1) bets three or more times the amount of his preceding wager at a table with a minimum limit of \$25.00 or more; or
- (2) bets ten or more times the amount of his immediately preceding wager at a table with a minimum limit of less than \$25.00; or
- (3) bets \$100 or more on his initial wager at a table with a minimum limit of less than \$25.00; or

- (4) bets \$200 or more on his initial wager at a table with a minimum limit of \$25.00 or more.

The testing of these alternatives is only a partial approach to resolving the problem. The counting systems at issue were developed through mathematical and computer analyses of the probabilities inherent in the game and were designed to provide the player with a decided advantage over the house. This same type of analysis, but with a different focus, is needed here to obtain the information required in order to identify more accurately the appropriate course of action necessary to solve the present imbalance. Such an analysis will enable the Commission to identify more specifically the relationships and interplay between the casinos and the various types of players, and the precise effects each of proposed alternatives will have. This type of analysis may result in the discovery of an effective new alternative, or in pointing to one of the alternatives as the most viable, or in the conclusion that no alternative, other than exclusion, exists. In any case, there is need for such a study to answer some of the questions and to provide the Commission with the information necessary to make a final and informed decision.

Of course, the feasibility of this type of study is dependent to a substantial degree on the cost it would entail. Before a final decision to undertake it could be made, cost data must be accumulated. Then the Commission

would be in a better position to weigh the benefits to be gained against the cost that would be incurred. In order to obtain the funds necessary for this type of study, it is possible that the Commission might impose a special assessment or fee on the casino operators.



PROSPERO DE BONA
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-18

IN THE MATTER OF THE APPLICATION :
OF ALBERT G. WASHINGTON FOR A :
CASINO EMPLOYEE LICENSE (BULK :
COIN HANDLER). :

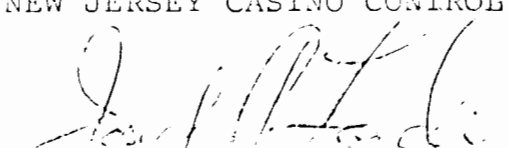
ORDER

The New Jersey Casino Control Commission having read and considered the June 4, 1979, Report and Recommendation of Robert J. Genatt, Hearing Examiner, which is attached hereto, at its public meeting of June 20, 1979, and having received no exceptions or objections from Albert G. Washington or the Division of Gaming Enforcement; and having voted to adopt the said Report and Recommendation;

It is on this 28th day of June, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Albert G. Washington for a casino employee license be and hereby is granted; provided, however, that such license shall be expressly restricted to the position of bulk coin handler; and it is further ORDERED that a copy of this Order be served upon counsel for the applicant and for the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION


JOSEPH P. LORDI, CHAIRMAN

Dated: JUNE 28, 1979

IN THE MATTER OF THE APPLICATION :
OF ALBERT G. WASHINGTON FOR A :
CASINO EMPLOYEE LICENSE (BULK :
COIN HANDLER) . : REPORT AND RECOMMENDATION

Donald G. Targan, Esq., appeared for the Applicant
Fredric E. Gushin, Deputy Attorney General, appeared for
the Division of Gaming Enforcement

The records of the New Jersey Casino Control Commission (the Commission) reveal that on June 9, 1978, an application for licensure as a casino employee was received from Albert G. Washington. Initially, Mr. Washington applied for a license as a casino employee so that he could be employed in the position of teller. Subsequently, his application was amended to reflect his desire to be employed in a security position. (T5-2 to 11¹). During the course of the hearing, further clarification was received. (T45-12 to 15; T45-19 to 25; T94-15 to 95-3). It is now understood that Mr. Washington requests casino employee licensure to enable him to work in the slot areas and hard count room of a casino hotel licensee as a bulk coin handler, a position with duties which require or authorize access to the casino. See N.J.S.A. 5:12-7.

1. T refers to the transcript of the hearing. Exhibits and documents introduced at the hearing are identified by use of either a "C" for Commission, an "A" for Applicant, or a "D" for Division.

The application was duly forwarded to the Division of Gaming Enforcement (the Division) for appropriate investigation. See N.J.S.A. 5:12-76. By its letter-report dated November 6, 1978, the Division, while it did not interpose objection to licensure of the Applicant, supplied information that raised questions which, in light of the Commission policy of strict regulation, required explanation in order to fully determine the Applicant's qualifications for licensure. Specifically, the Division asserted that the Applicant failed to disclose three disorderly persons arrests and two convictions. Instead, in response to question #46 of the personal history disclosure form #2 (D-1), he inserted the phrase "Not to my knowledge." According to the Division's letter-report, Mr. Washington subsequently explained to the Division investigative staff that he understood the question to ask for indictments.

After receipt of the Division's letter-report, the Commission unsuccessfully attempted to notify the Applicant by certified letter dated December 11, 1978, of its intention to deny his application for licensure and his right to a hearing on this matter. On December 20, 1978, another attempt at notification met with more success. The Applicant exercised his right and a pre-hearing conference was scheduled before the undersigned hearing examiner for February 2, 1979. At the request of Applicant's counsel, that pre-hearing conference was cancelled and rescheduled for March 2, 1979.

On January 23, 1979 at 10:30 a.m., an anonymous telephone call, alleging that the Applicant has physically abused his wife

and children, was received by the Commission staff:

The pre-hearing conference was held on March 2, 1979. At the conference, applicable legal standards were reviewed, (see N.J.S.A. 5:12-80(a), 90, 89(b), 86(b)), the factual issues requiring resolution were pinpointed, discovery requests were entertained, and a hearing date was set. See Pre-Hearing Conference Order attached hereto.

On April 3, 1979, a hearing was conducted before the undersigned hearing examiner. Preliminarily, the procedural history in this matter was outlined and the factual issues were stated thus: "Essentially, the questions that we have to resolve are whether the events noted in the Division's letter and in the report received over the telephone indicate that Mr. Washington lacks the degree of character and integrity necessary to receive this license and secondly, whether Mr. Washington, in failing to report his disorderly person arrests and convictions, committed an act which under the Casino Control Act disqualifies him from obtaining his license." (T3-22 to 4-6).

The hearing proceeded with the presentation of the Applicant's case. See N.J.S.A. 5:12-80(a). Applicant's attorney moved into evidence a copy of an index card indicating that the Applicant had been charged with three offenses and had been convicted twice. (A-1). He then adduced testimony from the Applicant regarding these charges.

As to the assault and battery arrest that occurred on April 28, 1971, Mr. Washington testified that it involved defending himself against a knife-wielding man who rushed out of the home of the Applicant's fiancée, now his wife. This charge was

ultimately dismissed. (T35-6 to T36-8).

In response to questions from his attorney, the Applicant further testified that he was arrested on May 31, 1974, for assault and battery on a minor. After pleading guilty, the Applicant was fined \$100 for this offense. The charge arose from his attempt to discipline his stepson after receiving information that the child had been involved in some wrongdoing. (T36-9 to T37-23). The Applicant's testimony also indicated that he is genuinely concerned with the rearing of his children, and that he voluntarily contributes to their support although he is now separated and living apart from the children and their mother. (T71-2 to T73-4).

Regarding the arrest for molesting and interfering, which took place on August 19, 1974, the Applicant testified that he was chastising his stepson for disobedience when an in-law interfered. An altercation ensued between Applicant and one Annette Herring, the aunt of Applicant's spouse, which culminated in the filing of a criminal complaint by Ms. Herring. According to the Applicant, he did not strike Ms. Herring, but ordered her to return to her car when she advanced toward him with a stick. The index card arrest record (A-1) indicated that the final disposition was a fine of \$50.00. However, the Applicant was under the impression that the complaint had been dismissed. (T53-22 to 54-7).

Testimony as to the reputation of the Applicant for good character, honesty and integrity was heard from several witnesses, and seven letters of reference were submitted on his behalf.

Based on the testimony given by the Applicant, his demeanor during the course of the hearing, the testimony of several character witnesses including Inspector Joseph Frazier of the Atlantic City Police Department, and Reverend Matthew Neil, Minister of the Union Baptist Church of Atlantic City, and the submitted letters of reference, there is ample credible evidence on the record to support the finding that the Applicant possesses the requisite degree of good character, honesty and integrity. This finding is not inconsistent with the three arrests for disorderly person offenses, two of which apparently resulted in convictions and the other in a dismissal, since the nature and circumstances of those incidents do not disclose any lack of moral fitness nor any violent or unduly aggressive character traits.

Mr. Washington responded to the anonymous allegation of abuse of family members by identifying the person he thought to be making the allegation, supplying a credible motive therefore, and by affirmatively refuting it through testimony. (T58-2 to 59-2). Additionally, this allegation was investigated by the Division and no substance was found to support it. (T127-t to 10).

Based on the record, and the absence of any documentation by his unidentified accuser, I find no reason to doubt that Mr. Washington has the required quantum of good character, honesty and integrity because of this unproven assertion. Further, I find that the Applicant's denial of the accusation is credible.

As previously indicated, Mr. Washington answered "Not to my knowledge" in response to question #46 of personal history disclosure form #2 (D-1), which question reads as follows: "Have

you or has any member of your immediate family...ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" As borne out by the Atlantic City Police Department arrest record index card procured by the Applicant (A-1), the Applicant should have answered in the affirmative and listed his three arrests and their dispositions.

On direct examination, the Applicant explained the circumstances surrounding the preparation of the application, and his reasons why, at least initially, he thought his reply to the question was appropriate. The Applicant stated that he needed assistance to complete the entire application because of his limited ability to read (T27-21 to T29-6). Question #46 was read to him and he told his assistant to answer "Not to my knowledge." (T28-25 to T29-5). The Applicant testified that he understood the question to ask for criminal activity such as bank robbery or murder rather than minor "domestic matters." (T31-11 to 18; T60-4 to T61-16; T65-25 to T68-1). The Applicant stated that his understanding of the law is limited, and that it was his belief that there is a legal distinction between criminal activity and domestic matters, as he characterized his arrests. (T163-3 to T164-21).

Because of this limited understanding the Applicant became unsure whether his response was correct. Within a few weeks of submitting the form, the Applicant sought the advice of his cousin Inspector Joseph Frazier of the Atlantic City Police Department. Inspector Frazier, who testified at the hearing, advised the Applicant that his answer to question #46 was incomplete and that

he should provide the information to the Commission. To assist the Applicant in doing this, Inspector Frazier procured a copy of the Atlantic City Police records (A-1) and provided it to the Applicant. According to Inspector Frazier, the Applicant declared his intent to take the information to the Commission. The Applicant testified that he did bring the record to the Commission offices in Atlantic City where he gave it to an employee and requested that it be forwarded to the Division. The Applicant also described the appearance of the employee to whom he made this request. Further, the Applicant declared that he had supplied A-1 to the Commission employee prior to receiving any communications from the Commission or the Division regarding his application. (T 31-22 to 33-18; T68-11 to 70-11; T55-12 to 57-23; T79-6 to 80-14; T170-4 to 7).

According to his testimony, the Applicant later attempted to follow-up the status of his application and the receipt by the Division of the additional information concerning his arrests. Sometime in September, 1978, the Applicant telephoned the Division and spoke to one Detective Gallo who took the Applicant's number and called him back. In that conversation the Applicant inquired whether the Division had received the record which the Applicant supplied to the Commission. The Applicant also testified that he telephoned the Division on another occasion and spoke to one Detective Brian Cavanaugh concerning the arrests. (T34-1 to 20; T57-9 to 23; T162-6 to 20; T165-17 to 169-13).

Detective James Harper testified that in mid-September 1978, he returned to his duties with the Background Investigation

Unit of the Division after completing an assignment in another jurisdiction and taking his annual leave. Although there was some question as to the precise date of his return to duty, Detective Harper's testimony corroborated the fact that on September 20, 1978, there was a telephone conversation between the Applicant and Detective Brian Cavanaugh. This conversation was evidenced by a handwritten memorandum (D-2) which indicated that the Applicant made the call and provided information concerning his arrest record. As to the telephone conversation between the Applicant and Detective Gallo, Detective Harper was unable to definitely state whether that call was before or after September 20, 1978, or whether it was initiated by the Applicant or by Detective Gallo. (T143-4 to 25; T156-24 to 158-2).

The receipt by the Division of the arrest record (A-1) was never established. In his testimony concerning the agency procedures for the forwarding and filing of information, Detective Harper acknowledged the possibility that the Applicant may have submitted the information as he stated but that it may have been mislaid, misfiled or misdirected. (T128-3 to T130-15).

Based on testimony given by Inspector Frazier, Detective Harper and the Applicant, and based on the demeanor of the Applicant during extensive examination, I find that the Applicant attempted in good faith, to properly answer question #46 of the disclosure form. (D-1). Because of severely limited language skills (infra) and limited understanding of legal terms of art, he interpreted the scope of question 46. I further find that

his action was not deliberate evasion. Prior

any communication from the Division, the Applicant voluntarily sought the advice of Inspector Frazier. Thereafter, the Applicant took steps to correct his response by hand delivering a copy of his arrest record to the Atlantic City Offices of the Commission. Based on these findings, I conclude that there has been no failure of the Applicant to reveal material information requested by the Commission. See N.J.S.A. 5:12-86(b).

Aside from the issues relating to character and disclosure the Applicant's evident learning difficulties and severely limited reading skills raised an additional question as to his ability to perform as a casino employee. The Applicant testified as to his educational background. He indicated that he had been placed in a special education class, and had not completed high school (T15-24 to T16-18). He stated that he experienced learning difficulties (T16-17 to 21). These problems were such that the Applicant was initially discharged from the Coast Guard because he could not pass the written tests. He improved his abilities by attending night courses and subsequently joined the Army and the National Guard (T16-25 to 18-16). However, during the hearing, he was unable to read the letters of reference which were submitted on his behalf. (T20-2 to 22-15).

In order to receive the casino employee license that Applicant seeks, under N.J.S.A. 5:12-90, 89(b)(3), the Applicant must establish by clear and convincing evidence that he has sufficient business ability and casino experience as to establish a reasonable likelihood of success and efficiency in the position involved. In view of the Applicant's limitations, the nature of the duties and responsibilities of a bulk coin handler

and the Applicant's ability to serve in that position became a subject of concern at the hearing.

The Applicant testified that he is currently employed by Resorts International in the accounting department under the supervision of Cory Klerk, the Casino Controller. The Applicant's work in that position consists of filing papers in numerical order. However, the Applicant stated that he was familiar with the duties of a bulk coin handler and had actually performed those duties for Resorts after the casino opened until all unlicensed personnel were ordered to leave the casino areas by the Commission. The Applicant related that his responsibilities were limited to removing the coin buckets from the slot machines, transporting the buckets to the hard count room, pouring the coins into the counting machines, removing the counted money, hauling it to the vault and transporting coins to the slot booths. The Applicant declared that he had no responsibility to actually count the coin or to verify the count, and that all paperwork was handled by his supervisors. If licensed, the Applicant expected to perform the same limited duties. (T45-2 to 46-7; T73-19 to 76-5).

Cory Klerk, Resorts' Casino Controller, testified that the Applicant is presently doing file work in the accounting offices located in the Chalfonte building. Mr. Klerk corroborated the Applicant's description of the functions of a bulk coin handler. Mr. Klerk stated that such employees have no responsibility to verify the count. The only document which a coin handler signs is the slot win sheet and this signature reflects only that the employee was present in the hard count room during the count. Mr.

Klerk advised that Resorts now employs persons who are "specifically licensed as bulk coin handlers." Based on his association with the Applicant in the accounting department, Mr. Klerk stated that he had no reservations regarding the Applicant's integrity and his ability to perform the duties of a bulk coin handler in a satisfactory manner. (T91-1 to 92-2; T92-8 to 25; T94-8 to 97-14).

Mr. David Belisle, the Inspector General for Resorts International's Atlantic City operations, testified on behalf of the Applicant. Mr. Belisle advised that he is responsible for assuring that Resorts complies with all pertinent laws and regulations, including the approved system of internal and accounting controls. Further, Mr. Belisle related that he has had extensive experiences in the areas of personnel investigation and security while serving in sensitive positions with the United States Government. (T97-25 to 103-13). Based upon his contacts with the Applicant at work and his conversations concerning the Applicant with other employees of Resorts, Mr. Belisle declared that he would recommend "very highly" that the Applicant be authorized to work as a bulk coin handler. (T103-14 to 105-16). Mr. Belisle concurred in Mr. Klerk's description of that position and added that, if the Applicant is licensed, Mr. Belisle's office would assure that his duties remain limited to those described. (T106-6 to 22; T107-7 to 19; T108-20 to 109-3).

Based on the foregoing, I find that the duties of a bulk coin handler are restricted to physical activities necessary to accomplish the collection, counting and distribution of the coins used in the slot machine operations. Specifically, I find that a bulk coin handler has no verification or accounting responsibility

and that such an individual, though authorized to be present in the hard count room to assist the count team, is not a member of the count team which is responsible for the counting and recording of slot drop bucket contents. See N.J.A.C. 19:45-41(c). I further find that the Applicant possesses the qualities required to satisfactorily serve as a bulk coin handler and that, despite his previously noted limitations, his employment in that capacity will not jeopardize the efficiency or security of the casino.

SUMMARY

Based upon the foregoing I find that the Applicant has demonstrated the requisite good character, honesty and integrity to receive and hold a casino employee license. See N.J.S.A. 5:12-89 (b)(2) and 90(b). I further find that the Applicant did not fail to disclose any material information requested by the Commission since he promptly and spontaneously corrected his mistaken response to question #46 on the disclosure form and attempted to supply the pertinent information to the Commission and the Division. See N.J.S.A. 5:12-86(b). I further find that the Applicant possesses the ability to fulfill the duties of a bulk coin handler. See N.J.S.A. 5:12-90(b). These findings are bolstered by the Division's decision not to object to licensure after the hearing. Therefore, I recommend that Albert G. Washington be licensed as a casino employee, provided that such license be expressly restricted to the position of bulk coin handler. If, in the future, Mr. Washington requests to alter or upgrade his position, he should be required to first demonstrate that he can

perform capably in such other position.

Respectfully submitted,



Robert J. Genatt, Hearing Examiner

Dated: June 4, 1979

IN THE MATTER OF THE APPLICATION :
OF ALBERT G. WASHINGTON FOR A :
CASINO EMPLOYEE LICENSE (TELLER). :

PRE-HEARING CONFERENCE
ORDER

A pre-hearing conference having been held in this matter before the undersigned Hearing Examiner on March 2, 1979, at 10:00 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, Carol E. Higbee, Esq., appearing for the Applicant, and Fredric E. Gushin, Deputy Attorney General, appearing for the Division of Gaming Enforcement, the following was decided:

A. LICENSING REQUIREMENTS

The standards to be satisfied by the Applicant in order to obtain a casino employee (teller) license are those set forth in section 90 of the Casino Control Act, N.J.S.A. 5:12-90.

1. Under section 90(b), the Applicant must establish by clear and convincing evidence that he meets the following criteria which are contained in section 89(b), N.J.S.A. 5:12-89(b):
 - (a) financial stability, integrity and responsibility;
 - (b) reputation for good character, honesty and integrity;
 - (c) sufficient business ability and casino experience as to establish the reason

likelihood of success and efficiency in the particular position involved.

2. Under section 90(d), the Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the following criteria contained in section 86, N.J.S.A.

5:12-86:

- (a) failure to provide all information required by the Act or requested by the Commission;
- (b) failure to reveal any fact material to qualification;
- (c) supplying any information which is untrue or misleading as to any material fact pertaining to qualification;
- (d) conviction of the Applicant of any offense which under present New Jersey law would be one of the disqualifying offenses in section 86(c);
- (e) current prosecution of the Applicant for any disqualifying offense under section 86(c);
- (f) pursuit by the Applicant of economic gain in an occupational manner or context violative of the criminal or civil public policies of this State where such pursuit creates a reasonable belief that participation by the Applicant in casino or gaming operations would be inimical to the policies of the Act or to legalized gaming in this State;

- (g) identification of the Applicant as a "career offender" or member of a "career offender cartel" as those terms are defined in section 86(f);
- (h) identification of the Applicant as an associate of a career offender or a career offender cartel where there is reason to believe that the association is of such a nature as to be inimical to the policy of the Act and to gaming operations;
- (i) commission by the Applicant of any disqualifying offense under section 86(c) whether prosecuted for such conduct or not;
- (j) contumacious defiance by the Applicant of any official investigatory body where such body is engaged in investigating crimes related to gaming, official corruption or organized crime activity.

B. ISSUES

The factual issues to be resolved by the Commission in determining whether the Applicant has met the qualifications for licensure as a casino employee (teller) concern the following:

- (a) The factual allegation set forth in the Division's letter-report of November 6, 1978, that the Applicant failed to disclose three disorderly persons arrests and two convictions in response to question 46 of the personal history disclosure form;

- (b) the circumstances underlying the alleged arrests and convictions listed in the Division's letter report, the allegation that the Applicant has physically abused his wife and children, and the Applicant's overall conduct during the period spanned by these alleged events.

C. DISCOVERY

1. The Applicant and the Division shall exchange list of witnesses to be called at the hearing. The lists shall contain the name and address of each witness and a brief indication of the nature of his or her testimony.
2. The Applicant and the Division shall exchange any exhibits or documents to be introduced at the hearing.
3. The Applicant and the Division shall exchange any statements or memorialization of any statement, exclusive of work product, of any witness to be called at the hearing.
4. The Applicant and the Division shall exchange any materials or documents relevant to the factual issues, exclusive of work product.
5. Discovery shall be completed by Friday, March 16, 1979, provided that the parties shall be under a continuing duty to promptly provide any subsequently obtained discoverable material.

D. HEARING

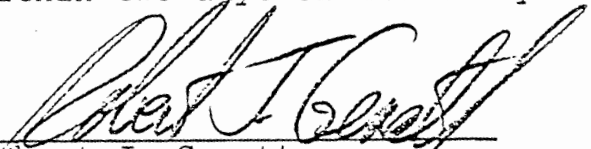
The hearing in this matter shall commence at 10:00

a.m. on Tuesday, April 3, 1979, in the Commission offices at 379 West State Street, Trenton, New Jersey.

It is hereby on this 9th day of March, 1979, ORDERED that this Pre-Hearing Conference Order be served upon the Applicant and the Division of Gaming Enforcement within two days of its entry.

DATE:

March 9, 1979


Robert J. Genatt
Hearing Examiner *RJC*

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 78-EA-14

IN THE MATTER OF THE APPLICATION :
OF THADDEUS E. WATLEY FOR :
LICENSURE AS A CASINO EMPLOYEE : FINAL ORDER
(FLOORPERSON) . :

The New Jersey Casino Control Commission having read and considered the October 5, 1979, Report and Recommendation of Robert J. Genatt, Hearing Examiner, and having received no written exceptions or objections to said Report and Recommendation from the applicant, and having received no written exceptions or objections to said Report and Recommendation from the Division of Gaming Enforcement, and having considered the record of the hearing in this matter, and having heard and considered the oral arguments of counsel and the applicant himself at its public meeting of October 24, 1979, and having voted at that meeting to adopt the said Report and Recommendation;

It is on this *29th* day of October, 1979,

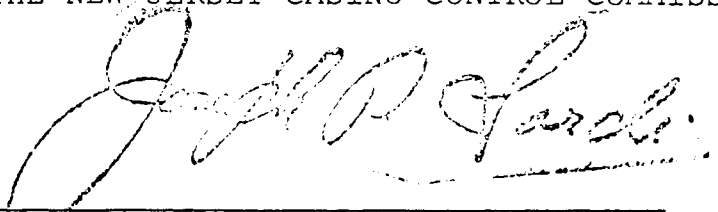
ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Thaddeus E. Watley for a casino employee license be and hereby is denied; and

It is further ORDERED that a copy of this Order be served upon counsel for the applicant and the Division of Gaming Enforcement with five(5) days of the date hereof.

THE NEW JERSEY CASINO CONTROL COMMISSION

BY:



JOSEPH P. LORDI, CHAIRMAN

Dated:

October 29, 1979

IN THE MATTER OF THE :
APPLICATION OF THADDEUS E. :
WATLEY FOR LICENSURE AS A : REPORT AND RECOMMENDATION
CASINO EMPLOYEE (FLOORPERSON). :

H. Parker Smith, Esq., appeared for the Applicant.
Guy S. Michael, Deputy Attorney General, appeared
for the Division of Gaming Enforcement.

I.

INTRODUCTION

On August 11, 1978, Thaddeus E. Watley [the Applicant] submitted a personal history disclosure form-2 [PHDF] to the Casino Control Commission [the Commission]. The Applicant seeks licensure to enable him to obtain employment as a floorman. Since section 7 of the Casino Control Act [the Act] classifies a floorman as a casino employee, the Applicant must meet the licensing standards for such employees set forth in sections 86 and 90 of the Act.¹

1. References to the Casino Control Act, N.J.S.A. 5:12-1 et seq., will be by section number only rather than by full citation. For example, N.J.S.A. 5:12-86 will be referred to as simply section 86.

In accordance with section 76 of the Act, the application was submitted to the Division of Gaming Enforcement [the Division] for the appropriate background investigation. In a letter-report dated November 29, 1978, the Division objected to licensure on the ground that the Applicant had been convicted of a disqualifying offense under section 86(c). Specifically, the Division alleged that on August 14, 1970, the Applicant was arrested in Michigan and charged with obtaining goods, to wit, an automobile, by false pretenses. The Division further indicated that the Applicant was actually convicted of "attempted larceny by conversion." The Division asserted that the Michigan conviction was the legal equivalent of a conviction for larceny under New Jersey law, N.J.S.A.2A:119-2, which is expressly listed as a disqualifying offense in section 86(c). Further, the Division's letter-report claimed that licensure of the Applicant would be inimical to the policy of the Act and to casino operations.

By letter dated December 11, 1978, the Commission notified the Applicant that it intended to act on his application and that the Applicant had a right to a hearing before such action was taken. By letter of December 14, 1978, the Applicant's counsel advised the Commission that the Applicant wished to exercise his right to a hearing.

A pre-hearing conference was scheduled for February 1, 1979. However, counsel for the Applicant advised that he would be unable to attend the conference at the scheduled time and questioned the need for a pre-hearing conference in this matter. By letter of January 23, 1979, the undersigned cancelled the

scheduled conference until further request was received from the Applicant's counsel. By letter of the same date, the Applicant's attorney supplied the undersigned with a four page typewritten statement apparently prepared and signed by the Applicant. (D-1).² In the same letter, the Applicant's counsel again inquired whether the pre-hearing conference could be waived since the Applicant's statement (D-1) allegedly set forth all pertinent facts surrounding the 1970 conviction and the Applicant's life in general.

Upon receipt of the foregoing, the undersigned forwarded copies of the letter and statement (D-1) to the Division and requested its comments. By letter of February 6, 1979, the Division responded that it had reviewed these items and that it did not consider a pre-hearing conference to be necessary. By letter of March 19, 1979, the Applicant's counsel requested that a hearing date be scheduled. In a letter dated March 23, 1979, the undersigned agreed to forego a pre-hearing conference and scheduled the hearing for April 18, 1979.

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2. This notation indicates that the referenced statement was introduced into evidence at the hearing. Documents and other materials so introduced will be identified by the following code: "A" for Applicant and "D" for Division.

References to the transcript of the April 18, 1979, hearing will be signified by a "T" followed by the relevant page number.

In that same letter of March 23, 1979, the undersigned advised the parties that the hearing would concern not only the nature and circumstances of the 1970 conviction but any other matters related in the Applicant's statement (D-1). Further, the Applicant's counsel was alerted to the burden on the Applicant to prove good character, honesty and integrity by clear and convincing evidence as required by sections 89(b)(2) and 90(b) of the Act. In addition, the Applicant was put on notice that he would not be issued a casino employee license if the hearing record revealed that he had committed any act which would constitute a disqualifying offense under section 86(c). With this as background, the hearing was held on the scheduled date.

II.

DISQUALIFICATION UNDER SECTION 86

The Division asserted in its letter-report that the Applicant's 1970 Michigan conviction for "attempted larceny by conversion" disqualified the Applicant. The Division argued that, as a matter of law, the Applicant's Michigan conviction was equivalent to a conviction under the New Jersey larceny law, N.J.S.A. 2A:119-2, which is listed as a disqualifier in section 86(c).

Although the Applicant contends that his Michigan conviction does not translate to a disqualifying conviction under New Jersey law, he does not deny the existence of the conviction. In fact, both in his statement (D-1) and his testimony at the hearing, the Applicant readily acknowledged the conviction.

While the Applicant personally believed that he had pled guilty to obtaining property by false pretenses (see T77 to 79), the Michigan police record (D-4) and a letter from the Applicant's Michigan attorney (A-3C) reflect that the Applicant was convicted of attempted larceny by conversion. Based on the documents presented, I find that, despite the Applicant's belief, he was actually convicted of attempted larceny by conversion under Michigan law.

The threshold question is whether a conviction for attempted larceny by conversion is to be treated as though it were a conviction for the completed offense for purposes of deciding whether there is a disqualifying offense under section 86(c). Under New Jersey law at the time of application, attempted crimes were punishable under N.J.S.A. 2A:85-5.³ Since that statute is

3. It should be noted that, as of September 1, 1979, the New Jersey Code of Criminal Justice (Title 2C of the New Jersey Statutes) became effective. The Code repealed most of the criminal statutes then in existence, including those which are the subject of this report. However, the Casino Control Act has not been amended at this point. Section 86(c) indicates that prior criminal conduct is to be measured against the enumerated statutes "at the time of application." Since the present application was filed before the effective date of the Code, the Applicant's conviction and prior conduct will be considered in light of the statutes then in effect and listed in section 86(c). However, for purposes of this report, no disqualifying conduct or offense will be found unless that conduct or offense would continue to be unlawful under the new Code. Thus, a larceny which was formerly punishable under N.J.S.A. 2A:119-2 would now be proscribed by N.J.S.A. 2C:20-1 et seq.

not one of those listed in section 86(c), the Applicant concludes that there is no per se disqualification for an attempt offense. The Division contends that a person who attempts to commit a disqualifying offense demonstrates the same flaws and traits as one who succeeds in his criminal endeavor. For that reason, the Division asserts that attempts should be considered no differently from completed disqualifying offenses. It is, however, unnecessary to now resolve this issue because even a completed larceny by conversion under the Michigan statute would not, standing alone, constitute the disqualifying offense of larceny under New Jersey law.

The parties agree that the pertinent Michigan statute, which defines the offense of larceny by conversion, is as follows:

Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny...
Mich. Comp. Laws, Section 750.362.

A reading of this statutory language plainly reveals that the described offense may be committed by anyone to whom property "shall have been delivered." Thus, the Michigan statute specifically encompasses situations where the offender initially obtained possession of the goods by way of a delivery, even a lawful delivery. In contrast, the New Jersey larceny statute, N.J.S.A. 2A:119-2, has been interpreted to require that the offender must have acquired possession by way of a trespassory

or wrongful taking. State v. Palumbo, 137 N.J. Super. 13, 16-17 (App. Div. 1975). Since the Michigan offense purposely omits one element required by the New Jersey statute, N.J.S.A. 2A:119-2, the Applicant's Michigan conviction does not itself establish the existence of a per se disqualification for larceny under N.J.S.A. 2A:119-2.

The question still remains whether the Applicant did commit an offense for which disqualification is required. Under section 86(g), the Applicant will be disqualified if it appears that he committed acts which would constitute a disqualifying offense enumerated in section 86(c), whether or not he was actually prosecuted for, or convicted of, that offense. The Division contends that the Applicant's own version of the 1970 Michigan offense reveals that he actually committed a disqualifying offense. Specifically, the Division asserts that the Applicant's admitted conduct constituted the offense of obtaining property by false pretenses as defined by N.J.S.A. 2A:111-1, which is one of the statutory crimes listed in section 86(c). In his brief on this question, the Applicant argues that, under the circumstances in which he acted, the cited offense did not occur. In particular, he asserts that he did not harbor the criminal intent required by N.J.S.A. 2A:111-1.

The Applicant related that during the years 1966 to 1970 he operated an illegal gambling club in Detroit. (T-38). In the course of operating the club, the Applicant often extended credit to known customers. (T-16). On one day in 1970, particular individual who had patronized the club on several occasions asked the Applicant to accept a 1970 Cadillac automobile as collateral for \$3,500 in markers

which the individual had accumulated that night. The Applicant then knew the individual only by the name "Blue" which derived from the fact that he had one blue eye. The individual produced the keys to the car and a title or registration which bore the name of one John H. Johnson. The Applicant agreed to accept the car as collateral for the markers. After observing the Cadillac in the parking lot next to his club and locking it, the Applicant took the keys and the title or registration. (T16 to 17; T67 to 68, T-77; T97 to 98).

A few days later, the Applicant discovered that the Cadillac was missing from the parking lot. A neighbor advised the Applicant that the police department had towed the car away. The Applicant then placed a telephone call to the Tenth Precinct and spoke to a police officer whom he knew there. The officer indicated that the car had been reported as being stolen and had been taken to the police garage where it was impounded. (T68 to 69; T99).

After learning this, the Applicant proceeded to the Tenth Precinct headquarters. The captain of the precinct and some of the officers knew the Applicant. They also knew that the Applicant operated an illegal gaming club in their precinct and that he had made regular payments to the police in that precinct since 1966. The Applicant spoke to one officer whom the Applicant "had been paying all them years." He advised the officer that he had been holding a car as collateral, that he had a title in the name of John Johnson, that the car had been impounded by the police and that he needed a drivers license to

obtain the car from the police garage. The officer complied with the Applicant's request and provided him with a license in the name of John Johnson. (T69 to 70; T101 to 103).

With the title and the bogus license, the Applicant proceeded to the police garage where he produced the documents and presented himself as John Johnson. He told the individual in charge that his car had been taken by the police because it was supposedly stolen. After examining the documents and comparing the identifying numbers on the title to those on the 1970 Cadillac, the garage official agreed to release the car to the Applicant who paid a \$64 towing charge and took the vehicle. (T17; T99 to 101). The Applicant subsequently parked the car in the lot adjacent to his gambling club. Sometime thereafter, he was advised that the car was actually owned by the Hertz rental agency. On August 14, 1970, he was arrested and charged with obtaining property by false pretenses. This charge eventuated in a guilty plea and a 2 to 2½ year prison sentence for which the Applicant served 18 months in the penitentiary. (T17 to 19; T70 to 71; T101; D-4).

The question now presented is whether the foregoing conduct would constitute the offense of obtaining property by false pretenses under N.J.S.A. 2A:111-1, which states:

Any person who, knowingly or designedly, with intent to defraud any other person, obtains any money, property, security, gain, benefit, advantage or other thing of value by means of false premises, statements, representations, tokens, writings or pretenses, is guilty of a misdemeanor.

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4. Although N.J.S.A. 2A:111-1 was repealed by the New Jersey Code of Criminal Justice subsequent to the filing of the present Application, conduct formerly proscribed by N.J.S.A. 2A:111-1 would continue to be criminal under the Code. See N.J.S.A. 2C:2-6 (2) (a) and (4).

The courts have identified several elements which must be proved to establish an offense under the quoted statute. There must, of course, be a false representation and the offender must know that the representation is false at the time it is made. The offender must make the false representation with the specific intent to cheat or defraud. The defrauded party must rely to some extent on the misrepresentation in parting with his property, and the offender must obtain some benefit by reason of the misrepresentation. State v. Covington, 59 N.J. 536 (1971); State v. Lemken, 136 N.J.Super. 310 (App. Div. 1974), aff'd 68 N.J. 348 (1975); State v. Cox, 150 N.J.Super. 599 (Law Div. 1977), aff'd 160 N.J.Super. 28 (App. Div. 1978); State v. Thvfaulst, 121 N.J.Super. 487 (Law Div. 1972), aff'd 126 N.J.Super. 459 (App. Div. 1974). However, it is not necessary that the defrauded person be the actual owner of the property obtained by the false pretense. "It is sufficient if he had lawful possession and dominion of the same." State v. Samaha, 92 N.J.L. 125, 126 (Sup.Ct. 1918), aff'd 93 N.J.L. 482 (E. & A. 1919); accord State v. Greenberg, 154 N.J.Super. 564, 566 (App. Div. 1977).

A comparison of the Applicant's admitted conduct to the statutory elements is necessary to determine whether the Applicant did commit the offense of obtaining property by false pretenses under N.J.S.A. 2A:111-1. There is no doubt that the Applicant made the false representation that he was one John Johnson and that he then knew that representation to be false. It is equally clear that the police garage official relied on that representation and that, as a consequence of that reliance, he released the 1967 Cadillac to the Applicant who thereby gained an undeniable benefit. Indeed, the Applicant does not contest that these

elements were satisfied. However, in his brief, the Applicant does deny that he acted with the necessary intent to defraud.

The Applicant asserts that he was entitled to possession of the car as collateral for John Johnson's gambling debts. He further asserts that he did not then know that the car actually belonged to a rental company. Finally, he claims that any interest which the police had in the vehicle was terminated by payment of the towing and storage fees. Thus, the Applicant concludes that, while he did obtain possession of the car by means of a false pretense, he did not intend to cheat or defraud anyone. The Applicant's analysis must be rejected for several reasons.

First, the Applicant testified he was initially told by the police that the car was impounded because it was reported stolen. However, he stated that, when he arrived at the Tenth Precinct, the police there could not locate any indication of a theft. Nevertheless, he admitted that he later told the official at the garage that the vehicle was impounded because it was allegedly stolen and that he was the owner. (T99 to 101). Based on these admissions, I find that the Applicant chose to obtain the car through deceit even though he had been advised of a possible theft. In so acting, the Applicant took the risk that the vehicle had been stolen and that he might be depriving the true owner of his property. He should not now be allowed to claim that he was unaware of the true owner's identity when he obtained possession of the vehicle.

Second, the Applicant's claim to the vehicle was based

on his "right" to collect payment for the gaming debts incurred by Mr. Johnson. Since the Applicant well knew such gaming to be illegal, he must have realized that efforts to secure the vehicle through legitimate means would fail. Indeed, the Applicant secured the false license because he perceived the need to regain the car by fraud. Given the Applicant's lack of any lawful claim to the car and the Applicant's express intent to retain the car unless he received \$3,500 in illegal winnings, it is plain that the Applicant acted with intent to gain an illegal advantage over Mr. Johnson through fraudulent means.

Third, the Applicant's limiting characterization of the police department's interest in the vehicle can not be accepted. As noted, the police impounded the car because it appeared on "hot list." (T100). According to the Applicant, the police interest in the car was restricted to collecting \$64 in towing and storage charges which the Applicant paid. Using that reasoning, the Applicant concludes that his false representation was not intended to defraud the police of any interest in the property.

The Applicant fails to grasp the fact the police were properly concerned with the possible theft of the car. Furthermore, the police were obliged to assure that the vehicle was returned to the true owner or to someone with a valid claim to the car. That the police would not have relinquished the car to anyone who paid the towing charge is obvious. More importantly, the Applicant himself realized that he had to present himself as the owner to regain the vehicle. By obtaining false identification and deceiving the garage official, the Applicant intentionally

deprived the police department of property which it had a right and a duty to retain.

From the foregoing, the Applicant's intent to defraud readily appears. Thus, I find the Applicant to have committed an offense proscribed by N.J.S.A. 2A:111-1. Under sections 36(c), 36(g) and 90(e) of the Casino Control Act, perpetration of such an offense requires disqualification from licensure as a casino employee. However, the record reveals the existence of other equally serious and persistent conduct which also mandates a finding of disqualification.

From 1966 to 1970, the Applicant owned and operated an illegal gaming club in Detroit. Moreover, during that entire period, the Applicant made weekly payments to the officer in charge of the Tenth Precinct so that the club would be allowed to operate. Those payments began at \$1,000 per week. If the police noticed that the club was very well patronized, the payment would be greater for that period. Eventually, the payments were increased to \$1,500 per week. In addition, the Applicant occasionally supplied liquor and other valuable consideration to certain officers. (T39; T92 to 94). As noted, it was the Applicant's illicit relationship to the Tenth Precinct which enabled him to demand the cooperation of those officers in obtaining a counterfeit drivers license. (T103).

I find that the Applicant knowingly entered into an agreement with Detroit police officials to allow the Applicant to operate a gambling club in violation of Michigan gambling laws.

In furtherance of that illicit agreement, the Applicant made regular payments to various police officials. It is therefore evident that the Applicant took part in a criminal combination which would have been punishable as a conspiracy under N.J.S.A. 2A:98-1 and 2.⁵ See State v. Louf, 64 N.J. 1972 (1973). Moreover, the Applicant's regular payments to police officials were intended to procure their acquiescence in the Applicant's illegal operations. These payments constituted bribery and solicitation of official misconduct as those offenses have been developed under New Jersey criminal law and incorporated into N.J.S.A. 2A:85-1.⁶ See State v. Begyn, 34 N.J. 35 (1961). Since violations of both N.J.S.A. 2A:98-1 and 2 (conspiracy) and N.J.S.A. 2A:85-1 (official misconduct) are listed as per se disqualifiers in section 86(c), the Applicant's commission of acts which would have constituted those offenses requires his disqualification by operation of section 86(g), even though no convictions were imposed for those crimes.

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5. Although N.J.S.A. 2A:98-1 and 2 have been repealed by the New Jersey Code of Criminal Justice, the conspiracy provisions of the Code would still prohibit the conduct admitted by the Applicant. See N.J.S.A. 2C:5-2 and 4.
 6. These offenses are now proscribed by various sections of the Code of Criminal Justice. See N.J.S.A. 2C:27-2 and N.J.S.A. 2C:30-2.

In addition to listing specific statutory disqualifiers, section 86(c) requires disqualification if the Applicant has committed "any other offense which indicates that licensure of the Applicant would be inimical to the policy of this act and to casino operations." The Commission has had occasion to expound on this standard and its application.

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

In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, slip opinion, p. 15 (1979).

In accordance with the excerpted passage, I have analyzed the Applicant's admitted conduct in Detroit and the circumstances attendant thereto. I conclude that the Applicant's offenses do indicate that his licensure would be inimical to the policies of the Act and to legalized gaming. In reaching this conclusion, I am not unmindful of the fact that seven years have passed since the Applicant's release from prison and that, in those years, he has been lawfully employed in the Nevada gaming

industry as a dealer, floorman and junket operator. I also realize that the Applicant has established himself in the florist business, first in Las Vegas and now in Atlantic City. Nevertheless, the nature and circumstances of the Applicant's offenses convince me that, under all the circumstances, licensure of this Applicant would justifiably undermine public confidence in the regulatory system and legalized gaming and would enhance the dangers of unsuitable practices in gaming operations.

The Applicant did not simply commit an isolated transgression of the Michigan gambling laws. Nor did he participate in illegal gambling only as an employee. Rather, he formulated a plan to establish and maintain an illicit gaming operation, and he deliberately carried that plan into action. At the outset, he determined that success in the venture would require the cooperation and corruption of local police officials. He contacted the appropriate officers and struck an agreement for payoffs in return for protection. He then commenced and continued the illegal operation for a four year period and, from all that appears, terminated the enterprise only after being convicted for the 1970 offense which arose directly from his unlawful gaming business. He candidly acknowledged that his motivation for this protracted course of criminal conduct was economic. He left employment with an automobile manufacturing company because he could make far more money with far less work through illegal gaming. (T94 to 95).

The Applicant asserts that he "made a mistake" but that "it wasn't an intentional mistake." (T96). He claims that illegal gambling was rampant in Detroit and that payments to police officials were widespread. In his words, "you have to abide by

the rules of the town." (T40). Thus, the Applicant seeks to justify his conduct as being consistent with the permissive atmosphere in the city. He further attempts to explain his illegal activities on the grounds of racial prejudice. According to the Applicant, a black man, he would never have operated the gambling club in Detroit if he had not been barred from legitimate employment in Nevada for racial reasons. He asserts that, in the early 1960's, he was told by friends in Nevada that blacks could not obtain gaming positions. (T14 to 15; T91). He then moved from Steubenville, Ohio, to Detroit and, after a period of employment with an automobile manufacturer, established the gaming club.

The Applicant's arguments in mitigation of the severity and gravity of his conduct are unpersuasive. Even assuming that illegal gambling and police corruption were not uncommon in Detroit at the pertinent time, the Applicant can hardly claim that his deep and extended involvement was significantly less egregious because others were also violating the laws. Indeed, the Applicant's reliance on "the rules of the town" would only seem to undermine public confidence. The casino industry must be operated by individuals who will resist opportunities for unlawful gain rather than yield to the inducement on some theory of situation ethics.

So too, the Applicant's allegation that racial discrimination was the cause for his unlawful behavior cannot be accepted. The Applicant attended Catholic schools in Steubenville, obtained a high school diploma, and declined an opportunity to

attend college at Ohio State. (T13 to 14; T94). Although he was allegedly told that racial barriers existed in the Nevada gaming industry when he graduated from high school in 1961, the Applicant did not personally verify that information. Moreover, the Applicant was gainfully employed in Detroit before he quit to open his gambling club in 1966. There is nothing in the record to indicate that the Applicant sought legitimate gaming employment in Nevada from 1966 until his conviction for larceny by conversion in 1970.

Most importantly, the Applicant himself admitted that his illegal activities were motivated not by social injustice but by economics. It was greed, not prejudice, which drove him. The Applicant has demonstrated his intelligence, ambition and resourcefulness in his employment and business endeavors since his release from prison. The Applicant's testimony and demeanor at this hearing also reveal these attributes. Thus, it appears that the Applicant enjoyed many advantages and opportunities. His participation in illegal gambling and official corruption was the result of a deliberate choice among several alternatives and not the product of racial pressures. Such serious, deliberate criminal conduct, occurring within the last 10 years, clearly demonstrates that licensure would be inimical to the policies of the Act and legalized gaming. Therefore, under sections 86(c) and (g), the application must be denied.⁷

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7. At the hearing, the Applicant testified that he had sought an expungement of his 1970 conviction but was advised that expungement was not available under Michigan law. The Applicant argues that expungement would be available under New Jersey law and he should not be penalized solely because of the place of his conviction. The simple response is that expungement is a legislative and judicial function. The Commission cannot determine whether an expungement should be granted. Moreover, even if the Applicant could expunge his 1970 conviction, that expungement would have no effect on the other offenses which the Applicant admitted but which were never the subject of criminal prosecution. Thus, the Applicant would still be disqualified for his operation of the illegal gaming club and the attendant unlawful payments to police officials.

III.

GOOD CHARACTER, HONESTY AND INTEGRITY

In order to obtain a casino employee license, the Applicant is obliged by sections 89(b)(2) and 90(b) of the Act to demonstrate clearly and convincingly his good character, honesty and integrity. The Applicant contends that his personal history reveals that he does possess these positive attributes. In this regard, he places emphasis on his activities since his release from prison in April, 1972. (See D-3). The Division argues that, on the present record, the Applicant has failed to make the required demonstration of fitness. (See T138 to 141).

The Applicant's criminal conduct has been described at length. The point to be made is that for a period of some four years the Applicant operated a lucrative, illegal gaming operation. Beyond flouting the gaming laws, the Applicant regularly and systematically provided payments to law enforcement officers in return for their misconduct. The Applicant also admitted that, when arrests did occur at his premises, he would "take care of" those matters by "pay[ing] somebody off" through an attorney. (T59 to 60). The facts underlying the 1970 conviction are also significant. In that instance, the Applicant decided to retrieve the impounded vehicle by obtaining a counterfeit drivers license with the assistance of a corrupt police officer and by presenting himself as the vehicle's true owner. In short, the Applicant was an occupational offender who routinely placed his own interest above the law.

In the face of such devastating evidence of bad character, the Applicant must present powerful and convincing proof of present fitness to possibly meet the statutory burden. In an effort to do so, the Applicant submitted seven letters of reference. (A-3A through G). Two of these letters (A-3 A and B) are from individuals in Ohio who claim to have known the Applicant since his early childhood in Steubenville. One letter (A-3C) is from the Michigan attorney who represented the Applicant in his 1970 prosecution. Three letters are from persons who worked or did business with the Applicant in Las Vegas. (A-3D, E and F). The remaining letter (A-3G) is from the president of the company which franchises the Applicant's florist shop in Atlantic City. With the exception of the letter from the Michigan attorney (A-3C), none of the writers revealed any knowledge of the Applicant's conviction or criminal involvement in Detroit.

The Applicant's primary contention is that his life from 1972 to the present establishes his total reform. From 1973 to 1978, the Applicant was employed by several Nevada casinos in various capacities. He began as a dealer and subsequently became a floorman. During that period, he opened a florist shop in Las Vegas. He also obtained a license as a junket operator. (A-2). According to the Applicant that license was issued after an extensive investigation by the Nevada gaming authorities. (T26). Upon moving to New Jersey in January, 1978, the Applicant bought a florist shop in Atlantic City. A

a fire damaged the shop in February, the Applicant took a partner, Mr. William Mathis, and they reopened the shop in May, 1973. At the hearing, Mr. Mathis testified to the Applicant's ambition, ingenuity and honesty. (T124).

Based on the entire record and on my observations of the Applicant, I am unable to find that the Applicant has sustained his heavy burden. The Applicant's prolonged criminal conduct involved both operation of an illegal gaming establishment and routine corruption of law enforcement officers. That pattern did not terminate until the Applicant was arrested for fraudulently regaining possession of an automobile which had been impounded by the police. On their face, these actions bespeak a serious deficiency of moral fiber. Most importantly, the Applicant's lawless behavior did not occur in the distant past. It has been only seven years since the Applicant was released from prison and nine years since his conviction.

The Applicant's life since that time has apparently been law-abiding. He has been licensed and employed in Nevada. He has also established a florist business both in Las Vegas and in Atlantic City and he continues to own and operate the latter. Nevertheless, there is nothing in the record to clearly demonstrate that the character traits exhibited by the Applicant in Detroit are no longer present. No reason appears to believe that his unlawful activities were aberrational. Indeed, the Applicant offers no sincere apology for that conduct but is seemingly convinced that it was justified. With the passage of additional

time, a different record might be made. However, at this point there is substantial question whether the Applicant would again indulge in improper conduct if he judged his interests to be served thereby. Thus, I must conclude that the Applicant has failed to demonstrate the good character, honesty and integrity necessary to assume the sensitive position of floorman.

IV.

CONCLUSION

For the reasons set forth above, I find that the Applicant is disqualified from licensure as a casino employee under section 86 of the Act. Specifically, I find that the Applicant committed acts which would constitute the following disqualifying offenses under New Jersey law: (1) obtaining property by false pretenses, N.J.S.A. 2A:111-1; (2) conspiracy to violate gambling laws, N.J.S.A. 2A:98-1 and 2; and (3) bribery and solicitation of official misconduct, N.J.S.A. 2A:85-1. Moreover, I find that the Applicant's central involvement in an illegal gaming operation which included routine unlawful payments to law enforcement officers constitutes an offense which indicates that licensure of the Applicant would be inimical to the policies of the Act and to casino operations. I further find that the Applicant has failed to demonstrate that he now possesses the degree of good character honesty and integrity required by sections 89(b)(2) and 90(b) of the Act. Therefore, I hereby recommend that Thaddous E. Watley be denied licensure as a casino employee.

Respectfully submitted,

Robert J. Genatt
Robert J. Genatt
Hearing Examiner *7/24*

Dated: October 5 1979
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 768-79
CCC DOCKET NO. 79-EA-39

IN THE MATTER OF THE APPLICATION :
OF ROBERT J. WEINSTEIN FOR :
LICENSURE AS A CASINO EMPLOYEE :
(SLOT ATTENDANT) . : FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Eugene D. Ginley of the Office of Administrative Law, and the Commission having considered the record of that hearing, and the Initial Decision of the Administrative Law Judge, and no objections or exceptions to the Initial Decision having been filed with the Commission by the Division of Gaming Enforcement or the Applicant; and the Commission having resolved at its public meeting of September 19, 1979, to adopt the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

It is on this *21st* day of September, 1979, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

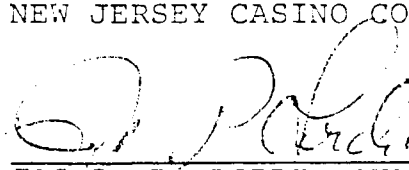
It is further ORDERED that the application of Robert J. Weinstein for a casino employee license be and hereby is approved based on the finding of fact and conclusions of law stated in the Initial Decision of Administrative Law Judge Eugene D. Ginley; and

It is further ORDERED that copies of this order be

served upon the Applicant and the Division of Gaming Enforcement
within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:



JOSEPH P. LORDI, CHAIRMAN

Dated: _____

9-21-79

IN THE MATTER OF THE APPLICATION
OF ROBERT J. WEINSTEIN FOR
LICENSURE AS A CASINO EMPLOYEE
(SLOT ATTENDANT)

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INITIAL DECISION
O.A.L. DKT. NO. C.C.C. 768-79

APPEARANCES:

George L. Seltzer, Esq., Pleasantville, New Jersey,
for Petitioner

Fredric Gushin, Esq., Deputy Attorney General, for the
Division of Gaming Enforcement, Department of Law and
Public Safety

David Arrajj, Esq., for the Casino Control Commission

BEFORE THE HONORABLE EUGENE D. GINLEY, A.L.J.:

The petitioner, Mr. Robert J. Weinstein, seeks a license to permit his employment in a casino as a slot attendant. Originally the petitioner filed an application with the Commission to permit his licensure as a principal in a gaming school (East Coast Gaming & Electronics). Along with that application he filed the Commission's Personal History Disclosure Form-1 (Exhibit J-1). Subsequently, based upon the advice of his then attorney, to the effect that his application was causing a delay in the licensure of the school, he terminated his status as a principal in the school and withdrew his application for licensure.

Subsequently, petitioner filed an application with the Commission to permit his licensure as a casino employee - slot attendant. A report from the Division of Gaming Enforcement, which had conducted an investigation on petitioner's background, dated December 15, 1978, indicated that it had discovered certain information relating to various civil judgments and an arrest of petitioner's son, all of which were not disclosed in the Personal History Disclosure Form - 1. Nevertheless, it did not interpose an objection to petitioner's licensure as a slot attendant. Pending the Commission's ruling on petitioner's application, information surfaced concerning petitioner having possible ties to organized crime. Accordingly, a supplemental investigation was undertaken by the Division. Reports were furnished by the Division to the Commission on February 5, 1979, and March 5, 1979. The report of March 5, 1979 stated that with respect to organized crime, the Division has not developed any information which establishes such ties. Again, the Division stated that it had no objection to the licensure of petitioner as a slot attendant. Nevertheless, the Commission by letter of March 23, 1979 to the petitioner, advised that there is a substantial possibility that his application will be denied. Based upon that letter, the petitioner exercised his right to request a hearing on his application.

The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A public hearing was held in Atlantic City, New Jersey, on July 26, 1979.

The standards to be employed by the Commission in the licensing of applicants are set forth in the "Casino Control Act", N.J.S.A. 5:12-1, et seq. Specifically, the matters in issue in this case are:

1. Failure to disclose required information (Sec. 86B).
2. Affiliation with organized crime (Sec. 86F).
3. Financial stability, integrity, and responsibility of the applicant (Sec.s 89B(1) and 90).

Exhibit DG-1, the letter of December 15, 1978 to the Commission indicated that the investigation had disclosed that the petitioner had been a defendant in nine (9) civil suits, all resulting in judgments, during the years 1969 to 1971. It also indicated that a loan made in 1971 to petitioner for one thousand dollars (\$1,000.00) from his employer, THE PHILADELPHIA ENQUIRER, was unsatisfied in the amount of seven hundred and three (\$703.00) dollars, and had been written off in 1973 due to non-payment. Neither the loan nor the civil suits were disclosed by the petitioner in the Personal History Disclosure Form. It was these items which account for the issues as to the failure to disclose and petitioner's financial stability and responsibility.

The issue of alleged possible ties with organized crime resulted from testimony given by a Frank Francesco in a Commission hearing unrelated to this present application. The concern arose over whether the petitioner had approached Mr. Francesco with the idea of seeking funding for a gaming school from certain figures allegedly known to be associated with organized crime.

Mr. Francesco appeared as a witness, under subpoena by the Division. He testified that he met the petitioner in 1976 when the petitioner and a Joseph Richards came to see him about the idea of opening up a gaming school in Atlantic City. The meeting was arranged through a Anthony Narcia who is a cousin of Francesco and a friend of the petitioner. Mr. Francesco explained that the petitioner and Richards were looking for a partner who could arrange financing for the proposed school. Mr. Francesco testified that at this meeting, Richards suggested to him that he seek financing from Angelo Bruno or John Testa, the figures alleged to be associated with organized crime. Apparently, Mr. Richards believed that Mr. Francesco had some relationship with Messrs. Bruno and Testa. However, Francesco stated that although petitioner was present when the request was made, he did not take any part in this request as he was engaged in conversation with the witness's brother at that time. He added that he did not know if petitioner knew about the request that Richards had made. He stated that he was surprised at such a request and did not cooperate in that manner. He did, however, seek help in getting funds for the school through other sources. These efforts proved unsuccessful and the relationship between himself and the petitioner became severed.

Detective Sergeant Henry Giancaterino of the New Jersey State Police performed an investigation of the petitioner for the Division. It was during the course of this investigation that the non-disclosures on the Personal History Disclosure Form-1 were discovered. He stated that the petitioner did not deny the existence of the non-disclosed facts, but gave various explanations for their non-disclosure. The detective added that all of his investigation checks showed no connection between the petitioner and any organized crime elements.

Mr. Weinstein gave testimony in which he emphatically denied any knowledge of Richards ever suggesting that funding for the proposed school be obtained from organized crime figures. He explained that when such charges came to his attention, he confronted Richards about it who then denied any reference to the alleged organized crime figures. He explained that the civil judgments against him came during a period of his life when he ran into many financial difficulties, some of which emanated from several prolonged illnesses of his wife. He added that all of the judgments have since been satisfied and that as to the loan from THE PHILADELPHIA ENQUIRER, he stated that he was under the belief that it had been paid off by the co-signer of the loan. Since 1971, he has not encountered any additional financial problems.

As to the non-disclosures of the civil suits, the loan, and the arrest of his son, the petitioner had several explanations. He blamed part of it on advice he received from his then attorney, a Jeffrey Gloss, who had become involved with the proposed gaming school. He claimed that Gloss told him only to go back ten (10) years in filling out the form. Petitioner's present attorney added that Mr. Gloss was apparently holding himself out as a licensed New Jersey attorney when in fact he wasn't, and that a complaint had been filed against him with the New Jersey Supreme Court. Petitioner added that he had forgotten that some of the suits carried over to within ten (10) years, but that he was also under the impression that they needn't be listed because they all had been satisfied.

Petitioner explained that he didn't disclose one arrest of his second son because he claimed that his son was doing undercover work on behalf of a local police force and that the arrest was due to a mix-up on the part of the police authorities and that the charges were subsequently dropped. He stated that he feared for his son's safety if it was disclosed that he was in fact working undercover for the police.

Finally, petitioner testified that he maintains a reputation for good character, honesty and integrity. There was no testimony in the record to refute this statement. It appeared to me that the petitioner testified in a credible and forthright manner. Counsel for the Division stated that it had not originally opposed licensure of the petitioner, that it was satisfied with the explanations rendered by him, and that it still did not interpose an objection to petitioner's licensure. Counsel for the Commission stated it felt that in light of the various circumstances, that the hearing was necessary in order to properly explore the explanations proffered by petitioner.

The burden of proof is clearly upon the applicant in this type of proceeding. However, the Commission must weigh all of the surrounding circumstances including the type of licensure sought. I am satisfied that petitioner did not knowingly participate in any alleged plan to seek financing from figures associated with organized crime. Obviously, petitioner experienced a period of financial instability during the years 1961 to 1971. Since there is no evidence of anything in this regard since 1971, he has apparently rehabilitated himself financially. The non-disclosures present a more serious problem, but in light of the surrounding circumstances, including the advice of his then attorney, I do not believe such is the result of a devious intent to misrepresent his background to the Commission. In view of the type of licensure sought, I believe that it is reasonably probable that petitioner will make an honest and trustworthy casino employee.

Accordingly, based upon the entire record, I FIND that:

1. Petitioner has applied for a license permitting him to work as a slot attendant in a casino.
2. Petitioner did not knowingly participate in any plan to solicit funds from figures associated with organized crime.
3. Petitioner has apparently regained a position of financial stability.
4. Petitioner did not intentionally seek to deceive the Commission as to pertinent facts in the Personal History Disclosure Form-1.
5. Petitioner maintains a reputation for good character, honesty and integrity.
6. The Division of Gaming Enforcement does not object to licensure of the petitioner.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE that petitioner should not be disqualified from receiving a Casino Employee License to work as a slot attendant based upon the issues which were litigated during this proceeding. I, THEREFORE, ORDER that the Casino Employee License, (slot attendant), be granted to petitioner.

This action cannot be effected prior to the effective date of this order which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in this proceeding.

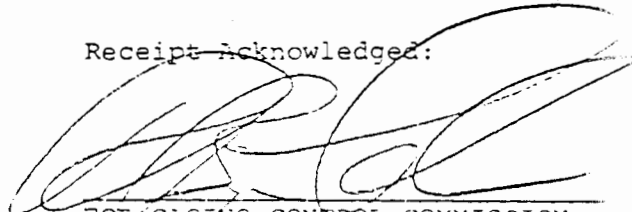
Aug. 13, 1979

DATE

Eugene D. Ginley

EUGENE D. GINLEY, A.L.J.

Receipt Acknowledged:



FOR CASINO CONTROL COMMISSION

R. BENJAMIN COHEN

Mailed to Parties:

August 21, 1979

DATE

Thomas F. Lane

FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-11

IN THE MATTER OF THE APPLICATION :
OF ANTHONY N. WILLIAMS FOR A :
CASINO EMPLOYEE LICENSE. :

ORDER

The New Jersey Casino Control Commission having read and considered the May 21, 1979, Report and Recommendation of Thomas N. Auriemma, Hearing Examiner, which is attached hereto, at its public meeting of June 20, 1979, and having received no exceptions or objections from Anthony N. Williams or the Division of Gaming Enforcement; and having voted to adopt the said report and recommendation;

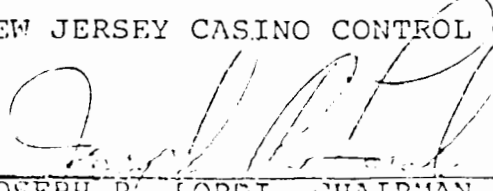
It is on this 28th day of June, 1979, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Anthony N. Williams for a casino employee license be and hereby is denied; and

It is further ORDERED that a copy of this Order be served upon Anthony N. Williams and the Division of Gaming Enforcement within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY:


JOSEPH P. LORDI, CHAIRMAN

Dated: June 28, 1979

IN THE MATTER OF THE APPLICATION :

OF ANTHONY N. WILLIAMS FOR A :

CASINO EMPLOYEE LICENSE. :

REPORT AND RECOMMENDATION

Fredric E. Gushin, Deputy Attorney General appearing for the
Division of Gaming Enforcement
Anthony N. Williams, appeared pro se at the hearing

The applicant, Anthony N. Williams, seeks to be licensed
by the New Jersey Casino Control Commission as a casino employee
(casino teller).¹ In support of his application he filed with the
Commission personal history disclosure form number 2. The Division
of Gaming Enforcement conducted an investigation into the

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1. T. will refer to Transcript of March 19, 1979.
2T. will refer to Transcript of April 19, 1979.
During the course of the hearing on April 19, 1979, Mr.
Williams indicated that he did not really desire a teller's
license but wanted to be a casino security employee. He
indicated that his original application was for the position
of security guard. (2T18-24 to 2T20-16). This Hearing
Examiner has independently reviewed the original license
application of Mr. Williams which was received by the
Commission on July 19, 1978. It has an "X" in a box under
the category called gaming related, and typed in is the
word "cashier." Nevertheless, since a security person is also
a casino employee the standard for licensure is the same.
See N.J.S.A. 5:12-90(f).
Moreover, at the conclusion of the hearing on April 19, 1979,
Mr. Williams stated: "I am willing to consider the hotel
position." (2T38-4). His main ambition appears to be to
"get licensed, period." (2T34-7). As Mr. Williams has not
filed an application for a casino hotel license, the issue
of whether he would be entitled to such license is not
presently before this Hearing Examiner and thus no opinion
is expressed thereon.

applicant's background. This investigation culminated with the Division filing a one page letter report with the Commission dated September 18, 1978. In this report, which is attached hereto, the Division interposed an objection to Mr. Williams' license application. The Division stated:

The Division of Gaming Enforcement objects to the licensure of Mr. Williams for casino employee license [sic] based upon a statutory disqualifier under Section 86 of the Casino Control Act. As Mr. Williams disclosed in answer to question #46 on his Personal History Disclosure Form, he was charged in January, 1977 with possession of stolen property pursuant to N.J.S.A. 2A:139-1. He received a ten months suspended sentence, a \$200 fine and ten months probation from the Atlantic County Court. The charges occurred when Mr. Williams was employed by the Atlantic City Police Department in the Identification Bureau. During that time, he stole property which came into his possession after processing a crime scene. In addition to the charges, he was forced to resign from the Atlantic City Police Department. Mr. Williams has no other record.

The Commission, after considering the Division's letter in a closed session, determined that a notice of intended Commission action should be sent to Mr. Williams advising him of his right to a hearing on his license application. Such notice was sent to Mr. Williams who did not request a hearing within fifteen (15) days of receipt of such notice. See N.J.A.C. 19:42-3.2 and 3.3. Accordingly, on October 25, 1978, the Commission voted to deny the application for licensure and an appropriate Order was entered on October 26, 1978. Mr. Williams was then promptly served with this

On November 13, 1978, the Commission received a letter dated November 6, 1978, from Mr. Williams wherein he sought to explain his reason for not timely requesting a hearing. On December 20, 1978, the Commission voted to vacate its previous Order and grant Mr. Williams an opportunity for a hearing. An Order was entered on January 4, 1979 embodying the Commission's determination.

A hearing was thereafter scheduled for Friday, February 9, 1979. On February 8, 1979, Mr. Williams telephoned this Hearing Examiner and requested an adjournment because his attorney was unavailable. Previous to that date, there had been no indication that Mr. Williams was represented by an attorney. I granted the request for adjournment and asked Mr. Williams to have his attorney write to me and enter his appearance in the case. On February 9, 1979, I received a letter from Nathan W. Davis, Jr., Esq., dated February 9, 1979, wherein it was indicated that he represented Mr. Williams.

Thereafter, a hearing was scheduled for 10:00 a.m. on Monday, March 19, 1979, at the Commission's Trenton Office at 379 West State Street. Mr. Davis was advised of the hearing date by letter of February 28, 1979. At 12:00 p.m. on Monday, March 19, 1979, I called the hearing to order. (T2-5 to 7). Neither Mr. Davis nor Mr. Williams had arrived. (T2-13 to 14; T5-1 to 3). My secretary had placed two telephone calls to the law office of Mr. Davis during the morning of March 19, 1979 to inquire as to the whereabouts of Mr. Davis. (T2-18 to 24). She was advised that Mr. Davis was enroute to Trenton. (T2-18 to 24). However, Mr. Davis never arrived in Trenton and never contacted me to explain his absence. (T2-25 to T3-2).

Nevertheless, I adjourned the hearing and rescheduled it for Thursday, April 19, 1979. I advised Mr. Davis and the applicant, Anthony N. Williams, of the new hearing date by letter dated March 22, 1979.

On April 19, 1979, Mr. Williams appeared without his attorney and indicated that Mr. Davis would not be appearing at the hearing. (2T3-17 to 18). Mr. Williams stated that it was his desire to proceed with the hearing in his attorney's absence. (2T3-19 to 21). The hearing was thus conducted with Mr. Williams representing himself.

I should note that I draw no adverse inference against Mr. Williams for his failure to appear on March 19, 1979. It appears that his attorney at the time was responsible for the confusion on that date (2T7-8).

The Casino Control Act provides that:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications....
[N.J.S.A. 5:12-80(a)]

Moreover, Section 90(e) of the Act (N.J.S.A. 5:12-90(e)) requires the Commission to "deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act."

At the hearing on April 19, 1979, the facts were undisputed. Detective Paul Search of the New Jersey State Police, the sole witness to testify for the Division of Gaming Enforcement, indicated that he had conducted the background investigation of Mr. Williams. (2T9-14 to 2T10-7). He related that Mr. Williams

had revealed in answer to Question Number 46 on his personal history disclosure form that he had been convicted of receiving stolen property. (2T10-24 to 2T11-7). Detective Search further testified that he verified the fact of Mr. Williams' conviction by speaking to Captain Mears of the Atlantic City Police Department. Captain Mears had related to Detective Search that Williams, a civilian employee in the Identification Bureau of the Atlantic City Police Department, had been charged in 1977 with receiving stolen property valued at \$244.67. Williams had come into possession of the property after processing a crime scene in Atlantic City. (2T11-6 to 2T13-24).

This Hearing Examiner has independently reviewed the personal history disclosure form of Mr. Williams on file with the Commission. In answer to Question Number 46 Mr. Williams admit that he had been convicted of receiving stolen property.

Mr. Williams testified in his own behalf and indicated that while employed by the Atlantic City Police he had come into possession of stolen property, that is, coats, linen, shoes, etc. (2T15-15 to 2T16-14). He testified that he was arrested on January 7, 1977, and that on January 10, 1977, he resigned his job with the Police Department. (2T16-15 to 20).

Mr. Williams also stated that he was indicted and that he subsequently pled guilty to a violation of N.J.S.A. 2A:139-1. He received a suspended ten month jail term and a \$200 fine. A ten-month period of probation was also imposed. (2T16-20 to 2T17-21).

At the conclusion of the hearing, Mr. Gushin of the Division of Gaming Enforcement reiterated the Division's objection to the issuance of a license to Mr. Williams and stated that:

It is clear from the testimony of Detective Search and Anthony Williams himself that he was convicted of possession of stolen property under N.J.S.A. 2A:139-1, which is a statutory disqualifier under the Casino Control Act.

Mr. Williams has been very candid with us here this morning and has testified to the facts and circumstances which surrounded his conviction of that section. Nevertheless, he was convicted of it and the Casino Control Commission has no discretion in terms of issuing a casino employee license to those who have been convicted of a statutory disqualifier.
(2T36-6 to 17).

On this record, I find that in January 1977, while a civilian employee of the Atlantic City Police Department, that Anthony Williams came into possession of stolen property valued in excess of \$200 while processing a crime scene. I further find that he was arrested and indicted and that he subsequently pled guilty to the offense of receiving stolen property in violation of N.J.S.A. 2A:139-1. I also find that he received a suspended ten month jail term, a \$200 fine and a ten-month probationary term.

N.J.S.A. 2A:139-1 provides in pertinent part that:

Any person who receives or buys any goods or chattels, or chases in action, or other thing of value stolen from any other person or taken from him by robbery or otherwise unlawfully or fraudulently obtained, or converted contrary to law, whether the stealing or robbery was committed either in or out of this State, and whether the property was received or bought from the thief or robber, or from another person, or who receives, harbors or conceals any thief or robber knowing

him to be so, is guilty of a high misdemeanor if the price or value of the property received or bought is \$500.00 or more, and is guilty of a misdemeanor if the price or value of such property is in excess of \$200.00 but less than \$500.00.

As noted previously, Section 90(e) of the Casino Control Act requires the Commission to deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of the Act.

Section 86(c) of the Act (N.J.S.A. 5:12-86(c)) mandates that the Commission deny the license application of a person who has been convicted of any misdemeanor which is enumerated therein. One of the enumerated offenses in Section 86(c) of the Act is N.J.S. 2A:139-1. As Mr. Williams has candidly admitted, and as the investigation of the Division has confirmed, Mr. Williams has been convicted of a violation of N.J.S.A. 2A:139-1.

On the basis of the record before me, I must conclude that Mr. Williams is automatically disqualified from holding a casino employee license by virtue of his conviction for a violation of N.J.S.A. 2A:139-1. I recommend, therefore, that the New Jersey Casino Control Commission deny the license application of Mr. Williams.

Respectfully submitted,

Thomas N. Auricenna

Thomas N. Auricenna
Hearing Examiner

Dated: Mar. 21, 1979



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHA
DEPUTY DIRECTOR

Hand Delivered

September 18, 1978-

Hon. Joseph P. Lordi
Chairman, Casino Control Commission
379 West State Street
Trenton, NJ 08625

Re: Anthony M. Williams, Applicant for Licensure
as Casino Employee

Dear Chairman Lordi:

The above-identified individual has applied to the Casino Control Commission for licensure as a casino employee as a teller. He filed Personal History Disclosure Form #2. As mandated by the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder, the Division of Gaming Enforcement conducted the requisite investigation into Mr. Williams' background. Information was gleaned from a record check through appropriate law enforcement agencies, a credit check and some field investigation.

The Division of Gaming Enforcement objects to the licensure of Mr. Williams for casino employee license based upon a statutory disqualifier under Section 86 of the Casino Control Act. As Mr. Williams disclosed in answer to question #46 on his Personal History Disclosure Form, he was charged in January, 1977 with possession of stolen property pursuant to N.J.S.A. 2A: 139-1. He received a ten months suspended sentence, a \$200 fine and ten months probation from the Atlantic County Court. The charges occurred when Mr. Williams was employed by the Atlantic City Police Department in the Identification Bureau. During that time, he stole property which came into his possession after processing a crime scene. In addition to the charges, he was forced to resign from the Atlantic City Police Department. Mr. Williams has no other record.

Yours very truly,

ROBERT P. MARTINEZ
DIRECTOR

By

Joan Robinson Gross
Deputy Attorney General

JRG:ko

cc: Members of the Commission
Joseph A. Fusco, Esq.
Mr. Anthony M. Williams

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 684-79
CCC DOCKET NO. 79-EA-26

IN THE MATTER OF THE APPLICATION
OF GREGG LADELL WILSON FOR
LICENSURE AS A CASINO EMPLOYEE
(SLOT MECHANIC)

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Eugene D. Ginley of the Office of Administrative Law; and the Commission having considered the record of that hearing and the Initial Decision of the Administrative Law Judge; and no objections or exceptions to the Initial Decision having been filed with the Commission by the Division of Gaming Enforcement or the applicant; and the Commission having resolved at its public meeting of August 29, 1979, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 30th day of August, 1979, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Gregg Ladell Wilson for a casino employee license be and hereby is denied; and ;

It is further ORDERED that copies of this order be served upon the applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY:

Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN ^{92A}

Dated:

August 30, 1979

IN THE MATTER OF THE APPLICATION OF)
GREGG LADELL WILSON FOR LICENSURE)
AS A CASINO EMPLOYEE (SLOT MECHANIC))

INITIAL DECISION

O.A.L. DKT. NO. C.C.C. 684-79

APPEARANCES:

Gregg L. Wilson, Petitioner, pro se

Patricia Arrons, Esq., Deputy Attorney General,
for the Division of Gaming Enforcement, Depart-
ment of Law and Public Safety

Thomas Auriemma, Esq., and David Arrajj, Esq.,
for the Casino Control Commission

BEFORE THE HONORABLE EUGENE D. GINLEY, A.L.J.:

The petitioner, Mr. Gregg L. Wilson, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a Slot Mechanic. Petitioner received a letter, dated March 12, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, "there is a substantial possibility that the Commission will deny your application." Based upon that letter, the petitioner exercised his right to request a hearing on his application. The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A public hearing was held in Trenton, New Jersey, on June 15, 1979.

The standards to be employed by the Commission in the licensing of applicants are set forth in the "Casino Control Act", N.J.S.A. 5:12-1, et seq. Specifically, the Division of Gaming Enforcement objects to petitioner's licensure on the following grounds:

1. Lack of clear and convincing evidence that applicant has a reputation for good character, honesty and integrity (Sections 89b(2) and 90).
2. Conviction of an offense which is "inimical" to the policy of the Act. (Section 86c).

3. Failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading. (Section 86b).
4. Failure of the applicant to establish by clear and convincing evidence that he has sufficient casino experience or completion of a course of study at a licensed school in an approved curriculum. (Sections 89b(3) and 90b).

Exhibit DG-2, a record from the United States Department of Justice, shows that the applicant was twice arrested in California for possession of marijuana in the years 1973 and 1975. In both instances, the applicant received a conditional discharge under which terms the applicant was placed on probation and enrolled in a drug abuse educational program. However, associated with the second charge for possession of marijuana, there was also a criminal charge of interfering with a police officer to which the applicant pled guilty and received a one-year probation.

In Exhibit DG-1, the Commission's Personal History Disclosure Form, the applicant indicated a "no" answer to Question No. 46. That question asks if he or any member of his immediate family has "ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction". When questioned, under cross-examination, as to why he did not disclose his record as represented on Exhibit DG-2, the applicant stated various reasons, but in an indecisive manner. They included that:

1. His probation officer told him since he was not convicted, he did not have to report it;
2. He did not feel that he was a criminal;
3. He did not know he was convicted of any charges;
4. That he filled out the Disclosure Form at 1:00 o'clock in the morning;
5. He was mistreated at his interview.

Mr. Daniel Balance, a New Jersey State Police trooper, testified on behalf of the Division of Gaming Enforcement that he was assigned to conduct the interview with the applicant which took place on December 15, 1978. Trooper Balance stated that when the applicant was asked if he had ever been arrested, the applicant responded only that he had received a speeding ticket in California. When the officer mentioned the marijuana charges, the applicant answered that since he was not convicted, he did not think they had to go into the Disclosure Form. Officer Balance also testified that when he confronted the applicant with the record of the charge for interference with a police officer, applicant stated that he forgot about the charge.

When the trooper pursued the question, he stated that applicant responded: "Okay, I didn't think you could find out about it". When Trooper Balance asked the applicant about his negative response to Question No. 49 (regarding use of drugs), applicant explained that he did not know why he answered "no" to the question.

Trooper Balance also testified that at the interview the applicant seemed that he was just waiting to be confronted with different things which were not disclosed in the application. For example, the trooper indicated that applicant was the parent of a child in California which also was not disclosed on the application. He described applicant's demeanor as "see who knows the most about me". Furthermore, Trooper Balance indicated that applicant was not abused at the interview and was treated the same as anyone else.

Applicant admits that he has no former schooling or work experience relating to the qualifications needed to be a Slot Machine Mechanic. He stated that if he was granted a license, he would go to school to learn, but that he was not going to spend the money for the tuition until such time as he found out if he would be licensed.

In conclusion, it is clear to me that the applicant has failed to demonstrate by clear and convincing evidence that he maintains a reputation for good character, honesty and integrity, as required by the Act. Further, applicant has failed to give sufficient explanation for the misleading answers in his Personal History Disclosure Form. Accordingly, I believe that the applicant does not comply with the requirements of the Act for licensure as a Casino employee.

Based upon the entire record, I FIND that:

1. Petitioner has applied for a license to permit him to work as a Slot Machine Mechanic in a casino.
2. That he did not complete the Personal History Disclosure Form in good faith in that he intentionally concealed information from the Commission.
3. That he did not present clear and convincing evidence that he maintains a reputation for good character, integrity and honesty.
4. That he did not present by clear and convincing evidence that he possessed sufficient casino experience or completion of a course of study at a licensed school to establish the reasonable likelihood of success and efficiency in the particular position involved.
5. That applicant's criminal record indicates that licensure of the applicant would be "inimical" to the policy of the Act and to casino operations.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE that petitioner must be disqualified from receiving a casino employee license. I, therefore, ORDER that the casino employee license in issue BE DENIED.

This decision does not become final until forty-five (45) days from the Agency receipt of this Order unless the Agency Head acts to affirm, modify or reverse during the forty-five (45) day period N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, Thomas Auriemma, Esq., Senior Assistant Counsel, my Initial Decision in this matter and the record in these proceedings.

July 25, 1979
DATE

Eugene D. Ginley
EUGENE D. GINLEY, A.L.J.

Receipt Acknowledged:

August 3, 1979
DATE

Robert J. Smith
FOR AGENCY HEAD

Mailed to Parties:

August 7, 1979
DATE

Ronald L. Smith
OFFICE OF ADMINISTRATIVE LAW

MDR